

Open access procedural regulations for publishing short academic works by UT staff members

Article 25fa of the Dutch Copyright Act (hereafter: CA) entitles researchers to share a short academic work without financial consideration after a reasonable period. To facilitate exercising this right, the Universities of the Netherlands (UNL) completed a successful pilot project as a part of the National Programme for Open Science (NPOS) in 2019. The participating researchers gave universities their permission to share short academic works.

The pilot's evaluation showed that the efficiency of the administrative procedures for researchers to grant permission (by two-way paper licence) is an obstacle to scaling up. The solution was found in converting the so-called opt-in approach into a tacit licence procedure with the possibility to opt out.

The universities, as the employer, warrant the participating researchers to pay for the possible costs in the case of a legal dispute with a publisher. Within the UNL, the universities agreed to share the legal risks.

Considering that:

- the University of Twente supports the importance of Open Access, thereby following Dutch government policy as laid down in the letter of the State Secretary for Education, Culture and Science dated 15 November 2013¹;
- Article 25fa of the Dutch Copyright Act (CA) entitles researchers to share a short academic work without financial consideration following a reasonable period after publication;
- the University has an interest in the academic output of its staff members being easily retrievable and, with a view to being a good employer, wishes to facilitate that its staff members can optimally exercise their rights under Article 25fa CA;
- the University requires a tacit, non-exclusive licence from its staff members for the purpose as mentioned above;

the Board of the University of Twente decided to adopt the following Procedure (hereafter: procedure), coming into effect on December 20, 2021.

¹ Letter of State Secretary for Education, Culture and Science, Sander Dekker (15 November 2013). Kamerstuk [Parliamentary Document] 31288, no. 354. <https://zoek.officielebekendmakingen.nl/kst-31288-354.html>

1. Definitions

The following definitions apply to all aspects covered by this procedure:

Open Access: Allowing for unlimited availability of academic manifestations (here: publications), in particular by providing free and online access to them.

Short work: The traceable bibliographical part of all short forms of transfer of the outcomes of academic research published as part of larger works, that is to say, for the categories of KUOZ (academic research indicators) publication types² 'refereed' or 'non-refereed' article in a journal, part of a volume, or 'refereed' or 'non-refereed' conference publications. These may include both printed and electronic publications.

Staff member: A person with a current or past employment contract with the University.

Repository: A database containing information in various forms (e.g., text, datasets, images, or sound). In this document, the University's database set up for this purpose, in which the University's research output is being stored, managed, and saved.

University: The University of Twente (UT)

2. Background and legal framework

2.1 Article 25fa reads:

The creator of a short scientific work, the research for which has been paid for in whole or in part by Dutch public funds, shall be entitled to make that work available to the public for no financial consideration following a reasonable period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.

2.2 Article 1.8 of the Collective Labour Agreement for Dutch Universities (CAO NU) reads:

Article 1.8 General 1. The employer is obliged to act and to refrain from acting in a way a proper employer should under similar circumstances. 2. The employee is obliged to perform his duties to the best of his ability, to behave as a good employee and to act in accordance with the instructions given by or on behalf of the employer. 3. In the performance of his duties and in his personal and concerted behaviour towards third parties, an employee is expected to act in the spirit of the goals of the university as much as possible.

2.3 Article 1.20 of the CAO NU reads:

1. The employee is obliged to comply with provisions reasonably laid down by the employer with regard to patent rights, database rights, plant breeder's rights, design rights, trademark rights and copyright, with due observance of the legal provisions.

² In conformity with the definitions of the Kengetallen Universitair Onderzoek (academic research indicators, KUOZ):

https://vsnu.nl/files/documenten/Feiten_en_Cijfers/VSNU_Definitieafspraken_onderzoeksinzet_en_out_put_KUOZ.PDF.

3. *Scope of the procedure*

3.1. The staff member, as a researcher, is entitled to invoke Article 25fa CA in order to publish their short academic works via open access after a reasonable term. With a view to being a good employer, the University wants to facilitate its researchers to use this right. The Procedure allows for this with the staff member's tacit approval, without the staff member having to undertake any actions. The Procedure contains an opt-out clause and a catch-all provision. Further explanation can be found on the University's website.

4. *Publishing short works in the University's institutional repository*

4.1 The employer facilitates that short works will be published in the institutional repository based on a tacit licence.

4.2 The University has the non-exclusive right to make publicly available any short works that the staff member has made during their employment contract with the UT and that meet the requirements of Article 25fa CA in the institutional repository without financial consideration. The point of departure is that the staff member agrees to this.

