

# *Copyright and Translation Tools: Clarifying Ownership Issues for Language Service Companies*

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## *Contents:*

### 1. Background:

- Definitions
- legislation

### 2. Identifying the issues

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## *Translation tools at PwC*

### **In Spain:**

1999 – 2010: Trados tools: Workbench, MultiTerm, etc.

2010 – 2012: SDL Studio 2009/2011

Under PwC's corporate objects, we are not allowed to sell translation memory files

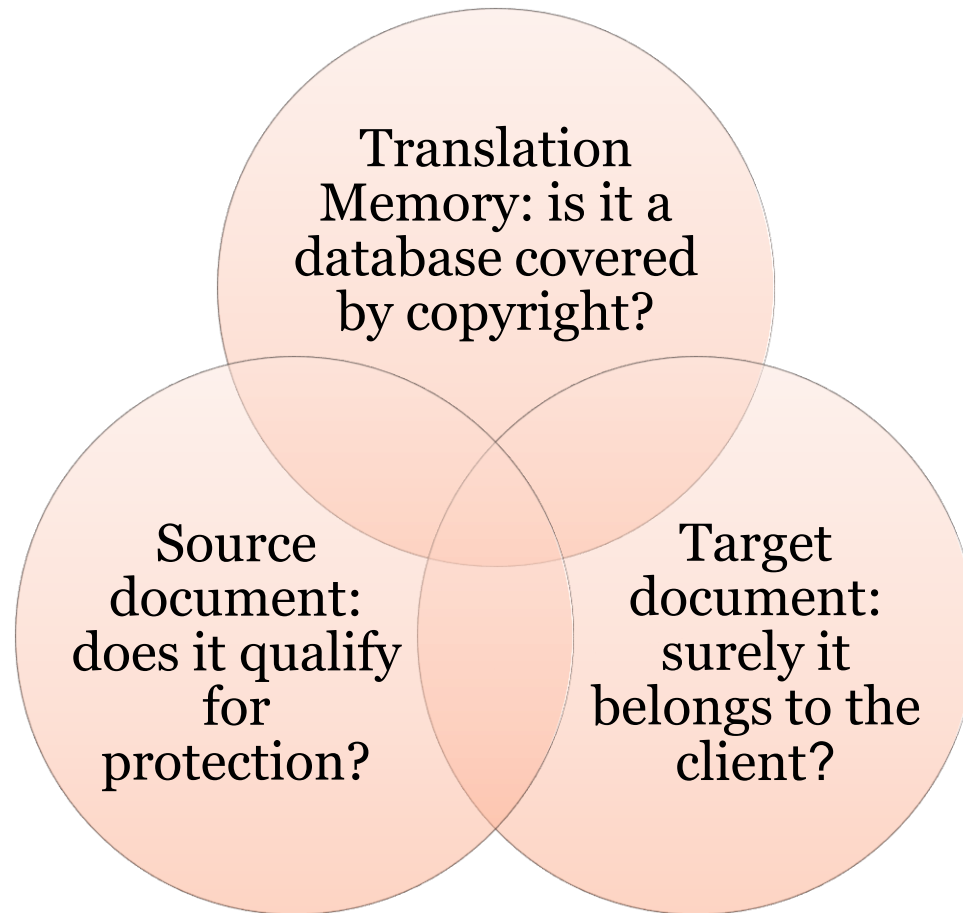
### **Worldwide:**

2000 – 2010: PwC/Systran on-line global machine translation facility for PricewaterhouseCoopers employees worldwide (discontinued).

All major offices now use translation memory tools, mainly SDL/Trados; Moscow also uses machine translation.

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## *Three key elements: source text, TM, translated text*



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# ***INTELLECTUAL PROPERTY = COPYRIGHT + INDUSTRIAL PROPERTY***

Intellectual property (IP) is split into two areas:



**Copyright or author's rights**  
(literary/artistic creations, original works of authorship)

**Industrial property** (inventions, industrial designs, trade marks etc.)

**Literature, translations, data bases and computer software** all come under the domain of **Copyright**

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# *INTERNATIONAL COPYRIGHT LEGISLATION*

- **International treaties:** Berne Convention 1886 (last amended in 1979); TRIPS\* Agreement 1994; WIPO Copyright Treaty 1996
- **US legislation:** Copyright Act 1976; Digital Millennium Copyright Act 1998
- **European legislation:** EU Parliament and Council Directive 2001/29/EC (“Copyright Directive”); EU Parliament and Council Directive 96/9/EC (“Database Directive”); derived Member State laws

\* TRIPS = Trade-Related Aspects of Intellectual Property Rights

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## ***INTERNATIONAL TREATIES SPECIFICALLY MENTIONING DATABASES:***

**TRIPS Agreement (1994):** Article 10 (2). “Compilations of data or other material, whether in machine-readable or other form, which by reason of the selection or arrangement their contents constitute intellectual creations shall be protected as such”.

