

Publicatie- en Reproductierechten Organisatie

This agreement is divided into two separate but related contracts for Short reproductions (based on Section 16 of the Dutch Copyright Act) and Medium-length reproductions (voluntary scheme), respectively.

Version of 9 September 2017

The Parties:

Stichting PRO,
Dutch Publishers Association (Nederlands Uitgeversverbond, NUV),
and the International Publishers Rights Organisation (IPRO),

hereinafter jointly referred to as 'the Publishers',

and

the Association of Universities in the Netherlands (Vereniging van Universiteiten, VSNU), acting for itself and (on the basis of a power of attorney) on behalf of the Dutch universities referred to in the Appendix;

hereinafter referred to as 'VSNU' and 'the Universities', respectively,

Whereas:

- for many years, the Universities have made copyright-protected works in paper or digital format as referred to in Section 10(1) of the Copyright Act (*Auteurswet*, Aw) available to students for explanatory purposes in the context of their education;
- the reproduction of part or all of copyright-protected works for this purpose is not considered a violation of the copyright of the creator of a work, provided that:
- where it concerns the reproduction of compilations, only short works or short parts of works by the same creator may be copied and where it concerns works as referred to in Section 10(1), under 6, 9 or 11, no more than a few of those works;
- on 1 January 2004, the parties concluded an agreement that was most recently amended by an agreement of 5/17 June 2014, which provides for an annual payment by VSNU as fair compensation for reproducing parts of copyright-protected works for explanatory purposes in the context of education, as referred to in Section 16(1)(a)(5) of the Aw;
- although the Universities also make Medium-length reproductions for explanatory purposes in the context of education, for which they request permission from the Publishers, joint studies show that these requests do not always cover the totality of Medium-length reproductions;
- as a result of technological and other developments, education material is increasing offered in digital format with or without an option to be printed;
- scientific publications are increasingly being made available via open access and direct licences from the Publishers for education purposes;
- the Parties wish to conclude new agreements on the use of Short reproductions and Medium-length reproductions, to the extent not provided for via open access or direct licences;
 - o the Parties consider transparency with respect to the Actual use by the Universities important, partly in order to monitor developments in Actual use;
 - o the Parties have negotiated the conditions for Short and Medium-length reproductions made by the Universities for the years 2017 through 2020;
 - o the Parties have set out in a Memorandum of Understanding 'an easy access scheme between PRO/IPRO and VSNU regarding compensation for reproductions of copyright-protected works' (the 'MoU');
 - o the Parties wish to elaborate the agreements made in the MoU through this agreement;

Have agreed as follows:

Article 1. Definitions

The definitions below apply to the following terms used in this agreement:

- a. Short reproduction: reproduction on paper or in digital format from copyright-protected works used for explanatory purposes in the context of education from
 - (i) a book: a maximum of 10,000 words and no more than one third of the original work (based on the number of pages);
 - (ii) a periodical: a maximum of 8,000 words;
 - (iii) literary works: a maximum of 100 lines of poetry or 2,500 words of prose, provided that it does not amount to more than one tenth of the entire original work;
 - (iv) sheet music: lyrics of a song – a maximum of one couplet and one refrain; musical notations – a maximum of five staves;
 - (v) images, graphics, tables, diagrams and similar works: no more than 25 from the same original publication and a few works by the same creator;
- b. Medium-length reproduction: reproduction on paper or in digital format from copyright-protected works used for explanatory purposes in the context of education which is not a Short reproduction, comprising a maximum of 50 pages and no more than 25% of the content of the book or periodical;
- c. Other reproduction: reproduction from copyright-protected works used for explanatory purposes in the context of education that is neither a Short nor a Medium-length reproduction and which is not classified as Other use;
- d. Actual use: the number of pages of Short and Medium-length reproductions used by the Universities, and the number of such reproductions made, for a contract year pursuant to Article 6 for which compensation is payable pursuant to Article 4 of this agreement;
- e. Other use: Short or Medium-length reproductions for which permission has been obtained (i) on the basis of the licences granted directly to the University concerned by the Publishers or (ii) on the basis of other schemes, including open access agreements, pursuant to which compensation for the use has already been paid to entitled third parties or no compensation is owed.

