

## CHAPTER TEN

### *Suggestions for optimizing the agency of freelance legal translators*

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Through an interdisciplinary lens of corporate agency theory, this chapter explores the production of translated written<sup>1</sup> legal discourse by freelance workers<sup>2</sup>, and how the latter's agency could be optimized within that environment, suggesting some good practices.

The supply chain from originator to end-user will be outlined, to set the freelance legal translator in a context of information flows, and highlight potential weaknesses in the communication process, using the legal translation *brief* as a case in point.

Four key layers of agency “negotiated” by the legal translator will then be unpacked, consisting of: textual level; source and target legal systems; source and target generic sublanguages; and functional purpose(s) of source and target texts.

#### **Outsourcing of legal translation to freelance workers**

First, it is useful to elucidate the market employing freelance legal translators. The outsourcing process can involve intermediaries such as translation agencies, networks or teams of translators, or online platforms<sup>3</sup>, or direct contracting out to individual translators or translation companies by lawyers, in-house counsel, court officials, paralegals or others responsible for procurement.

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1. This research focuses on written translation rather than oral interpreting.
  2. The characteristics of freelance translators' agency differ significantly from the situation within institutions, to which much legal translation literature relates. Clearly, not all legal translation is outsourced, but the freelance market may be surprisingly significant in terms of volumes.
  3. Such as Proz.com, TranslatorsCafé.com, GeoWorkz.com, etc.

In most industries, the specifications stating the client's requirements are an essential part of the ordering process when placing work with an external supplier. A translation order, however, almost always contains only cursory specifications<sup>4</sup> – typically, the following:

- Date of delivery
- Language pair
- Rate and number of words.

Where agencies or end-user clients have regular contacts with translators, it is unlikely that a signed formal agreement will be in place, work being placed on an ad hoc basis, and each “purchase order” will consist of an informal email containing the above “specifications” and a request to proceed. The order almost never includes detailed instructions relating to the translation process such as recommended terminology, style, register, reference documents for consistency, intended users or purpose.

### **Some relevant concepts from mainstream agency theory literature**

Mainstream agency theory primarily involves studies of businesses and organizations. It is important to differentiate *outsourcing* – which can be defined as the substitution of or abstention from the internalization of an activity (Gilley and Rasheed 2000) – from *agency theory*, the theoretical framework, originating in organizational theory, through the lens of which this chapter proposes to examine legal translation outsourced to freelancers.

Agency theory acts as a kind of umbrella, engendering literature on a broad range of sectors, including both tangible goods and intangible services.

In a widely cited 1989 literature review, Eisenhardt traced developments in agency theory from its origins in the 1960s and summarized the theory as follows:

Agency theory is directed at the ubiquitous agency relationship, in which one party (the principal) delegates work to another (the agent), who performs that work. Agency theory attempts to describe this relationship using the metaphor of a contract.

Agency theory is concerned with resolving two problems that can occur

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4. This important aspect has been examined in detail by the author in two surveys of the briefing of freelance legal translators carried out between 2013 and 2014.

in agency relationships. The first is the agency problem that arises when (a) the desires or goals of the principal and agent conflict and (b) it is difficult or expensive for the principal to verify what the agent is actually doing. (Eisenhardt 58)

In the context of outsourced legal translation, the client or intermediary that issues orders for work can be considered to be the principal, and the translator to be the agent. As we saw in the first section, the translation contract is often more “metaphorical” than a formal documentary act governing relations between freelance translators and their principals. Eisenhardt’s case b) – the difficulty for translation principals of verifying translators’ output – is of clear relevance, since it is unlikely that clients are native speakers of or even understand all target languages into which their documents are being translated. Goal conflict is a rather more complex issue, but still highly relevant, which we will examine below.

Since Eisenhardt’s seminal work, agency theory has been applied to many areas of business and management studies: corporate governance, executive compensation, incentives, supply chain management, manufacturing organizations, auditing, accounting, and financial markets.

A number of central concepts recur in agency theory literature devoted to the business world. I will now outline the concepts that I see as being of particular relevance to legal translation.

### **Goals**

Agency theory literature makes frequent use of the terms *goal conflict*, *goal convergence* and *goal (in)congruence*. Two parties to a contractual relationship generally have different goals – these may consist of achieving a lower/higher price for work, completing the work in more/less time, individual views of adequate quality levels, etc. As the relationship progresses, these goals may conflict, converge or become more or less aligned.

Logan suggests two solutions – the first “to diagnose the relationship from both sides of the contract”, and the second “to engage agency theory to help design the types of contracts and relationships necessary to provide and support an environment of trust” (2000: 22). Tate *et al.* (2010) add that “goal congruence between Principal and Agent is required for contracts to be effective”. The benefits of developing relationships of trust in a service provision context, especially one involving highly confiden-

tial documents, should also be evident to readers.

