

Summary of LOWI opinion 2016-01

The Board carried out an ex officio investigation of the re-use by Petitioner of own work that he had published previously. The conclusions of the Committee that conducted the investigation are, briefly, that re-use of 50 words or more of Petitioner's own work (with or without co-authors) occurs frequently, that the length of the re-used texts varies, and that references to previously used texts are almost always missing. In 261 publications examined, dating from 1995 onward, the Committee found at least 43 publications that involved re-use. In the view of the Committee, it was already clear in 1995 that re-use without attribution of sources could assume problematic forms and was a questionable research practice. The Board adopted the conclusions of the Committee, except for the term "questionable research practice" and the suggestion that Petitioner's working method was a possible explanation for the size of his oeuvre. The Board has already published the Committee's full report (i.e. part of it).

Petitioner has submitted an extensive request to LOWI, asserting (briefly), *inter alia*, that the Board was not authorised to publish the report, that the Board wrongly published the negative descriptions used by the Committee which were not adopted, that the report contained many errors, and that many of the re-used texts consist of general orienting sentences, expressions familiar to experts, technicalities and data descriptions, without any claim to originality. Petitioner also argued that Article 1.5 of the Netherlands Code of Conduct for Scientific Practice [*Nederlandse Gedragscode Wetenschapsbeoefening*] regarding re-use of one's own work had wrongly been applied retroactively, that the Committee had not asked the co-authors about their contribution, and that in a statement of support from 81 foreign colleagues it was stated, *inter alia*, that there are no clear rules on re-use and that Petitioner's working method is also used by others.

A brief summary is given below of LOWI's most relevant findings in the light of the grounds asserted by Petitioner. It is relevant, first of all, that LOWI found that the Board had jurisdiction to carry out an investigation ex officio (or to cause such investigation to be carried out) and to reach a decision in the light of such investigation.

As regards the grounds that concern (procedural) guarantees, LOWI found as follows:

- An ex officio investigation is also an integrity investigation, with the researcher finding himself in a vulnerable position. There is no reason to impose different criteria in the case of an ex officio investigation than in case of an investigation based on a complaint. There was sufficient reason to apply the guarantees in the Complaints Regulations by analogy. A researcher about whose integrity doubts are raised may not be disadvantaged as regards the procedural possibilities open to him for the sole reason that the doubts raised are not based on any underlying specific complaint;
- The Board complied with the requirements in the Complaints Regulations for hearing both sides. Petitioner was given sufficient time to respond properly to the draft report;

- The basic rule of the Complaints Procedure is that an anonymised summary (intended for publication) of the findings and the opinion by the Research Integrity Committee (RIC) are published. The Board deviated from this in two respects: by publishing without anonymization and by not publishing a summary but the full report (but without Appendices 6.2 to 6.4). Because the case had already, long before, been brought to the attention of the press with the full name being given, and it was widely known that the publication behaviour of Petitioner was under investigation, the Board decided, reasonably, to publish without anonymization. Anonymized publication did not in fact serve any reasonable purpose any longer. A summary of the report should, however, have been published. Partial publication of the entire report cannot be equated with doing so. If it did not wish to adopt the findings of the Committee in full, the Board should also have made that clear. Clear reasons why the Board was departing from some of the Committee's conclusions should have been given in the decision that was to be published with the summary;
- Publication of the decision, on the date it was forwarded to Petitioner, was premature. The LOWI procedure is subject to a duty of confidentiality. This is an important safeguard and it was thwarted by the premature publication of the report. Confidentiality is also a precondition for LOWI to carry out its duties effectively. It is good practice for the Board to wait with taking and publishing a final decision until *either* the deadline for submitting a request to LOWI has expired without such a request being submitted *or* until LOWI has delivered its opinion. This guarantees that LOWI's opinion can in fact be of value. An important component of the contested decision is the decision to publish the report without anonymization. Premature implementation of the decision means that any opinion rendered by LOWI to the effect that this decision should be reviewed can no longer be followed up due to the premature implementation of the decision.

