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Caveat Translator: Understanding the Legal Consequences of Errors in Professional Translation

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ABSTRACT

At the very heart of translation studies is the issue of translation quality. Yet, while there are numerous methods for assessing the quality of translations, little is known about what happens when a translator produces a bad translation. This paper will show that translation error, as a whole, can have significant consequences for both translator and client and by examining a number of case studies gathered from official reports and communications, court records, newspaper articles and books it will illustrate the diversity of situations which can arise as a result of translation errors. The paper will then examine the issues of liability and negligence to illustrate the legal means by which translators can be held accountable for the quality of their work. By understanding how liability for faulty translations arises, it will be possible to see the implications of laws and directives governing technical translations which are subsequently examined. This paper examines specific legal requirements relating to technical translation and discusses the consequences of translation errors using specific case studies relating to technical translation.

KEYWORDS

Technical translation, liability, negligence, legislation, law, quality, translation quality, European directives, technical documentation

1 Introduction

At the very heart of Translation Studies is the issue of translation quality. Numerous scholars such as Reiss (1971), House (1977) and Lauscher (2000) to name but a few have proposed various methods for determining what makes a good translation or indeed whether a translation should be called good or adequate or appropriate etc. However, there is a tendency to regard translation errors solely from the point of view of academic studies and translation pedagogy, completely shut off from professional practice. Despite notable works on legal translation such as Alcaraz and Hughes (2002), Morris (1995) and Šarčević (2000), little is known about a translator's legal obligations or responsibilities. What happens when the various quality criteria, objectives and goals are not met? In other words, what happens when a translator produces a bad translation?

This paper will attempt to answer these questions by outlining some of the key legal instruments which affect translation and, by means of several case studies, illustrate the legal, financial and safety implications – both real and potential – of inappropriate, incorrect, ambiguous or otherwise defective translations. Using a number of case studies gathered from official reports and communications, court records, newspaper articles and books the paper will illustrate the diversity of situations which can arise as a result of translation errors.

Having presented these general case studies, the paper will examine the issues of liability and negligence to help us understand the implications for those involved in the production and commissioning of translations. It will be shown that the nature of translation, i.e. the provision of an intellectual service by an expert whereby information is processed rather than merely transmitted unaltered, places translators at greater risk of litigation. By understanding the nature of liability and the ways in which translators can be held to account for faulty translations, it will be possible to fully understand the subsequent examination of laws and directives governing translations. The paper will then examine specific legal requirements relating to technical translation and discuss the consequences of translation errors.

1.1 Precedents in Translator Liability

Before embarking on this discussion of translation, liability and the translator's legal responsibilities, it is necessary to present a realistic background to these topics. In 1999, Ansaldi conducted a review of federal and state court rulings in the US spanning the preceding ten years but failed to find a single court case or ruling in which a translator was found liable as a result of a poor translation. Similar searches covering 20 years of articles in legal journals failed to uncover any article on the issue. My own research using a variety of legal catalogues and databases as well as a wide range of Internet searches produced similar results. While neither my searches nor those of Ansaldi could be regarded as exhaustive, it is certain that if, as Ansaldi puts it, the issue of translator liability "were in any sense a hot topic, it would have left more of a 'trail'" (Ansaldi 1999:12). Given the huge volume of translation work done in so many different areas across the world this is quite surprising and it is particularly true in the case of technical translation which, according to Kingscott (2002:247) accounts for some 90% of the world's total annual translation output. It would be unrealistic to interpret this lack of cases as proof that translators do not make mistakes or that the issue of translator liability is not something with which we should concern ourselves. This paper aims to show that, despite the lack of precedents, the possibility of being found liable for one's translations is very real and the implications of substandard translations must be treated seriously.

2 The Effects of Faulty Translations

The sheer volume and diversity of translation work which takes place throughout the world each year means that there are potentially dozens, if not hundreds, of possible implications for defective translations. But despite the apparent lack of specific cases in which a translator was held liable as a result of an incorrect or inadequate translation, there are numerous instances - relating to translation in general and technical translation in particular - which illustrate the potential consequences of substandard translations. Taken from a variety of sources, these instances

show, not only the impact of translation errors, but also the potential directions from which claims against a translator may come. On the basis of these examples, it is possible to categorise the general implications of inadequate translations into the following broad text categories: *legal; political*; and *commercial*.

