

Definition of “Embargo” and its applications

(text translated from *Tesi di dottorato e diritto d'autore*, written by Open Access Group-CRUI)

An embargo means that the PhD thesis, archived in an institutional deposit, has been sealed and only its metadata are accessible. This condition can last from 6 to 12 months or, in exceptional cases, for a maximum of 3 years.

PhD students can ask for an embargo only if their request is motivated. An embargo can be requested in case of:

a) Forthcoming thesis

A PhD student can ask for an embargo of his/her thesis if a publisher is going to publish it, not allowing its open access prior to publication. In this case, it's necessary to check if the work in course of publication is substantially different from the thesis it comes from. In fact, the article describing the research work carried on during the PhD programme is a publishing product different from the thesis. The same can be said for a volume representing a significant reworked version. In these cases, the publication of the thesis in an open-access archive shouldn't condition its publication by a commercial publisher in any way.

b) Thesis in agreement with third parties

If the thesis is part of a wider research project for which an agreement has been signed with an external research institution or a financing body in order to publish and disclose the thesis only at the end of the research project, a period of embargo can be requested legitimately.

c) Public safety reasons

An embargo can be requested for safety reasons, if the content of the thesis can put the public or national safety at risk in any way. Furthermore, an embargo can be requested in order to comply with the law in force.

d) Privacy

A period of embargo can be requested if the thesis deals with a living or recently deceased person for whom the right to privacy can be violated.

e) Patentable thesis

Patents and copyrights are two separate things. A patent protects the idea and requires an innovative research such as to ensure not so much an improvement of the state of the art and the technique, but a real new approach for solving a problem. To summarize, a research can be patented only if it can offer new solutions transferable at a technological level (technological transfer) to the benefit of everyone (industrial development). Only few theses can be patented. In any case, also the thesis defence, even if behind closed doors, makes its contents no more patentable because they have been made public. The Rules in force at some Universities warn the PhD students interested in starting a patent procedure that the thesis defence is to be considered a pre-disclosure.

Therefore, it's not the deposit of the digital version of the PhD thesis in an open access archive to prevent the patentability of a research, but rather its public defence.

The patent application must be submitted before the thesis defence, given that the defence amounts to its publication. After submitting the patent application, the PhD thesis can be deposited in an open archive. That's because the national, European and international rules concerning the industrial intellectual property – patents, trademarks, utility models and industrial designs – establish that nothing can be published before submitting the patent application, but only after it.