

Delft University of Technology - Short scientific work Scheme (Open Access)

The Board of Delft University of Technology 20-10-2022

Considers that Delft University of Technology (TU Delft) attaches importance to making short scientific works available to the public as part of its Open Access policy;

that in that context it is appropriate to adopt further regulations on the manner in which short scientific works, as referred to in Section 25fa of the Copyright Act, are made available to the public 'free of charge', after first publication thereof;

and states

as regarding Section 4.5 (5) of the Higher Education and Research Act;

as regarding Article 1.20 (2) of the Collective Labour Agreement of Dutch Universities;

In consultation with the works council (meeting dated 15 September 2022)

After agreement from the employee organisations in the local consultations (consultation meeting LO520 dated 17 October 2022);

established the following regulations.

Article 1. Definition of terms

For the purpose of these regulations, the terms below are defined as follows:

TU Delft:	Delft University of Technology
employee:	a person who is or has been employed by Delft University of Technology.
CAO NU:	Dutch Universities collective agreement;
Open Access:	making scientific achievements available without restrictions, in particular making them freely accessible and available online free of charge;
<i>Short scientific work:</i>	copyrighted work as referred to in Section 25fa Aw, being: a result of scientific research published in a short form of transfer in a non-independent publication - printed or electronic - and bibliographically traceable, including at least the KUOZ publication types ¹ 'refereed' or 'non-refereed' article in a journal, book volume/chapter, or 'refereed' or 'non-refereed' conference publication. This concerns not only print publications but also electronic publications. An overview is given in the Table in Annex 1 to these regulations.
Section 25fa Aw:	Section 25fa of the Copyright Act (also called: Taverne Amendment) reading: <i>The creator of a short scientific work for which the research has been financed wholly or partly with Dutch public funds shall be entitled, after the expiry of a reasonable period after its first publication, to make that work available to the public for no consideration, provided that the source of the first publication is clearly stated.</i>
<i>making available:</i>	making work available to the public without payment in order to take cognisance thereof, as referred to in Section 25fa of the Copyright Act;
Repository:	The Delft University of Technology database that may contain information in various forms (e.g. text, datasets, images or sound), in particular the institutional

¹ In accordance with the definition agreements in the [University Research Key Figures](#) (KUOZ) ,UNL, Development of the research output

<i>research output</i>	Repository of the Delft University of Technology in which Delft University of Technology's research output is stored, managed and preserved;
<i>Opt-out:</i>	Scientific publications and research activities; option to exclude individual 'short scientific work' from being made available under these regulations.

Article 2. Background and legal framework

1. Section 25fa Aw gives the employee, as the creator of a short scientific work referred to therein, the right to make it available to the public without payment within a reasonable period of time after the first publication, provided that the source of the first publication is clearly stated.
2. As an employer, TU Delft may, pursuant to Article 1.20 of the CAO-NU, determine reasonable rules concerning copyright. These regulations lay down more detailed rules on making research output available in the form of short scientific work.
3. This arrangement facilitates that any rights of the employee under Section 25fa Aw can be exercised in a simple manner by tacit consent of the employee, providing an Opt-out option.

Article 3. Availability via the TU Delft Repository

1. TU Delft has the tacit consent of the employee to make every short scientific work that the employee has produced and/or will produce during the period of employment with TU Delft available via the Repository after a reasonable period following the first publication, stating the source of the first publication. TU Delft does not have this consent if the employee informs TU Delft by means of an Opt-out that he does not consent to making a particular short scientific work available.
2. The reasonable period, as referred to in paragraph 1, is a period of six months after initial disclosure.

Article 4. Opt-out

1. The employee has the right to exclude any individual short scientific work or all his short scientific work collectively from being made available by using the Opt-out. The employee has this power even after the reasonable period of six months has passed, as long as the short scientific work has not yet been made available through the Repository.
2. TU Delft shall provide the procedure for requesting the Opt-out and publish it on the TU Delft website, at least on the TU Delft Library website. A draft Opt-out form is included in Annex 2 of these regulations.
3. TU Delft may request the employee to state the reasons for invoking the Opt-out option.
4. In case of an Opt-out, TU Delft will process personal data of the employee, including in any case surname, initial(s), and faculty/department.

Article 5. Guarantees and obligations

1. TU Delft guarantees the employee that in the event of any claim by third parties against the employee resulting from the making available under these regulations, TU Delft will provide the employee with legal and financial support. TU Delft will provide legal assistance at TU Delft's initiative and expense. If the employee is obliged to pay any costs, fines or compensation as a consequence of making the short scientific work available under these regulations, TU Delft will reimburse these in full. The above applies on the condition that the employee is the creator or one of the creators of the relevant short scientific work and does not apply in the event of intent or gross negligence on the part of the employee.
2. TU Delft will not make the short scientific work available until six months after initial publication.
3. When making available via the Repository, TU Delft shall clearly indicate the source of the initial publication of the short scientific work .
4. TU Delft and the employee will notify each other immediately if they establish an infringement of a short scientific work or if a third party makes a claim to a short scientific work that has been made available, or claims that one or more short scientific work that have been made available infringe its rights.
5. The provisions of this article also apply if the employee is no longer employed by TU Delft at the time the short scientific work is made available under these regulations.

