

GUIDANCE ON TRANSLATION COMMISSIONED BY THE AUTHOR



WHY THIS IS NOT RECOMMENDED

If an English language publisher obtains permission from the original rights holder to publish an English translation of the author's book, the English publisher will generally insist on the freedom to commission the translator of its choice, and it would be the responsibility of the English publisher to pay the translator. Any translation contract will also be dependent on the rights holder of the underlying work also giving consent (assuming the underlying work is still in copyright).

We strongly advise against an author commissioning a translator to produce a translation, other than for purposes of the author self-publishing, because the publisher may insist on using its own translation/translator, in which case the cost the author has paid to get the work translated will have been wasted. Bearing that caveat in mind, if an author wants to commission a translation of their work, the key points to clarify are:

- 1. What Translator is commissioned by Author to translate [title] into English, and for doing that work s/he will be paid [...]**
- 2. Who owns what rights in the resulting translation, and on what terms.**

2. POINTS TO AGREE

In further detail, points which need to be agreed, in writing, include:

- (i) Name and address of Author and of Translator
- (ii) A warranty that the Author (and not for instance their publisher) controls the English language rights in the work;
- (iii) Whether Translator needs to submit a sample for Author's approval and, if so, by when; and whether or not there will be a payment for that sample;
- (iv) By when Translator will deliver the full translation, and in what form (especially if there could be a mismatch between Translator's and Author's software on things like accents);
- (v) What Author will pay Translator for the work of translating, and when. For example: half the fee on signature of the agreement and half on delivery of the translation.
- (vi) Author may want a caveat that part of the fee is conditional on him/her approving the translation. Our advice is that it should be clear that the full fee is paid if Translator does the translating on time and in good faith. If Author has concerns having seen a sample by Translator, they should reconsider entering into an agreement at all.
- (vii) Especially if Author can read English, clarify that if Author wants rewrites/changes made after Translator delivers the work, such extra work by Translator is conditional on fresh deadlines and payment being agreed.
- (viii) Author should give a warranty and indemnification that the work is not libellous, an infringement of copyright, or in any way unlawful and Translator should undertake that he/she will not introduce into the translation any matter of an objectionable, libellous or otherwise unlawful character which was not present in the original work.
- (ix) It must be clearly agreed what happens if either party chooses to terminate the commission before the translation has been completed. Generally we would expect Translator to be paid all/an agreed proportion of the full fee unless Translator is the one who wants to break the contract. If Translator wants to break the contract mid-stream Author will probably want the right to insist on payment of any part of the fee which has already been made to Translator.

(x) Where relevant, both parties need to clarify whether (if Translator is VAT registered), whether VAT should be charged, and/or whether there are double-tax formalities (where payments are being made from one country to another).

(xi) If Translator is entitled to a share of the income from exploitation of the translation (under one of the arrangements described below), clarify whether the fee is in addition to royalties or if it will be treated as an advance against Translator's share of the royalties, or if Author has the right to recoup the fee from total royalty income in the first instance, dividing any income after that in the agreed proportions.

2. THE GRANT OF RIGHTS

Each deal has to be negotiated by the relevant Author and Translator on a case by case basis, but in most cases the arrangement is likely to be one of the following:

a) Author takes an assignment of copyright from Translator (and the fee paid reflects this).

An assignment means that Translator sells his/her translation outright and has no further involvement or rights of any sort. Author can do anything they please with the translation.

(i) There must be a clear statement that the assignment of copyright is not valid unless/until the full agreed fee has been paid.

(ii) Even with an assignment, there can be an undertaking by Author that s/he will pay an agreed percentage of Author's income from exploitation of the translation to Translator, or e.g. a further fee if the translation is published. If further payments are due to Translator, it must also be clear that Author will send such payments, along with the relevant royalty statements, to Translator within [one month] of receipt of such monies by Author.

b) Translator retains all rights in the translation:

In such instances, the money paid by the author is for the act of translating, but any publisher or producer wishing to exploit the translation will need to reach separate agreements with Translator and Author.

(i) Clarify how any income from exploitation of the translation will be divided between Author and Translator.

(ii) Author may want some guarantee that Translator will make best efforts to secure publication of the translation and will not unreasonably impede any proposed terms the Author considers acceptable.

(iii) Translator may want a guarantee from Author that Author will not grant English language rights other than where the publisher agrees to use the Translator's translation, for a specified period of time.

c) Not recommended, because it is complicated and open to confusion:

Translator retains copyright and grants Author the exclusive right to publish the translation (and/or the right to license others to do so), in print/ebook form, or in all forms and media including dramatisations, or as agreed. This means it is the Author who can self-publish the work and/or has the right to sign publishing or other contracts to exploit the translation.

(i) Clarify exactly the nature and extent of the rights granted by Translator to Author.

(ii) Clarify what fee Translator is paid for translating, and how any income from exploitation of the rights granted will be divided between Author and Translator.

(iii) Clarify Translator's right of approval (or not) of editorial changes to the translation, and their right (or not) to be credited. Where Translator has the right to be credited, there should also be a statement that '[Translator] hereby asserts his/her moral right to be identified as the author of the translation.'

(iv) Translator should be aware that if Author licenses a publisher (or other producer), any undertakings by Author on things which are subject to agreement with the publisher, like how many free copies Translator is entitled to, can sometimes be no more than that 'Author will make best endeavours to ensure...'

(v) Ideally publisher would pay Author's share to Author and Translator's share to Translator. Failing that, Author should give undertakings that s/he will send Translator's share, along with copies of the publisher's royalty statement, to Translator within e.g. one month of Author's receipt of such money from the publisher.

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