

Translators and Copyright: an International Survey

Bente Christensen

Copyright for translators is an important issue, that has to be taken seriously. Many translators are not aware of the fact that they have exactly the same rights as authors, that they are “real” copyrightholders. Translators are creators, and translations are protected as original works.

Copyright seminars

The Copyright Committee of the FIT (Fédération Internationale des Traducteurs) has been working with this issue for several years now. In connection with FIT's 50th anniversary, that was celebrated in the UNESCO building in Paris in 2003, Linda Sivesind, former chair of the Copyright Committee, organized a big Copyright seminar.

Since then, seminars on copyright have been held on several occasions. At FIT's World Congress in Tampere, Finland in 2005, the seminar “Get organized” treated copyright and related aspects. The seminar was meant to make translators aware of their rights and to give advice about how to protect these. It was also a goal to create links between translators from different parts of the world, so that they could encourage each other in their efforts to organize themselves, negotiate with publishers and other employers and to get better contracts. And for FIT it was a means of knowing where and what the problems were, in order to address the copyright issue in the most efficient way.

The seminar “Copyright, Piracy and Writers' Organisations” was held on Rhodes, Greece in 2006, in connection with the tenth anniversary of the island's International Writers' and Translators' Centre. The participants at the Rhodes seminar were writers and translators from countries in Eastern Europe and the Middle East, where copyright has a weak position, and where there are no or few writers' organisations. The speakers were representing important international organisations in the field (FIT, International PEN, European Writers Congress, the International Publishers' Association). The seminar was made possible through subventions from different Norwegian institutions, among which the collecting society KOPINOR, itself a member of the global organisation IFRRO (International Federation of Reproduction Rights Organisation). The intention with the seminar was to give the participants information about copyright and organising, and to build networks between organisations as well as individuals. To create cooperation between individuals and organisations in the field of copyright is most important in order to ensure that copyright is respected.

Last, but not least, FIT's World Congress in Shanghai, China in 2008, hosted a seminar called “Publishing and Copyright – An International Survey”. This seminar was looked upon as an occasion to learn about and

to discuss the copyright situation worldwide. Speakers from all continents were invited, and they were asked to give a large picture of their regions and to concentrate upon some nearer defined issues, such as copyright laws, organisations, negotiations between translators and publishers, contracts, digital use, etc. The intention with the seminar was to have a broad survey of the field and to have some ideas for guidelines for the Copyright Committee's work in the future.

Basic concepts in copyright

The eminent scholar Prof. Dr. Adolf Dietz from the Max Planck Institute in Munich, Germany, was a keynote speaker at the seminars in Rhodes and Shanghai. Dr. Dietz prefers to use the concept "author's rights" instead of "copyright", because this first concept shows more clearly that these rights are linked to a person who creates a work worthy to be protected. He has also forged the expression "The Five Pillars of Modern Copyright": 1. Protected works, authors as initial owners, content, duration and limitation of protection. 2. Neighbouring or related rights. 3. Copyright contract law. 4. Collecting societies law or collective management of rights. 5. Enforcement.

It will exceed the limit of this paper to go into the details of Dr. Dietz' work, but his speech at the Shanghai seminar can be found in the Proceedings from the congress. (Adolf Dietz, "Author's Rights - General Principles" in *XVIII FIT World Congress Proceedings II*, Foreign Languages Press, 2008, pages 1794-1803).

I will, however, mention some important notions when it comes to copyright. As I have already said, the idea of the translator as a creator implicates that the text in question must have what we call a "threshold of originality", it must be shown as coming from an originator, or what we call an author. And there is no fixed limit as to the scope of the text; a book title or the name of a literary person can have a threshold of originality. *For Whom the Bell Tolls*, the title of the Ernest Hemingway novel from 1940 is an example of this. There are no strange or original words in this title, but the manner of putting them together make them stand out as something special and a little awe-striking. It is unthinkable that another author should use the same title on another book, it is forever linked to Hemingway. This title has even inspired the band Metallica to create a song with the same title, a song from 1984, so I presume that they have got the permission from the Hemingway estate to use the title. In most of the European countries –and in Argentina, as far as I can see– a work falls into the public domain, that is, can be used without permission 70 years after the author's death. As Hemingway died in 1961, that means 2031. And for the translations, the texts will have protection still longer. The

first Norwegian translation was published in 1946, by a translator who died in 1976, which means that his Norwegian version of the novel can be used without permission only in 2046... But of course, given permission and the right remuneration, all these texts can circulate in the cultural environment. The names of literary persons can also have a threshold of originality, and especially when it comes to children's literature, where the names are often given to characterize the persons. This is easy to see if we think about the Harry Potter figures, who very often have names who make us associate different things: Salazar Slytherin, Lord Voldemort, Morfin Gaunt. The Norwegian translator of Harry Potter has translated the names whenever he found it fit, and the figures in J.K. Rowling's books are now a part of our country's literary heritage.