Article 6. Final provisions

1. In cases not covered by these regulations, the TU Delft Executive Board shall act and decide as it sees fit, taking into account the interests of all parties involved. The same applies if a case arises involving multiple interpretations of the regulations.
2. TU Delft's Executive Board may decide not to make a short scientific work available via the Repository if compelling interests, including those relating to scientific integrity or knowledge security, oppose it.
3. In case of conflict between the Dutch text of these regulations and a translation thereof, the Dutch version shall prevail.

Article 7. Transitional arrangement

These regulations do not apply to employees who are no longer employed by TU Delft at the time of its entry into force.

Article 8. Effective date

These regulations enter into force on 1 February 2023.

Article 9. Short title

These regulations shall be cited as "TU Delft short scientific work (Open Access) Scheme".

These regulations will be posted on the TU Delft website and employee pages.

Notification of this regulation and its posting on the website and employee pages will be made in TU News, Delft University of Technology's digital newsletter.

Adopted at the meeting of the Executive Board held on 8 November 2022,

Prof. T.H.J.J. van der Hagen,
President of the Executive Board

EXPLANATORY NOTES

Introduction

TU Delft endorses the importance of Open Access, following the policy of the Dutch government as laid down in the letter from the State Secretary for Education, Culture and Science of 15 November 2013. In doing so, the vision of the Dutch government and the Dutch Code of Conduct for Scientific Integrity² that publicly funded research should be freely accessible as much as possible, on which agreements have been made between the Universities of the Netherlands (UNL, v/h VSNU) and the Ministry of Education, Culture and Science.³

Section 25fa of the Copyright Act, also known as "the Taverne Amendment", was introduced as of 1 July 2015 and gives researchers the right to share short scientific work as a result of wholly or partly publicly funded research with the public for perusal within a reasonable period of time without payment after its first publication, i.e. generally six months after the first publication. To facilitate the exercise of this right, the Universities of the Netherlands (UNL) conducted a successful pilot in 2019 as part of the National Open

² See 3.2 norm 11 Norms for good research practices in the Dutch Code for Scientific Integrity:
<https://www.vsnu.nl/files/documenten/Nederlandse%20gedragscode%20wetenschappelijke%20integriteit%202018.pdf>

³ <https://www.rijksoverheid.nl/documenten/convenanten/2018/04/09/sectorakkoord-wetenschappelijk-onderwijs-2018>

Science Programme (NPOS). In it, participating researchers granted universities permission to share short scientific work publicly.

TU Delft Open Access pilot based on Taverne amendment

Public availability without payment based on the Taverne amendment was introduced at TU Delft as a pilot following Executive Board approval on 23 October 2018. In the pilot, Taverne was implemented in a scalable manner by TU Delft Library. Several faculties were designated as participants. In addition, researchers could apply individually as participants. Between February 2019 and the end of 2021, 420 researchers participated after signing a model agreement.⁴ By the end of 2021, more than 3,000 articles, conference papers and book chapters previously behind a pay wall became available. As a time window, it was chosen for practical reasons to make scholarly work available in this way from 1 January 2018.

National evaluation of pilot

The national evaluation of the pilot in 2020 found that the efficiency of the administrative processes surrounding the granting of consent by researchers (through an agreement) hampered upscaling. The solution was found in converting the 'opt-in' approach into a scheme with the possibility of an 'opt-out'. This arrangement has now been implemented at the following universities: University of Groningen, Erasmus University, University of Twente, Leiden University.

TU Delft guarantees participating researchers that in the event of a legal dispute with a publisher, the university as employer will bear all possible costs. At UNL level, the universities agreed to share this legal risk jointly.

Regulations for making available short works of science

TU Delft, its employees and the public have an interest in ensuring that scientific output by TU Delft employees can be easily found. As a good employer, TU Delft therefore wishes to facilitate that employees can make optimum use of their right under Section 25fa Aw, as part of the Open Access policy. These regulations establish the procedure for making short works of science available to the public (without payment) after a reasonable period of six months from first publication. This reasonable period may change in the future due to changes in laws and regulations.

These regulations assume (tacit) consent by TU Delft employees to be made available to the public, with an option for the employee to opt out.

For non-employees, such as authors with a hospitality agreement or secondment agreement with TU Delft, the procedure in these regulations will be able to be applied by analogy where possible if TU Delft is included as the institution name in the publication, based on agreements reached between TU Delft and the guest or seconded employee about it.

Relevant provisions by way of illustration

Section 25fa Copyright Act

The creator of a short work of science for which the research has been financed wholly or partly with Dutch public funds shall be entitled, after the expiry of a reasonable period after its first publication, to make that work available to the public for no consideration, provided that the source of the first publication is clearly stated.

