

This article was published in 2000 in Gaddis Rose, Marilyn (ed.). *Beyond the Western Tradition. Translation Perspectives XI*. Binghamton: Center for Research in Translation, State University of New York. 347-349. A previous version had been printed in *Translation Perspectives X*.

## Copyright and translation

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Copyright is the ‘intangible property right which automatically comes into existence on the creation of an intellectual product’. It entails the right of the author or his/her assignee to make copies or make performances of his original work.<sup>1</sup> In general terms, it is the legal and societal protection of original artistic and intellectual products as property and negotiable goods. Respect of copyright is normally closely tied to concepts of morals.

Historically the development of legalised copyright connects with improved methods of reproduction and the advent of mass media. The need for some kind of protection of the author’s right and, especially, the licence to reproduce his works therefore became obvious with the introduction of large-scale printing in 16th century Europe. The first legalisation concerned with the author’s ownership was English (1709), but it was not until well into the 19th century that the idea of protection of authorship was generally accepted and confirmed by law in most European countries. Even then national legislations did not extend to authors in translation. In 1878 an association for the protection of literary and artistic works was formed - which fact eventually led to the so-called Berne Convention of 1886 (revised several times since then) which extended copyright to translated works in the original signatory nations. As other nations have joined them later on, the situation today is that most countries, in some form or other, accept the principle of copyright.

Today copyright obtains not only for the printed word, music, films, but also for original oral discourse. Copyright also extends to unpublished words (e.g. manuscripts).

There are still many national differences in terms of copyright, and translators who are directly involved with copyright material should therefore check national law.

By and large, however, copyright, as the right to reproduce the original work (in the original language or in a translation) is vested with the ‘author’ (etc.) for 50 - in the European Union countries years 70 - years after his/her death.<sup>2</sup> It is, however, permissible to cite brief passages for non-commercial purposes, such as reviews and scholarly work without obtaining a written permission from the copyright holder. This principle is sometimes known as ‘fair use’; there are no strict guidelines for ‘fair use’, so if in doubt, it is wise to obtain the written permission. Some countries also have pooling systems where copying (e.g. photocopying) of original work is permitted for employees at certain institutions (e.g. universities, schools) and where authors are reimbursed by a central state agency. ... //348 ...

In the vast majority of cases where a translator (subtitler, interpreter, dubber etc.) is involved with translation (of any type) of an original work of art, it is the employer/-contractor’s responsibility to obtain this permission.

If, for some reason or other, one should still need to obtain the copyright for a whole work, or a longer passage, one should turn to the source one can find, usually in the case of printed books, the publisher (addresses are listed in e.g. *Books in print*, vol. 2) who will then know who should be addressed: it may be a publisher, the author, or an agent. In the correspondence, it is to be recommended to obtain a written permission. Especially in so far as (free) quotations of passages are concerned, the operation is fairly easy, since it is in everybody's interest to allow for quotation within reasonable limits.

It is always understood (and occasionally even part of the legislation) that quotations from other sources should be fair to the authors and must not distort their views.

This overlaps with the so-called 'droit moral' (Berne Convention 1948) which protects the author's name, honour and esteem. According to this 'droit moral' works must not be distorted even after the expiry of the author's copyright. It must be pointed out that the principle of 'droit moral' is fine, but hardly applies in real life, neither in the publishing world (witness reprints of classics) nor in the world of translation (where works are also often cut and changed). Similarly, it must be stressed that much modern translation theory (e.g. the 'skopos' theory) undermines the idea of literal translation which is also (implicitly) part of the concept of 'droit moral'.

Translation work made for hire and/or for an employer in full-time paid employment is rarely copyrighted. Such non-copyrighted translation work will typically be done in business translations, subtitling for television or videos, voice-overs, dubbing, and interpreting for industry or international organisations.

Other translation work, notably literary translations, is sometimes protected by copyright (on a par with the author), provided this is made explicit in the contract with the publisher of the translation. In some countries, the translator is also entitled to make changes in the translation in case of reprint.

In case a translation is not made directly from the original source language, but via another language (for instance: Swedish to English to Chinese), both the original and the translation are copyright material. Therefore permission must be obtained both from the original author and from the translator. Publishers (and other requesters) sometimes overlook that there is an intervening (translator's) copyright especially when the original author's copyright has expired.

1. These definitions are adapted from 'The Concise Oxford Dictionary' and the 'Encyclopedia Americana'. ...// 349 ...
2. The 70-year copyright has been effective as of 1 January 1995. Until then copyright varied from country to country, e.g. 70 years in Germany, 60 in Spain, and 50 in most other countries. The 70-year period is not retroactive.



*Guards at the royal residence in Copenhagen, Denmark*