**WIPO Copyright Treaty (1996):** Article 5. “Compilations of Data (Databases) ... Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such”.

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## ***DATA BASE PROTECTION IN EUROPE AND USA***

EU: General protection under Copyright Directive (2001/29/EC) plus specific protection under Database Directive (96/9/EC)

- Intellectual effort + time/money (“substantial investment”) is sufficient for protection in EU though rights duration is shorter (15 years)

USA: databases are protected under Copyright Act (Section 101) as compilations (*“collection and assembling of preexisting materials or of data that are selected in such a way that the resulting work as a whole constitutes an original work of authorship”*.)

- Effort not enough in US: some originality is required (but not much)



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## ***CAN A TM BE CLASSED AS A DATABASE?***

Definition of database in EU Directive (Art.1.2): **“a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means”**.

TMs contain data which are:

- arranged systematically and methodically
- Individually accessible by electronic means

**There is no requirement that the database be created for the purpose of retrieving individual items of information**

Classed as compilation in US legislation: must constitute an **“original work of authorship”**. This is more difficult terrain.

# ONLY THE STRUCTURE IS PROTECTED, NOT THE CONTENT:

Article 3 of the Database Directive states:

*“1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. **No other criteria shall be applied to determine their eligibility for that protection.***

*2. The copyright protection of databases provided for by this Directive **shall not extend to their contents** and shall be without prejudice to any rights subsisting in those contents themselves.”*

**The database is like a filing cabinet: the furniture belongs to the craftsman, but not the documents inside**



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## ***EVEN IF A TM CONSTITUTES A DATABASE, IT MAY NOT QUALIFY FOR PROTECTION:***

### **European Court of Justice ruling in *Football Dataco v Yahoo* (March 2012):**

To qualify for copyright protection, the selection or arrangement of the data in the database must amount to “*an original expression of the creative freedom of the author*”.

This criterion is not applicable when database creation is dictated by “*technical considerations, rules or constraints which leave no room for creative freedom*”.

Additionally: the ECJ differentiates between skill and effort spent collecting and arranging data, and skill and effort spent making the database: in the case of TMs, the translator is creative and original in translating segments, but not in making the database.

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## ***IP LEGISLATION PROTECTS : Both databases and translations***

Under international, US and EU legislation, translations enjoy the same copyright protection as the original documents (Article 2.3 Berne Convention 1886-1979).

Therefore:

- As a database, the TM will qualify for copyright protection provided it can be shown to be the author's "intellectual creation";
- The translated document qualifies for protection, provided the author's authorisation has been obtained;
- But ...
- Does the original document always qualify for copyright protection?

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## ***DO ALL ORIGINAL DOCUMENTS ENJOY COPYRIGHT PROTECTION?***

According to WIPO, for a work to enjoy copyright protection “the form of expression must be an original creation of the author”.