In the context of (legal) translation, the principal's "technical" goals should be defined in a translation brief, specifying not only price and deadline, but also recommended terminology if requested, style, register, reference documents for consistency, intended users and purpose. In this regard the quality standards EN15038:2006 and ISO 9000 have been put forward by Strandvik (forthcoming) as a useful way forward for legal translation, in particular as regards "*subject-field specialization, systematic revision, structured use of translation briefs and knowledge-sharing among the different actors*". Detailed parameters relevant to a translation brief can also be found in ASTM<sup>5</sup> standard F2575-06. For its part, the translation industry has also addressed the issue with guidelines for buyers.<sup>6</sup> When a brief is clearly stipulated, the translator will be better able to provide output that corresponds to the principal's goals.

### ***Dangers***

***Information asymmetry***, a fundamental tenet of agency theory, occurs when one party to a transaction has more or better information than the other party.

As regards agency theory literature, information asymmetry is seen as being to the advantage of the agent, requiring, for example, the principal to set up monitoring procedures. Traditional agency theory scholars have been silent about asymmetries that might disadvantage the agent.

Eisenhardt (1989) stressed that information asymmetry between principal and agent is increased in short-term agency relationships (Eisenhardt 1989: 62), since over time they will make discoveries about each other.

A subset of information asymmetry, *knowledge asymmetry*, was put forward in particular by Sharma (1997), who underlined the fact that principal-professional agency exchanges involve

[...] information asymmetry that is particularly severe, since principals

5. ASTM: The American Society for Testing and Materials.

6. e.g. *Translation: Getting it right* and *Translation: Buying a non-commodity*, both published by the Institute of Translation and Interpreting (UK) and by the American Translators' Association (USA), available in a variety of languages.

do not possess the technical knowledge to evaluate the effort invested or the outcome accomplished by professional agents. (Sharma 1997: 768)

and emphasized that

Not knowing *how* the agent does a job is distinctly different from and compounds the problem of not knowing *what* the agent does. (Sharma 1997: 768)

When it comes to translation, clients are rarely familiar with how translators do their work, or what translation actually comprises. Equally though, in this field, information/knowledge asymmetries are not necessarily to the advantage of the agent – in fact making their job more difficult. Information about the text’s context is especially crucial –.

In the legal field, knowledge asymmetries not only arise owing to the above – there is a constant danger in the (re)construction of conceptual differences in interactions among professionals from different cultural frames and functional systems. The latter has been the focus of work by Engberg (2014) who has termed his approach *Knowledge Communication*. In the case of legal translator-agents, in order for them to effectively apply their *knowledge* (in this case, as professional agents, supposedly asymmetrical in their “favour”), they need more contextual information from their client – in other words the *information* asymmetry favouring the client-principal must be rebalanced towards the translator –. In this way they may be better armed to deal with the highly challenging *knowledge communication* issues arising.

The traditional agency theory approach is a dyadic relationship between principal and agent, or buyer and seller. Although corporate agency theory has been little applied in the field of Translation Studies<sup>7</sup>, Abdallah (2010) used it as her theoretical framework to examine translation (not focused on legal texts) production networks, stating that “the theory is well-suited to complement network-based research” (Abdallah 2010: 13).

Abdallah (2010) found that

inadequate or substandard source materials and lack of relevant information are not uncommon in the translation industry. (Abdallah 2010: 20)

She quotes from one of the interviewees in her study as follows:

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7. See also Pym *et al* (2013), concerning information asymmetry.

The translator does not always know whether the gadget is room size or palm size. 'It is not important, just go ahead and translate'. (Abdallah 2010: 21)

and adds:

translators are not always able to perform, post-contractually, their work adequately due to the restricted flow of information between the various principal-agent dyads. (Abdallah 2010: 22)

The situation is worse still where an intermediary interposed between principal and translator may in certain instances withhold pertinent information from the translator (Abdallah 2010: 22), harming quality.

To conclude this section on the dangers of the principal-agent relationship, this analysis will posit that it is very much in the interests of the principal (the translation commissioner) to be more concerned with the risks involved in supplying the agent (translator) with incomplete information (an insufficient translation brief), as regards the outcome (translation quality), and especially if intermediaries are interposed, in particular because the translation may then not be performed with the aim of meeting the principal's goals – simply because the translator is unaware of what those goals actually are.

### ***Power and empowerment***

As we saw in the initial definition of agency theory above, the concepts of agency and contract are entangled, underscored by the use of the legal terms of art "principal" and "agent". There are, however, some differences. In an agency relationship involving freelancers there may be less independence between agent and principal as compared, for example, with contracting parties that are both firms. Particularly where the agent is an individual, the principal-agent relationship may be more hierarchical or power-driven than a formal contractual relationship, and as a result there may be greater scope for principals to punish, control, or reward agents (e.g. Rigdon 2009).