2.1 Legal Texts

Whereas the consequences of inaccurate or incomplete translations produced either inside a courtroom or as part of the preparations for a court case are well documented[1], translation's effects on the way in which courts conduct their business can be significant and surprisingly durable. The translation of laws, decrees and other legislation, for example, can pose problems for the implementation and expediency of justice. One particularly troublesome example is the Warsaw Convention whose translation from French into English has been the source of much legal argument and has featured prominently in numerous cases throughout the English-speaking world. Signed on the 12th October 1929, the Convention was originally drafted in French, a single copy of which is stored in the archives of the Polish *Ministry of Foreign Affairs*. This original French version was intended by all parties to serve as the only official and authoritative text. In order for the provisions of the Convention to be adopted into English law in the form of the *Carriage by Air Act 1932*, the English Parliament at the time commissioned its translation into English, the aim, according to the judge presiding in the matter of *Corocraft v. Pan American Airways Inc [1969]*, being to make an "exact translation" which the translator failed to do. By adding glosses to the text and by clarifying and disambiguating the source text, the translator "produced certainty where there was ambiguity: and clarity where there was obscurity" (*ibid.*). Indeed, the quality of the translation is widely criticised with it being described by Beaumont (1949) as "not good" and in need of revision.
There are several cases where the apparent inconsistency of meaning between the French and English versions of the Convention - intended to govern the liability of airlines for death or injury to passengers or damage or loss of baggage - has resulted in confusion, debate and the dismissal of cases. One such instance is the case of *King v. Bristow Helicopters Ltd. [2001]*, where the translator's decision to render the word *blessure* as *wounding*, rather than as *injury* is criticised. The original text of the Convention refers to

> …**la mort, les blessures et toute autre atteinte à l'intégrité corporelle subie par un voyageur** lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement. [King (AP) vs. Bristow Helicopters 2002] (my emphasis)

The confusion caused by the word *blessure* is compounded further by the translator's decision to split the sentence:

Official Translation:
"…the death or wounding of a passenger…and of any other bodily injury suffered by the passenger…"

Literal Translation:
"…the case of death, wounding or any other bodily injury suffered by the passenger…"

(Source: *King v. Bristow Helicopters Ltd. 2001)*

Taken together, these decisions are grounds for confusion and debate and ultimately mean that the English text and law are not legally adequate with the result that the French text must be consulted in order to clarify the intended meaning of the Convention. By splitting the sentence, it has been argued, the translator has placed *death* into a different category to *bodily injury* in terms of its legal causation, which in itself has implications for establishing liability. It is also argued (*ibid.*) that by using *wounding* instead of *injury*, the translator restricted the meaning to such an extent that it would excessively limit the liability of the air carrier; wounding being generally used where an injury occurs as a result of violence and usually involving a weapon. While no alternative translations which would eliminate this problem are proposed in any of the sources consulted - although Lord Steyn in the judgement on King (AP) vs. Bristow Helicopters [2002] comments that translating *blessure* as "bodily injury" might be more appropriate for entirely different reasons - it is clear that simply replacing **wounding** with **injury** creates a rather unfortunate scenario where injury is used twice in the same sentence to mean two separate things. One possible solution, which is, of course, open to debate, would be to phrase the sentence as "the case of death, **injury** or any other bodily **harm** suffered by the passenger…".

This particular example raises some unusual questions for many translators who see it as their responsibility to produce translations which are appropriate for the intended purpose and target audience, even if this means rewriting, disambiguating or otherwise improving a text. In doing precisely this, the translator of the Warsaw Convention has succeeded in damaging the legal effectiveness of the document and consequently its communicative value and appropriateness for the target audience.
The way in which a translator's choice of words can impact upon the efficacy and enforceability of legislation is also reflected in a submission entitled *Making the Right Choices* made by Amnesty International (1998) to the International Criminal Court regarding definitions of prohibited weapons in proposed legislation. Responding to an initial draft of the legislation, Amnesty International refers to the phrase "*…propres à causer des maux superflus*"; the official translation of which was "*…which are calculated to cause superfluous injury or unnecessary suffering*". Amnesty International maintained that this translation was based on a translation

error in the English version of Article 23(e) of the 1907 Hague Regulations and should be translated as "*…of a nature to cause superfluous injury*".
It is not difficult to see why the phrasing of the original was problematic as it implied that weapons must be specifically designed to cause unnecessary injury. While this would effectively prohibit weapons such as landmines, cluster bombs etc., it would not cover other devices or substances which may be used to cause superfluous injury in addition to their primary function, e.g. petrol, acid, nails, etc.
Technical translators too, face similar challenges with regard to selecting appropriate terms when translating texts which are intended to play some sort of regulatory or normative role. In 2002, an urgent request was made by an expert group in Germany to correct a potentially serious translation error in Section 5.1.3 of the German version of European Council Directive 70/220/EEC which deals with technical and safety requirements for vehicle fuel tanks (UNECE 2002).
In the original English text, paragraph 5.1.3 reads as follows:

> Provision must be made to prevent excess evaporative emissions and **fuel** spillage caused by a missing fuel filler cap.

However, when translated into German, paragraph 5.1.3 referred to *Benzin* (petrol) instead of the more generic term *Kraftstoff* (fuel).

> Überhöhte Verdunstungsemissionen und Überlaufen von **Benzin** aufgrund eines fehlenden Tankdeckels müssen vermieden werden.