Other important concepts are the two different sorts of rights, *the material rights* and *the immaterial* or *moral rights*. The material rights have to do with the economic side and are linked to the remuneration of the author's work, paid in royalty or honoraries. The immaterial rights have to do with the integrity of the work, with the content protection: nobody can change the content of the text against the author's will. The so called "three step test" is a useful notion: The work can be used only in special cases, there must be no conflict with normal exploitation and there must be no unreasonable prejudice to the legitimate interests of the author. These rights are regulated in the copyright laws and in contracts, negotiated with publishers or other employers. In some countries the translators' associations have negotiated *norm contracts* with the employers, but in most countries every translator has to do this work by her/himself, if it is possible to get a contract at all.

In addition to the translators' associations, which can help the translators in contract matters, the collecting societies with their the collective management of rights are very useful. A collecting society can typically consist of several authors' associations, as one can see in the Norwegian KOPINOR (www.kopinor.no). One single person is not capable to completely control the use of his/her work, and to assure that the remuneration is paid, even an authors' association can have the same problems in ensuring the members' interests. A collecting society, however, has an administration capable of following up the contracts and the remunerations. And it can license works for broad groups of users. The so called *extended collective license* is an agreement between users and copyright holders, represented by their collecting society, and this agreement is legally binding also for non organised rightholders. It is an easy way of taking care of the interests of both parties, users and rightholders.

Most countries have a copyright law, but it is not always easy for the weaker part, i.e. the authors, in this case the translators, to get their rights. That is why the organisations, both the authors' associations and

the collecting societies are so important. They can help the translators to discuss with the employers and to secure the quality of the work. Big media companies, like Warner Brothers or others, want to press the lemon for all its juice, so they want to merchandize the texts as much as possible, especially when it comes to childrens' and young people's books. On the market you will find films, T-shirts, mugs, dolls etc. etc., spin-off products from popular series. And to be able to sell these goods everywhere in the world, these products must be standardized. In several countries, the translators of Harry Potter were not allowed to give "indigenous" names to the literary persons. When the Norwegian translator insisted on doing so, because he thought that the Norwegian children deserved to understand the full range of the text, that they deserved the same quality as the original readers, he had to take a big fight with the English agent. Very often the foreign agents ask the publishing houses and the translators to sign contracts where the agents give the rules of translation. If not they will not have the option to publish the book. And of course the translators are supposed to give away all possible rights for eternity.

Copyright around the world – the shanghai seminar

At the copyright seminar in Shanghai in 2008, specialists from all five continents were present, and they gave an overview of the situation in their respective parts of the world. It became very clear that the United States are different from the rest of the world, partly because of their very strong anti-trust laws, but perhaps also because of their "self made man"-ideology. They do not have the possibility to set up norm contracts with proposed royalty or honorary levels, so everybody must fight his or her own fight, sometimes helped by personal agents. And they have no real protection of the immaterial rights, so one could almost say that the US is a developing country in the copyright field.

Beatriz Rodriguez from the Colegio de Traductores Públicos de la Ciudad de Buenos Aires was the representative for Latin America, and she could tell that most of the countries have copyright laws and are aware of the importance of copyright. The translators have, however, little power vis-à-vis the publishers, who mostly dispose of the works as they please. One point where translators and publishers have common interests is the fight against *piracy* that has taken place in several Latin American countries in the last years. The word "piracy" is used worldwide to point at the brutal theft of the protected works. Even if some people do not think that they are doing anything wrong by for example taking music from the internet and putting it in their iPods, they are in reality like pirates, stopping the ships from crossing the seas. Some young people think that Warner Brothers or Madonna are rich enough, so it is OK to steal from them. The expression "copyleft" has been used to designate the negative attitude to copyright, and it has become a proper ideology. In Sweden

they have even started a political party based upon the free use of copyright material. But this attitude is damaging to the flow of information and the exchange of culture, so it is important to rectify this point of view. This is about “the free flow of information, not about the flow of free information”, as formulated by the former director of KOPINOR. It is important to make the public understand that the big majority of the copyright holders are human beings striving for a living, not big companies or lofty celebrities. If the authors are not getting remunerated, if their books or music is not sold because it is stolen and read for free, they will have to find other jobs to earn their bread and lots of texts and music will not see the daylight.