Article 2. Scope of agreement

- a. Pursuant to this agreement, the Universities are entitled to make Short and Medium-length reproductions for explanatory purposes in the context of education in exchange for payment of the compensation owed and under the conditions of this agreement.
- b. This agreement applies to all forms of academic education offered by the Universities, with the exception of education provided on a commercial basis. The parties agree that education provided for the benefit of a wider public at no cost, such as massive open online courses, does not come under this agreement either.
- c. This agreement relates to Short and Medium-length reproductions, regardless of the manner in which the copyright-protected material concerned is made available.
- d. Short reproductions, as described in this agreement, are considered to be in accordance with what is generally regarded as acceptable as provided for in Section 16(1) of the Aw.

Article 3. Duration of agreement and evaluation

1. This agreement takes effect on 1 January 2017 and remains in effect through 31 December 2020. The Parties will begin consultations on a new agreement for the period after 1 January 2021 no later than in December 2019. If no agreement has been reached on a new agreement on 31 December 2020, the duration of this agreement will be considered to have been extended until such time as arrangements on a new agreement have been reached. For the application of Article 4 in that case, the compensation owed will be indexed on the basis of the collective labour agreement wage indexation (2017 = 100), with a maximum of (2%).
2. In January of each year contract year, the parties will evaluate the performance of this agreement in the past year within the steering group referred to in the Appendix. The first evaluation will take place no later than 28 February 2018. This evaluation will in any event assess the information exchange, the Actual use in the previous contract year, and the verification and findings of the Parties with respect to the performance of this agreement. Based on the outcomes of the evaluation, the Parties will make additional agreements where necessary to improve the performance of this agreement.

Article 4. Compensation

- a. During the term of this agreement, the Universities will owe €3.6 million (exclusive of VAT) per year as compensation for Short reproductions (€1.1 million) and Medium-length reproductions (€2.5 million) for which no permission has been obtained on the basis of licences awarded directly to the Universities by the Publishers or on the basis of other schemes – including open access agreements – pursuant to which compensation for the use has already been paid to entitled third parties or no compensation is owed.
- b. These amounts are based on the use in 2015, as determined in the manner referred to in the Appendix. The Universities will endeavour to reduce the Actual use by all the Universities jointly by an average of 5% (in numbers of pages [and numbers of reproductions made]) compared with the previous contract year.
- c. Each year before 1 April, Stichting PRO will invoice the Universities on behalf of the Publishers for the amount owed in that year. Each year before 1 March, VSNU will make available to PRO an overview of the amounts owed by each university. In the event that there is no such overview, PRO will charge each university the compensation owed in proportion to the number of full-time students enrolled in the relevant university. The Universities are obliged to make the payment no later than 1 July of that year. The amount owed will be specified in the invoice according to the type and form of use (short/paper, short/digital, medium-length/paper and medium-length/digital).
- d. For the period prior to 2017, the Universities owe a once-only and fixed amount of €2 million (exclusive of VAT) for the use of Medium-length reproductions for which no permission has been requested from the Publishers. The Universities will compensate this amount from the reduction of the Actual use by all the Universities jointly compared with the previous year (in 2017 relative to the extrapolated use of Erasmus University Rotterdam in 2015). The amount of this difference will be deducted from the amount of €2 million (exclusive of VAT). The remaining part of this amount becomes due if it has not been compensated fully in the aforementioned manner on 31 December 2020. Stichting PRO will send VSNU an invoice for this amount, which invoice VSNU will settle within 30 days of its receipt.
- e. If the amount of €2 million (exclusive of VAT) referred to in Article 4d has been compensated in the manner described in that article during the term of this agreement, the invoice for the annual compensation referred to in Article 4a for each subsequent contract year will be based on the Actual use of the previous contract year. After the end of the first contract year referred to, the Actual use of that year will be determined. If the Actual use turns out to be lower than the invoiced amount, the amount corresponding with the difference will be deducted from the compensation owed for the subsequent contract year. If the Actual use turns out to be higher, the amount of the difference will be added to the compensation owed for the subsequent contract year.
- f. If the Actual use for a contract year is higher than the use in 2015 referred to in Article 4b before the amount of €2 million (exclusive of VAT) referred to in Article 4d has been compensated in the manner described in that article, Stichting PRO will send an invoice for the amount of the difference, which invoice VSNU will settle within 30 days of its receipt.