The submission requested that *Benzin* be changed to *Kraftstoff* on the grounds that the existing wording was causing misinterpretations (UNECE 2002:2-3). It is conceivable that such misinterpretations could be financially very costly if a manufacturer designed a diesel tank having taken into account the misleading provisions contained in the translation and the tank subsequently needed to be recalled, redesigned and retrofitted with a cap. Such misinterpretations could also be dangerous or possibly even fatal. In any case, this error would have seriously affected the ability of the directive to regulate, standardise and govern the manufacture of vehicle fuel tanks by effectively creating a large loophole in the requirements.

2.2 Political Texts

Translation has always played a central role in political spheres, whether being used as a means of circumventing censorship, as a propaganda tool or as a means of promoting political co-operation. Closely linked to the political implications of translation are the social implications, since politics invariably has an impact on the population of a country and the policies of a government, in many cases, affect the attitudes and beliefs of the society it governs. There are several examples of how translation errors have had political and social ramifications, some of which seem disproportionate to the actual error itself.

Elections and Race Relations

One such case involved the translation of ballot papers in New York for the 2000 US elections. Amid claims that some Chinese American voters may have voted for the wrong candidate, it emerged that not only were voters given conflicting instructions on the translated ballot papers but that the labels for the *Democratic* and *Republican* boxes had been reversed. This debacle was made even worse by the poor quality translation of the voter helpline which provided instructions that were so badly translated into Cantonese that some voters are reported to have needed to listen to the English version before they could understand the translation (Yung 2000). Perhaps as a reflection of the alleged marginalisation felt by the Chinese American community, the failures in the translation process were cited as proof of the indifference of the federal government to the community. Of course, it is possible that the ballot paper errors were the result of a simple layout problem during print preparation rather than a genuine translation error, but the fact that the perceived lack of importance attached to the translation process is regarded as proof of the disregard for the Chinese vote places a greater onus on translation.

What is interesting is that the company responsible for providing the translations claimed not to be responsible for making corrections and that it was the New York City Elections Board who was responsible for quality control. The Elections Board, on the other hand, was not capable of checking the quality of the translations as its Asian staff consisted of "one gentleman who speaks some Chinese and a couple of Koreans" (*ibid.*). There are a number of issues worth mentioning here. Firstly, that an agency could provide translations – and high profile translations at that – without any form of quality assurance process is worrying and does little to inspire confidence in the translation industry. Secondly, the fact that the New York City Election Board was prepared to cut corners on quality could be regarded as a sign of its attitudes to the Chinese American community. There is, of course, the possibility that the client was simply unaware of the issues involved in commissioning and using translations, in which case, the translation industry surely has a moral and ethical duty to educate customers about the process.

In a similar case in 2004, between 8000-12000 copies of a Spanish voter guide were recalled due to translation errors which were variously described as "garbled", "horrific" and "atrocious" (Klawonn 2004). Again, this instance was cited as just the latest in a long line of poorly translated Spanish documents sent to members of the Hispanic community by government agencies (*ibid.*). As with the Chinese ballot papers, this incident is perceived as a sign of the disregard central government has for minority communities. While it is conceivable that ignorance on the part of the client, coupled with cost-cutting, is responsible for these problems, the fact remains that translation is seen as the public face or facilitator of the

problem and it can be regarded as a means of oppression to a certain extent.

Political Life

While in the cases mentioned above, translation is regarded as giving expression to the attitudes and biases of political leaders and that poor translation reflects their true beliefs, there are numerous instances where translation is blamed for misrepresenting politicians, in some cases, unfairly. In 2002, after a bitter two-day debate on the nomination of Chang Sung as the first female prime minister of South Korea, translation was blamed for misrepresenting facts about Chang's curriculum vitae, thereby casting her in a dishonest light. Much of the controversy centred on why her curriculum vitae listed a doctorate from *Princeton University* when she had, in fact, been awarded her degree from *Princeton Theological Seminary*. Chang blamed this on a translation error, claiming that "aides thought the two schools were connected" (CNN 2002). It seems incredible that a professional translator would make such an elementary mistake, but let us consider the implications of this case for a moment. Firstly, if the translation is, in fact, faulty it is theoretically complicit in Chang's failure to secure the position of prime minister and has tarnished both her political credentials and her personal reputation. However, the fact that there were other objections to her nomination would complicate any attempt to sue the translator.

Secondly, if the "mistake" was not due to a translation error, but rather was a disingenuous attempt by Chang to disguise attempts to inflate her curriculum vitae, the translator is being wrongly accused of incompetence and translation as a whole is made a convenient scapegoat. It is difficult to see how, as translators, we can prevent such incidents from occurring since we are not responsible for the content of the source text or even the target text once it has been delivered to the client. In the event of a court case, it should of course be possible to produce the source and target texts to prove one's innocence; assuming that the source and target texts have been retained in some form of archive.

