



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D. C. 20559

REQUEST FOR COMMENTS ON THE STATUS OF TRANSLATORS

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LIBRARY OF CONGRESS

Copyright Office

Request for Comments On the Status of Translators

AGENCY: Library of Congress, Copyright Office.

SUMMARY: The United States Copyright Office, Library of Congress, is publishing the Unesco Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators to obtain comments from interested parties including translators, as well as publishers and users of translations. The following background statement sets forth the history of this Recommendation and explains briefly the status of translators and translations under both international and United States Copyright Law. We would appreciate receiving your comments by July 31, 1979, so that we may consider your perspectives in preparing an appropriate United States response to these recommendations.

FOR FURTHER INFORMATION CONTACT: Lewis I. Flacks or Michael S. Keplinger, Special Legal Assistant to the Register of Copyrights, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (703) 557-6722.

Background

Translations—the rendering of literary works from one language to another—have been a central issue of international copyright since the 19th Century when the first international copyright agreements were concluded. Statesmen, authors and others, committed to the growth of culture, sought ways to break down the barriers

of language that inhibited increased communication among different societies while recognizing the rights of authors of differing nationalities. Yet these barriers as well as the threat of literary "piracy" remained as durable as societal differences and national boundaries, and the question of translation rights remained at the core of the controversy. Nations have always sought to exercise some control, or at least influence, over the selection of foreign works that are translated into their national language and according to the foreign author an unlimited translation right would take away the choice. Largely because of this issue the right of translation has always been qualified in the international copyright treaties.

The 20th Century struggle for strong international copyright recognition has often seemed to be a defense of the author's right to control translation against pressures tending toward its erosion. The internationalization of Western culture, the culturally absorptive character of modern technological society and, most recently, the demands of developing states for easier access to copyrighted works for educational purposes, have led to demands for weakening the translation rights. Somehow, lost in the law and politics of author's material and professional rights in controlling translations is the shadow author: The translator.

Beginning in 1956, the United Nations Educational, Scientific and Cultural Organization (Unesco), recognizing that translators, as creative authors in their own right, faced unique problems in professional recognition, remunerations and conditions of employment, initiated a broad series of studies on the legal status of translators throughout the

world. Based on these studies and with the cooperative work of the International Federation of Translators, opinion soon crystalized around the notion that the real problems of translators were not so much a lack of legal status, as a set of complex economic circumstances.

The legal studies confirmed that in virtually all states, translators were expressly or impliedly treated as "authors," equal in status to the authors of the original works being translated. While *translations* are, with respect to the original language version, "derivative works," for whose creation and publication the consent of the original author is generally required, the translator theoretically may exercise the full range of rights accorded authors with respect to his or her translation. By 1973, however, the committees of Unesco studying the subject had concluded that "the legal protection enjoyed by translators was for the most part adequate, but that there were difficulties in connection with the practical application of these provisions."

One of the exclusive rights of an author or copyright owner in the United States as in most nations with modern copyright statutes is to prepare "derivative works" based upon his or her original work. "Derivative works" include such secondary creations as screenplays based upon novels, arrangements of musical compositions and, of course, translations. The right to authorize the creation of derivative works belongs to the author or owner of copyright in the original work and permission must be sought before an authorized translation, or other derivative work may be prepared. Obviously, the right to control other creations based upon one's work is

tremendously valuable: often the largest element of value derived from a copyrighted work.

However, derivative works require their own authors, often as skilled and creative in their medium or language as the original creator. Thus, just as the original work is protected by copyright, so is the derivative work. Separate and distinct copyrights exist with respect to translations: the original author has a copyright in the underlying work, and the translator insofar as his or her translation transforms the work.

The copyright protection available for translations does not, however, extend to a translation or to any part of a translation made without the original author's permission. There are certain limitations or exceptions to this general rule.

First, although it is the general rule that a translation may be prepared only with the permission of the author or the work being translated, the legislative history of the United States Copyright Law suggests that the fair use provisions of the law might be applied to translations in certain limited instances. Second, if the translation is prepared by an employee of the United States Government in the normal course of his or her duties, it is a work of the United States Government not protected by copyright.

Just as translations are copyrighted works under the provisions of the United States Copyright Law so are translators considered authors, but authors of derivative works, and the copyright status of their works, by and large, depends upon their having secured authorization or permission from the author or copyright owner of the original work. When the work is prepared with authorization, the translator enjoys the protection of the copyright law, and the translator secures available economic rights.

