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IPR infringements and collision of interests in the translation industry

IPR translation puzzles by Wojciech Wołoszyk

#Translating Europe Workshop, 23 May 2018



REBUILDING BABEL: COPYRIGHT AND THE FUTURE OF MACHINE TRANSLATION ONLINE
by Erik Ketzan [Tulane Journal of Technology & Intellectual Property, Spring 2007]

*“The legal implications of machine translation have yet to be considered by legal scholars or technologists because the technology, in its current state, is too far from usable to create actual legal problems. I predict that if MT ever evolves to “good enough,” **it will create massive copyright infringement on an unprecedented global scale**. I argue that MT, specifically online MT, needs to be protected from litigation because it is socially, politically, and commercially beneficial. [...]*

The legal problem is that under American copyright law and our international treaties, a translation of any text is considered a derivative work and translators must obtain permission to create translations from the derivative right holder of the original text. There is a danger, therefore, that when online translators finally become perfected, whether that happens next year or in a decade, they will create massive copyright infringement on an unprecedented global scale through the creation of unauthorized derivative works.”



Intellectual Property Rights (IPR) headaches in translation

- › Translation memories (TMs) as databases
 - databases as copyrighted property worldwide
 - *sui generis rights to databases (EU)*
- › Machine Translation (MT) copyrights (+postediting)
- › Re-use of public sector information
- › Collision of interests



The author's exclusive right of translation


The author of a work enjoys an **exclusive right** to translate it. He or she can therefore prohibit third parties from translating it without his authorisation. That right is expressly provided for in the Berne Convention.

At a national level, it is regulated in various ways: some Member States of the European Union recognise it explicitly, while others encompass it as part of the broader right of reproduction.

The European Union directives in the field of copyright do not deal with the right of translation at all. There is therefore **no harmonisation of that right at the European Union level.**



The protection of source documents by copyright may limit their use for translation purposes and their inclusion in translation databases



The right of translation is clear: source documents that are protected by copyright can generally not be translated without the authorisation of the author or of the subsequent rights holder.

The same goes for their inclusion in databases, such as translation memory databases.

Authorisation by the author of the source document is therefore a key requirement.

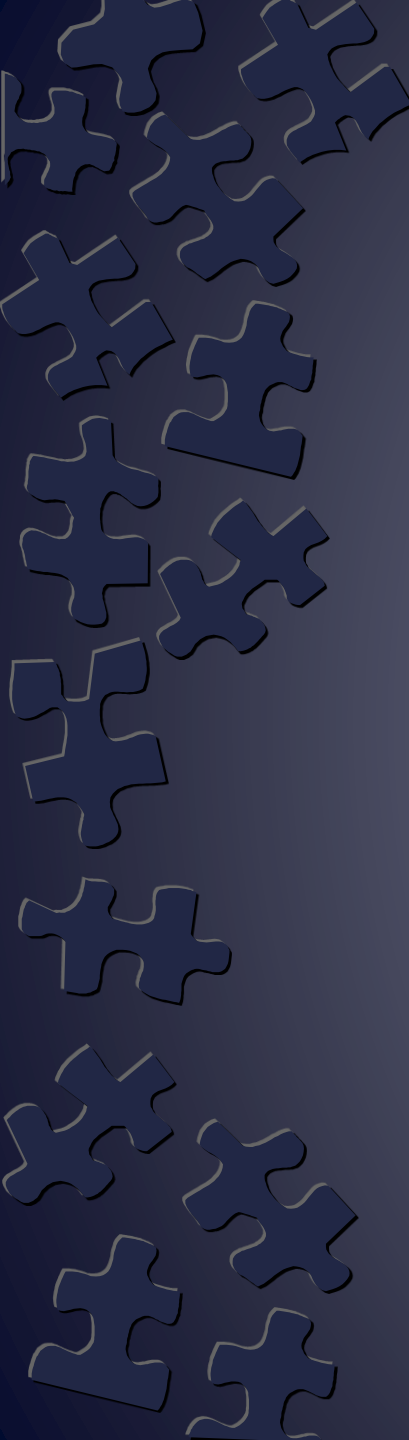
Translation projects (including the projects aimed at improving translation automation) must take these limitations into account, determine the copyright status of source documents based on their nature, and secure the necessary authorisations across the entire chain of titles.

