

**The Hague University of Applied
Sciences
Executive Board
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**Education, Knowledge &
Communication service
department (OKC)**
Research & Education (O&O)
THUAS Library (HB)

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Policy Ownership of research publications in relation to open access

1. AMBITION

The ambition of The Hague University of Applied Sciences (THUAS) is to publish open access. There are two reasons for this:

- To show the research output of THUAS' to the outside world.

Knowledge circulation is one of the five goals in the Onderzoek Versterkt (2017) (Research Strengthens) strategic policy.¹ One of the ways to achieve this, and this is only a start, is to make research publications available for professional practice and educational purposes on a freely accessible website of THUAS.

- To follow the open access policy of the Netherlands Association of Universities of Applied Sciences.

In 2017, the Netherlands Association of Universities of Applied Sciences ascertained its vision on Open Science. One of the ambitions is to open up the results of practice-based research. The aim is to make knowledge products of universities of applied sciences easy to find online and accessible to the public (*open access*).²

To prepare for the implementation of THUAS' open access ambition, we will start with a significant condition for publishing open access – a policy on proprietary rights of research results from employees. This policy focuses on one specific form of research results, namely publications.

What policy on the ownership of research publications is required to make open access possible?

¹ The Hague University of Applied Sciences (2017). *Onderzoek versterkt (Research Strengthens). Strategic research policy for 2017 and beyond*. Determined by the Executive Board on 29 August 2017. Approved by the General Council on 4 October 2017.

²The Netherlands Association of Universities of Applied Sciences (2017). *Universities of applied sciences and Open Science: Towards greater impact in practice-based research*. Determined by the General Assembly on 16 June 2017.

2. DECISION POINTS

- 1a. **Employees who have written research publications** on which the **copyright** rests with THUAS will be **authorized to provide a publication licence** to third parties under defined conditions so that they are able to publish these (see page 4).
- 1b. THUAS places **conditions on open access** (see page 5) on the licence that employees provide to third parties for publishing research publications under item 1a.
- 1c. For a smaller group of employees, the copyright on research publications does not rest (solely) with THUAS. In these exceptional cases (see page 4), THUAS strongly suggests that these employees **will make every effort** to enter into **written agreements about open access** with any co-authors, other institutions or companies involved and the publishers of research publications **prior to publication** (see page 5).

Follow-up actions for decision point 1:

Authors will be better supported in the areas of copyright issues and open access publishing (see page 5).

3. EXPLANATION

3.1 Open Access

Open access is a broad international movement that aims to provide publicly freely available and free online access to academic information, such as research publications and data. The Netherlands Association of Universities of Applied Sciences is striving to make all knowledge publications open access under the EU and Ministry of Education, Culture and Science by 2020 in two ways:

- the golden route: open access publishing via the publishers' platforms
- the green route: the full text of the research publication is contained in a repository. A repository is a publicly accessible database (such as the HBO Knowledge Base) run by the research institution which is often linked to the research group's website.

Both routes have costs or conditions attached. These depend on the contract between the publisher and the author, a significant part of which are proprietary rights. The universities are going far ahead on this. The Association of Universities in the Netherlands (VSNU) is capable of concluding costly mega deals with publishers on behalf of the universities for the golden route.

3.2 Proprietary rights

We have provided further information below on where copyright rests under the current legislation in The Netherlands. We will also consider how authors of research publications working at THUAS can deal with copyright in practice.

Legislation

In this section, we will look at where the copyright to research publications by THUAS staff rests under the current legislation in The Netherlands.

Copyright is the exclusive right of the creator to publish and multiply his or her work. The rights to these two actions are also referred to as exploitation rights.

THUAS practices the copyright over all products that permanent employees create for THUAS as part of their job. In doing this, THUAS follows the applicable legislation and collective labour agreement for universities of applied sciences (CAO-HBO):

Copyright Act – Article 1: *Copyright is the exclusive right of the creator of a work of literature, science or art, or the successor in title, to publish and reproduce this work, subject to the restrictions laid down by the law.*

Copyright Act – Article 7: *Where labour which is carried out in the service of another consists in the making of certain literary, scientific or artistic works, the person in whose service the works were created is taken to be the maker, unless the parties have agreed otherwise.*

Article E-7 CLA- Higher Education³: *Copyright and industrial property:*

The rights to the copyright, patent right or plant breeders' right and also the income arising from:

- *making a work of literature, science or art within the meaning of the Copyright Act;*
- *the discovery of a new product or a new method within the meaning of the Patents Act; or*
- *the breeding or harvesting of a variety in which a plant breeders' right can be vested as defined in the Seeds and Planting Materials Act*

are acquired by the employer if the production, discovery, breeding or harvesting is performed by the employee while performing his or her job or is performed on behalf of the employer.

However, under academic freedom we could assert otherwise. Academic freedom is the principle under which lecturers and researchers at the university should enjoy extensive freedom to perform research in the interests of developing knowledge and developing a diversity of opinions. The question then arises whether their work consists of producing certain works. According to Louw's dissertation on the Higher Education and Research Act (Wet op het hoger onderwijs en wetenschappelijk onderzoek), academic freedom does not solely apply to academic staff at universities, but also applies to lectors.⁴ This means that the line drawn in the legislation concerning the copyright on works produced by academic staff can also be drawn by heads of research groups. If this line is taken, the copyright lies with the lector. However, in contrast to universities, there is no known jurisprudence on universities of applied sciences. Lectors and other staff at universities of applied sciences have to date never taken legal proceedings about copyright on research publications. The Collective Labour Agreement for Higher Education stipulates that universities of applied sciences must follow the Copyright Act. The publication policies of Amsterdam, Windesheim and Saxion universities of applied sciences also stipulate that the copyright to research publications generally rests with the institution.

