



## Guidelines for fair translation contracts

Building on the “Hexalogue” adopted by CEATL in 2011, the following guidelines are meant to serve as a tool for establishing good practices in the literary translation sector. Such good practices will benefit everyone in the publishing industry (translators, publishers, original authors) by enhancing the quality of literary translations. To this end, it is essential to create fair terms, a balanced relationship, and good material and moral working conditions for translators.

Note: It is imperative that a contract be established between translator and publisher before the translator starts working. Such a contract should be:

- a) in written form;
- b) based on “typical” contracts where they exist<sup>1</sup> and/or on standard contracts negotiated between translators’ and publishers’ associations, as the rules underlying these contracts ensure both parties basic rights and limit the effects of disproportionate contractual power between them;
- c) established after negotiations in good faith to meet the parties’ specific needs on a case-by-case basis.

### 1) Licensing of rights, obligations of the publisher

The licensing or transfer of rights shall be limited to a specific print run and/or in time. If a translator does not receive royalties, the licensing of rights shall have a shorter duration.

- The rights transferred and the conditions under which they are transferred should be subject to negotiation. The contract must not call for the summary transfer of all rights and the scope of the licensing shall be detailed (each licensed right shall be mentioned in the contract). Further, the contract should not include the transfer of the right to exploit the work through technologies that do not yet exist nor any future rights that may be granted later by legislation.
- As a general rule, the licensing of rights for the use of the translation should be subject to the restrictions and duration of the licensed rights of the original work to the publisher. In any case, the maximum duration should not exceed 10 years. The contract should contain a reversion clause, such as: “If at any time the rights to the work revert to the author, then the rights to the translation shall at the same time automatically revert to the translator.”

---

<sup>1</sup>In civil law jurisdictions, a “typical” or “nominate” contract is a contract whose content and form is regulated by statute and which is given a special designation, e.g. “contrat d’édition”

- The publisher shall be obliged to publish the work within a specified period, for example: *"The publisher shall publish the translation within the period stipulated in the contract, and no later than two years after delivery of the manuscript."* (Hexalogue, #4)

## 2) Moral rights

The [Berne Convention](#) grants authors inalienable moral rights, the most important of which are the right of attribution and the right of integrity:

- *Right of attribution*

The right to be recognised as the author of one's work: *"As author of the translation, the translator shall be named wherever the original author is named"* (Hexalogue, #6). If a publisher sells a license to the translation, the licensee must be obliged by the license agreement to name the translator in the same way as the licensor.

- *Right of integrity*

The contract must respect the translator's right of integrity, so no changes shall be made without the translator's knowledge and approval. The translator has the right to object to any distortion, mutilation or other modification of his/her work that would be detrimental to the work or to the professional reputation of the translator. The translator's right of integrity should be asserted with a clause stating, for example, that "the publisher shall not make any alteration to the translation without the consent of the translator". The contract must therefore provide for an editing and proofreading process that respects the translators' legal right to be informed of and be able to verify any change made to the translation.

The translator will receive from the publisher the final text for approval before its publication and will assess in good faith any change made, which will foster a collaborative editing process.

In case the subject of the translation requires a review by a professional in the field, who may make relevant changes and/or integrations, the contract must contain provisions to ensure collaboration between the translator and the said technical reviewer in order to respect the role and the authors' rights of both.

## 3) Remuneration

The remuneration (basic fee plus royalties) shall be subject to negotiation, taking into account all relevant factors including the length and difficulty of the translation, experience of the translator, whether the translation project was initiated by the translator, expected sales of the book (in the case of bestsellers) etc.

- *Basic fee: "The fee for the commissioned work shall be equitable, enabling the translator to make a decent living and to produce a translation of good literary quality."* (Hexalogue, #2)

Although the contract may provide for a *higher* payment if the publisher receives a grant, it must ensure an equitable basic fee even if the subsidy is not granted.

- *Royalties and secondary uses:* "The translator shall receive a fair share of the profits from the exploitation of his/her work, in whatsoever form it may take, starting from the first copy." (Hexalogue, #5)

As the author of the translation, it is fair that the translator should benefit in due proportion from the success of the book. Royalties should be paid from the outset or after the initial fee, if it is considered an advance, has been earned (or after a specified number of copies of the translation have been sold). If, however, the contract provides for a basic fee without royalties, additional fees should be paid if sales reach an agreed level.

The translator shall also receive a share of the profits derived from secondary uses, such as e-books, audiobooks, book clubs, etc.