TMs as databases subject to legal protection

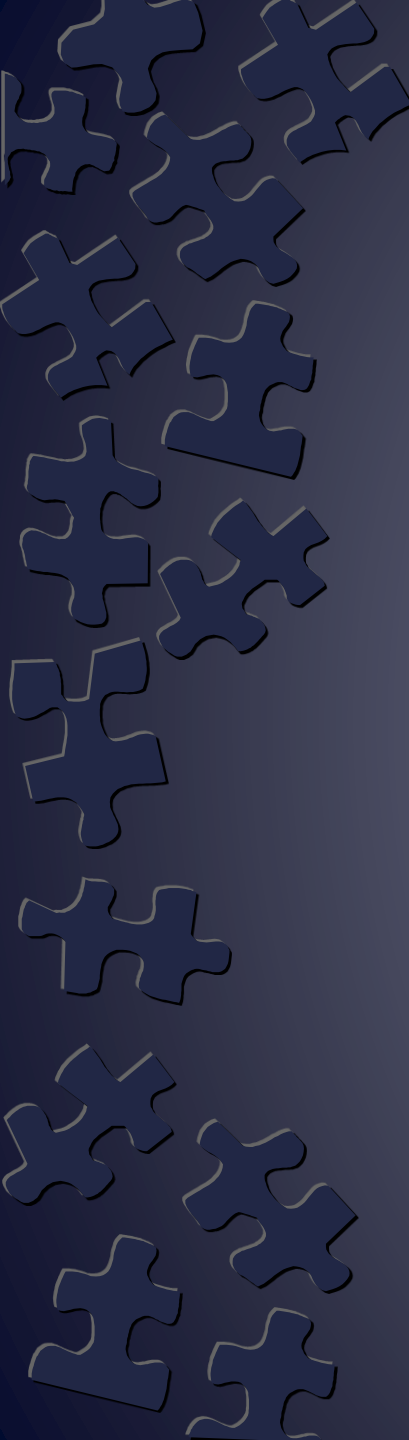
Original databases are always treated as copyrighted works in the US, whereas in the EU there are two types of rights, i.e. **copyright for the original databases** and **the sui generis rights where only investment in time and labor has taken place**. (DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 1996 on the legal protection of databases).

Finally, the level of originality required to grant protection may be different. For instance, in Australia the level of originality required to grant protection to a database is close to the definition of the non-original database in the EU, whereas in the US a greater level of originality is required.

This means that the same work may have different levels of protection in different jurisdictions and, hence, what constitutes infringement in one jurisdiction may not have the same treatment in another.



**Translation Memory is a
piece of intellectual
property separate from the
source and target
(translated) document**



The TMs created by a reliable makers (specialized LSPs or other professional services providers) could be of considerable value to freelance translators and language service providers, and might therefore be worth selling or licensing.

However issue of confidentiality arises and necessary anonymization of sensitive and personal data.

MT COPYRIGHTS

- A translation that is entirely generated by machine, without the intervention of a human translator to make corrections (such as is the case with pure machine translations) would not be protected under copyright given that it leaves no room for **human creativity** and would therefore be **deprived of originality**.
- One or more raw translation(s) that are generated by machine and suggested to human translators for either making a choice between various suggestions and/or post-edit the propositions (as is the case with the use of translation memories) could give rise to copyright protection in case the translator would be able to **imprint his personality and make such work original**. The originality will however depend on the translator's required input, as well as the type of work to be translated.

This second situation gives rise to an **interesting paradox** as the originality will depend mainly on whether the translator will need to edit the suggestions in a substantial manner.

Consequently, the better the translation program, the less likely the result will be eligible for copyright protection



If machine translation is performed, would the ensuing translation be protected by copyright laws?

In most cases answer is no, because no “creative effort” has been applied.

Summarizing, since there is no creativity involved, machine translation results would not fall under copyright protection



AUTORSHIP OF MACHINE TRANSLATION

A machine cannot be an author within the meaning of copyright law. Legal instruments related to copyright implicitly refer to authors as a human being creator of the work.