In the Arab world we have a situation where most of the countries have laws to protect the writers’ and translators’ interests, but these laws are not enforced. Some people think that copyright is there only to hinder the people of the Middle East to get access to the artistic and intellectual production of the Western countries, because copyright makes the information and the books more expensive, as the originator has to be paid. As a result of this, there is a widespread piracy, and many readers seem to consider this a normal way of defending oneself against western imperialism. This is of course a very shortsighted view. One might be able to buy books cheaper, but there is no quality control with the products, so one does not really know if it is the “real” text, and if piracy is the rule, it is not easy to build up a proper literary culture, as nobody can live of being a writer.

The Asian countries have different regimes, but many of them have developed fastly in the copyright field. In China, for example, they have come a long way in very short time. From a non existing copyright regime, they have gone through a more rudimentary phase, and are now catching up with the Western countries. They have started to set up proper contracts for translators, and they know that communication with the Western publishing houses means that they have to assure a corresponding system. They also have a very professional and realistic attitude, and they express the sentiment that they can learn from their business partners in other countries.

Australia is a multicultural society, and in order to develop this manyfaced country in the most favourable direction, it is important to enforce copyright. An author/translator who is not remunerated properly for his/her work, cannot continue the work, and is in a way “silenced”. So in order to let many voices be heard, it is important that it is materially possible for the authors to continue their activity.

The importance of copyright and how to ensure it

To sum up: Why is copyright important and how can we see to it that it is respected?

Copyright furthers and allows creativity and intellectual production.

Copyright ensures cultural diversity and communication between cultures.

Copyright helps building the civil society:

Respect for copyright law is encouraging respect for laws in a general way, and the immaterial rights are closely knit to the freedom of expression. Respect of the immaterial rights means that censoring a text is not legal.

To ensure the respect for copyright, I think that building organizations is the most useful thing that we can do, strong copyrightholders' associations helping to enforce the copyright laws and to negotiate with the publishers and other employers. It is impossible to say that one way of organizing is better than another –different countries have different laws and rules, different tradisitons, different possibilities–. In many countries, the book translators are members of the writers' associations, in other countries, there are specific translators' associations. Experience might show that it is better for the translators to have their own organisations. Together with writers – especially poets and fiction writers – they will always play the second fiddle.

The first step in setting up an organization is to get in contact with other translators, to create networks, to spread information about jobs, fees and copyright matters. The financing of the organization is primordial. To live on membership fees is always precarious, so it is an advantage to get subventions, either from the state or from some sponsors (private persons, institutions). It is necessary to have statutes, to write down the organization's goals, to have rules and regulations for membership etc. What the association can do, depends upon the finances. There is a big difference between an association with an office and a full time secretary and a "kitchen bench"association. But the board of the association should try to help with negotiations and juridical matters, to be spokespersons vis-à-vis the authorities and to organise a network of information.

When it comes to negotiations with counterparts, it is a good idea to be at least two persons. And to be well prepared. As I have already said, the country's Copyright Law is the base for the contract. It is therefore important to know the law text and to be able to use it in negotiations. One should also come with a list of demands – in order of importance. The most important issue is the fee, either honoraries or royalties. This depends of the size of the market. In Norway, with its population of close to 5 million people, the translations cannot possibly sell so much that it is worth while to have royalties (or it is extremely rare), so it is most reasonable to ask for honoraries. In English- or Spanishspeaking countries, however, with their

big populations, royalties might be best for the translators.

In a negotiation one must always have something to give away. Start on a higher feet than expected, but not too high. Be firm, but not rude, and try not to escalate the conflict. It is also important to be specific about primary and secondary use. The printed book is what the translator gets paid for in the first hand. If the publishing house wants to use the translation further, in an electronic version, in a book club or as an audio book, there should be special payment.

Some problems are international, like the global multimedia companies I have been talking about. They try to interfere in the different countries and to buy all poaaible rights –for almost nothing–. The only way to counteract this, is international cooperation among translators, and here FIT (www.fit-ift.org) can be of help. With its committees, like The Copyright Committee and its regional centres, like CRAL (Centre Regional d'Amérique Latine) it can be close to each individual translator, at the same time as it has its global network. But remember: nothing is gained for ever –and nobody will do everything for you, you must do it yourself– “with a little help from your friends”.