

Open Access provisions in copyright law: examples from Germany, the Netherlands, France and Belgium

Françoise VANDOOREN

Research support coordinator

Department of libraries and scientific information

& Laura DE PAUW

Université libre de Bruxelles

10th UNICA Scholarly Communication seminar

Academic Libraries. Supporting the university community in the Open Science era

14 & 15 October 2021

Provisions in Copyright Law in favour of OA

- Countries: Germany (2013), The Netherlands (2015), France (2016), Belgium (2018)
- Provision: **The author of a short scientific work, based on research activity publicly funded, is entitled to make this work publicly available following a certain period of time after the work was first published.**
- It is a **right**, not an obligation
- The author retains this right even if copyright has been transferred to the publisher
- Conditions have to be met and vary according to the national legislations, in terms of:
 - Type of work, frequency of journal issue
 - Version that can be shared
 - Embargo period to be respected
 - Proportion of required public funding of the research activity



	Germany	The Netherlands	France	Belgium
Type of work	Article	Short scientific works	Articles	Articles
Version	Author Accepted Manuscript-AAM	Version of record	AAM	AAM
Frequency of periodical issue	2 issues/year	1 issue/year	1 issue/year	1 issue/year
Embargo period	12 months	reasonable period	6 months in STM, 12 months in SSH	6 months in STM, 12 months in SSH
Funding of research activity by public funds	At least half	Partially or completely	At least half	At least half



Issues raised

- Has the law a retroactive effect?
- Which licence can be used for the shared version?
- Does the national copyright legislation of the author override the publisher's contractual provisions when they are referring to the governing law and jurisdiction from another country? Can the publication be shared beyond the national borders?

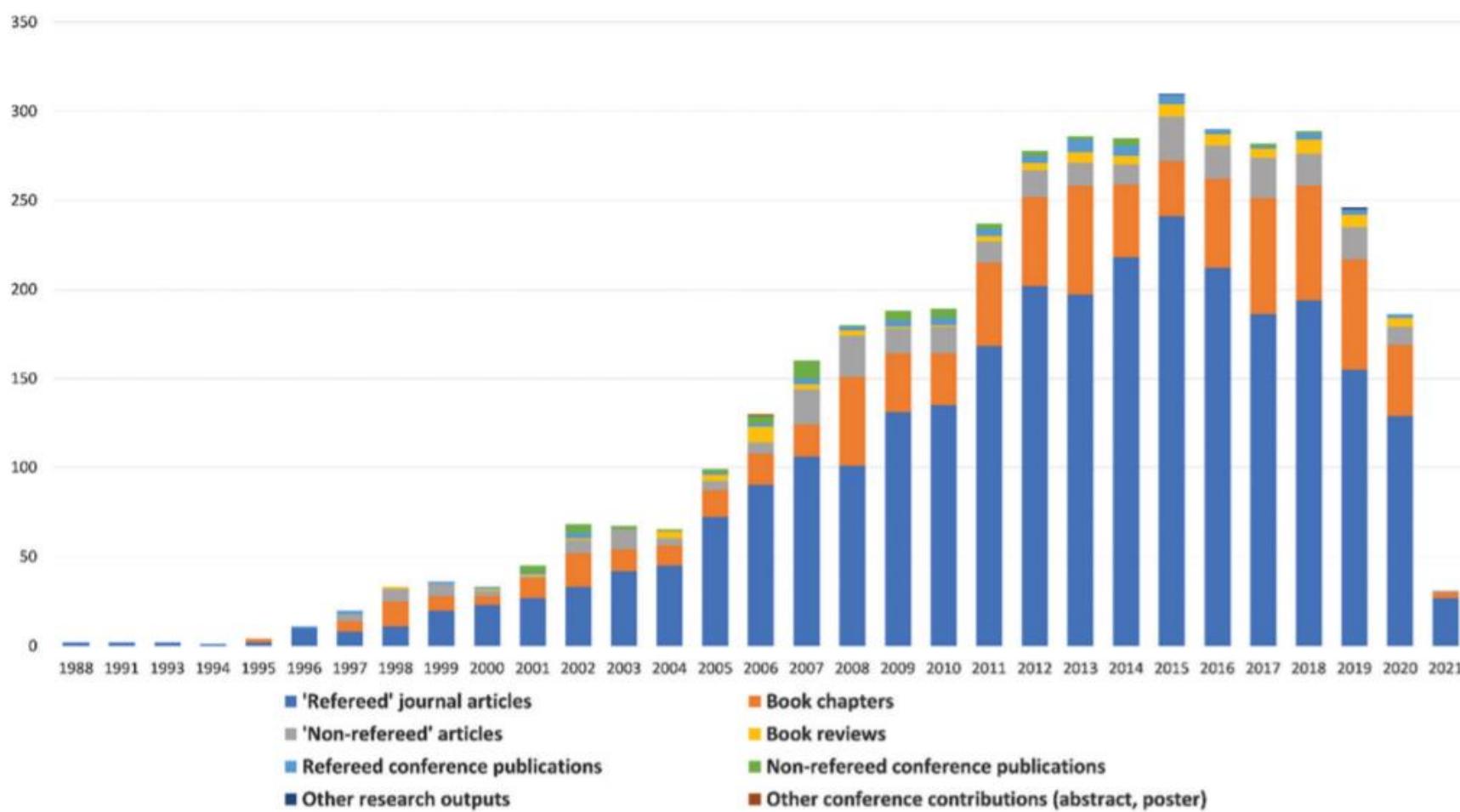


Impact of such copyright provisions on OA : NL/ Pilot « You share, We Take Care » (from Feb. 2019 to August 2019)

