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# HU Copyright Regulations

# HU Copyright Enforcement Regulations OOS/JZ/16.111

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These regulations will enter into force on 1 February 2017.

### 1 Introduction

HU Utrecht University of Applied Sciences (HU) has had copyright enforcement regulations in place since 1997. The main rationale of the HU Copyright Enforcement Regulations is that only natural persons (individual authors) and legal persons (like the HU) will be liable in the sense of the Copyright Act 1912 (*Auteurswet 1912*), not institutes or other organisational units. A legal person will be liable for acts by its members of staff if they engage in the acts in question in the exercise of their duties.

For the HU, the above means that only the Hogeschool Utrecht Foundation legal person, represented by the Executive Board, can be held liable for infringements and that it alone is responsible for the enforcement of the relevant legal rules. It is not possible to delegate this formal legal liability to institute management or individual lecturers.

However, implementation of the copyright enforcement regulations can be delegated to institute management, which in turn can place responsibility for day-to-day practice with another person via internal subdelegation. Where this is the case, ultimate legal responsibility will remain with the Executive Board at all times.

With the above in mind and the responsibility incumbent on the Executive Board, it is necessary for the Executive Board to adopt central copyright regulations.

The existing regulations have now been updated in connection with the entry into force of the amended Copyright Act. This Act has been amended further to implementation of the 2001 EC Directive on the harmonisation of certain aspects of 'copyright and related rights in the information society'.

These updated regulations elaborate in general on the legal and employment-law frameworks. Click the link below for more information, including FAQs, aimed at students/lecturers/institutions:

<https://www.surf.nl/en/auteursrechtennl-reliable-information-copyright>

## 2 COPYRIGHT ENFORCEMENT REGULATIONS, HU UTRECHT UNIVERSITY OF APPLIED SCIENCES

### 2.1 Definition of the term “copyright”

- a. In these regulations, the term “copyright” is defined as “the exclusive right of the author of a literary, scientific or artistic work or his successors in title to communicate that work to the public and to reproduce it, subject to the limitations laid down by law” (Article 1 of the Copyright Act).

The Copyright Act identifies a whole range of items that fall under the term “work”.

For example, books, newspapers, magazines, films, videos, photos, drawings, plays and musical works. The Act does not provide an exhaustive list.

- b. Copyright arises ‘by operation of law’. In other words, an author obtains an exclusive right of disposal as soon as he/she creates a certain work.

Copyright as an exclusive right of disposal comprises the following rights amongst others:

- The right to decide on the publication and reproduction of a work;
- The right to decide on the making of copies, adaptations, filmings and translations;
- The right to receive a payment for the adoption of short parts of a work in educational publications;
- The right to receive a payment for the photocopies permitted (by law);
- The right to decide on changes to be made to a work.

In some cases, the actual author will not be the ‘legal’ author. In other words, the owner of the copyright in the work. In situations where the actual author has been employed to create a particular work, the employer will be the legal author (see Subsection 4.1).

Copyright ends 70 years after the death of the author, or - if an institution is the legal author - 70 years after the publication date.

- c. In these regulations, the term “copyright” is also understood to include the rights related to copyright, which are protected individually by virtue of other legislation or regulations, including the Related Rights Act (*Wet op de Naburige Rechten*) of 1 July 1993.<sup>1</sup>

### 2.2 Scope

**These regulations contain provisions that are designed to protect the rights of:**

- a. third parties, stakeholders outside the HU (see Section 3 below);
- b. persons within the HU (staff members, students; see Section 4 below);
- c. the legal person Hogeschool Utrecht Foundation (see Section 5 below).

### 2.3 Starting points

The first starting point for these regulations is the agreements that the Council for Higher Professional Education (*HBO-Raad*), as the representative of the HU or one of its legal predecessors, has entered into with representatives of stakeholders, authors and publishers in the broadest sense of the word. The second starting point is that the aforementioned agreements will retain their validity if and as long as the regulations governing legal succession, which are necessitated by mergers in the publishing industry (with regard to reader agreements, for example), have not been concluded yet. The agreement between the Royal Dutch Publishers Association (*Koninklijke Nederlandse Uitgeversbond (KNUB)*) and the Council for Higher Professional Education has now been succeeded by the agreement between the Dutch

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<sup>1</sup> In practice, it was found that the Copyright Act provided copyright owners with insufficient protection against copyright infringements by modern image and sound carriers (videotape or cassette tape, etc.). A number of improvements have been achieved via the introduction of the Related Rights Act. For example, if a TV programme is recorded on a video and the recording is then used in an educational setting, a fair payment must now be made to the copyright owner. Thus, the Related Rights Act primarily secures the - previously debatable - rights of performing artists.