Under certain circumstances, a translator may also be an author of a "joint work," that is "a work prepared by two or more authors (perhaps another translator, or the author of the original work, if he or she actually contributes to the translation) with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." The key is the intention of the parties. So, depending upon the relationship of the parties involved, a translator might be a "joint author," and as such, a co-author and a co-owner of the copyright in the work.

Many translators' works are "works made for hire," that is "a work prepared by an employee within the scope of his or her employment," or a specifically ordered or commissioned work if there is an agreement signed by the parties stating it "shall be considered a work made for hire." One of the consequences of a work being considered a "work

made for hire" is that the employer or party commissioning or ordering the work is considered the author with all the rights of an author under the statute. A second consequence is that the termination rights which can end exclusive or nonexclusive grants of a transfer or license of the copyright or of any right under copyright do not apply to works made for hire.

A final consideration for translators is the question of so-called moral rights, which are personal to authors. Generally summarized, they include the following: to be acknowledged as the author of the work; to prevent others from being named as the author of the work; to prevent others from falsely claiming authorship in the work; to prevent others from making changes in the work that would damage the author's work; to withdraw a published work from distribution if it no longer represents the views of the author; and, to prevent others from using the work or the author's name in such a way as to reflect on his or her professional standing. Although the United States Copyright Law does not provide for recognition of moral rights, equivalent protection has been developed under different labels—unfair competition, defamation, invasion of privacy, or breach of contract.

In summary, the United States Copyright Law recognizes translators as authors and protects their translations. However, the protection is limited to authorized translations and does not extend to unlawful translations. As authors, they are entitled to all the rights accorded to this group under the statute. But these rights may be impaired by the translators being employees and their works being considered works made for hire. In this case, their status may be inferior to that of the author of the original (pre-existing) work.

Guidelines for Comments

The UNESCO recommendation regarding the protection of translators, set out below, is the product of a long process of study. Its aim is to reflect broadly held views in the world community as to how best to encourage translation, in part through improving the professional environment of translators, throughout the world. As a part of this effort, the United States Copyright Office is publishing the Recommendation, seeking wide dissemination of it and attempting to elicit the reaction of all affected interests—though most particularly, translators and those engaged in securing and disseminating translations.

In your responses to this notice of inquiry, we would appreciate particularly, consideration of the following issues:

1. Whether, in one's experience, any of the practical measures set out in Section III of the Recommendation are

presently available as a matter of custom and practice or contract, in the U.S.;

2. If certain practices are not widespread in your experience, would their establishment be beneficial to the interest of translators or in the interest of assuring the increased availability of works in translation;

3. Whether any issue raised in the Recommendation calling for changes in copyright law, organization of the translating profession, social insurance, and training programs meets an unfulfilled need in the U.S. and should be implemented; and

4. Any problem not addressed or measure not suggested in the Recommendation which, in one's own view, should be considered.

Comments should be submitted by July 31, 1979, to: Special Legal Assistant to the Register of Copyrights, U.S. Copyright Office, Library of Congress, Washington, D.C. 20540.

Date: June 26, 1978.

Barbara Riegler,

Register of Copyrights.

Approved:

Donald J. Berman,

Librarian of Congress.

Recommendation on the Legal Protection of Translations and Translators and the Practical Measures To Improve the Status of Translators

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Nairobi from 29 October to 30 November 1978, at its nineteenth session.

Considering that translation promotes understanding between peoples and co-operation among nations by facilitating the dissemination of literary and scientific works, including technical works, across linguistic frontiers and the interchange of ideas.

Noting the extremely important role played by translators and translations in international exchanges in culture, art and science, particularly in the case of works written or translated in less widely spoken languages.

Recognizing that the protection of translators is indispensable in order to ensure translations of the quality needed for them to fulfill effectively their role in the service of culture and development.

Realizing that, if the principles of this protection are already contained in the Universal Copyright Convention, while the Berne Convention for the Protection of Literary and Artistic Works and a number of national laws of Member States also contain specific provisions concerning such protection, the practical application of these principles and provisions is not always adequate.

Being of the opinion that it, in many countries with respect to copyright, translators and translators enjoy a protection which resembles the protection granted to authors and to literary and scientific works, including technical works, the adoption of measures of an essentially practical nature, assisting translators to

authors and specific to the translating profession, is nevertheless justified to ameliorate the effective application of existing laws.

Having decided, at its eighteenth session, that the protection of translators should be the subject of a recommendation to Member States within the meaning of Article IV, paragraph 4, of the Constitution.

Adopts, this twenty-second day of November 1976, the present Recommendation.