As stated above, the use of freelancers in the translation industry is characterized by informal outsourcing, with few formal long-term contracts. There are thus many opportunities for such punishment and control. This is further exacerbated by the issue of translators' low status (e.g. Pym *et al.* 2013; Dam and Zethsen 2009; Katan 2009).

Most agency models assure that the principal dominates. Regarding

professional agents, however, Sharma (1997) holds that due to their expertise, they wield power over what he terms as “*lay principals*”. However, he mitigates this by adding that “whether professional agents can and actually do take advantage of their power” will vary according to four main restraints: self-control, community control, bureaucratic control, and client control (Sharma 1997).

Owing to many factors, including lack of contractual security, lack of direct contacts (see below on the chain of supply), and low perceived status, when the professionals concerned are freelance legal translators, unlike other “high perceived status” professionals such as lawyers or doctors, their empowerment as regards their textual agency may be severely limited.

### **How the concept of agency has so far been applied within Translation Studies**

Rather than agency theory, as understood in the context of organizational and management theories through the metaphor of a contractual relationship, it is generally the concept of agency as human intervention that has been employed, construed in various ways, in Translation Studies.

A Translation Studies symposium organized in Tampere, Finland in February 2008 collectively decided on a definition of agency as “willingness and ability to act” (Kinnunen and Koskinen 2010: 6). The latter form an integral part of the age-old tension that translators face constantly – how far can they “intervene” in a text, how much can they “change” it to suit the requirements or preferences of the target language or culture. Agency may also refer to choosing a given text – especially in sensitive situations or where the very fact of translating a text may somehow promote it or allow its dissemination.

In her overview of “agents of translation” Buzelin (2011: 7-8) examines the usefulness of studying translation “from the viewpoint of the agent”. She argues that this focus might be “ultimately empowering to the profession”, and, quoting Dam and Zethsen (2009: 11), “be able to strengthen the status, image and identity of the profession”.

### ***Social / sociological issues***

A number of Translation Studies scholars have used agency as a means

to approach social and sociological issues<sup>8</sup>, such as activism in conflict situations, or narrative, or to consider how translators exert their agency as a tool for mediation or intervention (e.g. Gouanvic 2005; Inghilleri 2005; Baker 2006).

### ***Literary translation***

Much scholarly work on agency in the discipline of Translation Studies has been devoted to literary translation – such as choices made when importing foreign literature, the questioning or fostering of societal conventions through translated works, literary translation styles, and research on the publishing industry (e.g. Milton and Bandia 2009).

### ***Interactions with translation technology***

Agency has also been used to “conceptualize translation practice [...] and...] translators’ interaction with translation technology, both individually and collectively” (Olohan 2011: 342).

For Cronin (2010), new technologies and post-print literacy have led to “a move away from a traditional stance on translators’ agency – Jerome alone in the desert – to a pluri-subjectivity of interaction”.

The latter model of interaction, incidentally, resembles the complex interplay between the subjects involved in the commissioning of legal translation.

### ***Court interpreting***

For the sake of completeness, despite the expressed focus of this chapter on the written form, I would like to briefly cite the only Translation Studies research applying agency to the legal domain that I have been able to identify. It is a study of interprofessional collaborative practices in court interpreting in Finland by Kinnunen (2010).

Once again we encounter the issues of status and lack of empowerment, lack of process regulation, and insufficient formulation of requirements.

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8. Although agency in sociology, and literature, are major areas in Translation Studies, I will not go into detail here, insofar as they are less relevant to the context of legal translation performed by freelance agents.

The study consisted of

practitioner interviews (including judges, clerks, interpreters, and a lawyer, as well as a leading language police authority [...]), observations in district court settings, recordings of court interpretations. (Kinnunen 2010: 136)

Kinnunen posits that Finnish courts do not currently adapt their procedures according to whether they involve other languages or not, and that the court interpreter's role, status, agency and external practice have not been suitably defined or regulated by Finnish legislation (Kinnunen 2010: 128). She further argues that interprofessional collaboration is "not always rational and purposeful by any means" (Kinnunen 2010: 127).

Thus, despite a wide range of applications of the concept of agency to Translation Studies, broaching and embracing interventionism, philosophy, sociology, and literature, the discipline has so far not availed itself of agency to shed light on legal translation practice.

### **The chain of supply of freelance legal translation**

In order to highlight the practical issues involved in optimizing a freelance legal translator's agency, it is essential to take the measure of the chronological chain of dyadic interactions between actors as the text progresses through its "journey" from source text to target text.

As a preliminary, it is important to disambiguate some terms that are central to the following discussions.

I have chosen the term "*actor*"<sup>9</sup> to describe the parties involved in the outsourcing of legal translation. The term "stakeholder" might also be used as an alternative for "actors", but I feel that "stakeholder" implies a degree of control that legal translators in particular do not possess at the present time. In the context of translators' agency, the term "actor" has been used, *inter alios*, by Inghilleri (2005), Abdallah (2010), and Olohan (2011).