- Implementation guidelines: 6-months embargo period for the version of record, to be made available in the institutional repository, with help of libraries
- Results: 600 researchers, from 13 research universities, participated and more than 2800 publications were deposited on open access in institutional repositories during the pilot

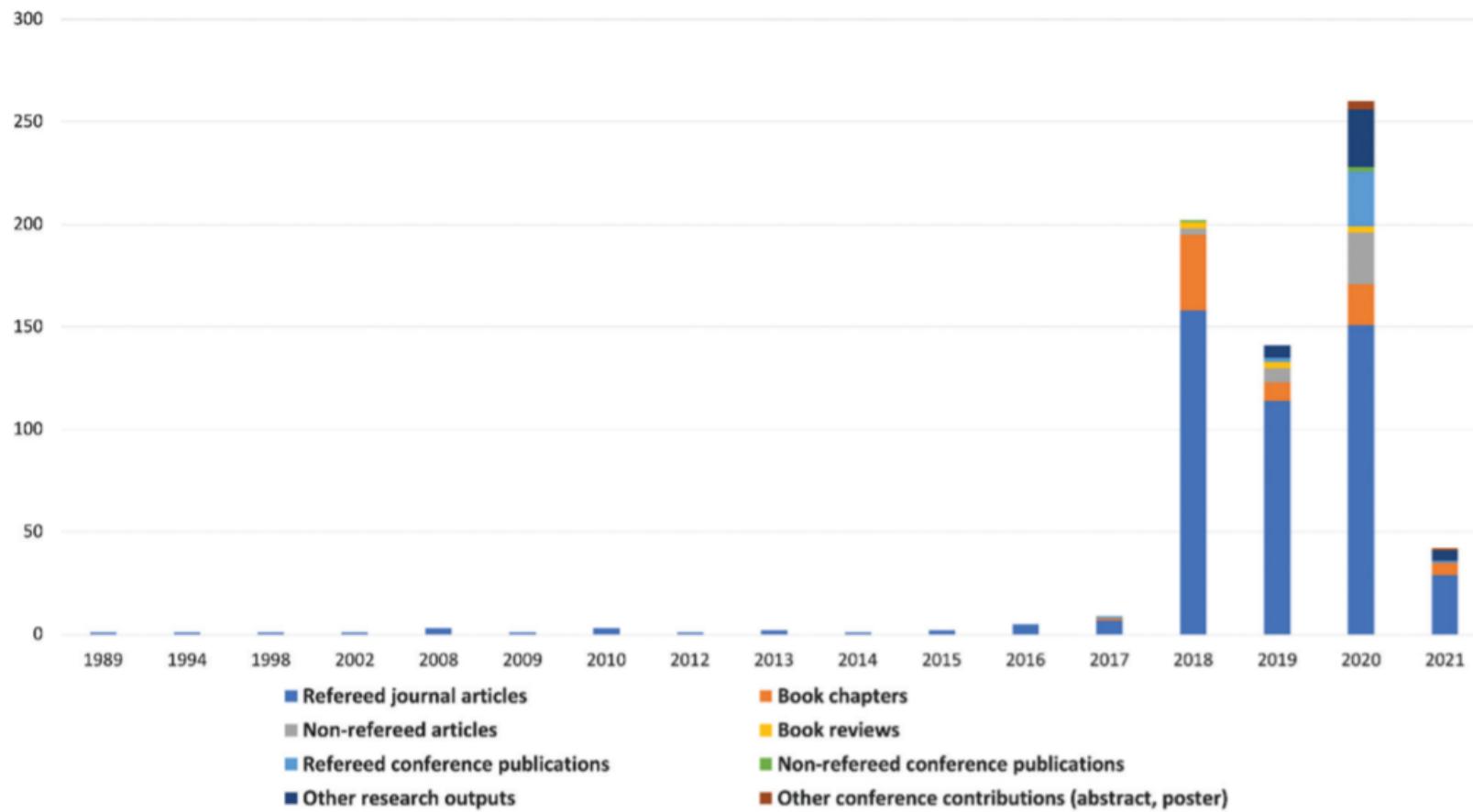


Fig. 2: Yearly number of short works at Utrecht University released under Article 25fa (February 2019–1st January 2021).