The General Conference recommends that Member States apply the following provisions concerning the protection of translators and translations by taking whatever legislative or other steps may be required, in conformity with the constitutional provisions and institutional practice of each State, to give effect, within their respective territories, to the principles and standards set forth in this Recommendation.

The General Conference recommends that Member States bring this Recommendation to the attention of the authorities, departments or bodies responsible for matters relating to the moral and material interests of translators and to the protection of translations, of the various organizations or associations representing or promoting the interests of translators, and of publishers, managers of theatres, broadcasters and other users and interested parties.

The General Conference recommends that Member States submit to the Organization, at each session and in such form as shall be determined by the General Conference, reports on the action taken by them to give effect to this Recommendation.

I. Definitions and Scope of Application

1. For purposes of this Recommendation:

(a) the term "translation" denotes the transposition of a literary or scientific work, including technical work, from one language into another language, whether or not the initial work, or the translation, is intended for publication in book, magazine, periodical, or other form, or for performance in the theatre, in a film, on radio or television, or in any other media;

(b) the term "translators" denotes translators of literary or scientific works, including technical works;

(c) the term "users" denotes the persons or legal entities for which a translation is made.

2. This Recommendation applies to all translators regardless of:

(a) the legal status applicable to them as:

- (i) independent translators; or
- (ii) salaried translators;

(b) the discipline to which the work translated belongs;

(c) the full-time or part-time nature of their position as translators.

II. General Legal Position of Translators

3. Member States should accord to translators, in respect of their translations, the protection accorded to authors under the provisions of the international copyright conventions to which they are party and/or under their national laws, but without prejudice to the rights of the authors of the original works translated.

III. Measures To Ensure the Application in Practice of Protection Afforded Translators Under International Conventions and in National Laws Relating to Copyright

4. It is desirable that a written agreement

be concluded between a translator and the user.

5. As a general rule, a contract governing relations between a translator and a user, as well as where appropriate any other legal instrument governing such relations, should:

(a) accord an equitable remuneration to the translator whatever his or her legal status;

(b) at least when the translator is not working as a salaried translator, remunerate him or her in proportion to the proceeds of the sale or use of the translation with payment of an advance, the said advance being retained by the translator whatever the proceeds may be; or by the payment of a sum calculated in conformity with another system of remuneration independent of sales where it is provided for or permitted by national legislation; or by the payment of an equitable lump sum which could be made where payment on a proportional basis proves insufficient or inapplicable; the appropriate method of payment should be chosen taking into account the legal system of the country concerned and where applicable the type of original work translated;

(c) make provision, when appropriate, for a supplementary payment should the use made of the translation go beyond the limitations specified in the contract;

(d) specify that the authorizations granted by the translator are limited to the rights expressly mentioned, this provision applying to possible new editions;

(e) stipulate that in the event that the translator has not obtained any necessary authorization, it is the user who is responsible for obtaining such authorization;

(f) stipulate that the translator guarantees the user unobstructed enjoyment of all the rights granted and undertakes to refrain from any action likely to compromise the legitimate interests of the user and, when appropriate, to observe the rule of professional secrecy;

(g) stipulate that, subject to the prerogatives of the author of the original work translated, no change shall be made in the text of a translation intended for publication without seeking the prior agreement of the translator;

(h) assure the translator and his translation similar publicity, proportionately to that which authors are generally given, in particular, the name of the author of the translation should appear in a prominent place on all published copies of the translation, on theatre bills, in announcements made in connexion with radio or television broadcasts, in the credit titles of films and in any other promotional material;

(i) provide that the user ensure that the translation bear such notices as are necessary to comply with copyright formalities in those countries where it might reasonably be expected to be used;

(j) provide for the resolution of any conflicts which may arise, particularly with respect to the quality of the translation, so far as possible, by means of arbitration or in accordance with procedures laid down by national legislation or by any other appropriate means of dispute settlement which on the one hand is such as to guarantee impartiality and on the other hand is easily accessible and inexpensive;

(k) mention the languages from and into which the translator will translate and without prejudice to the provisions of paragraph 1(a), further expressly the translator's possible use as an interpreter.

6. In order to facilitate the implementation of the measures recommended in paragraphs 4, 5 and 14, Member States should, without prejudice to the translator's freedom to enter into an individual contract, encourage the parties concerned, in particular the professional organizations of translators and other organizations or associations representing them, on the one hand, and the representatives of users, on the other, to adopt model contracts or to conclude collective agreements based on the measures suggested in this Recommendation and making due allowance for all situations likely to arise by reason either of the translator or of the nature of the translation.