2.3 Commercial Texts

To discuss the effects of translation errors without examining the potential economic and commercial losses would be to omit one of the most significant and immediate areas of translation's influence. Indeed, the financial and commercial ramifications are probably the most immediately relevant aspects of translation errors and the implications they can have.
Even where a company does not commission a translation itself, it can still be adversely affected by translations produced by others. One notable example is reported by Fight (2004:35) concerning the US bank, *Continental Illinois*. A report issued in 1994 by the Commodity News Service referred to rumours that a Japanese bank was planning to take

over Continental Illinois, which was already experiencing market difficulties. When this report was translated into Japanese, the translator mistranslated *rumour* as *disclosure* which created an entirely different meaning; instead of the **possibility** of a take-over, there was an apparent **certainty**. The news of the impending take-over had a profound effect on the bank's depositors and creditors who all sought to withdraw their money. With bankruptcy looming large as a result of the lack of confidence in the bank, the US *Federal Deposit Insurance Corporation* together with the *Federal Reserve Board* and the *Comptroller of the Currency* pumped some USD$2 billion in additional funding to guarantee deposits and reassure investors. Despite this confidence-building exercise, the run on deposits continued. In view of the potential damage to the economy which would be caused by the collapse of such a large bank, the Federal Reserve was forced to take over the bank. By the time the process was finished and the bank's future secured, the US government had spent over USD$8 billion on the bank. Although the rescue strategy was successful and is widely regarded in banking circles as a good model for this type of rescue, the fact that this level of financial intervention was necessary as a result of a single translation error is astonishing. In addition to creating widespread panic among the bank's customers, the translation error resulted in the near bankruptcy of Continental Illinois and required vast amounts of taxpayers' money. Although the bank was already in poor financial shape, the mistranslation of a single word triggered a sequence of events which ultimately left the bank a "ward of the government" (Fight 2004:36).

Translation errors are, of course, potentially embarrassing for the client; the translations represent the company and any flaws, mistakes or imperfections reflect badly upon the company much as dirty fingernails reflect badly upon a surgeon. One can imagine prospective customers questioning the professionalism and trust-worthiness of a company who cannot master the seemingly basic task of writing clearly, grammatically and idiomatically. Translation errors do not merely cause problems because of the factual inaccuracies contained in the text or the stylistic infelicities which mark a text out as a poor translation. The very presence of errors can provide grounds for complaints, litigation and a variety of other loopholes which can result in significant costs to a company.

The 1998 Annual Report by the European Ombudsman describes the background and decisions in relation to a complaint made regarding a European Union call for tenders in 1996 (Söderman 1998). The *Directorate General for Health and Safety at Work* (DGV F) issued a tender for the supply of technical services to which the complainant submitted a tender. The European Commission subsequently informed the complainant that the tender process had been cancelled due to a number of translation errors in the documentation. This in itself is quite a significant issue in that the sheer cost in terms of money, time and effort is enormous. The complainant argued that the real reason for the cancellation of the tender

was not translation errors "but an illegitimate purpose", namely to "give an advantage to firms with lower quality personnel and in particular to the current contractor" (Söderman 1998:58). Although the complaint was rejected as unfounded by the Ombudsman, the process itself must have been quite costly to all concerned. As a result of inconsistencies across the various language versions of the tender documentation, the European Commission was exposed to allegations of dishonesty and preferential treatment. Of course, neither the translators nor the Commission could have envisaged such an outcome but the reality is that translation errors can and do have a ripple effect which can reach some rather unexpected shores.

3 Liability and Negligence

In the preceding examples, the question of whether and to what extent a translator is to blame for the negative consequences of the translation is not always clear and the issue is open to speculation and debate. To properly understand the implications for the translator it is necessary to be familiar with some fundamental legal concepts such as liability, negligence and duty of care. In the following paragraphs these terms will be defined briefly in an attempt to clarify the issue of translator liability.
A fundamental precept of many legal systems is that if one suffers loss or damage through the negligent act of another, then "the injured party shall be entitled to damages at law" (Cecil 1984:3). This basic definition of liability encompasses two types of liability:

1. breach of contract
2. commission of a tort

Liability arising out of breaches of contract relates to a formal agreement and undertaking between two parties, i.e. the translator and the client, and is based on the terms and conditions of the contract. Tort law relates to civil wrongdoings and is based on case law and precedent rather than on laws and legislation. Torts are defined as "acts or omissions by an individual […] which cause damage to another (Mowat 1998:21). Cecil (1984:5) defines the commission of a tort as the neglect of a "common-law duty of care for the wellbeing of those other people who might suffer as a result of one's actions". This can include the client but also third parties such as people who use the translation or people who suffer loss, damage or injury as a result of the translation. It is worth noting that a translator can be found liable to a client both in tort and for breach of contract.