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Publishers Association (*Nederlands Uitgeversverbond (NUV)*) and Stichting (International) Publishers rights Organisation (Stichting PRO)/Council for Higher Professional Education (see the appendix and [www.reprorecht.nl](http://www.reprorecht.nl))

### 3 PROTECTING THIRD PARTIES, STAKEHOLDERS OUTSIDE THE HU

#### 3.1 Private use

Staff members and students at the HU may make a limited number of copies **for private use, for the purpose of their own study and practice**, or arrange for such copies to be made, without making any payments and without the consent of the copyright owner. The copying of entire works is prohibited, except where the parts concerned have been taken from books that are sold out and no longer being reprinted (Article 16h(2) of the Copyright Act). Short articles from newspapers or magazines may be copied in full. **The provision to others of copies made in this context (without payment and consent) is prohibited.** No payment is required for this type of use.

#### 3.2 Making copies to support teaching activities

If necessary for the purpose of their education activities, lecturers may make copies of parts of copyright-protected works, or arrange for copies to be made of the aforementioned, without prior consent.

If just a very limited number of copies are made on an incidental basis, this will be permitted without the need to obtain consent. Each year, a lump-sum payment is made for these so-called “odd” copies by virtue of an agreement between the Council for Higher Professional Education and the Reprographic Reproduction Rights Foundation (*Stichting Reprorecht*) [www.reprorecht.nl](http://www.reprorecht.nl) (*Appendix 1*).

#### 3.3 Adoption for use in readers

A number of bundled copies (readers) will only be permitted if they are a necessary addition to the textbooks available. The complete replacement of textbooks by these readers is prohibited. A copying right and the absence of the requirement to obtain prior consent applies in respect of readers too. If this right is exercised, the so-called ‘reader agreement’ will apply. This ensures that a reasonable payment is made to the stakeholder(s) concerned via a lump-sum arrangement.

Under the existing lump-sum arrangement, so-called short adoptions are permitted automatically. In other words, a maximum of 10,000 words (approximately 50 pages) if adopted from books and a maximum of 8,000 words (approximately 20 pages) if adopted from magazines.

Charts, tables and diagrams count as 200 words or half a page. A maximum of 25 of these works may be adopted from the same publication.

Case law compiled and adapted by a publisher with an introductory summary and annotations will be paid for per page. The same applies for legislation that has been compiled and edited by a publisher.

Publications on the intranet (the network to which only enrolled students and staff members have access) fall under the same regime as publication in readers.

Digital use (in digital readers, for example) has been bought out in the agreement between the Dutch Publishers Association and Stichting Pro/ The Association of Universities of Applied Sciences too.

So-called long adoptions (in other words: adoptions that exceed the maximums referred to above) must always be reported to Stichting PRO in advance and a separate payment must be made for them. The same applies for all adoptions that are posted on the internet (not the intranet!).

Payment will be made in the form of a lump-sum payment, the amount of which will be determined annually on the basis of the number of students enrolled at government-funded universities of applied sciences. This lump-sum payment will be collected by Stichting PRO, on behalf of copyright owners in the Netherlands and elsewhere.

In all cases, Stichting PRO will be able to act as a mediator at the very least. Stichting PRO has also been designated by the Dutch Publishers Association to ensure compliance with the reader

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agreement.

The standard conditions of Stichting PRO have been appended to these regulations as *Appendix 2*.

All of the aforementioned ensues from the reader agreement that has been entered into between the Dutch Publishers Association and Stichting PRO on the one hand and the Netherlands Association of Universities of Applied Sciences (*Vereniging Hogescholen*) and the Council for Higher Professional Education on the other hand.

The reader agreement relates to short adoptions from both Dutch and foreign publications.

The text of the reader agreement and a corresponding clarification have been appended to these HU Copyright Enforcement Regulations as *Appendix 1*.

The reader agreement and the standard conditions of Stichting PRO are also available online via [www.reprorecht.nl](http://www.reprorecht.nl)

### 3.4 Plagiarism

This subsection pertains to HU regulations and policy in situations where students **commit plagiarism** when writing theses, articles and papers, etc. during their degree programme.