CAO NU

Section 2 Obligations of employer and employee

Article 1.8 General

1. The employer is obliged to do and refrain from doing everything that a good employer should do and refrain from doing in 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 according to the instructions given by or on behalf of the employer.
3. Employees are expected to act in the spirit of the University's objective to the best of their ability in the performance of their duties and in their personal and communal actions to the outside world.

Section 3 Intellectual property rights

Article 1.20 General

1. The employee is obliged to comply with what is reasonably determined by the employer, with due observance of statutory provisions, with regard to patent law, database law, plant breeders' rights, design and model law, trademark law and copyright law.
2. The employer may impose more detailed rules with regard to the provisions referred to in Articles 1.21 and 1.22.

Article 1.21 Obligation to report

1. An employee who, during or otherwise coinciding with the performance of his duties, creates a possibly patentable invention or, by means of plant selection work, isolates a new variety for which plant breeder's rights may be obtained, is obliged to report this in writing to the employer and must

submit sufficient data to enable the employer to assess the nature of the invention or variety.

2. The obligation referred to in paragraph 1 arises the moment the employee is reasonably able to conclude that there is a question of such an invention or such a variety. In any event, the employee shall be considered to have been able to reach such a conclusion the moment the invention is completed or the variety has been isolated.
3. The provisions in this article apply by analogy as far as possible if the employee creates work that is protected by copyright, if and insofar the employer has not determined otherwise.

Article 1.22 Transfer and retention of rights

1. Without prejudice to the provisions of Section 12 of the National Patent Act, Bulletin of Acts and Decrees 1995, 51, Section 31 of the Seeds and Planting Materials Act, Bulletin of Acts and Decrees 1966, 455, and Section 7 of the Copyright Act, Bulletin of Acts and Decrees 1912, 308, the employee, if and insofar he is entitled to other than moral rights to the invention, the variety or the work, for which the obligation to report in Article 1.21 exists, shall transfer these rights to the employer in whole or in part if so requested, in order to enable it to make use of them in the context of fulfilling its statutory duties within a term to be established later.
2. As soon as the term referred to in paragraph 1 has expired without the employer actually having made use of the rights that were transferred to it, the employee is entitled to reclaim them. If the employee subsequently decides in favour of exploitation, the second sentence of paragraph 3 applies by analogy.
3. Except in cases contrary to the substantial interests of the university, the employee is entitled not to comply with the request as referred to in paragraph 1. In that case, the employer may decide that the costs it has invested are at the employee's expense, including salary, the costs of the facilities made available to the employee, insofar as they are directly related to the creation of the rights the employee now wishes to keep for himself, plus the interest accrued. The term 'substantial interests of the university' shall be interpreted to include interests arising from agreements entered into with third parties by or on behalf of the employer.

APPENDIX 1

Table of publication types according to KUOZ (University Research Key Figures) classification.

Research output (publications and research activities) are classified according to purpose and intended target group into three main classifications within which KUOZ types are distinguished. The KUOZ types can be refined into subtypes, as far as distinguished within TU Delft's own research information system (CRIS). The table below lists these distinct KUOZ types, as used in CRIS and its linked repository, indicating whether or not they fall under Art. 25fa Aw. SEP: Standard Evaluation Protocol as established by UNL, 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. Dissertation (KUOZ: sum 1+2; SEP: classified in A + B)	SEP 1e		
f. Refereed Conference Publication	SEP 1f		
g. Non-referred 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 submission)	SEP 2		
l. Book review	SEP 4	SEP 4	SEP 4
m. Inaugural lecture	SEP 4		
n. Conference contribution other (abstr. 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 / production	SEP 4		
s. Software	SEP 4	SEP 4	SEP 4
t. Web publication	SEP 4	SEP 4	SEP 4
u. Other	SEP 4	SEP 4	SEP 4
	Section 25fa Aw applies		
	Section 25fa Aw does not apply		
	Dissertations sometimes comprise a collection of individual articles. Section 25 Aw may apply to these articles.		

ANNEX 2

Opt-out form Open Access short academic work TU Delft – draft .. March 2022

Based on article 25fa of the Dutch Copyright Act and the “TU Delft Regulation on Open Access for short academic work”, the final published version of short academic work with an TU Delft affiliation (articles, conference papers and book chapters in edited volumes) becomes openly available in the TU Delft Repository. The work becomes available in full text six months after the first publication date, regardless of terms and conditions of the publisher.

As a consequence, eligible publications in the TU Delft Repository will automatically be openly available after six months, unless you opt out for a specific publication or you opt out for all your short academic work.

Which publication(s) would you like to opt-out?

Please fill in title and DOI (if applicable) or URL

1.
2.
3.
4.
5.

If you wish to opt out for more than five publications, then submit your first five publications in this form and fill out another form for the remaining publications.

If you wish to opt out for all your publications with a TU Delft affiliation

Please use the button

Opt out for all publications

Name

Faculty

E-mail

Do you have any questions or remarks? Do you want to undo a previous opt-out?

Please send an e-mail to Oadeals-lib@tudelft.nl