Liability and Duty of Care

In principle, liability is unlimited in time, scope and amount but it is possible, subject, for example, to EU Directive 93/13/EC (Unfair Terms in Consumer Contracts) or England's *Unfair Contract Terms Act 1977* to limit, by means of exclusion clauses in contracts, all three aspects of

liability both in contract and in tort (Jewell 1997:85). It is not, however, possible to limit one's liability in tort to third parties, nor is it possible to limit liability where a fundamental breach of contract has taken place or where liability relates to death or personal injury (Jewell 1997:82-84). It is, however, possible to limit a translator's financial liability so that the translator is not liable for consequential losses which might be suffered as a result of the translation. Ansaldi (1999:14) recommends that translators include in their terms of business a clause that explicitly excludes liability for consequential losses and entitles the client to a refund alone.

In order to establish a translator's liability, the client needs to show, not simply that the translator has produced a faulty translation, but also how the translation has caused harm. The task is to show that, were it not for the translators negligence in producing the translation, the client would not have suffered any harm at all (Ansaldi 1999:13). To establish negligence, a client needs to show that the defendant owed a duty of care to the client; that the defendant had acted in such a way as to break that duty of care; and that the client has suffered damage as a consequence (Mowat 1997:22-23).

Apart from the requirement to show that the client has suffered damage as a result of the translation, the crucial factor here is proving that the translator has a duty of care to the client. There are various definitions for *duty of care* but perhaps the most relevant to our purposes here as translators comes from the case of *Caparo Industries plc v Dickman [1990]* which dealt with the liability of a firm of auditors to potential investors. In this case the auditors were engaged as information providers, a role which, it can be argued, is quite similar to that of translators. In dealing with the case, the judge developed a four-part definition for duty of care which consists of the following:

1. the information is provided for a purpose
2. this purpose is made known at the time of commissioning
3. the information provider knows that the information will be provided to the recipient in order to be used for the specified purpose
4. it is known that the information is likely to be used without independent inquiry or verification for the stated purpose

On the basis of these definitions, for a duty of care to the client to exist, the translator must know, amongst other things, what the intended purpose of the information is when the translation is first requested. It is interesting to note the similarities between these points and some of the central tenets of Skopos theory (see Vermeer 1989 and Nord 1997), particularly with regard to the notion of a translation brief and the intended purpose of a translation.

A Translator's Liability

In her discussion of liability issues for librarians (who are described as information providers), Mowat (1998:10) claims that information *producers* are more liable for ensuring the accuracy of the information they produce than information *intermediaries* are. She argues that librarians who produce reports for users on the basis of information they have retrieved or who use in-house information as the basis for a resource are adding an intellectual value to the information and, as such, become producers of information. If the librarians simply passed on information without adding to it, they would be *intermediaries*, and would be less liable for any resulting damages.

This raises some interesting questions for translators and how they view themselves. If we regard the role of translator purely as an information intermediary, this would necessitate a view of translation which involves no intellectual input or creation; in essence, we would be talking about word for word translation. It is impossible to argue that this approach could produce adequate professional translation results. Even literal translation, which is considerably more sophisticated than word for word translation, cannot satisfactorily cope with every translation eventuality. So by accepting that translation involves some form of intellectual addition to or processing of the information in the source text, whether by adding, removing, clarifying, interpreting, rephrasing, recontextualising or recasting information for the target audience, we are in effect accepting a role for translators which is subject to a greater degree of liability than a mere conduit of information. Translation involves processing information which, in turn, involves a certain degree of production or creation and places translators at greater risk of litigation. However, since translators are regarded as service providers, they are more likely to be judged on process-based criteria with the result that, provided a translator can prove that the translation was produced in an appropriate and careful manner to the best of the translator's ability (Ansaldi 1999:14), the presence of errors in the finished translation may be regarded with greater leniency. This general principle notwithstanding, Ansaldi (*ibid.*) maintains that where the nature of the work is routine and does not involve special skill or judgement, a translator can be found to be liable even if all of the appropriate procedures have been followed.

It can also be argued from the definitions given in the Caparo case that, if the client does not or cannot give the translator clear information as to the purpose of a translation, the duty of care is diminished. However, lest a translator think that the duty of care can be circumvented simply by not asking what the translation is for, the law places certain expectations upon people who claim to be professionals. Those who provide services are expected to do so in a "good and workmanlike manner" (Ansaldi 1999:13). The translator must, therefore, provide the translation in accordance with the skills, practices and customs appropriate to the

profession generally and appropriate to the ordinary skills and capacity normally possessed by a practitioner (Mowat 1998:27). Thus, if it is reasonable to assume that professional translators ask their clients what purpose a translation is to serve, then a translator who fails to do so will most likely be found not to have complied with accepted practice and the duty of care will be deemed to exist.

As a corollary, it also follows that if a client uses a translation for a purpose other than that for which the translation was originally produced, the client's entitlement to claim negligence due to breach of duty of care is diminished. The precise mechanics and extent of such a process, however, is something best left to the lawyers.