*Quotations* from a work created by someone else will not be deemed to be an infringement of copyright (Article 15a of the Copyright Act). A quotation will be the case if an adoption (quotation) relates to the context in which it is used and must be regarded as an essential part of the whole. A quotation must be of subordinate significance too. In other words, the adoption must benefit the content of the work to which it is added (for example: convey an impression, provide an explanation or illustrate an argument) and the quotation must be relatively short. Another condition is that the work from which a quotation is taken has been communicated lawfully and been published. Steps must be taken to guard against infringement of the exclusive right of communication to the public that is vested in the author, being the owner of the copyright. Therefore, it is customary to provide a source acknowledgement when including quotations in a text.

(Source: *Gebruik van auteursrechtelijk beschermd materiaal in de Digitale Studentenboekerij, nota Open Universiteit*)

If the conditions applicable when using quotations are not observed, plagiarism may be the case.

*Plagiarism* (Articles 13 and 14 of the Copyright Act):

the publication of a work by someone else as if it were your own (plagiarism). This often goes hand in hand with the infringement of the copyright vested in the author; this involves the absence of a source acknowledgement or the adoption of a significantly bigger piece of work than specified in the source acknowledgement.

N.B. The term “publication” must be interpreted broadly. In other words, the writing of a thesis or report and its presentation for assessment, as required for the degree programme, will also be regarded as publication or communication to the public.

What happens if a student exceeds the limits specified?

If students adopt the work of others in their theses and reports, etc. and subsequently present the work adopted as their own work (plagiarism), this will be regarded as an “irregularity” in the sense of Article 25 of the HU Education and Examination Regulations (Bachelors’ degree programmes).

An examiner or the Examination Board will assess whether an irregularity has indeed taken place; if so, a sanction may be imposed but must be appropriate to the infringement in question. Students may submit an appeal against the measures and sanctions imposed to the Board of Appeal of the HU.

In line with previous rulings by the Board of Appeal, the Examination Board must demonstrate that a student is ‘guilty’ of an irregularity. Where plagiarism is concerned, the student must have been aware that he/she was adopting the work of someone else.

### 3.5 The new Copyright Act (with effect from 2004)

The Copyright Act contains two new rules that are of particular importance for libraries and multimedia libraries:

1. The *provision of access to a work by means of a closed network* in a space that is accessible to the public will not be deemed to be an infringement of copyright (Article 15h of the Copyright Act) if done for the purpose of research or private study. This provision reflects established practice, in which the mere provision of access to books and journals for consultation purposes is not deemed to constitute the lending of these works. As such, it is also permitted to make copyright-protected work available to the public via special terminals in a multimedia library, provided the material in question forms part of the collection of the institution. In principle, this exception applies solely to consultation and not downloading!  
Based on Article 16b of the Copyright Act, students or staff members will be permitted to make a so-called **home copy** for the purpose of their personal study. However, several conditions apply: 1. Just several (two to three) specimens may be copied or printed out; 2. The home copy must be intended for private use or study; 3. The copy may have been made on the instruction of others. However, the home copy rules do not apply for music! A separate payment will be due for this.  
The new rule will also apply to software that is in the possession of a multimedia library/library. However, this software may not be consulted from a home office. This will only be permitted on the basis of a licensing agreement with the publisher and will, of course, be subject to payment.
2. It is permitted to make a so-called preservation copy or archive copy of a work. A copy of this nature may be made to protect a work from deterioration but not for commercial or economic purposes. The work to be copied must also already form part of the collection held by an institution (Article 16n of the Copyright Act).

The new Copyright Act (Article 16c) permits individual users to make private copies in the digital domain (on a disc, cassette or CD-ROM). Individuals must make copies of this nature themselves, or arrange for them to be made. These copies must be intended solely for private use and there may not be any commercial motivation.

The new Copyright Act (Article 16a) permits the adoption of a short recording, showing or announcement of a *report on current events* in a photo, film, radio or television report in the public domain. However, the source and name of the author must be indicated wherever possible.

### 3.6 Related rights

Related rights are very similar to copyright (they are related to them) and protect the work of performing artists (musicians, artists and actors), record companies and broadcasting organisations. Related rights basically have the same object as copyright, being to enable performing artists, record companies and broadcasting organisations to earn or recoup money from their work. The consent of the aforementioned will be required if others want to use their work, because of which they are able to retain some control over what they have created. Two parties are often involved in a situation of this nature: a work is created by an author, composer or lyricist (copyright) and is then performed by performing artists (related right).