Article 5. Other reproductions

For Other reproductions, the Universities must obtain prior written permission from the publisher concerned. The Publishers will endeavour to facilitate and offer tailored solutions with respect to requests for Other reproductions with a maximum of 50% of the work concerned.

Article 6. Determining and reporting Actual use

- a. Each year before 1 March, the parties will determine the Actual use and the Other use over the past contract year, in accordance with the provisions of this article and the Appendix. The reports on the Actual use and the Other use distinguish between the number of pages and the number of reproductions made of Short reproductions and Medium-length reproductions, as well as between paper and digital use in these reproductions.
- b. For the determination of the Actual use and the Other use, the Universities will ensure that four universities in the first contract year and at least three universities in each subsequent contract year – selected in consultation with the Publishers – will provide to the Publishers a full and verifiable insight into their Actual use, which will be used for calculating the Actual use of the Universities through extrapolation. In the period 2017–2020, all the Universities will provide insight into their Actual use once.

- c. The Universities will set up a national network of coordinators, who together with PRO will facilitate knowledge exchange with a view to the performance of this Article 6.

Article 7. Indemnification

The Publishers indemnify the Universities against claims from copyright holders to the extent that such claims are related to the use of copyright-protected work for which the Universities have made the compensation payments referred to in Article 4.

Article 8. Settlement of disputes

- a. The Parties will endeavour to resolve disputes regarding the performance of this agreement through mutual consultation. At the request of either party, the dispute may be submitted to the steering group referred to in the Appendix. If the steering group is unable to arrive at a solution to the dispute, the Parties will endeavour to resolve the dispute with the aid of mediation in accordance with the applicable regulations of the Dutch Mediation Federation (Mediatorsfederatie Nederland). As long as the mediation has not concluded, neither of the Parties will refer the dispute to the courts unless it is exclusively to safeguard their rights. The Parties will attend the initial mediation session, after which the Parties are free to end the mediation at any time that they wish. The mediation begins at the time when the Parties attend the initial joint mediation session.
- b. If the methods referred to in the first paragraph do not result in a resolution of the dispute, the dispute will in the first instance be exclusively referred to the District Court of The Hague, in accordance with Article 16g of the Aw.
- c. This agreement is governed by Dutch law.

Agreed on 2017.

VSNU (Association of Universities in the Netherlands) Stichting PRO

Name: K. Dittrich
Position: chair
Date: 26 September 2017

Name: H. van der Rijst
Position: chair
Date: 12 October 2017



NUV

Name: P.A. Stadhouders

Position: director

Date: 24 October 2017

IRPO

Name: G. Noorman

Position: chair

Date: 24 October 2017

APPENDIX:

Notes to and agreements on the practical implementation of a number of provisions from the agreement dated 9 September 2017 between VSNU, Stichting PRO, IPRO and NUV.

General notes

In this agreement, the parties have elaborated a solution whereby the Universities can reuse parts of content for explanatory purposes in the context of education with a minimum of administrative burden. This scheme provides for the remittance of a reasonable compensation for this type of use in both paper (readers) and digital form. The scheme consists of two components:

- 1 It should be simple to use content in exchange for reasonable compensation. The portion of reuse allowed without the need to request separate permission (was a maximum of 8,000/10,000 words) has been raised to 50 pages, with a maximum of 25% of the work.
- 2 The parties wish to gain insight into the Actual use of content. To achieve this insight, each university will provide insight once during the term of this contract into all the reuse over the course of one year, as elaborated under point 6b below. The manner in which this insight is to be provided will be agreed later between the Universities and Stichting PRO.
The aim is to provide maximum flexibility to the Universities within the framework of the basic principles set out under point 6b, in so far as each University ensures that PRO obtains full and unlimited insight into the reuse in order to enable the verification of a university's actual reuse by PRO in the most efficient manner possible.

Representation by the Parties

VSNU represents the following universities, including the medical faculties, as well as the research schools and institutes referred to below:

- Erasmus University Rotterdam
- Maastricht University
- Open University
- Radboud University Nijmegen
- University of Groningen
- Delft University of Technology
- Eindhoven University of Technology
- Tilburg University
- Leiden University
- University of Twente
- Utrecht University
- University of Amsterdam
- VU Amsterdam
- Wageningen University

If VSNU wishes to add a university, research school or institute, this addition will occur in consultation with the Publishers and the Executive Board of the University in question will issue a declaration stating whether the unit concerned falls under the responsibility of the Executive Board.