The notion of *reasonableness* also acknowledges the fact that no professional can guarantee success all of the time; surgeons will lose patients from time to time, chefs' soufflés will occasionally collapse and translators will sometimes make mistakes. Thus, reasonableness relates to what it is *reasonable* to expect a translator to be able to do. This, however, is affected by what a translator claims to be able to do. As Cecil (1984:3) explains, "if a man holds himself out to be an expert, the standards to be applied to his conduct in assessing his negligence will be more stringent than those applied to a layman". If, then, a generalist translator is asked to translate a highly specialised engineering text, it is likely that any errors would be regarded as beyond the reasonable ability of a general translator unless the translator claimed to be an expert in the area. Similarly, a specialist translator who claims to be an expert in a particular area, raises the standard expected from simple "workmanlike quality" to "workmanlike quality from one specialised in X" (Ansaldi 1999:17).

This is particularly relevant to freelancers who market themselves by promoting their specialist skills and knowledge. Ansaldi (*ibid*.) recommends that a clause be included in translation contracts similar to those used in the accounting profession which state that financial statements prepared by accountants are not guaranteed to be true and correct but that they have been prepared in accordance with generally accepted procedures. Nevertheless, by virtue of being specialist translators professing to have certain expertise, the legal implications facing technical translators are much higher, not just from the point of view of general tort and contractual law but also from the point of view of various pieces of legislation specifically relating to technical documentation and translations.

4 Specific Implications for Technical Translation

While translation itself is the subject of various pieces of legislation, it is worth bearing in mind that translation, more specifically technical translation, is also subject to many of the laws, regulations and directives

which relate to the production of technical documentation as a whole. (Byrne 2006:67-68). This can be explained on the basis that technical documentation – particularly product documentation – more often than not needs to be translated; indeed, in Europe it is a legal requirement set out in EU Resolution C411 that product documentation must be translated into the language of the country in which the product is to be sold (Council of the European Union 1998:4). Once translated, technical documentation ceases to be regarded strictly as a translation, but rather as technical documentation in its own right which is then subject to the requirements and regulations relating to original language documents. Wright echoes this idea when she states that technical translators are technical writers (1987:119) and as such their work should be subject to the same constraints and expectations as a technical writer. Such a view is also shared by Göpferich (1993) who posits the notion that technical translation is really "interlingual technical writing".

Independent of the requirements of Resolution C411, there is also a statutory requirement under EU and national contract laws for manufacturers to provide translations of instructions. For example, if a manufacturer provides a quote and a copy of terms of business to a customer in another country in the customer's own language, then the manufacturer is obliged to provide product documentation in that language regardless of whether this is specifically mentioned in the contract (TCeurope 2004:12). Nor for that matter, can the requirement to provide translated documentation be circumvented by contractual agreement.

4.1 European Legislative Requirements

In Europe, the most important laws affecting technical translation are the various directives issued by the European Union. These directives constitute European law and are also adopted into the national laws of individual member states. The European Union acknowledges the potential problems caused by translation errors in Resolution C411 which states that

> …operating instructions for technical consumer goods are frequently perceived as inadequate both because they are unclear and because they present language difficulties as a result of faulty translations (Council of the European Union 1998:1).

To address the problem of faulty or inappropriate technical product documentation (including translations) European legislation specifies that a technical product is only complete when accompanied by an operating manual. As such, inadequate operating instructions may be a factor in considering whether goods are defective (*ibid.*). This requirement also applies to companies who intend selling second-hand products (TCeurope 2004:20). Indeed, in order to sell and distribute products within the European Union, companies must produce a CE declaration of conformity

for the product. If the product is not accompanied by a complete and accurate instruction manual, the CE declaration is not valid and the manufacturer and/or distributor will be liable should any problems with the product ensue (TCeurope 2004:7). The result of this legislation together with Resolution C411 is that not only must documentation be provided in the language of the user but, also if the translated manual contains errors which prevent the user from using the product or from using it safely, the entire product is regarded as being defective and must be withdrawn from the market, often at considerable expense to the manufacturer and distributor. TCeurope provides an eye-opening example of the practicalities of such a problem in its *SecureDoc* guideline (TCeurope 2004:20).

Such provisions for liability owing to faulty or incomplete documentation have been incorporated into the laws of most, if not all, European member states. One such example is Germany's product liability law (*Produkthaftungsgesetz*) which also regards documentation as an integral part of the product and entitles users to replacements and/or compensation if the documentation results in damage or loss (Heino 1992:111). A study conducted by the German computer magazine *ComputerBild* in 1996 revealed that the majority of user guides for electronic consumer goods were defective in one form or another and users would have been entitled to such compensation (1999:16).

While one of the main provisions of EU Resolution C411 mentioned above is that all product documentation must be translated into the language of the country in which it is to be sold, it also states that the documentation must be clear, accurate and easily comprehensible. Simply providing translations is not enough to satisfy the legal requirements and protect manufacturers and distributors from liability and claims for compensation. Technical product documentation must be tailored to the specific needs of the intended audience and it must help them to perform whatever tasks they need to perform in order to use the product correctly and safely. Naturally, this also applies to translations. In certain circumstances this may involve quite significant changes to the translated text in order to comply with target audience expectations, customs, conventions and to reflect the physical and technical landscape in which the product is to be used, e.g. different voltage systems, waste disposal laws, climate conditions etc.

