

# Copyright protection for Translation Memories

Tracey Byrne

SDL TRADOS Technologies



## Topics

**Who owns the translation technology?**

**Who owns the translation memory content?**

**The Corporate View**

**The LSP Views**

**The Freelance Views**

**Considerations**

**What is the Legal Legislation?**

**How can you protect your content?**

**Questions and Answers**

- **The translation technology, copyright, code and development is the **property of the software provider****
- **The user guides and associated help files is the **property of the software provider****
- **Translation technology is sold and licensed to industry users**
  - Different “flavours” exist depending on the user type/functionality requirement/budget, etc.
  - The user owns the license to install and work with the software
  - The licensed user can become the owner and creator of the translation memory structure, but the question of the content is still in debate
- **Translation tools are developed to support all localization workflows**
  - Irrespective of who “owns” the content!

## ● There are many beliefs among industry users

- The most common of those are:
  - *The source content is written by the client; therefore, the translated content of this source documentation is the property of the client*
  - *The creation and maintenance of the translation memory is performed by the language service provider (LSP). The client pays for the files to be translated. The translated files are the property of the client, but the translation memory is the property of the LSP*
  - *The translation is written by the translator and is saved into the translation memory, so the content of the translation memory is theirs*

## ● These are all valid arguments in their own right

- Is there one which is legally correct?
- If so, which one?

## ● **The author is the owner of the source content**

- The author within the client corporation

*OR*

- The author's employer or commissioning party in the case of "work for hire"

## ● **The translation is created based on the source content**

- The LSP or freelance translator is commissioned and paid to perform the translation of the source content
- The client requests the use and discounts pricing based on the use of translation technology
- The project is performed on a "work for hire" basis

## ● **The resulting translation and translation memory content is the property of the client**

- Part of the payment includes the use of translation technology and creation of associated translation memories and termbases using the client's documentation

## ● The client owns the content of the translation memory

- The project is performed on a “work for hire” basis
- The resulting translation and translation memory content is the property of the client
- The translation memory may be delivered as part of the project deliverables or retained by the LSP, but made available to the client upon request

## ● The LSP owns the content of the translation memory

- The original source and translated documents are delivered to the client
  - *The client pays for the translated document, not the translation memory database*
- The LSP has made an investment in the translation technology
  - *The translation memory is created and maintained by the LSP*
- The translation memory is the property of the LSP
  - *Leads to the question – translation memory structure vs. translation memory content*

## ● The client owns the content of the translation memory

- The project is performed on a “work for hire” basis
- The resulting translation and translation memory content is the property of the client
- The translation memory is delivered as part of the project deliverables to the LSP/client

## ● The translator owns the content of the translation memory

- The translation is created as new content
  - *The translator is the author of the new translated content*
  - *The client pays for the translated document, not the translation memory database*
- The translator has made an investment in the translation technology
  - *The translation memory is created and maintained by the translator*
- The content of the translation memory is the property of the translator
  - *Leads to the question – translation memory structure vs. translation memory content*

- **If you create a translation memory using your own source content and translations, you are the author and owner of the content**
  - If you use the translation memory to leverage/reference during translation, you are not obliged to send the translation memory database to the client
- **If the client has not requested the use of translation memory technology, the translation memory content is not defined as part of the deliverables**
- **If you retain copyright of the translated document, you do not hold any copyright of the source documentation**

- **If the translation memory contains the content from several clients, it is not acceptable to send the full translation memory database to a single client**
  - Conflict of content from competitors/different contexts
  - Need for manual agreement of deliverables expected
- **If the translation memory has been created using the content from a client, you cannot use this content for the translation of another client project**
- **Translation memory structure vs. translation memory content**
  - A user may be the creator and owner of the translation memory structure and maintenance, but not of the content within the translation memory database

## ● **Copyright Act of 1976**

- An Act for the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes.
- **The Act was designed in part to address intellectual property questions raised by these new forms of communication and technology**
- **The author, employer or commissioning party, who pays for creation of the work, is deemed the author, rather than the employee or commissioned party who actually conceives and fixes the expression (or causes its fixation)**

## ● **Section 101 of the Act governs work “made for hire”**

- A work prepared by an employee within the scope of his or her employment; or
- A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire

## ● **Section 201b of the Act governs “work for hire”**

- “In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright”

- **If a work is created by an independent contractor or freelancer (that is, someone who is not an employee), the work can be created as a work made for hire, or not**
- **In order for it to be a work made for hire, all of the following conditions are required:**
  - The work must be specially ordered or commissioned;
  - The work must come within one of the nine categories of works listed in the definition listed previously; and
  - There must be a written agreement in advance between the parties specifying that the work is a work made for hire
- **Section 204 of the Act governs the transfer of ownership of copyrights**
  - The section requires a copyright holder to sign a written agreement that expressly transfers ownership of the copyright to the intended recipient for a transfer to be effective

## ● **The Berne Convention Act is an international treaty protecting intellectual property**

- Droit Moral - gives legal protection to the “moral rights” of authors, requiring that they receive proper credit for their efforts (the “paternity right”) and that their creations not be distorted, mutilated, or modified in a manner that “would be prejudicial to [the author's] honor or reputation” (the “integrity right”)

## ● **The Paris Revision (1971) of the Berne Convention recognized translations as original works and acknowledged that they should be “protected as original works without prejudice to the copyright in the original work”**

- Failed to discriminate between the two senses of the term “original”, i.e. author's original and translator's original
- Granted translators “authorial” protection in principle, but denied them a much needed degree of autonomy by placing their work under the control of an author who has the “exclusive right of making and of authorizing the translation”

- **Using translation technology, anyone in the translation supply chain can create translation memories from the original source and translated documents**
- **Withholding translation memories within the Client/LSP/Freelance group gives the impression of mistrust**
  - Clients prefer a level of control and will look for other vendors who offer this as part of their service
- **The introduction of server technology offers a centralized partnership for localization**
  - Content is available to all users
  - The central concept offers sharing of translation within the translation group
  - Ensures consistency and high-quality translations

## ● Clients

- The project must be created as a “work for hire”. In order for it to be a work made for hire, all of the following conditions are required:
  - *The work must be specially ordered or commissioned;*
  - *The work must come within one of the nine categories of works listed in the definition previously; and*
  - *There must be a written agreement in advance between the parties specifying that the work is a work made for hire*

## ● LSPs/Freelance Translators

- Rights to translate a client’s source content remain with the client
  - *Ensure you have a signed contract for the commissioned translation*
- Is the client sending the translation assets to you or are these being created by you
  - *In the case of the latter:*
    - Is this work chargeable as part of the project?
    - How does this affect “ownership” of the content?
- Be clear about the expected deliverables at the end of the project
- Discuss and, if possible, include contractual assurance of your recognition as a co-author and co-owner of the translation memory content

# Questions?

**Copyright © 2007 SDL. All rights reserved.**

SDL and the SDL Logo are trademarks or registered trademarks of SDL or its affiliates in the U.S. and other countries. Other names may be trademarks of their respective owners.

This document is provided for informational purposes only and is not intended as advertising. All warranties relating to the information in this document, either express or implied, are disclaimed to the maximum extent allowed by law. The information in this document is subject to change without notice.

# Thank you!

## Tracey Byrne

*[tbyrne@sdl.com](mailto:tbyrne@sdl.com)*

**SDL | TRADOS**  
TECHNOLOGIES