

GUIDANCE ON RELAY TRANSLATION



WHAT IS RELAY TRANSLATION?

It is where a translator works not from the original but from another translation. It can happen with any languages, but is most likely to arise if you translate from a relatively minor language (let's say Finnish) into English. If a publisher is seeking to produce a translation in a third minor language (let's say, Korean), they are more likely to find a translator into Korean from English than one who is fluent both in Finnish and Korean.

What are the relevant rights?

Translations have their own copyright - in addition to (not replacing) any copyright in the original work (and whether or not the original work is still in copyright).

Copyright is infringed if the skill and labour which goes into creating a work (in this case the translated version) is relied on to a substantial degree by someone else. So - quite independently from needing permission from the copyright owner of the original work itself - if a new translator were to rely substantially on the English translation as the basis for their third-language translation, they would need permission; failing which the relay translation would be an infringement of the copyright in the English translation.

Who controls the right to license relay translations?

If you assign copyright to your publisher, you thereby give up all ownership and control over your translation (unless the contract specifically says otherwise, which would be unusual), and will have no say over relay translations.

If you retained copyright, the probability is that you will have granted the publishers the exclusive right to publish the translation (and, often, to do other specified things e.g. license the use of quotations and possibly dramatisations.) Very rarely would the contract specifically mention relay translations. In most cases, therefore, it is likely to be you rather than the publisher who controls the relevant rights.

If the question is not directly addressed in your contract, and at least if you translate from less common or more difficult languages, it would be as well to clarify with the publisher at the outset that you retain relay translation rights. You might also want to urge them to alert their rights department to ensure that any relay translation request is promptly forwarded to you. If the original work is still in copyright, you might also want to alert the rights holder of the original.

Feedback from members is variable as to how often consent is sought for relay translations. It seems that at least when it comes to bestselling authors, where relevant permission is properly requested. In other cases, perhaps less so - probably more an indication of ignorance than of deliberate attempts to cut out the English translator.

If someone wishes to make a relay translation, what can you expect in return?

Established translators advise us that fees for the right to make a relay translation tend to be modest - not least because the new translation is likely to be into a smaller market or poor country. In addition, what the new translator is being paid may well be decidedly modest and s/he might be expected to cover any relay translating fee. Our understanding is that fees would generally be in the region of £50-£100.

In addition, it would be reasonable to ask for confirmation that on any publication of the relay translation, you be given a credit as the creator and copyright owner of the version of the work which was used as the basis for that translation. You might also want to ask for a copy of the relay translation to be sent to you on first publication.

Consider entering into a dialogue with the relay translator. This can be enjoyable and illuminating for both of you; and if it becomes tedious you can always bring the discussion to a close.

If you discover what seems to be a relay translation only after it has been published

If you believe that your copyright has been infringed, it is up to you to produce sufficient evidence (it is up to you to prove, not the alleged infringer to disprove). So you would need to be able to show that passages in the new translation clearly derived from content which appears in your translation but not in the original work. You would also need to show that the use of your material was 'substantial' (something not defined in law but which is a matter of quality as much as of quantity).

It could be that the third-language publisher specifically asked a translator to work from your English version; but more probably the decision to rely on the English translation will have been made by the translator him/herself.

You may well feel that taking issue with a fellow translator is something which needs to be handled with some sensitivity. Assuming that in most cases they will have acted out of ignorance, it might often be kindest and most constructive to alert the translator, say you are flattered that they have relied on your translation but you need to make clear that they were not actually at liberty to do so without permission; seek a penalty fee if that feels appropriate; and ask them to ensure that in future they ask first, and agree terms up front. If you also ask the translator to try to ensure a credit to you in reprints (a by no means unreasonable request), bear in mind that this is something s/he will have to negotiate with their publisher – possibly only after the relay translation has already been published – and that could impact on their chances of being commissioned again.

If there is a flagrant infringement of your rights

If the infringement is flagrant, e.g. you can establish that your work has been used in its entirety with no reference to the original or other sources, damages could be more than the fee you might have charged if asked at the outset. You might also be able to claim an additional sum for the infringement of your moral right to be credited as the author. You could also seek a final injunction preventing further copies of the offending work being sold, or an undertaking that no further infringing copies of your work will be printed.

Responding to the guidance in this section, some TA Committee members have wisely cautioned that it 'raises false hopes by suggesting there may be any redress. The sums are so small, in most cases, that it's out of the question to initiate an action in a foreign court'. In addition, remember that other countries have different copyright and moral rights law, and may have a different basis for granting injunctions and/or awarding damages. Legal proceedings are expensive, particularly if the defendant is not in this country. Where it seems likely that the cost of legal proceedings could be out of proportion to likely damages, you may be better advised to press for a reasonable fee, an acknowledgement, and a promise not to make further use of the work without permission.

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