As regards the grounds that concern written and unwritten standards, LOWI found as follows:

- Prior to Article 1.5 of the Netherlands Code of Conduct for Scientific Practice coming into force in 2014, there were no (national) written standards regarding re-use. It is therefore relevant whether there were already unwritten standards: these are applicable if they were subject to broad consensus and if they were sufficiently well known. Experienced researchers can be expected to observe widely supported and familiar standards of research integrity, even without such standards having been set out in writing;
- The report states: "It was also already clear in 1995 that re-use of one's own texts without attribution of sources could assume problematic forms," but this was not substantiated. The advisory memorandum from the Royal Netherlands Academy of Arts and Sciences (KNAW) on *Correct Citation Practice* [*Correct citeren*] shows that there were in fact unwritten standards. Given, however, that it cannot be asserted that there was a very obvious standard – which is already evident from the fact that the standard was not included, either in 2004 or in 2012, in the Netherlands Code of Conduct for Scientific Practice – LOWI requested two external experts

to provide their advice in order to clarify whether, and how, the broad scientific discussion on re-using one's own texts has developed since 1995;

- Because it appears from the advisory memorandum that there were (general) unwritten standards, there is scope for assessing the re-use by Petitioner since 1995. It must in any case be concluded from the recommendations by the experts that views regarding re-use were then developing, and are currently still developing. There was no question of any evident standard in 1995, as asserted by the Committee and the Board. A similar conclusion can be drawn from the advisory memorandum, which speaks of shades of grey [*grijstinten*] and which stresses that there are differences between the various scientific disciplines. This means that the report by the Committee and therefore the decision by the Board regarding this point are insufficiently substantiated;
- LOWI also considers it relevant that it is apparent from the experts' recommendations that when deciding whether there is a case of impermissible re-use one must assess the nature of the re-used passage. Is one dealing with the recycling of text – something that is very common and sometimes even difficult to avoid – or with a false claim of a new scientific discovery? That the nature of the re-used passage is relevant also follows from the advisory memorandum and from Article 1.5 of the Netherlands Code of Conduct for Scientific Practice;
- The above means that the actions of Petitioner since 1995 can be assessed, but that in doing so the requirements of due care and the assessment framework for the now written standards regarding re-use must be observed.

As regards the scrupulousness of the report and the assessment framework, LOWI found as follows:

- The fact that one of the Committee members had been a member of committees that investigated previous complaints about Petitioner does not necessarily mean that the impartiality or independence of the Committee is at stake. It would, however, have been preferable if that Committee member concerned had not participated for a third time in a committee whose task was to judge the research integrity of Petitioner (among others). It could have been foreseen, quite easily, that that would raise doubts;
- There are, all in all, insufficient reasons for finding that the investigation should have been extended to Petitioner's co-authors or for the finding that the investigation of Petitioner (alone) should not have been carried out at all;
- The Committee was at liberty, in order to ensure the feasibility of the investigation, to select only publications that were available digitally. The Committee was permitted to select for investigation the publications classed as scientific in Metis, and did not need to assess any more than superficially whether the classification "scientific" was correct for each individual publication;

- The Board was required to respect the assessment framework set out in Article 1.5 of the Netherlands Code of Conduct for Scientific Practice in conjunction with the advisory memorandum. That means that, if the report did not comply with that assessment framework, the Board could also not take the report as the basis for its decision;
- It follows from Article 1.5 of the Netherlands Code of Conduct for Scientific Practice that the scope and also the content of the re-used texts are relevant, as is the practice in the specific discipline. In order to determine the extent of the re-used texts, it can be sufficient to use a software program, but in order to determine the content of the re-used texts and the practice in the discipline, substantive assessment of the texts is necessary, as is the involvement of peers. There is no reason to consider that in the case of a less far-reaching classification than “questionable research practice”, a less careful investigation is sufficient;
- No specific number of words has been laid down anywhere beyond which re-use begins. The lower limit of 50 words applied by the Board is reasonable in this case. That number is substantial enough for one to speak of actual re-use, justifies studying the content of the texts, and excludes coincidences sufficiently. In most cases, the lower limit of 50 words was in fact exceeded considerably;
- The statement of support from 81 foreign colleagues, submitted in support of Petitioner’s assertion that he acted in conformity with the practice in his discipline, dates from the start of the investigation. It has not been shown, however, that the Committee took account of that statement in the investigation, nor itself investigated what the practice in the discipline is (and was), nor that the Committee is aware of this from its own experience. The Committee conducted a study without a control group: it was only Petitioner’s oeuvre that was investigated, without any check of the publication behaviour of comparable researchers. It must therefore be established that the practice in the specific discipline did not play any role in assessing the re-use by Petitioner. This means that the report, and thus the decision, does not comply with the Netherlands Code of Conduct for Scientific Practice;
- It follows from Article 1.5 of the Netherlands Code of Conduct for Scientific Practice that it must be determined whether the researcher is publishing the previous work (“findings”) “as though it constituted a new contribution to the scientific literature”. The standard therefore does not cover the re-use of all possible kinds of text, but the re-use of scientific findings, i.e. the results of research. Correct application of this standard requires a substantive assessment of the re-used passages of text, which may, moreover, require the involvement of peers;
- It frequently occurs – and LOWI considers it acceptable – that one sentence or a few sentences is/are re-used, for example to clarify the problem that is to be considered or to define the context of a research area. Connecting passages of this kind are constantly needed again and again in any publication on the same subject, and it is troublesome to always have to come up with a different way of phrasing them. This is a different matter, however, to failing to attribute sources correctly when republishing actual research findings;

