

# Who owns nature?

Many of the plants we buy are now patented, which makes it illegal to propagate from them for commercial gain. **Michael Wickenden** makes the case against Plant Breeders' Rights. Photography by Andrea Jones

## A RIGHT TO GROW

Michael Wickenden (right) set up Cally Gardens, a renowned Scottish nursery, more than 20 years ago. He believes that he and other growers should be free to propagate what they wish

**AT FIRST SIGHT**, 'who owns nature?' looks like an absurd question. Surely the idea of owning nature is ridiculous; it 'belongs' to humanity in general and, indeed, humanity belongs to it. However, over the last few years this has become a real question for anyone who propagates plants for sale, and for the public who buy them at nurseries and garden centres.

The plants in your garden still belong to you, but the right to propagate them for sale, in some cases, does not. This became possible when nature, including garden plants, became 'intellectual property'. Copyright is a more familiar form of intellectual property; you can own a copy of a book but not the right to reprint it for sale. Clearly, a book is the product of someone's intellect whereas a plant is a product of nature.

This begs a question – why should one person rather than another be able to patent something they did not invent? The answer, from those in favour of Plant Breeders' Rights (PBR) – which, if granted, give the originator of a new plant control over its propagation – is that the huge amount of work involved in plant breeding justifies the right to patent it. This was fair enough when PBR was only available for agricultural crops developed from expensive breeding programs, but in June 1997 the scheme was opened out to all plants. To get PBR there is no requirement to show you have done any actual breeding work and no definition of what plant breeding is. In official publications and elsewhere the words 'breeder', 'raiser', 'developer', 'finder', 'discoverer' and even 'creator' are interchangeable – profitable confusion reigns, and they all get PBR.

Many ornamental plants currently bearing PBR were simply found by chance or collected in other countries. The public are charged royalties (adding to the cost of plants they buy) for breeding that may not have taken place. Anybody who wants to see how this happened can read

online what was said in the House of Commons (Hansard, 24 Jun 1997, vol 296, columns 729 & 730). The Minister of State for Agriculture promised only expensively bred plants would get PBR, a promise seemingly now forgotten.

## Plant Breeders' Rights and the public

We hear a lot about choice these days, but the public can not choose to avoid patented PBR plants and their royalties as there are no enforced rules on labelling. You can not tell what is covered. Plants that are labelled with PBR (such as many of the fashionable new *Heuchera*) are often marked 'propagation illegal', which is misleading. It is propagation for sale that is prohibited. There have been questions to BBC Radio 4's *Gardeners' Question Time* from the public wondering if they really were not allowed to propagate these plants for their own use or as presents for friends. A parliamentary question from Norman Baker MP in 2005 asking if the Government would amend the labelling regulations received a simple reply: no. If your garden opens to the public you are not even allowed to propagate 'large quantities' of your own plants for your own garden if they are patented, as you are deemed to be getting a commercial advantage.

Dominant PBR-orientated wholesale nurseries tend to drop worthy but older garden plants in favour of similar 'new' ones with a royalty. As a result many retailers now offer similar ranges; it is easier for them to buy in young plants from these wholesalers than to try to find out what is not patented and grow their own. Even buying in non-PBR new selections is a problem – under one of the most dubious aspects of this system they can be released to test the market and then granted PBR later on. If I propagate one of these plants in the meantime I will not be allowed to sell the results of my work.

Some nurseries simply rename PBR plants to avoid the royalties; others rename old selections to get PBR. This lack of regulation has attracted a new breed of 'marketing consultants' into horticulture. Their advertisements encourage the public to bring them any exciting new plants they have 'found' (no pretence here that any breeding has taken place). They obtain PBR and market the plant, for a percentage.

I am sorry that it is my generation of nurserymen who have embraced, or at least quietly accepted, these measures. We had the right to propagate what we wanted when we started out, but now wish to deny new growers this same advantage. Potentially even more important are the implications of priceless natural genetic resources, which have evolved over millennia with no help from anyone, becoming the private 'intellectual' property of individuals or companies, a growing issue not only in the world of horticulture but also affecting the spheres of food, medicine, science and much else besides. ■

*Michael Wickenden* owns Cally Gardens, a walled garden and nursery in Dumfries and Galloway

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**? What do you think?** Who should or should not hold breeding rights to plants? Write to: Viewpoint, The Garden, 4th Floor, Churchgate, New Road, Peterborough PE1 1TT; email: [thegarden@rhs.org.uk](mailto:thegarden@rhs.org.uk); please include a postal address

**i For information on PBR visit:** [www.fera.defra.gov.uk/plants/plantvarieties/plantbreedersrights/index.cfm](http://www.fera.defra.gov.uk/plants/plantvarieties/plantbreedersrights/index.cfm)