Product documentation, in addition to providing instructions for use, is also required by various directives to anticipate possible risks and hazards and to provide clear precautionary advice. Table 1 below lists some of the directives that refer specifically to technical product documentation and translations and outlines the relevant provisions.

The effect of these requirements is that documentation (original language and translations) must prevent damage or injury as a result of any

reasonably foreseeable use or misuse of the product. As the *Securedoc* guideline notes "users do not only use products for their intended purposes" (TCeurope 2004:32). Reasonable efforts must, therefore, be made to prevent such instances from occurring. Any failure to meet these requirements not only exposes manufacturers and distributors to compensation claims but also to penalties imposed by the EU and national regulatory bodies including recall orders and restrictions on the movement and sale of products (TCeurope 2004:15).

Directive	Subject	Requirements
2001/95/EC	General product safety	Article 8-1-B-1 states that if products can pose risks, there must be clear warnings in the language of the country in which it is sold.
90/385/EEC	Medical devices	Documentation must be translated and must anticipate potential reasonably foreseeable risks and describe precautions. Where inaccuracies in the instructions might lead to the death of a patient or a deterioration in health, the manufacturer must report it and an investigation will ensue.
98/79/EC	In-vitro diagnostic medical devices	Documentation must be translated and the translations must be accurate, "easily understood and applied by the user" (Annex I-B-7). Instructions must anticipate risks and explain restrictions on use of the product.
76/768/EEC	Cosmetic products	Instructions must be translated, clear and understandable. Documentation must anticipate risks.
95/16/EC	Lifts	Documentation must be translated and must ensure correct assembly, connection, adjustment and maintenance as well as prevent accidents.
88/378/EEC	Safety of toys	Documentation must be translated and must be easy to understand. Instructions must anticipate risks and specify ways of avoiding them.
90/396/EEC	Appliances burning gaseous fuels	Documentation must be translated. Documentation must be produced and translated for two separate audiences: installer and user.
93/42/EEC	Medical devices	Documentation must specify the intended purpose of the product as well as clear instructions. Deficiencies affect validity of product's CE certification and must be reported.

Table 1: Example of EU Directives Relating to Documentation

Beyond the European Union's directives, the production of product documentation and instructions, whether original texts or translations, are subject to various other standards and regulations including numerous European norms such as EN 62079 and VDI 4500-2 as well as regulations such as the Joint Aviation Authorities requirements JAR-21 and JAR-145.

4.2 Case studies

In light of the regulations and directives described above, it would be useful to look at specific examples of defective technical translations to assess the impact of faulty technical translations and to see whether and how a translator could be held liable.

The first such example dates back to 1996 and involves two cases where a bread making machine on sale in Germany produced toxic fumes when used and placed numerous users at serious risk (Révy von Belvárd 1997:191). The Regional Institute for Health and Safety in Düsseldorf investigated the matter and found that the instruction manual had been translated incorrectly and was to blame for the cases. It transpired that the original English instructions informed users that steam would be released by the machine and that this was perfectly normal. However, when translated into German, the translator somehow confused the word *steam* (*Dampf*) with *smoke* (*Rauch*). Unfortunately, a defect in the product meant that it overheated when used, releasing clouds of poisonous smoke. With reassurances from the instructions that this was normal and nothing to worry about, users allowed the smoke to fill the room. Naturally, the product's manufacturer had to pay compensation to affected users as well as recall the product, all of which damaged the manufacturer's reputation (Révy von Belvárd 1997:192).

It is possible to argue that the translator in question was not entirely to blame for the harm caused because the translation merely exacerbated the problem caused by the defective product. This is indeed true to a certain extent because the translation on its own would not have exposed users to danger. However, under normal circumstances a user would be unlikely to calmly continue using a smoking machine and would in all probability sense that something was wrong and would unplug the product and return it to the shop. The fact that users continued to use the product and allowed the build-up of toxic fumes, thereby exposing themselves to significant risks is entirely due to the translated instructions. As a result, the translator, it can be argued, breached the duty of care to both the manufacturer and the user and was indeed responsible as the Institute for Health and Safety found. Why this did not transfer into liability and litigation - either by the manufacturer or by the users - is difficult to ascertain although it is conceivable that this case was settled out of court. Additionally, the presence of an underlying fault in the product may have diverted attention away from the instructions and the translation.

Had the translator been sued for negligence, the nature of the mistake, i.e. a basic "schoolboy howler" (Ansaldi 1999:14) which is so routine that no professional translator should have made it, would have meant that the translator would have been judged less leniently than if the error involved a more complex term or expression. The fact that neither *smoke* nor *steam* are specialised terms and can easily be found by anyone in a standard bilingual dictionary would seem to go very much against the translator[2].

