

Supplementary Statement on Enhancement of Open Access to Scientific Publications in Europe

In its [2013 Statement on Enhancement of Open Access to Scientific Publications in Europe](#), ALLEA invited the European authorities to take measures to facilitate the transition to an Open Access (OA) model for publications in scientific journals. To accelerate this transition, the European authorities could advocate or adopt a legislation on a copyright contract law provision allowing the authors of short scientific works resulting from a publicly-funded research to make their work available to the public free of charge following a reasonable period of time after the work was first published. Such a provision can facilitate the deployment of the so-called Green OA model according to which the published and peer-reviewed article is archived and made available by the researcher when the publisher has recouped its investment (for instance by selling subscriptions during the embargo period).

Such a provision was adopted in February 2015 by the Dutch legislature (see the new Article 25fa of the Copyright Act¹). The German copyright law has also had a similar provision in place for some years (see Art. 38(4) of the German Copyright Act). With those provisions in the law, scientific authors may make their article freely available despite any provision to the contrary in their contract with the publisher of the journal.

Such a measure should only apply to articles (short publications), not to books; it should be limited to short publications resulting from publicly- and in particular EU-funded research programmes (not from private research); making such material available for free should happen after a reasonable period of time in order to allow the publisher to recoup its investment. It is probably not necessary to indicate in the law the precise length of the embargo period in favour of the publisher. German law opted for a fixed period of time of twelve months, but ALLEA emphasised in its defence of the Green OA model that the embargo should be “short”, but “could vary depending on the discipline. In fast moving research fields, the embargo could be for six months” (2013 Statement, p. 11-12).

These provisions do not create a new copyright exception, which could raise compatibility issues with the existing 2001/29 Directive on copyright and related rights in the information society (Art. 5 of the Infosoc Directive), but only affects the assignability of the economic rights of the authors. (The authors’ rights of reproduction and communication to the public are defined in Articles 2 and 3 of the Infosoc Directive).

¹This Article reads as follows: “The maker 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 free of charge following a reasonable period of time after the work was first made public, provided that clear reference is made to the source where the work was first made public”.

European institutions concerned with the dissemination of scientific research should support such measures which could be adopted at the European or national level. At least it is worthwhile to make the researchers aware that they should negotiate with the journal's publishers the possibility for a rapid free release of their articles under the Green OA model.

This supplementary statement was issued by the [ALLEA Permanent Working Group on Intellectual Property Rights](#) in October 2015.

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