Sondervan, J., Schalken, A., Jan de Boer, & Saskia Woutersen-Windhouwer. (2021). Sharing published short academic works in institutional repositories after six months: The implementation of the article 25fa (Taverne Amendment) in the Dutch Copyright Act. *LIBER Quarterly: The Journal of the Association of European Research Libraries*, 31(1), 1–17. <https://doi.org/10.53377/lq.10915>

Fig. 1: Number of articles by publication year of short works at University Leiden released under Article 25fa.



Sondervan, J., Schalken, A., Jan de Boer, & Saskia Woutersen-Windhouwer. (2021). Sharing published short academic works in institutional repositories after six months: The implementation of the article 25fa (Taverne Amendment) in the Dutch Copyright Act. *LIBER Quarterly: The Journal of the Association of European Research Libraries*, 31(1), 1–17. <https://doi.org/10.53377/lq.10915>

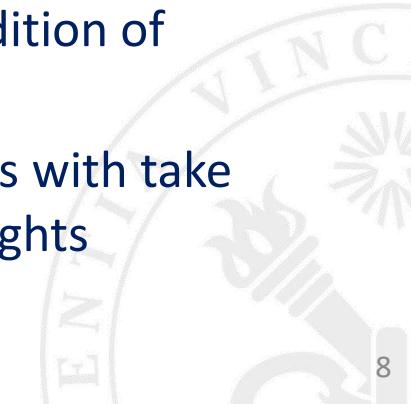
Reactions from researchers and publishers

Researchers

- Participating researchers were enthusiastic and wanted to share both recent publications and older material.
- Reasons not to participate in the pilot:
 - Uncertainty regarding the reactions of publishers and/or their co-authors
 - Feelings of uncertainty with regard to their position e.g. as journal editor if they deviated from the publisher's policy

Publishers

- Critical of the use of the version of record and the addition of book chapters.
- Few publishers have threatened individual researchers with take down notice – dealt with by pointing to the authors'rights anchored in the Dutch Copyright Act



Impact of such copyright provisions on OA : BE/ Survey in French-speaking part of Belgium

Questions related to copyright and Open Access

- 8% think they will lose their copyright when publishing in OA
- 30% think they are protected and may make their article publicly available after a 6/12 months embargo whatever the contract signed with the publisher

Although only 1 respondent knew about the article XI.196 in the Belgian economic law (a lawyer)



Conclusions & Perspectives

- Raise authors' awareness about such copyright provisions
- Need for support, guidance and reassurance (co-authors, publishers' reaction...)
- Limitation of such copyright provisions with respect to:
 - Plan S: embargo, open licence
 - Version: AAM vs. Version of record
- Reaction of publishers if such copyright provisions are generalized
- LIBER Zero Embargo campaign: Draft Law for the Use of Publicly Funded Scholarly Publications
- European perspectives : « Analyse authors' rights to enable sharing of publicly funded peer-reviewed articles without restriction”



Thank you for your attention



References

Germany

Act on Copyright and Related Rights - (Urheberrechtsgesetz – UrhG), Section 38, par. 4

- https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html#p0240
- <https://open-access.net/en/information-on-open-access/legal-issues/legal-issues-in-germany/copyright>

The Netherlands

- Article 25fa Copyright Act “Taverne Amendment”
<https://www.openaccess.nl/en/events/amendment-to-copyright-act>
- Results of the VSNU open access pilot ‘You Share, We Take Care’ based on article 25fa of the Dutch Copyright Act
https://www.openaccess.nl/sites/www.openaccess.nl/files/documenten/summary_taverne_pilot_vsnu_200330.pdf
- Sondervan, J., Schalken, A., Jan de Boer, & Saskia Woutersen-Windhouwer. (2021). Sharing published short academic works in institutional repositories after six months: The implementation of the article 25fa (Taverne Amendment) in the Dutch Copyright Act. LIBER Quarterly: The Journal of the Association of European Research Libraries, 31(1), 1–17. <https://doi.org/10.53377/lq.10915>



References

France

- Article 30 LOI n° 2016-1321 du 7 octobre 2016 pour une République numérique <https://www.ouvrirlascience.fr/guide-application-loi-republique-numerique-article-30-ecrits-scientifiques-version-courte/>
- La loi pour une République numérique <https://hal-amu.archives-ouvertes.fr/page/la-loi-pour-une-republique-numerique>
- Livre blanc sur l'article 30 de la loi République numérique (LRN), Olivia Tambou, 2017 <https://blogdroiteuropeen.files.wordpress.com/2017/10/livre-blanc-sur-larticle-30-lrn-final-2017.pdf>

Belgium

Code of Economic Law, [Art. XI.196 § 2/1](#)

<https://openaccess.be/belgian-open-access-legislation/>

Laura De Pauw, *OpenAccess et COVID-19, duo ou duel?* Master Thesis, Law Faculty, Université libre de Bruxelles, September 2021.



References

Other

- National legislation for the promotion of Open Access in EU countries. Memo to the LIBER Board https://libereurope.eu/wp-content/uploads/2021/02/LIBER_national_legislation_OA.pdf
- LIBER Draft Law for the Use of Publicly Funded Scholarly Publications <https://libereurope.eu/draft-law-for-the-use-of-publicly-funded-scholarly-publications/>