However, even translations that are entirely generated by machine require some human input, even if in certain cases it is very remote.

UK is kind of an exception in the European Union in that respect. Works generated by machines are expressly considered. Under section 9(3) of the Copyright Designs and Patent Act, related to the authorship of work, paragraph 3 stipulates that "in the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken".

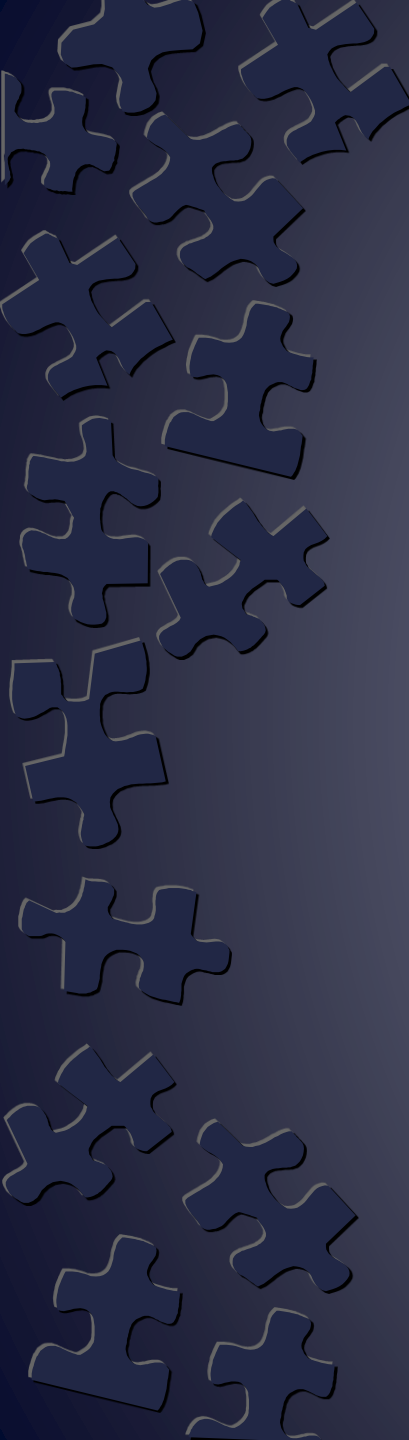


REUSE OF PUBLIC SECTOR INFORMATION

The Directive on the re-use of public sector information, also known as the 'PSI Directive' ([Directive 2003/98/EC](#)) entered into force on 31 December 2003. It was revised by the [Directive 2013/37/EU](#), which entered into force on 17 July 2013.

It addresses material held by public sector bodies in the Member States, at national, regional and local levels, such as ministries, state agencies and municipalities, as well as organisations funded mostly by or under the control of public authorities