4.3 The University also has the non-exclusive right to make publicly available all future short works that the staff member will produce during their employment contract with the UT and that meet the requirements of Article 25fa CA in the institutional repository without financial consideration. The point of departure is that the staff member agrees to this.

5. *Opt-out*

5.1 The staff member has the right to request an opt-out for each individual short work from being made available.

5.2 The University will ensure that the procedure for requesting an opt-out can be found on the University's website.

5.3 When an opt-out concerns a publication with multiple UT authors, the University will process the staff member's personal details, at least including their surname, initials, and faculty/department, to inform the other UT authors of that publication about the opt-out.

6. *Warranties and obligations*

6.1 The staff member warrants the UT to be the creator or co-creator of the short work and as such, to be authorized to grant this consent.

6.2 The University warrants the staff member to support them legally and financially in case of any third-party claims against the staff member that arise from this procedure. The UT shall ensure legal aid at the initiative and expense of the UT. The UT shall fully compensate any costs, penalties or claims that the staff member has incurred due to the public availability of a short work in the context of Article 25fa CA. The above shall not apply in the case of intent or gross negligence on the part of the staff member.

6.3 The University shall not make the short work publicly available within six months of its first publication.

6.4 The University shall always clearly state the source of the first publication of the short work.

6.5 The University and the staff member shall inform each other immediately of any infringements of the short work or short works, or if a third party makes a claim to the short work or short works, or states that one or more short works constitute an infringement of their rights.

7. *Retroactive effect*

7.1 These Regulations have a retroactive effect on works that have been made before the date of commencement of these Regulations.

7.2 The Regulations equally apply to staff members who had an employment contract with the UT before the date of commencement with regard to short works published during the term of the employment contract. In that case, it must be ascertained that the staff member has been informed of the Regulations and the possibility to opt out.

8. *Catch-all provision*

Situations not foreseen in these Regulations shall be settled by the Board of the University, balancing the interests of all parties involved.

9. *Official title*

These Regulations shall be cited as Open Access Procedural Regulations and shall come into effect on December 20, 2021 after being adopted by the Board of the University on December 20, 2021.

10. *Contact details*

For any questions about this Regulation, about Open Access and the implementation of the Procedure, you can contact open-access@utwente.nl (University of Twente Library).

11. *Table of publication types according to KUOZ categories (Kengetallen Universitair Onderzoek, academic research indicators)*

Research output (publications and research work) will be classified based on aim and envisaged target group into three main categories that distinguish KUOZ types. The KUOZ types may be divided further into subtypes, to the extent that these have been distinguished in the University's current research information system (CRIS).

The table below lists the distinguished KUOZ types as they are used in the CRIS and the repository linked to it, indicating whether they are covered by Article 25fa CA.

SEP: Standard Evaluation Protocol as determined by the VSNU, KNAW and NWO.

KUOZ type	1) Academic	2) Professional	3) Popular
a. 'Refereed' article in a journal	SEP 1a		
b. 'Non-refereed' article in a journal	SEP 1b	SEP 2	SEP 3
c. Book	SEP 1c	SEP 2	SEP 3
d. Volume	SEP 1d	SEP 2	SEP 3
e. Thesis (KUOZ: sum of 1+2; SEP: subdivided into A + B)	SEP 1e		
f. Refereed conference publication	SEP 1f		
g. Non-refereed conference publication	SEP 1f	SEP 2	SEP 3
h. Annotation	SEP 1b	SEP 2	
i. Protocol	SEP 4	SEP 4	
j. Report	SEP 4	SEP 4	SEP 4
k. Patent (1st application)	SEP 2		
l. Book review	SEP 4	SEP 4	SEP 4
m. Inaugural speech	SEP 4		
n. Conference contribution (abstract, poster)	SEP 4	SEP 4	SEP 4
o. Design	SEP 4	SEP 4	SEP 4
p. Database	SEP 4	SEP 4	SEP 4
q. Digital or visual products	SEP 4	SEP 4	SEP 4
r. Performance/execution	SEP 4		
s. Software	SEP 4	SEP 4	SEP 4
t. Online publication (web)	SEP 4	SEP 4	SEP 4
u. Other	SEP 4	SEP 4	SEP 4
	Article 25fa CA applies		
	Article 25fa CA does not apply		
	A dissertation may be a collection of individual articles. Article 25fa CA may apply to these articles.		