End Point Royalties

Plant breeder's rights, sometimes known as plant variety rights, provide exclusivity for various uses of the propagating material of protected plant varieties. There are a number of different ways through which plant varieties might be used or commercialised.

Commonly, farmers that want to grow a protected variety agree to a contract or license that includes terms that govern the farmer's use of the variety. This commonly includes the purchase price of the propagating material, terms of use, reporting requirements, and the amount (and timing) of any royalties to be paid.

What are royalties?

The cost of the propagating material of a protected plant variety often includes a royalty, which is a payment for use of the material that generates revenue for the breeder. For example, a variety that costs $100 per tonne may include a $4 royalty that goes back to the owner of the plant breeder's rights.

Royalties are often collected at the point of sale, as a one-off payment when propagating material such as seed is purchased. Alternatively, growers in Australia may be required to pay an end point royalty on newly released varieties. End point royalty payments are calculated on the volume, quantity, or weight of the crop that is harvested from the seed of a particular variety. End point royalties are also known as Crop Improvement Royalties.

Importantly, the use of end point royalties is not restricted to varieties that are protected by plant breeder's rights. Royalties are the exclusive province of the contract between the grower and the seller (who is often the plant breeder's rights owner or their licensee) of the propagating material.

Why end point royalties?

End point royalties are often presented as a fairer alternative to point of sale royalties. This is because they may enable breeders to obtain a return on the investments they made in breeding the variety, while keeping the cost of propagating material relatively low.

End point royalties also spread the risk of crop failure, while allowing plant breeder's rights owners to collect royalties from the sale of grain that was grown using farm-saved seed. In this way, end point royalties are understood as a user pays system that allows the grower to produce the variety and to pay royalties proportionately based on the success of the harvest.

How do end point royalties affect the grower?

In most circumstances, the grower is required to sign a contract (often referred to as a 'Grower Agreement' or 'Seed Licence' when they purchase propagating material (*see* Fact Sheet 19: Closed Loop Contracts). This contract outlines the obligations of the grower, which may include:

- to pay an end point royalty that will be calculated based on each tonne of grain harvested, whether sold or retained on farm; and
- to retain records that specify the tonnage of grain either sold or retained.

Importantly, any propagating material that growers save, and subsequent harvests of crops grown with this material, may be subject to the terms and conditions of the contract.

How do growers pay end point royalties?

When grain of a variety that is subject to end point royalty payments is delivered to certain buyers, the royalty may be automatically deducted from the payment that the buyer makes to the grower. Alternatively, if delivery is made to a buyer that does not automatically deduct the royalty, then the grower may be invoiced subsequently for the end point royalty.

Grower declarations, grain delivery information, and contract auditing are all used to ensure that appropriate end point royalties are being collected.

How do I know if I have to pay end point royalties?

Your contract will state what type of royalties are payable. You need to check your contract to determine whether the royalties are end point royalties.

Who receives the end point royalties?

The recipient of the end point royalties is usually the breeder, distributor, or licensee.

What are the issues with end point royalties?

Transparency: Occasionally, breeders will collect a point of sale royalty on the propagating material, in addition to an end point royalty. Some growers believe that this constitutes 'double-dipping' because they are paying two royalties twice: once for the propagating material, and once for the harvested product. However, this does not occur for most commercially grown plant varieties.

Variation in end point royalties rates: There can be a large variation in end point royalty rates, depending on the variety. This variation generally results from a consideration of the costs of other varieties in the market place, the benefit(s) of the new variety, and market tolerance. Variation can be reduced by charging a percentage rate rather than a $/tonne charge.

Standardised contracts: While end point royalties are widely used, their implementation has been approached variously by different breeding organisations and/or collection agents. This has resulted in several similar but separate systems operating within the same industry. As a result, there is a wide range of Grower Agreements, which can vary substantially. It is important that you read the terms of any contract you sign carefully.

Third-line forcing (Competition and Consumer Law): While it is lawful to recommend the product or service of a third party to a grower, it is unlawful to force growers to use those products or services. For example, it may be unlawful for a seed vendor to force growers to use a particular grain collection agent. However, the legality of this situation may depend on whether any public benefit (e.g., based on price or choice) would result from forcing growers to use a nominated agent. For example, in Australia, the former Australian Wheat Board successfully obtained 'authorisation' from the relevant national regulator to force growers to use only their nominated collection agent, based on a public benefit rationale.

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