Even if the product itself had not been defective, the translation, by virtue of the fact that it did not provide clear and accurate instructions and did not warn users of potential hazards, could have breached various EU directives and national product liability laws and consequently the product could have lost its CE certification and the product would have had to be recalled.

A more dramatic case, also dating from 1996, involves a gas explosion in an office building in San Juan, Puerto Rico in which 33 people died and more than 80 people were injured (National Transportation Safety Board 1997). After several reports over the course of a week from people who smelled gas in the building, the San Juan Gas Company (SJGC) dispatched a number of crews on different occasions to investigate the problem. On each occasion, the crews drilled what are known as *bar holes* into the street to take readings to establish whether there was indeed a gas leak. On the day in question, a work crew tested the existing bar holes and was in the process of drilling another hole when the explosion occurred.

It emerged from the investigation conducted by the NTSB that the explosion was due to a gas leak which was not detected by staff due to deficiencies in the training they were given by the owners of SJGC - the now defunct energy company Enron. Several SJGC employees received on-the-job training from Enron in surveying and detecting leaks. They also received training in Spanish from a bilingual SJGC trainer who was provided with training materials outlining key safety and procedural information for the detection of gas leaks.
The report found that although there was a trainer,

> SJGC's primary means of training its employees about its operating, maintenance, and emergency procedures is to instruct them to read the relevant documents, but the SJGC does not test its employees or evaluate their knowledge of the procedures (National Transportation Safety Board 1997:4).

As a result, the NTSB reported that it was unable to determine whether the training had been effective and whether the translators who translated the training material "accurately conveyed the information provided by the trainers" (*ibid.*). If, as the report states, the original English language training materials provided detailed technical information on procedures for detecting leaks and ensuring safety, why did the workers not act on this information in the translated materials? There are a number of

possible explanations. Firstly, the workers may not have read the training materials and, as they were tested only on their ability to perform tasks, it is possible that they knew how to perform the basic, manual aspects of the survey procedure but did not know the theoretical information. The other explanation is that the translated materials were somehow faulty, unclear or were missing key information, although this is impossible to verify here because the actual documents are unavailable. The report seems to favour this possibility as it refers on a number of occasions to language and communication problems and recommends that training and materials be provided by trainers who are native speakers of Spanish to ensure that "critical technical information is not lost in the translation process" (*ibid.*).

Establishing liability and responsibility in this case is a much more complex affair as it is difficult, if not impossible, on the basis of the information available to determine precisely why workers did not have the knowledge needed to deal with the gas leak. Even if the translated training materials were not entirely at fault, they could be used to build a case of negligence against Enron in the event that any of the survivors or families of those killed decided to take legal action.

5 Conclusions

The previous sections have examined a wide range of factors relating to the issue of translation errors and their implications for translators, clients and third parties. The general examples and case studies presented illustrate the range of problems errors can cause and they show that the issue of faulty translations is not something which exists solely within academic discussions of translation and translation quality assurance. Instead, translation error, like translation, is a real-world phenomenon which has real-world implications for everyone who comes into contact with translations. It is clear from the case studies presented that the consequences of translation error are very real and that they are something we should be genuinely concerned about. The examples of errors in technical translations serve to reinforce the gravity of this issue and show that translation errors can have disastrous and potentially fatal consequences.

While translators have a clear duty of care to their clients and they must elicit from clients what purpose translations are intended to serve, realistically speaking, translators cannot extract information from clients when the clients themselves do not have the answers. While standards such as DIN 2345 "Translation Contracts" represent an attempt to improve the translation process and to ensure that both translator and client are aware of their responsibilities, the onus still rests with the translator to produce translations which comply with standard procedures to the best of their ability.

Translators can protect themselves to a certain extent and limit their liability in the event of defective translations by not overstating their abilities or making unrealistic promises as to the quality of the translations and by keeping clear records of how they deal with problematic parts of a text (Ansaldi 1999:14). They nevertheless can be found liable under both contract law and under tort law and it behoves them to ensure that they make all reasonable efforts to familiarise themselves with the subject material, source and target conventions and the relevant legislation and requirements governing the texts being translated. Even where translators are not or cannot be held liable for translation errors, there are surely ethical issues involved and the translator has a certain moral responsibility to the injured party. The translation community itself is entitled to expect that its members do not tarnish its image or prejudice its reputation as a result of careless, negligent work.

Despite the apparent lack of cases where translators are held to account for the quality of their work, the potential for litigation is never far away and as technical translators we should always be aware of this and strive to minimise the risk to which we expose ourselves.

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[1] For example, Pawloski (1996), Kunnath v Mauritius [1993] and R. v Secretary of State for the Home Department Ex p. Yasin (Ghulam) [1996]

[2] One possible explanation for the error (which by no means exonerates or defends the translator) is that the translator confused the German word for smoke which is *Rauch* with the German word for *smell* or *aroma* which is *Geruch*. There are certain physical similarities between the words and it is conceivable, though not necessarily likely, that the translator, either through inexperience or a lack of attention picked the wrong word.