

## Open Access Procedural Regulations Art. 25fa Tilburg University

January 2024

According to the principles of Open Access, endorsed by the Universities of the Netherlands (hereinafter: UNL) and to which Tilburg University (hereinafter TiU) belongs, scholarly work must be freely available.

In accordance with [Article 25fa](#) of the Dutch Copyright Act (auteurswet, hereinafter: Aw), researchers have the right to share short scholarly work, for no financial consideration, following a reasonable period of time after the work was published. UNL has decided to facilitate the exercise of this right. On the one hand, by unburdening researchers through using support services for making articles public and findable, on the other hand by guaranteeing participating researchers that in the event of a legal dispute with a publisher, the university as an employer would bear all possible costs.

At the UNL level, the universities agreed to share this legal risk jointly. Considering that:

- TiU 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 2010;
- Article 25fa of the Dutch Copyright Act (CA) entitles researchers to share a short scholarly work without financial consideration following a reasonable period after publication;
- the University has an interest in the scholarly 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 license from its staff members for the purpose, as mentioned above;

the Board of TiU decided to adopt the following Procedure, coming into effect on 1 January 2024.

### Article 1. Definitions

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

**"Open Access"**: making scholarly achievements (here: publications) available without restrictions, in particular making them freely accessible and freely available online.

**"Short Publication"**: The bibliographically traceable part of all short forms of transmission of the results of scholarly research in the form of a non-independent publication, i.e. for the categories from the [KUOZ](#) publication types 'refereed' or 'non-refereed' article in a journal, volume, or 'refereed' or 'non-refereed' conference publication. This concerns not only printed but also electronic publications of short scholarly work.

**"Reasonable period"**: with consensus within the UNL, set for a six-month embargo after first disclosure.

**"Employee"**: the person who is or has been working for Tilburg University in the field of research. This includes not only (former) employees, but also persons who perform (research) work for TiU on the basis of a hospitality agreement, a facilities agreement, a professor's agreement, a secondment agreement and a contract for services.

**“Repository”**: a database that can contain information in various forms (for example: text, datasets, image or sound), here referred to as TiU’s database set up for this purpose, in which TiU’s research output is stored, managed and preserved. The current database at the time of the preparation of this document is known as the Research Portal *“Pure”*.

**“TiU”**: Tilburg University.

## **Article 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:

*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 behavior 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:

*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.*

## **Article 3. Scope of the Procedure**

The staff member, as a researcher, is entitled to invoke Article 25fa CA in order to share their short scholarly works via open access after a reasonable term. With a view to being a proper 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.

## **Article 4. Disclosure of Short Publications through TiU's institutional repository**

4.1 TiU facilitates that Short Publications are made public via the institutional repository (currently: research portal Pure) on the basis of a tacit license.

4.2 TiU has the non-exclusive right to make publicly available any Short Works that the staff member has made 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 TiU also has the non-exclusive right to make publicly available all future Short Works that the staff member will produce and 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.

#### **Article 5. Opt-out**

5.1 The Employee has the right to request an opt-out for this provision for each individual Short Publication. To this end, the Employee must provide a written motivation via the opt-out procedure. The Short Publication in question is then kept closed in the repository. Opt-out requests are reported to the Vice-Dean of Research of the relevant School.

5.2 TiU will ensure that the procedure for the opt-out application can be found on the TiU University Library website.

5.3 When publishing the Short Publications and administering the opt-out, TiU processes the personal data of the Employee, including in any case: his surname, initial(s), and faculty/department.

#### **Article 6. Guarantees and obligations**

6.1 TiU warrants to the Employee that in the event of any claim by third parties against the Employee resulting from this agreement, TiU will provide the Employee with legal and financial support. TiU will pay for necessary legal assistance. TiU will fully reimburse any costs, penalties or claims to be paid by the Employee resulting from making the Short Publication publicly available within the framework of Article 25fa of the Copyright Act.

6.2 TiU will not make the Short Publication publicly available until six months after the first publication.

6.3 TiU will at all times clearly state the source of the first publication of the Short Publication.

6.4 TiU and the Employee will inform each other immediately if they find infringements of the Short Publication(s) or if a third party claims the Short Publication(s), or claims that one or more Short Publications infringe his rights.

#### **Article 7. Retroactive effect**

7.1 The procedural rules apply retroactively to Short Publications produced before the date of entry into force.

7.2 The procedural rules also apply to Employees who were employed by TiU prior to the effective date of employment with regard to Short Publications published during this employment. In this case, it must be established that the Employee has been informed of the procedural arrangements and the possibility of an opt-out.

#### **Artikel 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.

**Article 9.**

This procedural regulation is referred to as "Open Access Procedure Regulation Art. 25fa" and enters into force on 1 January 2024 after adoption by the Executive Board on 21 November 2023.

**Article 10. Contact Information**

For questions about the content of this procedural regulation, please contact Legal Affairs via [secretariaat.jz@tilburguniversity.edu](mailto:secretariaat.jz@tilburguniversity.edu). For questions about Open Access and the implementation of the procedural rules, please contact [University Library](#).