- *Terms of payment:* "On signature of the contract, the translator should receive an advance payment of at least one third of the fee." (Hexalogue, #6). The remainder shall be paid no later than 60 days after delivery of the translation.

Contracts that provide for the last part of the basic fee to be paid on publication are unacceptable. Payment of the final instalment of the basic fee must be directly linked to completion or acceptance of the translation.

In the event that the final instalment is dependent on acceptance of the translation (see point 5 below), such acceptance shall be given no later than one month after delivery of the translation.

- *No extra work shall be asked for free from the translator*

If the translator is expected to do work other than translation (e.g. carry out extra research, write an introduction, glossary or index), such work should be clearly itemised and the translator should be paid a separate fee. The translator should also receive an additional fee if required to do unforeseen additional work.

- *No exploitation of the work without remuneration*

Clauses sometimes provide for many forms of exploitation of part or all of the translation without payment of any remuneration to the translator, provided such exploitation aims at promoting not only the translation and the translator, but also "the publisher's business". Such a vague definition is not acceptable.

#### **4) Accounting**

The publisher must communicate to the translator all uses of the translator's work by means of detailed, transparent and regular, at least yearly, royalty statements, as stated in an audit clause in the contract. Except for the itemising of royalties, this obligation should apply even when translators receive no royalties, as they have the right to be informed about how the translation has been exploited and the revenue it generates.

## 5) Acceptance of the translation

A translation is usually a commissioned work and one of the fundamental tasks of the publisher is to ascertain the competence of the translator before commissioning a translation (i.e. by reading other translations made by the translator or by commissioning a test/trial translation of a few pages). For this reason, a publisher should not be able to reject a translation if the translator has fulfilled his/her obligations and delivered the translation as commissioned (conforming to the agreed specifications and similar in style and quality to any sample the publisher has already seen). Contracts should not leave the door open for a publisher to refuse the translation arbitrarily because the publisher realises that a mistake has been made in choosing the original book to be translated, or because circumstances have changed.

The publisher and the translator shall agree on a timetable that ensures that a professional translation can be made. It is the shared responsibility of the publisher and the translator not to propose or accept a translation if the allotted time is too short in which to deliver professional work. Another crucial point, especially relevant to literary translation, is that the translator shall not be asked to deliver the translation in tranches to speed up the editorial process. Only after translating the whole work can the translator put it into its definitive form, giving it consistency and a unitary style. Therefore, if the translator is asked to deliver a translation in parts, or if, after signing the contract, the publisher asks the translator to anticipate the deadline, such a publisher should not have the right to refuse a translation due to problems resulting from there being insufficient time in which to complete the work.

Whenever the contract provides for the possibility to reject the translation for "quality reasons" (which must be supported by irrefutable elements), provisions should at least be made for a revision process and/or for conciliatory procedures, and the translator should never be asked to return the portion of fee received on signing the contract. In addition, the contract must establish a defined and reasonable period of time for acceptance of the translation (e.g. 30 days), stating that if the translator does not receive a written and documented refusal statement from the publisher in that period, the translation shall be considered accepted.

## 6) Warranties to the publisher

Translators should never be asked to guarantee that the work does not contain any libellous or offensive content, or that it does not violate any law or any right of privacy or publicity. A translator's only responsibility regarding the content of the book should be to warrant that they have done the translation themselves and that it is entirely original and does not infringe on anyone else's intellectual property rights. However, they may guarantee to the publisher that they will not introduce into the translation any content of an objectionable or libellous nature that was not present in the original work, and, in return for this guarantee, the publisher will undertake to indemnify translators from all lawsuits brought against them or incurred by them on the grounds that the translation contains anything objectionable or libellous.

Following these guidelines is important but may not necessarily be enough: the translator must always be alert and ensure that the contract to be signed is a fair agreement between the publisher and the translator.

## Special note on “work made for hire” contracts

Publishers based in the US or European publishers wishing to “import” foreign contract models they deem more favourable may be tempted to propose translators “work made for hire” contracts.

According to the US Copyright Law, if a work is “made for hire”, the (natural or legal) person for whom the work was prepared, and not the actual creator, is considered the legal author and the initial owner of the copyright. In some countries, this is known as “corporate authorship”. “Work made for hire” contracts contravene the principles of the Berne Convention and most (if not all) European countries copyright laws. Therefore, they should be sternly refused as one should with any type of contract “imported” in any country that does not respect the standards and laws of that country. [Read more.](#)