

THE PARABLE OF THE SEEDS: INTERPRETING THE PLANT
VARIETY PROTECTION ACT IN FURTHERANCE OF
INNOVATION POLICY

*Jim Chen**

Among drivers of evolution, two forces tower above all others. One of them is food. The other is sex. The seed is both. Information embedded in seed is amenable to various forms of proprietary protection. In the abstract, the Plant Variety Protection Act (PVPA) provides an attractive alternative to utility patents on plants and to the protection of hybrid crops as trade secrets. In practice, the PVPA has failed to become the preeminent form of intellectual property in plants. This Article explores some of the reasons for this apparent statutory shortcoming.

First, this Article outlines the case for a substantive canon of statutory interpretation derived from the Constitution's requirement that federal intellectual property laws advance the Progress of Science and useful Arts. Second, this Article applies this canon to the PVPA. In particular, it addresses the PVPA's controversial crop and research exemptions. Third, this Article discusses the statutory requirement that applicants for plant variety protection deposit reproductive material in a public repository. Fourth, this Article assesses the practice of seed-wrap licensing as a contractual response to reproductive breeding, brown-bag sales, and other activities putatively conducted under the PVPA's crop and research exemptions. This Article concludes by defending its constitutionally informed approach to interpreting the PVPA, which appears to be a rare instance in the annals of contemporary intellectual property law in which proprietary protection is not excessive, but rather insufficiently robust.

* Associate Dean for Faculty and James L. Krusemark Professor of Law, University of Minnesota Law School, chenx064@maroon.tc.umn.edu. This Article was presented as a part of the University of Minnesota's Applied Plant Sciences Seminar Series on September 19, 2005.