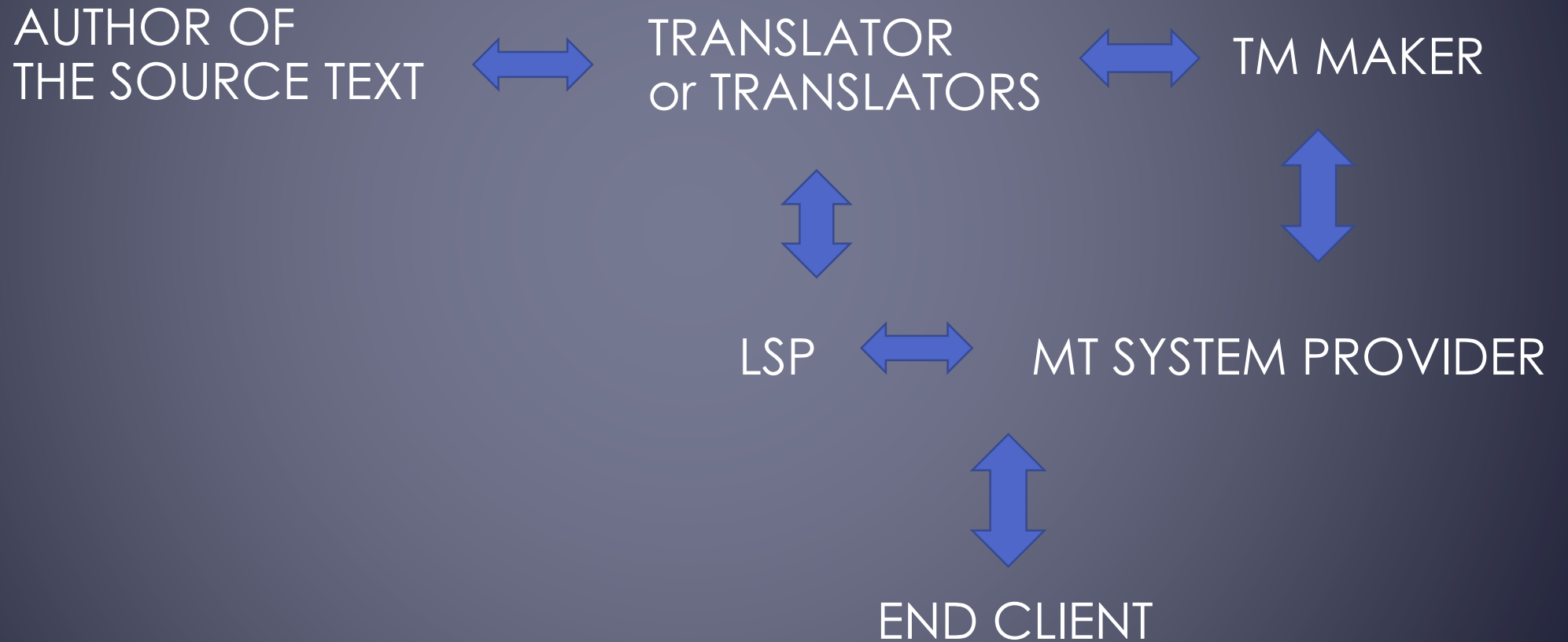
The Directive covers written texts, databases, audio files and film fragments.

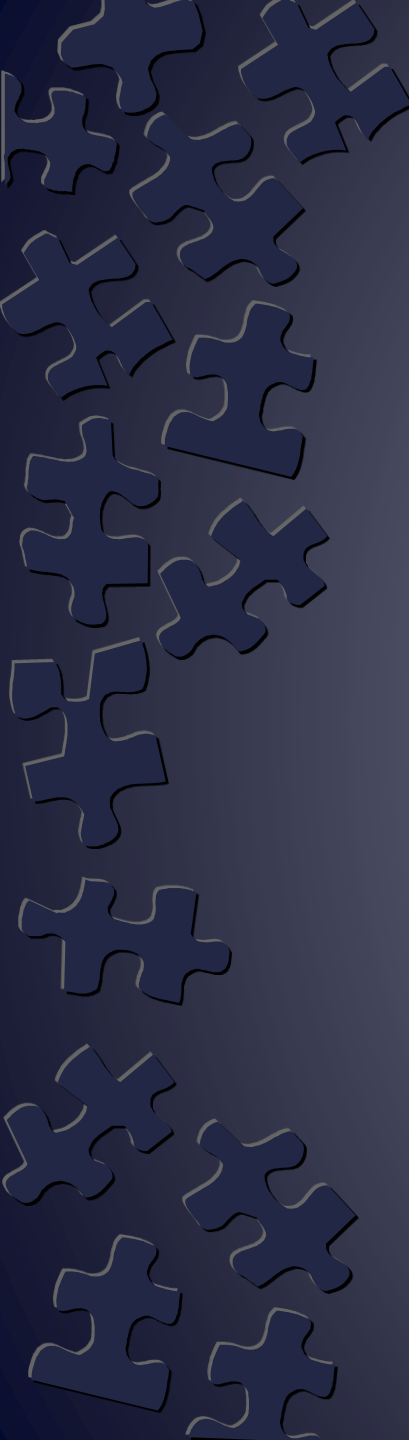


Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions -
Re-use of Public Sector Information: review of Directive 2003/98/EC – [SEC(2009) 597] /* COM/2009/0212 final

The Commission applies the principles of the PSI Directive also to its own documents through a Commission re-use policy. Commission Decision 2006/291/EC, Euratom [8] goes beyond the Directive by applying charges based on (at most) marginal costs and by making all documents re-usable. Examples are EUROSTAT's statistical data, **Commission translation memories**, the EC law database EUR-Lex and studies. Commission information is often available in 22 or even 23 languages which gives it a unique value e.g. for **machine translation tools**.