"Agency" will be defined as – "*the ability to act*" (Kinnunen and Koskinen 2010: 6). One might almost rephrase this as "the wherewithal to

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9. "A participant in an action or process" (Oxford Dictionaries online <http://oxforddictionaries.com>).

work”. It should be noted that the use of this term in other contexts, such as that of company law – the “law of agency”<sup>10</sup> (where an agent is akin to a proxy) – has been excluded here. “Agents” will be used as an alternative term for translators, who can, to differing extents and in different ways, exercise their agency. “Agents” as they are understood in the field of literary translation, i.e. writers’ representatives, do not participate in the supply chain in the context of legal translation. I have also excluded the reading of “Agent” as any intermediary between translator and end-user (see Milton and Bandia 2009: 1). “Agencies” in the plural form is used to refer to translation service provision entities.

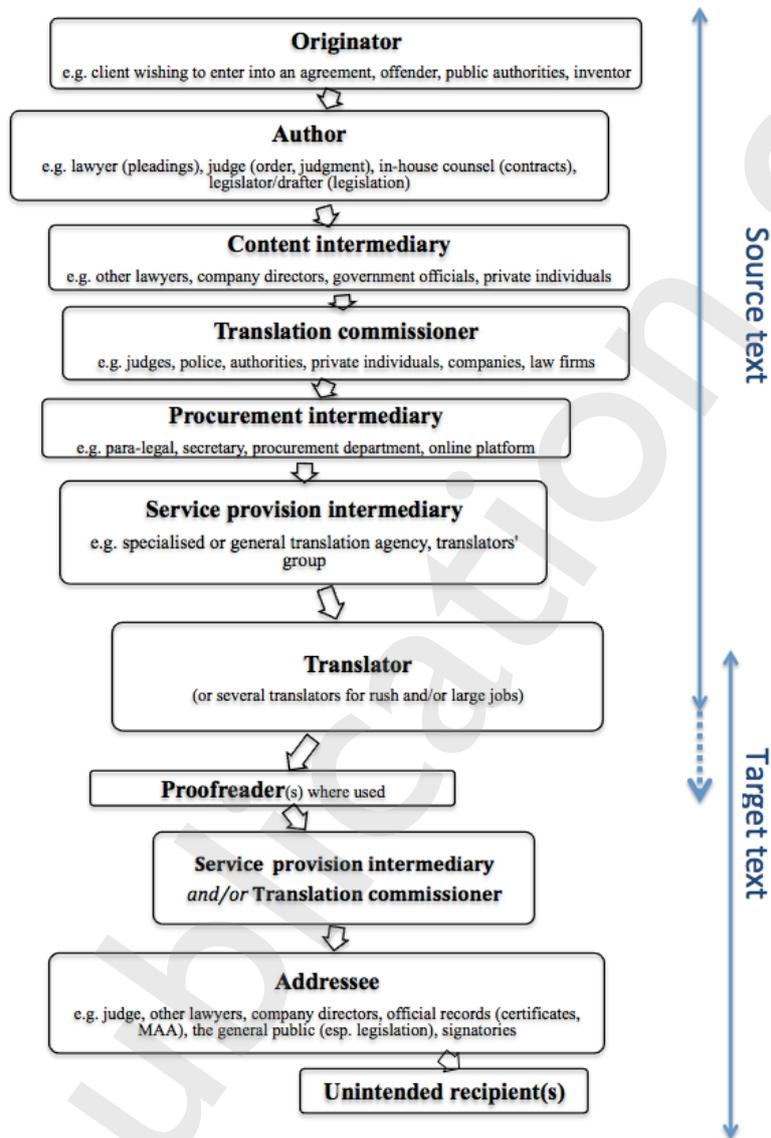
The term “principal”, typically used by agency theorists, will be replaced by “commissioner” (e.g. Milton and Bandia 2009) in subsequent parts of this analysis, since, as already mentioned, the existence of a formal contract as implied by “principal” is relatively rare when individual legal translations are outsourced to freelancers.

The figure below aims to illustrate the complex supply chain generated when legal translation is outsourced to freelance translators. It is presented in chronological order, from the stages comprising the drafting and handling of the source text through to the stages of production and reception of the target text.

*Fig. 1 Flow chart representing the steps involving  
in outsourcing legal translation to freelancers*

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10. For a summary of doctrine, national and international legislation see <http://www.trans-lex.org/911000>.



Many actors may<sup>11</sup> be involved in the chain of supply of legal translation.

