

Literary translation: work for hire or contract work?

[For LitNet]

The translator traditionally, in this country at least, has been the near-invisible, near-anonymous worker-behind-the-scenes. Often informally approached by the author, and usually indeed paid by the author, the translator has been expected to deliver the goods and then disappear. The British publishers of my translation of Marlene van Niekerk's *Agaat*, for instance, were clearly not interested in any thoughts I might have about the translation and their tampering with it; as far as they were concerned, they had bought a commodity, the translated text, and it was theirs to do with as they saw fit.

It is easy to see why this should be so. Publishers have enough to deal with in keeping authorial egos placated and marketing a translation in a market deemed to be hostile to translations, without also taking on board the translator. Indeed, it is in their interest to closet the translator as much as possible. Putting the translator's name on the cover, except where the translator is a best-selling author such as André Brink or JM Coetzee, is bad business, in that it advertises the fact that the book is a translation; the thinking seems to be that the reader should be tricked into buying a book that s/he would not otherwise have bought. Publishers, we are told, seldom make money out of a translation, at any rate in the English-language market; why then should they advertise the fact that a book is a translation?

The effect of all this has been to leave the translator with very few rights and very little money. Especially where the translator and the author are left to negotiate a fee between themselves, sheer fellow-feeling may prevent a translator from demanding what he knows to be a substantial cut of the author's royalty – and yet, of course, translating is a skilled and time-consuming job, and ideally should be accordingly rewarded. I say 'ideally' because in practice, in a world of supply-and-demand, translators will never be paid per hour what they could earn in a less over-subscribed field like accounting. Their consolation is that translation, at least literary translation, is more fun than counting beans.

If, however, translating is not to be its own reward, the translator should negotiate an agreement that will at least spell out such limited rights and rewards as the market allows. The Translation Committee of the PEN American Center has drawn up a

Translator's Model Contract setting out what the Committee regards as a fair deal for the translator. The full text can be found on www.pen.org/page.php/prmID/322, but the rest of this essay contains a brief summary of its main points.

Of course, implicit in this document is the contention that a translator should *have* a contract – by no means a common practice in this country, where, as we've seen, publishers prefer not to hassle too much with translators. So the first piece of advice to translators is: *insist on a contract*. This may in practice be either with the author who has approached you to do the translation, or with the publisher of the translation. If the former, you need to make sure that the provisions of your contract with the author are transferred to the author's contract with his/her publisher, otherwise you may be left with the cold comfort of a claim against the author that you're unlikely to enforce. It follows that your contract should be realistic, that is, not require the author or his/her agent to negotiate impossible terms.

The PEN Committee distinguishes between two main approaches to the status of a translation. On the one hand it can be deemed 'work for hire'; on the other it can be seen as 'authorial', that is, as a creation in its own right. Work for hire is, by and large, what translation in South Africa has been: in the words of the PEN Committee, 'translators were given a one-time flat fee for their efforts and had no further interest in, or control over, their translations.' The disadvantage of this for the translator is obvious: no matter how successful the translation, he has no further stake in it; no matter what changes the publisher makes to the translation, he has no control over them. It is at odds with the now more prevalent view that the translator is entitled to recognition and reward in his own right. This more enlightened view is, for instance, reflected in the fact that the *Sunday Times* Literary Award in this country is now open also to translations, and, where a translation wins the award, is split equally between author and translator. In the UK, too, the *Independent* Foreign Fiction Prize, by definition awarded to a translation, is also split equally between author and translator.

This attitude has yielded what the Committee calls the 'authorial' approach to translation: that is, the translator is treated as the author of an original work in his own right. In terms of the contract, this has several important implications.

In the first place, the contract will stipulate that copyright in the translation resides with the translator (in the case of work for hire, the publisher generally acquires copyright).

This is not a simple matter, for the translator's copyright is a 'derivative right', that is, is dependent on the prior copyright of the author. In practice, then, the translator's control is far from absolute: at most his copyright grants him the right to be acknowledged as translator, and to be consulted on any changes the publisher (or even author) might want to make to the translation. In fact, the contract should probably contain a separate clause stipulating this latter right -- although too legalistic an approach also has its perils: the author, after all, understandably retains an interest in the translation and may want to change the translation to accord better with what s/he regards as the better translation. Some tactful negotiation between author and translator may be more productive than an insistence on contractual rights -- although negotiation from a position of strength is of course always easier! In any case, it is also wise to stipulate that the translator should have the opportunity to scrutinise all proofs: you don't want to take responsibility for other people's mistakes.

As part of the shift of emphasis to the translator as creative agent, the Committee strongly recommends that 'the Translator's name shall appear on the jacket front or front cover of the book, on the title page, and in all publicity and advertising copy released by the Publisher, wherever the author's name appears.' This, of course, is something that has to be negotiated with the publisher rather than the author or his/her agent, and in practice publishers may prove sticky on this point -- as I've said, they still seem to treat a translation as a dirty secret best kept under wraps. But, as the Committee notes, 'this provision [is] essential not only for the sake of individual translators but for the profession as a whole.' So don't be too humble: you're making it harder for other translators to get their due.

Whether a translation is treated as work for hire or authorial will also affect the nature of payment. Typically, work for hire is recompensed in a one-off payment, regardless of how many copies of the translation are sold. It is standard in most countries in Europe, though, for a royalty to be paid to the translator in addition to the initial lump sum, the royalty being a (small) percentage of the retail price of the book. This clearly is a fairer procedure, and should form part of the contract.

There are two options available here. The initial lump sum may be treated as an advance on royalties, in which case the translator will only start earning royalties once the advance has been offset against earnings. In practice, this may well mean that the

translator receives no further royalties, unless the translation sells exceptionally well. Thus there is a second option, more beneficial to the translator: the translator starts earning royalties from the first copy of the translation that is sold. This is clearly preferable from the translator's point of view, but may also benefit the author, in that the initial lumps sum, which is in practice often paid by the author, can now be smaller, since part of the payment is in effect deferred till after publication. Local publishers may balk at the complexity of this arrangement, but in time this may well form part of a standard contract.

The moral of all this for the translator is: Shrinking violets get stepped on. Nobody is going to hand you rights if you don't ask for them.. And if you don't have a contract you don't have rights. So: GET A CONTRACT.