The Publishers represent all domestic and international publishers.

Article 1. Definitions

Short reproduction

In the case of a reproduction of a combination of text (components (i), (ii) or (iii)) and images, an image will count as 200 words and the upper limit of the number of words as well as the upper limit of the number of images apply.

Medium-length reproduction

The old reader scheme only included a lump-sum arrangement for Short reproductions. To facilitate the Universities, PRO offered on its platform the option of requesting permission for reproductions that exceeded these limits, up to a maximum of one third of a book or journal. These reproductions were invoiced separately by PRO. In the Easy Access scheme, a part of these reproductions (i.e. up to 50 pages and 25% of a book or journal) comes under the lump-sum arrangement. PRO will endeavour to continue facilitating permission for longer reproductions – up to 50% of a book or journal if possible – so the Universities will not need to make agreements with individual publishers in this regard.

In the case of a Medium-length reproduction of a combination of text and images, an image counts as half a page.

Other use

This definition has been added because the use for which no compensation is owed pursuant to Article 4a must be calculated – and included in the annual report – in order to determine the Actual use for which the compensation set out in Article 4a is payable (total use minus Other use = Actual use). From Article 4a, it follows that no compensation is owed on the basis of this agreement for the use of copyright-protected work that is permitted on the basis of a direct licence issued by a publisher or of another scheme pursuant to which compensation for the use has already been paid to entitled third parties or no compensation is owed, such as an open access agreement.

Article 3b. Steering group

In the past period, the Parties have negotiated with each other in a negotiation group referred to as a steering group, which includes two representatives of VSNU and two representatives of the Publishers. It is the intention that this steering group, in the context of this agreement, will fulfil the role of consultation body for the Parties and assess the implementation of the agreement each year. Matters regarding the implementation of the agreement about which the parties disagree may also be presented to this steering group (see Article 8a).

Article 4a. Calculating compensation

1. This amount is based on the established Actual use at Erasmus University Rotterdam (EUR) over 2015, which has been extrapolated on the basis of student numbers to all the Universities in order to determine the total amount.

Description of use	amount	Accountable for VAT	amount including VAT
Short recordings (digital and paper)	€1,116,173	no VAT	€1,116,173
Medium-length digital recordings	€ 1,828,880	21% VAT	€2,212,945
Medium-length paper recordings	€642,909	21% VAT	€777,920
Basic compensation per year	€3,587,962		€4,107,038

2. The established use of Medium-length digital reproductions of EUR is €163.853 (based on the number of pages x page price x number of reproductions, where different page prices apply for works from Dutch and international publishers). EUR has 23,236 students, which is 8.96% of the total number of students within VSNU in 2015 (total was 259,354). Extrapolation of EUR's amount to the total number of students results in a compensation for Medium-length digital reproductions of €1,828,880.

The use of Medium-length paper reproductions of €642,909 is based on the reproductions submitted by the Universities in 2015 via the PRO portal for permission requests. The amount for Short reproductions (€100,000) is based on an EUR estimate following its own studies. Assuming the number of students for 2015 referred to above, this figure is 8.96% of the total use. Consequently, the compensation owed by the Universities is €1,116,173.

3. The amount that the Universities pay for Short reproductions pursuant to Article 4a is not subject to VAT because it is based on the statutory exception referred to in Section 16 of the Aw. The compensation owed for Medium-length reproductions pursuant to Article 4a is subject to VAT because it is based on licences, which are viewed as a service.

Article 4a. Limiting use by 5% per year

The Universities aim to realise a reduction in the use of Short and Medium-length productions that are covered by this agreement. It is estimated that this reduction will amount to approximately 5% (measured in number of pages and reproductions made) per year, compared to the previous year. The year 2015 serves as a reference point for 2017 (see notes to Article 4a under 1 and 2). However, the amount to be paid annually pursuant to Article 4a remains the same over the term of the agreement, while the total use in this manner would drop by more than 20%. The corresponding amount of the actual use is determined on the basis of the applicable page price and this amount is settled with the past compensation determined pursuant to Article 4d.