11. Figure 1 aims to show a variety of alternatives. All of the actors included do not necessarily participate in all instances of text production. Equally, the figure

Let us first examine each actor in turn.

a) Originator

The originator will depend on the category of legal text. Political parties or pressure groups may be at the origin of legislative texts. In criminal law, the originator may be the party committing a crime that subsequently generates a number of case documents. In litigation, the originator may be the injured party (claimant) or the defendant or respondent party, or even third parties in joinders. Thus I shall define the *originator* as being the party (person or entity) whose actions *trigger* the writing of a given legal text.

b) Author

In the context of legislation, the author will be the legislator or drafter. In code-based systems, notaries draw up documents at their client's behest. Lawyers exchange written submissions. Judges may write either using complex legal terms or language that is more accessible to the general public.

c) Content intermediary

By content intermediary, I refer to those actors that adapt or have a say in textual material produced. Junior counsel, for example, may have their writing checked or revised by senior lawyers. Non-legal professionals can also affect content – for example directors or shareholders wishing to change the terms of a contract, or individuals in the case of private deeds. Whole teams collaborate to produce legislative texts.

d) Translation commissioner

In judicial contexts, a judge or public prosecutor may request a translation as part of an international case either under requirements for a fair trial, as an investigatory measure, at a pre-trial stage, or under cross-border procedures. Lawyers may commission translations either of documents in their own case file or those of the adverse party. The police may request a translation through the court as part of the letters rogatory process. Official authorities may require translations from private individuals in support of an application – e.g. birth/marriage/death certificates, driving licence, diplomas, etc. Many different actors may thus initiate the translation of a document. I shall refer to the actor *triggering* the transla-

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seeks to represent the majority of cases, but does not profess to cover all possible text trajectories.

tion as the *commissioner*.

e) Procurement intermediary

In the legal field, interaction between the translation commissioner and the translator providing the service is often indirect. Thus a paralegal, a secretary, or a procurement department may deal with finding a translator, and may even offer work through an online platform such as Proz.com.<sup>12</sup>

f) Service provision intermediary

In some cases, translation commissioners or procurement intermediaries may work with legal translators directly. Where this occurs, it tends to be the result of an established long-term relationship. However, a service provision intermediary is often interposed, both before and after the translator's work. This may be a specialized legal translation agency, a general translation agency, or a translators' group or team.

g) Translator

A legal document may be translated by a single translator, or placed with several translators in cases of high volumes – e.g. in high-profile cases or tender packages – or if there is a very short deadline.

h) Proofreader

The terms “reviser” and “reviewer” are also used.<sup>13</sup> Whilst professional translators always proofread their own work prior to delivery, many service provision intermediaries will retain an in-house or freelance proofreader. Intermediaries with high quality standards employ more than one proofreader – i.e. one native speaker of the source language and one of the target language, or one or more proofreaders specialized in copyediting. An ideal situation would of course be proofreading by a bilingual lawyer, preferably one qualified in both source and target legal systems. However, it has been observed that translation rates would rarely allow for persons with such a profile to be involved.

More and more, freelance translators are being asked to proofread, or “post-edit”, the output of machine translation, in the legal field as well. Indeed, certain agencies specifically mention post-editing services on their websites, in particular for large quantities of documents such as in

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12. A community platform which allows clients to post job offers and obtain quotes directly from freelancers.

13. Translation quality standards make distinctions in defining these roles.

the discovery process.

i) Addressee

Once the translation has been checked, it is delivered to the addressee, who may or may not be one and the same as the commissioner. As a simple example, the translation of a contract may be commissioned by a lawyer, but delivered to the company directors. The translation of a formal notice may be commissioned by a process server, but delivered to the defendant party.

j) Unintended recipients

After delivery, or in parallel to it, translated legal documents may fall into the hands of unintended recipients or receivers. By “unintended”, I refer to actors that the translator did not have in mind when producing the target text.

My aim in the above examples has been to illustrate the serpentine path followed in the production, translation, and subsequent delivery of a legal document, in order to demonstrate how information flows can easily be waylaid or hampered, and how information asymmetries can arise. It is generally accepted that contextual and extra-textual information is crucial to enable translators to do a good job. This complex supply chain does nothing to facilitate their task.

### **The expression of customer requirements: Briefing**

In discussing agency theory as applied to supply chain quality, Zu and Kaynak underscore the following:

Quality gurus have strongly suggested if firms are to provide products or services that customers want, it is essential to explicitly identify and assess customer **requirements** (2012: 435, citing Hackman and Wageman 1995, my emphasis).

This is in accordance with the well-established definitions of quality as meaning “compliance with requirements” (e.g. ISO 9000).

A term which has apparently not been mentioned in the literature on agency theory and that we encounter both in the context of legal services and that of creative industries, as well as Translation Studies literature, is the “*brief*”. The noun “*brief*” can be defined generally as: “a set of instructions given to a person about a job or task”, and the verb as “to instruct

or inform (someone) thoroughly, especially in preparation for a task.”<sup>14</sup>

If we consider outsourcing to be the obtaining of a service from an external supplier, to a certain extent the majority of legal services are outsourced, apart from those corporations possessing in-house counsel, inasmuch as lawyers are usually self-employed or working within small groups.

