

Mutant-flu researcher backs down on plan to publish without permission

Virologist will apply to Dutch government for export permit before submitting his paper to *Science*.

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Ron Fouchier, a researcher at the Erasmus Medical Center in Rotterdam, the Netherlands, whose work on the H5N1 avian flu virus has been embroiled in controversy, told *Nature* this afternoon that he has now reluctantly agreed to apply for an export permit to submit his work to the journal *Science*.

Fouchier's paper is one of two reporting the creation of forms of the H5N1 virus capable of spreading between mammals. The other, by Yoshihiro Kawaoka of the University of Wisconsin, Madison, and the University of Tokyo, and his colleagues, has already been submitted to *Nature*. Some researchers fear that if such viruses were to escape from a laboratory, they would pose a threat to human health.

Fouchier had told *Nature* last week that he intended to defy the government and submit the work to *Science* without seeking the export permit that the Dutch government says is required (see ['Mutant-flu researcher plans to publish even without permission'](#)). A government official had told *Nature* that such an action could incur penalties including up to six years' imprisonment.

"We have been informed we still need an export permit. We have decided to apply for an export permit, but will do so while disputing the obligation to comply with it," says Fouchier. "This is a formal procedure by which we indicate that we do not agree with the Dutch government's interpretation of EC 428/2009," he says, referring to [European Union \(EU\) legislation on export controls](#). The decision to apply for a permit "under protest" was backed by all of the paper's co-authors and the board of directors of their institutions.

Some observers had hoped that the Dutch government might lift the export-control requirement following a closed meeting on 23 April in The Hague. The meeting was called by the Dutch government to help assess the risks and benefits of publishing the research, and brought together about 30 experts (see [participant list](#)) in biosafety, public health and virology from many of the countries involved, such as the United States, Japan, the Netherlands, the United Kingdom, Vietnam and Indonesia (the last two supplied the H5N1 viral isolates used in the research).

But the meeting was intended only to help "inform the Netherlands government position and policy stance", and not to reach any formal conclusions, say Cindy Heijdra, a spokeswoman for international trade at the Dutch Ministry of Economic Affairs, Agriculture and Innovation. The government has now definitively excluded the possibility of waiving export control of the work, and will only make a decision on whether to allow publication after Fouchier applies for a permit. The turmoil surrounding the collapse of the Dutch coalition government yesterday seems unlikely to change matters.

Acceptable compromise

The US National Science Advisory Board for Biosecurity (NSABB) said in December that the studies' experimental details should be redacted from any publications. The board cited concerns that the information could be used by bioterrorists, and that full publication would enable many more labs to work on the viruses, raising the risk of an accidental release. But the NSABB revised its position on 30 March, after a two-day meeting with the researchers and other flu experts, recommending that both papers should be published in full (see ['US biosecurity board revises stance on mutant-flu studies'](#)). The United States government [formally endorsed](#) the board's conclusions on 20 April.

Basic research is usually exempted from the need for an export licence, as long as the study is to be published in a public forum. But by initially agreeing to the redaction of their papers, submitted to *Nature* and *Science* last autumn, Fouchier and Kawaoka inadvertently lost the right to that exemption.



Dirk-Jan Visser/The New York Times/Redux/eyevine

Ron Fouchier will comply with government officials' demands, but not because he agrees with them.

Following the NSABB recommendation that the studies be published in full, Kawaoka submitted his revised paper to *Nature*, as his legal counsel had advised him that the revised paper no longer fell under US and Japanese export controls, he says. "As long as I intended to publish the full manuscript, the contents of the paper were not export controlled."

But the Dutch government explicitly stated that Fouchier's revised paper still falls under Dutch and EU export controls, and that he needed to apply for an export permit before resubmitting the paper to *Science*. Fouchier had refused to do so, arguing that the Erasmus Medical Center's legal counsel believes that export controls do not apply to the work.

Fouchier says that by conceding to the government's request while continuing to contest the need for an export permit, he hopes to have found an acceptable compromise. "By following this parallel track, we hope to publish the manuscript without further delays," he says. But "the government should not consider that this request for a permit sets a precedent for future manuscripts".

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