- LOWI notes that no peers were involved in this case and that the Committee checked text fragments using a software program. By doing so, the Committee assessed whether text had been recycled, but re-use of research findings is something significantly different. It does not appear that the Committee specifically drew that distinction and assessed whether the re-used texts were meant as new contributions to the scientific literature or that Petitioner was pretending something to that effect. It is also clear from the position adopted by the Board that what it considered relevant was, above all, whether text passages of more than 50 words were or were not original, without asking what the precise content was of those passages. The Committee's manual check after using the software program focused primarily on whether there had been (proper) attribution. This means that this part of the report also, and thus the decision, does not comply with the Netherlands Code of Conduct for Scientific Practice.

LOWI then found as follows:

- Given that it is not in dispute that there is in fact no question of a violation of research integrity or questionable research practice, the assessment focused on the procedure followed by the Board;
- The request is well founded in so far as it concerns the premature publication of the full report. Analogous application of the Complaints Regulations requires publication of a summary of the report, with a decision by the Board which includes reasons why and to what extent that decision deviates from the conclusions of the Committee. Because Petitioner's name had already appeared extensively in press reports and it was widely known that Petitioner's publication behaviour was under investigation, the Board, it is true, could reasonably even decide to also publish without anonymization, but it should have waited before doing so. By not waiting, the Board acted contrary to the Complaints Regulations and the duty of confidentiality pursuant to Article 10 of the LOWI Regulations (i.e. the functions of that duty of confidentiality);
- The request is well founded in so far as the scrupulousness of the report is concerned, in the sense that the report and hence the decision by the Board does not comply with the assessment framework pursuant to Article 1.5 of the Netherlands Code of Conduct for Scientific Practice. It does not appear that the practice in the specific discipline played a role in the assessment, nor does it appear that a distinction was made in the assessment between the re-use of text as regards the introduction, theory development, or description of methodology as opposed to the re-use of research findings as being new contributions to the scientific literature;
- In so far as the request concerns the suspicion of plagiarism, it is without any factual basis, given that the reason for the ex officio investigation had to do with publications regarding re-use;
- The request is unfounded in so far as the suspicion of re-use without proper attribution is concerned, given that there is insufficient reason to conclude that scientific publications dating from prior to the entry into force of Article 1.5 of the Netherlands Code of Conduct for Scientific Practice may not be assessed as regards re-use. However, when carrying out the assessment, the requirements of scrupulousness and the assessment framework for the now written

standard in Article 1.5 of the Netherlands Code of Conduct for Scientific Practice must be observed;

- The request is unfounded in so far as the involvement of co-authors is concerned, given that the request is insufficiently substantiated as regards this point and what has been submitted can also not lead to the conclusion that Petitioner's actions should not have been investigated.

LOWI advised the Board as follows:

- The Board's decision was in fact already effectuated by the Board publishing the report without anonymization. That means that any opinion regarding possible revision of the decision can have hardly any effect. It is not possible to undo publication of the decision, and it is also not for LOWI to comment on the consequences of that publication. The LOWI procedure is not intended to bring about rehabilitation;
- That does not of course alter the fact that the Board can still decide to carry out a new investigation and to take a close look at the already selected publications once again and to assess the texts more as regards their content, with the assistance of peers;
- Even if the Board does not have a new investigation carried out, LOWI suggests that the Board consider taking and publishing a new decision on the report. In such new decision, the Board can still give reasons why and to what extent its decision deviates from the conclusions of the Committee;
- LOWI advises that in future the Complaints Regulations should be applied to ex officio integrity investigations by analogy.

The Board notified LOWI on 12 April 2016 that the opinion did not give reason to revise the assessment of Petitioner's method of re-using previously published own work, that the Board would have an additional investigation carried out, and that the results of that additional investigation would in due course be published by the Board.