**4 PROTECTING COPYRIGHTS OF PERSONS WITHIN THE HU (STAFF MEMBERS, STUDENTS)**

**4.1**

Copyrights belong to the HU if they relate to a work that has been created by a staff member on their own initiative, or as instructed by the HU, **in the context of their employment for the HU** (Article 7 of the Copyright Act and Article E-7 of the Collective Labour Agreement for Higher Vocational Education (CAO-HBO)).

**4.2**

A staff member who believes that the rights in a work should be vested in them, despite all or part of the work in question having been created in the context of their employment by the HU, may - prior to the publication of the work - request the Institute Director, service director or director of a Research Centre to enter into an agreement in which all or some of the copyrights will be vested in the staff member in question. The relevant Institute Director, service director or director of a Research Centre will be obliged - possibly after obtaining legal advice - to reasonably decide on a request of this nature with due observance of the interests at stake **within six weeks**.

**4.3**

If a member of staff makes a work **without this directly ensuing from their position**, the rights in the said work will be vested in them and not in their employer. If the work is made on the basis of expertise that the author has gained partly through the exercise of their duties as a staff member, this will not affect the copyright vested in them. The assessment of the material to be published at the HU will not make the HU the copyright owner.

**4.4**

To avoid conflicts, copyright owners are advised to enter into the agreement referred to above in 4.2 in these cases too.

**4.5**

The following will always apply for readers:

- The copyright will be vested in the respective authors of the component parts. If a reader as a whole is to be deemed to be "a literary, scientific or artistic work" due to connecting texts, individual explanations, new texts or other circumstances, the copyright will be vested in the HU, because a lecturer will always be deemed to have made the reader in the exercise of their duties.  
The HU may decide to include the name or names of the compilers of readers on the title page or elsewhere. However, this will not create a copyright.
- When selling readers to students, the cost price including copyright payments will be the starting point. If the institute feels that a limited surcharge arrangement is necessary, the surcharge may not benefit one or more lecturers that compiled the reader.

**4.6**

If students make a work in the context of their study and this work is protected by copyright in principle - theses and graduation reports, for example - students will obtain the copyright in the work in question, unless the HU and the student concerned agree otherwise in advance.

### 5 Protecting the rights of the Hogeschool Utrecht Foundation

#### 5.1

A natural person or legal person that is to be regarded as the author of any literary, scientific or artistic work will not be required to take any special measures to obtain the copyright in the work in question. If the HU possesses the copyright by law, it will not be necessary to explicitly state its possession of these rights in all publications.

#### 5.2

However, to avoid any misunderstanding and define the legal position, the institutes are recommended to include the fact that the copyright belongs to the HU in the institute regulations that accompany each publication.

#### 5.3

It will not be possible to vest copyright in HU institutes as they do not have legal personality.

#### 5.4

However, it will be possible for one or more natural persons to be named as copyright owners in addition to the HU by means of an agreement like that referred to in Article 4.2 or 4.6, for example.

#### 5.5

The HU can take all the steps necessary, at law and otherwise, to enforce the rights to which it is entitled under the Copyright Act, the Related Rights Act, the Databases (Legal Protection) Act (*Databankenwet*) and additional legislation on digital technologies.

Source acknowledgement: the legal page of the website of Utrecht University has been drawn on for several short parts of these regulations.

URL: [www.HU.nl/rechten-en-plichten](http://www.HU.nl/rechten-en-plichten)

#### **Previous version:**

HU copyright regulations SZ/J/10.001

#### **Organisations concerned:**

- Reprographic Reproduction Rights Foundation, for the copying of copyright-protected work;
- Bureau of Musical Copyright (*Bureau voor Muziekauteursrecht (BUMA)*), for the copyright in musical works to which composers and lyricists are entitled;
- Foundation for the Exploitation of Neighbouring Rights (*Stichting ter Exploitatie van Naburige Rechten (SENA)*), for the related rights of performing musicians and producers;
- Videma, for the copyright permission necessary to show videos.

**Appendices**

1. Agreement for the adoption of short copyright-protected works and of (short) parts of copyright-protected works in educational publications of universities of applied sciences, including readers (reader agreement);
2. The standard conditions of Stichting PRO.