In addition to Articles 1 and 7 of the Copyright Act, the new Article 25fa (as of 1 July 2015) is in the specific interest of the open access publication of research output.

Copyright Act - Article 25fa *The creator of a short scientific work for which the research has been wholly or partly funded by Dutch public resources has the right to make the work available to the public after a reasonable period has passed since the initial publication, provided that the source of the initial publication is clearly stated.*

³Collective Labour Agreement for Higher Education 1 April 2017 to 31 March 2018

http://www.vereniginghogescholen.nl/system/knowledge_base/attachments/files/000/000/771/original/CAO_2017-2018_DEF.pdf?1495450550

⁴ Ruud Louw (2011). Het Nederlands Hoger Onderwijsrecht (Netherlands Higher Education Law) A thematic commentary on The Higher Education and Research Act. Leiden University Press.

<https://openaccess.leidenuniv.nl/bitstream/handle/1887/17700/Kopie%20van%20Het%2BNederlands%2Bhoger%2Bonderwijsrecht%5B1%5D.pdf>

For THUAS, this article means that the content of some research publications that have been published by third parties under a licence that does not permit open access may still be freely distributed in the course of time.⁵

Exceptions:

The copyright on some publications by lecturers and (lecturer-)researchers does not (solely) rest with THUAS. This may apply to staff with two jobs whose production also falls within the job description of another institution. It may also apply to staff who are not employed by THUAS but for instance are seconded, engaged on a self-employed basis or are special lecturers (externally financed). Research publications may also be co-written with authors who work for universities, other institutions or companies.

3.3 In practice

Copyright expert Raymond Snijders from Windesheim University of Applied Sciences argues that even though the copyright on staff research publications rests with the institutions under the legislation and the collective labour agreement, in practice authors have been making arrangements for years between lecturers, researchers and publishers on releasing to the public and distributing those works, in other words, publishing.

At THUAS we also see that our lecturers and researchers have many questions and uncertainties about the copyright on research publications. Many authors find it extremely difficult to obtain a good idea of their situation and determine what and how open access can be arranged. There is a greater need for support, explanation and advice when negotiating publication contracts. The proprietary rights to research publications by THUAS often unconsciously yield to the publishers, with the result that the aims of open access publishing are not accomplished.

4. ADVICE

Decision point 1a:

Employees who have written research publications on which the **copyright** rests with THUAS will be authorized **to provide a publication licence** to third parties under defined conditions so that they are able to publish these.

This means that the author may choose the manner in which he or she publishes research results and may negotiate with publishers about the publication on behalf of THUAS.

In taking this decision, THUAS is following other Dutch universities of applied sciences such as Windesheim and Saxion.

This is because it should be possible to pursue scholarship in total freedom. THUAS aims to not have any control over the platforms in which the results of research and the views of the researcher are published. It should be possible to freely publish all research results.

Decision point 1b:

THUAS places **conditions on open access** on the licence that employees provide to third parties for publishing research publications under item 1a.

⁵ See Visser, D.J.C. (2015). De Open Access bepaling in het auteurscontractenrecht (Open Access provision in copyright contract law). *Tijdschrift voor auteurs-, media- & informatierecht*, 3, 68-74

The employee will publish their research publications under **Open Access** unless this is impossible due to laws and regulations or other arrangements or contracts.

- The employee is only authorised to make arrangements about a publication licence under defined conditions.
- When publishing research through a publisher, the employee will ensure that at least the author's version of the publication (the version preceding peer review and/or publication by the publisher) can be freely used by THUAS for education and research purposes. He/she will aim to also gain permission as far as possible for THUAS to use the post-print (the version following peer review) or the publisher's version (the formatted and published version) for education and research purposes.
- When publishing research through a publishing company, the employee will ensure that the publication will be available in Open Access form after a reasonable embargo period.⁶

As a result, authors of research publications can continue to choose the publication platforms as they did in the past. However, they now need to make arrangements with publishers about a publication licence that will promote Open Access publishing and the reuse of the publication by THUAS. The THUAS library is able to support authors with this.

Decision point 1c:

For a smaller group of employees, the copyright on research publications does not rest (solely) with THUAS. In these exceptional cases (see page 4), THUAS strongly suggests that these employees **will make every effort** to enter into **written agreements about open access** with any co-authors, other institutions or companies involved and the publishers of research publications **prior to publication**

Follow-up actions for decision point 1:

Authors of research publications will receive better support from THUAS on copyright issues, publishers' policies, open access publishing and the options they have as authors to make their publication freely available.

The Education, Knowledge & Communication service department (OKC) will make every effort to extend its assistance concerning copyright issues and the open access of research publications with the relevant service departments and faculty offices, in consultation with leading lectoren of THUAS research platforms. This should involve the following: how the various open access routes are supported; how we can provide information on this; what infrastructure is required for this; how to link this to other initiatives such as the research data management policy and partnership agreements with other institutions.

⁶ For some research publications, publishers will block all forms of open access. However, even for these publications open access may be possible after a certain period according to the law (see the new article 25fa of the Copyright Act on page 3).