The definition of “brief” in *The Oxford Companion to Law* reads as follows:

... a document of **instructions** to counsel to appear in court including also the **papers relevant to the case**, copies of pleadings, proofs of the evidence of witnesses, etc. prepared and sent by the instructing solicitor (Walker 1980: 152, emphasis added)

The process of “instructing” a lawyer or barrister to appear in court would be unthinkable without the provision of relevant documents. The principal-client thus provides the agent-lawyer with their requirements and with the information that the agent will need in order to achieve a satisfactory outcome.<sup>15</sup>

Where a lawyer’s client is an individual, that client will play the role of a lay principal. If the client is a corporation, in-house counsel may be able to act as expert buyers of the service, depending on the complexity of the legal issue involved in the case.

When a lawyer purchases a translation, they themselves become a lay principal. In a relationship of trust, we would hope that translators could educate their clients and thereby be properly *instructed* by the latter, thus leading to better outcomes for all.

In order to illustrate why an understanding of objectives, purpose and framework is just as crucial for legal translators as for lawyers, consider the following alternatives for a standard lease agreement applying to the Chinese stores of a French multinational, being translated from French to English:

- to be signed in English as the binding version with Chinese subsidiaries, to which English law will apply;

14. Oxford Dictionaries online (<http://oxforddictionaries.com>)

15. Through the intermediary of a solicitor in some countries such as the UK, Australia, or Hong Kong.

- to be signed in English as the binding version with Chinese subsidiaries, to which Chinese law will apply;
- to be signed in English as the binding version with Chinese subsidiaries, to which French law will apply;
- for gist comprehension by English-speaking Chinese subsidiaries – the original French version is to be signed and will be binding;
- translated into English as a “hub translation” – for subsequent translation into Chinese.

In the first case, the translator must pay particular attention to the transfer of French civil law terms into English common law terms, since English law is to apply and English is to be the binding version.

In the second case the implications under the three, very different, legal systems (English, French and Chinese) of any transferred concepts should be carefully weighed up.

Where French law is to apply, in the third example, the use of footnotes or glosses including the original source term could be considered for system-specific legal concepts.

The English translation for gist comprehension will be subject to a lower degree of scrutiny, and in *some* cases might be a candidate for translation by a less experienced translator, or, more recently, by sophisticated machine translation systems.

The assignment involving a hub translation might make more liberal use of untranslated loan words for potentially difficult French terms, to enable the Chinese translator to bypass the hub and refer directly to the original term.

Turning now to the “non-technical” and purely contractual terms of the translation brief, of particular relevance is the following analysis by West (1997: 4):

The project-based agency-client relationship would be classified as ‘**arm’s length**’ and **adversarial**. It equates to the traditional purchasing paradigm of putting a specific job out to tender and choosing the best bid. (emphasis added)

Price pressure and the “adversarial” nature of procurement are certainly features of the translation market.

West also differentiates between “short-term project-based” and “long-term collaborative” relationships.

Once the agency has offered and implemented a solution, the relationship is dissolved. [...] The trade-offs are that there may be a lack of commitment from either side and a need for **greater coordination**. (emphasis added)

Regarding the positive effects of coordinated collaboration between lawyers and linguists and knowledge-sharing on translation quality, and the importance of identifying the target-text purpose and the level of quality required, Strandvik (2012; forthcoming) has provided many salient examples relating to translation at the European Commission.

### *Functionalism in translation theory*

When discussing the briefing of translators in any domain, one cannot fail to refer to the extensive body of work from Translation Studies theory on functionalism,<sup>16</sup> including *Skopostheorie*. However, since the aim of this chapter is to focus on the contribution that agency theory may have to the practice of freelance legal translation, I will limit myself to a small number of particularly relevant specific contributions in this area (see also Šarčević 2000):

[...] information about the target-text addressee [...] is of crucial importance for the translator. (Nord 1997: 22, citing Reiss and Vermeer 1984: 101)

[...] unless the skopos for the target text is specified, translation cannot, properly speaking, be carried out at all. (Schäffner 2001: 237)

Translating without clear instructions is like swimming without water. (Nord 1997: 78)

Regarding functionalist approaches and the requirements of legal translation, Garzone (2000) noted the emergence of “legal equivalence”, a principle similar to functional equivalence but adding “the consideration of the legal effects that a translated text will have in the target culture” (see also Gémard in this respect, 1998). As regards the suitability of a functional approach to legal translation she concluded that:

[...] the degree of equivalence to be achieved in the translation of a given text is not absolute, but depends first and foremost on the TT [target

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16. As distinct from the field within comparative law, propounded in particular by Zweigert and Kötz.

text] intended function as well as on the nature of the ST [source text]; the whole process is [...] suitable for virtually all types of legal texts (Gémar 1998: 9).

### ***Interdiscursivity, intertextuality, and genre***

A constituent of an effective legal translation brief is also the making available of any reference documents (e.g. previous translations, related texts and legislation, glossaries, websites). Bhatia, in particular, has stressed the role and relevance of context in legal drafting for professional purposes, underscoring the multifaceted space in which texts are impacted by intertextuality and interdiscursivity (2010).