7. Member States should also promote measures to ensure effective representation of translators and to encourage the creation and development of professional organizations of translators and other organizations or associations representing them, to define the rules and duties which should govern the exercise of the profession, to defend the moral and material interests of translators and to facilitate linguistic, cultural, scientific and technical exchanges among translators and between translators and the authors of works to be translated. To this end, such organizations or associations might undertake, where national law permits, in particular, the following specific activities:

(a) promote the adoption of standards governing the translating profession; such standards should stipulate in particular that the translator has a duty to provide a translation of high quality from both the linguistic and stylistic points of view and to guarantee that the translation will be a faithful rendering of the original;

(b) study the bases for remuneration acceptable to translators and users;

(c) set up procedures to assist in the settlement of disputes arising in connexion with the quality of translations;

(d) advise translators in their negotiations with users and co-operate with other interested parties in establishing model contracts relating to translation;

(e) endeavour to arrange for translators individually or collectively, and in accordance with national laws or any collective agreements which may be applicable on this subject, to benefit with authors from funds received from either private or public sources;

(f) provide for exchanges of information on matters of interest to translators by the publications of information bulletins, the organization of meetings or by other appropriate means;

(g) promote the assimilation of translators, from the point of view of social benefits and taxation, to authors of literary or scientific works, including technical works;

(h) promote the establishment and development of specialized programmes for the training of translators;

(i) co-operate with other national, regional or international bodies working to promote the interests of translators, and with any national or regional copyright information centres set up to assist in the clearance of rights in works protected by copyright, as well as with the Unesco International Copyright Information Centre;

(j) maintain close contacts with users, as well as with their representatives or professional organizations or associations, in order to defend the interests of translators; and negotiate collective agreements with such representatives or organizations or

* Error; the line should read: "paragraph 1(a), further specify expressly the"

associations where deemed advantageous;

(k) contribute generally to the development of the translating profession.

8. Without prejudice to paragraph 7, membership of professional organizations or associations which represent translators should not, however, be a necessary condition for protection, since the provisions of this Recommendation should apply to all translators, whether or not they are members of such organizations or associations.

IV. Social and Fiscal Situation of Translators

9. Translators working as independent writers, whether or not they are paid by royalties, should benefit in practice from any social insurance schemes relating to retirement, illness, family allowances, etc., and from any taxation arrangements, generally applicable to the authors of literary or scientific works, including technical works.

10. Salaried translators should be treated on the same basis as other salaried professional staff and benefit accordingly from the social schemes provided for them. In this respect, professional statutes, collective agreements and contracts of employment based thereon should mention expressly the class of translators of scientific and technical texts, so that their status as translators may be recognized, particularly with respect to their professional classification.

V. Training and Working Conditions of Translators

11. Member States should recognize in principle that translation is an independent discipline requiring an education distinct from exclusively language teaching and that this discipline requires special training.

Member States should encourage the establishment of writing programmes for translators, especially in connexion with translators' professional organizations or associations, universities or other educational institutions, and the organization of seminars or workshops. It should also be recognized that it is useful for translators to be able to benefit from continuing education courses.

12. Member States should consider organizing terminology centres which might be encouraged to undertake the following activities:

(a) communicating to translators current information concerning terminology required by them in the general course of their work;

(b) collaborating closely with terminology centres throughout the world with a view to standardizing and developing the internationalization of scientific and technical terminology so as to facilitate the task of translators.

13. In association with professional organizations or associations and other interested parties, Member States should facilitate exchanges of translators between different countries, so as to allow them to improve their knowledge of the language from which they work and of the socio-cultural context in which the works to be translated by them are written.

14. With a view to improving the quality of translations, the following and practical * measures should be expressly recognized in professional statutes mentioned under subparagraph 7(a) and in any other written agreements between the translators and the users:

(a) translators should be given a reasonable period of time to accomplish their work;

(b) any documents and information necessary for the understanding of the text to be translated and the drafting of the translation should, so far as possible, be made available to translators;

(c) as a general rule, a translation should be made from the original work, recourse being had to retranslation only where absolutely necessary;

(d) a translator should, as far as possible, translate into his own mother tongue or into a language of which he or she has a mastery equal to that of his or her mother tongue.

VI. Developing Countries

15. The principles and norms set forth in this Recommendation may be adapted by developing countries in any way deemed necessary to help them meet their requirements, and in the light of the special provisions for the benefit of developing countries introduced in the Universal Copyright Convention as revised at Paris on 24 July 1971 and the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works.

VII. Fiscal Provisions

16. Where translators and translations enjoy a level of protection which is, in certain respects, more favorable than that provided for in this Recommendation, its provisions should not be invoked to diminish the protection already acquired.

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