COLLISION OF INTERESTS IN THE TRANSLATION PROCESS

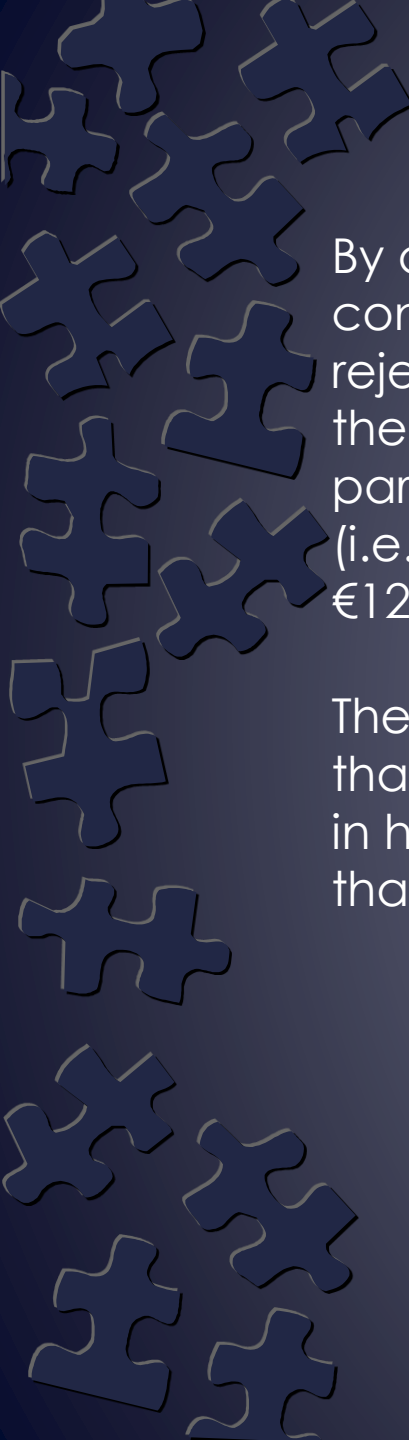




COURT OF JUSTICE OF THE EU
Judgment in Case C-103/11 P
Commission v Systran SA, Systran Luxembourg SA

Long story of collaboration between the EC and Systran since mid 70's in the field of machine translation.

After few decades of fruitful cooperation SYSTRAN sued the EC before the General Court of Justice on the basis of infringement of its IPR to machine translation system



By a judgment in 2010, the General Court held that the dispute was not contractual in nature and that, therefore, it had jurisdiction to hear it. While rejecting the claims in so far as they concerned the Systran Luxembourg subsidiary, the General Court recognised that the Commission's conduct had caused the parent company material damage through loss of value of its incorporeal assets (i.e. loss of value of its intellectual property rights), assessed on a lump-sum basis at €12 million, and non-material damage assessed at €1,000.

The Commission lodged an appeal before the Court of Justice, seeking to have that judgment set aside. It argues, in essence, that the General Court erred in law in holding that the dispute was of a non-contractual nature and by concluding that Systran was entitled to compensation.



CONCLUSIONS

The use of segments of copyrighted works in translation tools may infringe authors' moral rights

Technological revolution is taking place in the field of machine(-aided) translation, but the current copyright law regime does not provide the optimal level of legal certainty for its development.

The industry is changing rapidly. Big data and artificial intelligence - among many others - open new doors and perspectives. They also trigger new complex legal issues.

In this complex legal framework, the contractual arrangements between the various actors in the field of translation, at all levels of the chain, are of paramount importance.

However, the legal framework related to copyright and database contracts is not harmonised in the European Union.



THANK YOU FOR YOUR ATTENTION!

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