Such contextual documents are, however, almost never supplied to the freelance legal translator. The implications of this are, *inter alia*, a narrower view of the case, inconsistency of cross-referencing, potential inconsistency of terms where they have been previously translated, and the creation of extra work for the translator, who then has to seek out reference documents – if indeed they can be obtained.

The notion of interdiscursivity is closely associated with genre (e.g. Bhatia 1997; 2004; 2008; 2010), which is another key element of what is required of a (translated) legal text. Indeed Gotti (2012: 60) states:

The conventional use of [legal] genres also produces certain expectations among readers, and whenever the rules are broken a text may be misunderstood or rejected.

Hence if translated legal texts do not comply with the generic conventions of the community receiving them, they are unlikely to be acceptable.

Texts primarily conforming to a legal genre can also overlap with or include, embedded within them, “technical” genres – domain-specific sublanguages – i.e. engineering terms in pleadings in a case involving washing machines, or agricultural terms in legislation on seed rights.

### **A topology of the freelance legal translator’s agency**

I shall now present the legal translator’s agency – their intervention – in the form of a topology of interactions. My aim is to move from seeing the freelance legal translator (if they are seen at all) as accessory to the process, functioning as an isolated “island”, to becoming an integral part

of it – a *hub*.

Indeed, in practice legal translators are an “interface” between actors, languages, legal systems, and sublanguages – as we shall see. If legal translators are empowered and such a “hub” status is recognized, it can only render the results of their (complex) labours more effective.

*Fig. 2 The freelance legal translator as a crucial hub*

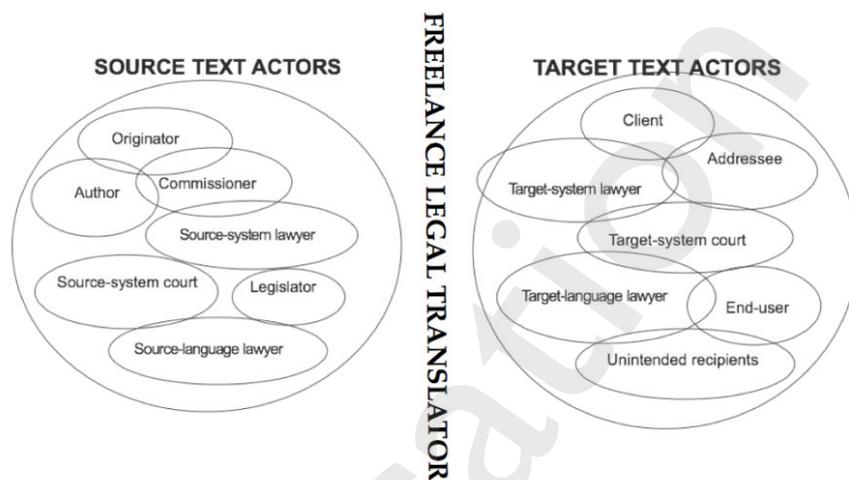


Figure 2 above shows the freelance legal translator’s position as a crucial hub between the actors associated with the source text and those associated with the target text. However, the translator often has no direct contact with any of the actors apart from the procurement intermediary/ service provision intermediary, and in many instances does not know who the target text actors actually are.

The translator’s role, however, not only encompasses interaction with source text and target text actors. It also consists of textual agency.

In Figure 3 below, I depict the legal translator’s agency as it relates to the text. At a first level, the translator intervenes on the source *language*, to produce a text in a different, target language. Here, the legal translator’s task is analogous to that of translators in other domains.

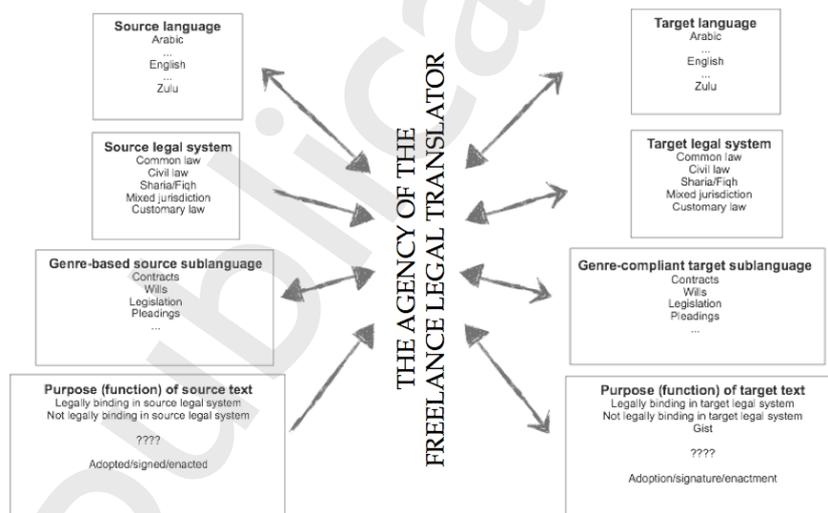
At a second level, however, the legal translator’s work becomes more complex, as they “negotiate” solutions between the source *legal system* and the target legal system. However, some legal documents, although translated into a different language, may not cross substantially different

legal cultures – e.g. texts from French to Italian, both in code-based, civil law systems.