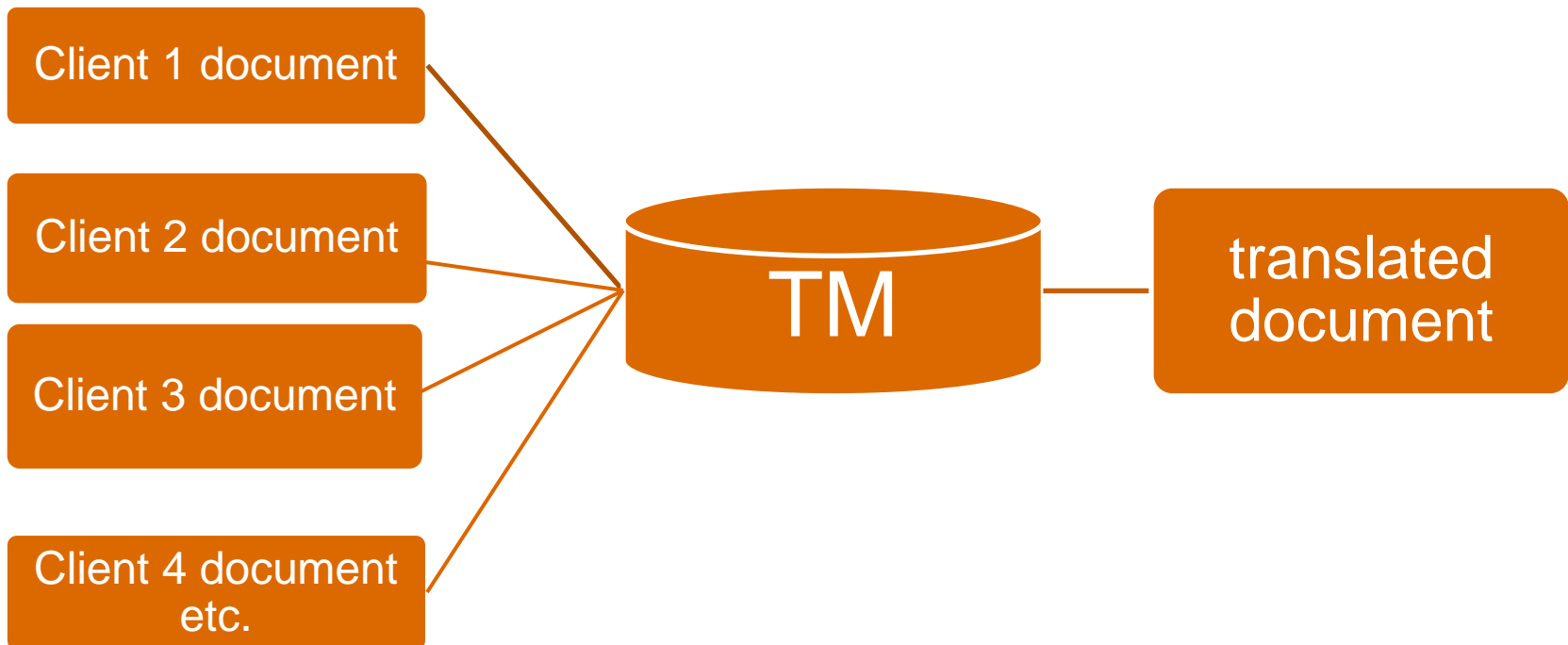
Therefore, is it possible for a:

- Printer manual
- Audit opinion
- Employment contract
- Etc.

To be regarded as an original creation, when they contain completely standard, unoriginal language?

## *TRANSLATION FLOW WITH TM:*

target document is like a jigsaw puzzle comprising segments of source documents from various different clients



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## ***RIGHTS OF THE TRANSLATOR***

### **Freelance translators, US:**

In USA, translators' rights can be restricted under "work made for hire" provision in contract:

- U.S. Copyright Act define nine categories of service which can be treated as "work made for hire".
- One of these is translation, provided that such work is specially ordered or commissioned. If so, then:
  - *"The employer or other person for whom the work was prepared is considered the author for the 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"* (Section 201.b U.S. Copyright Act 1976).

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## ***RIGHTS OF THE TRANSLATOR***

### **Freelance translators, Europe:**

In EU no such legislation exists, so agency-freelance relation must be specified in contract

### **In-house translators:**

Under Spanish law and in other jurisdictions the right to the economic exploitation of the intellectual creations of salaried employees pertains to the employer, unless otherwise stipulated contractually (Art. 51, Copyright Act). In US, work-for-hire applies.

**In the case of both free-lance and salaried workers, translators always retain the “moral rights” in their translations**



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## ***TMs IN TRANSLATION COMPANIES***

**Translation memories created by in-house salaried translators belong to the employer (by law, or contract).**

All IP rights in TMs sent to freelancers remain with the language services company. This can be stated when sending TM files to freelancers:

*“The attached translation memory file is the intellectual property of LSC Ltd. and may not be copied, assigned or sold without the prior authorisation of LSC Ltd; furthermore, said translation memory may only be used in performing translations commissioned by LSC Ltd.”*

(or words to that effect)

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## *TM<sub>s</sub> IN TRANSLATION COMPANIES*

We do not need to send large TMs to freelancers:

1. It is often easier to send a pretranslated bilingual file in the appropriate format: rtf, xliiff, etc. to the translator
2. Or, project-specific TMs can be generated using our translation software, containing only the segments of a larger TM required for the specific job

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## *TMs IN TRANSLATION COMPANIES*

Is a free-lance translator legally required to submit the TM used in a translation when delivering the translation to the language services company?

- Probably not, in the light of existing IP legislation.

Under database legislation, the TM belongs to whoever creates it, assuming it qualifies for protection.

To avoid uncertainty, best to specify this in writing:

*“The independent contractor/translator/service supplier agrees that any translation memory file [or machine-readable document in bilingual format] generated during the translation process and ownership rights thereto shall be transferred to LSC Ltd. upon delivery of the commissioned translation .”*

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*Thank you for your kind attention*

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