Article 4d. Past compensation

Based on the EUR studies, the parties have determined that the Universities would jointly have to pay an annual amount of more than €1.8 million (exclusive of VAT) for the use of unreported Medium-length digital reproductions.

In the context of this agreement, the Publishers are willing to waive the right to compensation for the unreported use of Medium-length digital reproductions in the years before 2014 and to agree a total compensation of €2 million (exclusive of VAT) for the period 2014 through 2016. This amount is not a penalty but compensation for unreported Actual use in the past.

Article 5. Other reproductions

In case of a reproduction of copyright-protected work which comes outside the scope of this agreement and which comes outside the scope of Other use, the University concerned must obtain permission for this use from the publisher in question; if a University fails to request permission, Stichting PRO will send a separate invoice.

Article 6b. Insight into use

1. Each year, at least three universities will grant full and verifiable insight (without restrictions) into the total use of Short and Medium-length reproductions (digital and paper) and the Other use in the previous contract year. The structure of the study as carried out in cooperation with the EUR provides a good foundation, with the details to be worked out further in consultation between Stichting PRO and the Universities. Based on these data, the selected universities and Stichting PRO will jointly determine the Actual use for each selected university in the contract year concerned¹ and the Actual use of all the Universities in that year through extrapolation. Calculated on this basis is the compensation owed in principle and, to the extent that the Actual use is lower than the use referred to in Article 4a, the amount of the compensation that can be deducted from the compensation for the years 2014–2016 in accordance with Article 4d.
2. Each year, VSNU and the Publishers consult to select universities before 1 September, on the assumption that the selected universities are sufficiently representative of the Universities jointly, including in any case one general university and a university with a specific profile (e.g. agriculture, technology).
3. The universities selected for a contract year supply a report, before 1 March of the following year, to Stichting PRO on the total use of Short and Medium-length reproductions. This report distinguishes between the use involving Short reproductions/paper and Short reproductions/digital as well as between Medium-length/paper and Medium-length/digital. The

¹ The Actual use is calculated by first determining the total number of Short or Non-short reproductions and then deducting the Other use from this figure.

definitions in the agreement are used to determine whether a reproduction is short or of medium length.

- 4 The Universities will enable Stichting PRO to verify the accuracy, completeness and reliability of the information. The Actual use is subsequently determined together with the degree to which the use has increased or decreased (also see Article 4b).
- 5 If a university is unable to supply the report referred to under 3 in good time, it will provide Stichting PRO with access to its electronic learning environment and its readers used, so PRO can assess the use; also see point 7.
- 6 In 2017, a leading group of four institutions (EUR, VU Amsterdam, Delft University of Technology and Wageningen University) will start implementing a measurement system that complies with similar standards as EUR. PRO and VSNU will facilitate these front runners.
- 7 Before 1 September 2017, each University among the front runners will draw up an implementation plan (including a realistic time frame) in close consultation with Stichting PRO for the implementation of:
 - a. a pilot measurement system;
 - b. a tested system that has been approved by the Parties;
 - c. the initial results/test results;
 - d. validated data on Actual use;
 - e. working arrangements and procedures.
- 8 If the university is unable to implement a measurement system in time, in any case with respect to the data of the four front-running universities for the 2017 contract year, the university will allow Stichting PRO to inventory the Actual use for the contract year in question and Stichting PRO will in that case be prepared to register as well as analyse the number of reproductions. The four front-running Universities will ensure that PRO has full and unrestricted access to the content provided for students no later than 1 September 2017. This content can be made available by allowing Stichting PRO to inspect the paper readers and (i) granting access to the electronic learning environment(s) or (ii) making available to PRO a data dump of all content from the electronic learning environment(s). If a university selected for a later contract year anticipates that the measurement system will not be ready in time to supply the report referred to under point 3, the university concerned will ensure that Stichting PRO has access to this content before 1 June as referred to above.

Article 6c Establishment of a national network of Easy Access scheme coordinators

In 2017, the Universities will examine how to set up the measurement system so the administrative burden remains limited. This set-up may require, for example, tenders for new LMS systems to include as a condition that systems must be able to generate information on the use required for the report. To ensure that knowledge of and experience with measurement systems as well as more generally determining and verifying Actual use is exchanged, VSNU will establish a national network of Easy Access scheme coordinators in cooperation with the Universities and Stichting PRO.