At a third level of difficulty, the legal translator must transfer the specialized source sublanguage of a given genre – e.g. wills, into the specialized target sublanguage of that genre. Here, compliance with *generic sublanguages* will be a key requirement, and, in some instances, with technical domain-specific sublanguages depending on the subject of the text.

The fourth and final layer to the legal translator’s work is to ensure that the *purpose* or *function* of the source text is correctly reflected in their target text, *if* such a reflection has been requested by the client, or indeed to adhere to a different purpose for the target text. For example, if the source text is binding legislation, a translation of it may be requested to inform the general public in another country of its content. In this case, the commissioner will need to specify whether they want the translator to produce a text that is accessible for the general public, thus to an extent “rewriting” the text, or whether the translation is to be a literal reflection of the source, such as might be produced for study by comparative lawyers.

Fig. 3 The multiple layers of the freelance legal translator’s textual agency



### **Weaknesses and dysfunctions in the freelance legal translation outsourcing process**

As we have seen in this chapter, some recurrent potential weaknesses when outsourcing freelance legal translation relate to tortuous information flows and information asymmetry, as well as goal incongruence insofar as goals are unknown – i.e. the insufficiency or total lack of a legal translation brief.

The surveys referred to earlier, carried out by the author in 2013-14 are currently being analysed. However, initial results provide some examples of resulting dysfunctions “downstream”, found in the target texts supplied. Commissioners’ principal criticisms of texts include terminological appropriateness issues, problems of register, and not being “fit for purpose.”

In purely quantitative terms, 81% of those commissioning legal translations from freelancers worldwide<sup>17</sup> have replied that the intended purpose of a translation is not given or rarely given “upstream”. This result is reflected in a similar figure of 77% quoted by translators.<sup>18</sup> The implications of this process dysfunction on quality should be clear from the discussions on the need for contextual and interdiscursive information when producing a translation. It is also at odds with the recommendations of recognized official quality standards.

### **Suggestions for good practices**

I hope to have shown in this chapter that agency theory has much to offer a study of the outsourcing of legal translation to the freelance market. We have also had a taste of the complex interactions involved in the legal translation process, both in terms of actors, and in terms of textual agency.

Some suggestions to improve the status quo include: the *systematic and comprehensive briefing* of freelance legal translators to diminish information asymmetry and goal incongruence; *defining purpose* and

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17. 142 respondents, 35 countries.

18. 207 respondents, 33 countries.

*target audience* as prerequisites to achieving the quality standard of fitness-for-purpose; and more generally the routine inclusive treatment and *consultation* of legal translators, thereby bringing outsourcing processes into line with existing international standards for translation quality.

In this way we may be able to optimize the valuable resource that is the freelance legal translator, positioned as they are at the hub of a process affecting, *inter alia*, the outcome of civil and criminal cases worldwide.

## Bibliography

- Abdallah, Kristiina 2010. Translators' agency in production networks. In Kinnunen, T. / Koskinen, K. (eds.), *Translators' agency* (11-46). Tampere: Tampere.
- Baker, Mona 2006. *Translation and conflict: A narrative account*. London: Routledge.
- Bhatia, Vijay. K. 1997. Translating legal genres. In Trosborg, A. (ed.), *Text Typology and translation* (203-214). Amsterdam: John Benjamins.
- . (2010). Interdiscursivity in professional communication. *Discourse & communication* 4(32), 32-50.
- Bhatia, Vijay K. / Engberg, Jan 2004. Introduction. *Hermes, Journal of Linguistics* 32, 7-11.
- Bhatia, Vijay K. / Candlin, Christopher N. / Engberg, Jan 2008. *Legal Discourse across Cultures and Systems*. Hong Kong: Hong Kong University Press.
- Buzelin, Hélène 2011. Agents of translation. In Gambier, Y. / Van Doorslaer L. (eds.), *Handbook of translation studies: Volume 2*, (6-12). Amsterdam: John Benjamins.
- Cronin, Michael 2010. The translation crowd. *Revista tradumàtica*, 8. Retrieved from <http://www.raco.cat/index.php/Tradumatica/article/view/225900>
- Dam, Helle V. / Zethsen Karen K. 2009. Who said low status? A study on factors affecting the perception of translator status. *Journal of Specialised Translation*, 12.
- Eisenhardt, Kathleen M. 1989. Agency theory: An assessment and review. *The Academy of Management Review*, 14(1), 57-74.
- Engberg, Jan 2014, May 15. Conceptualising corporate criminal liability. Paper presented at *Language and law in social practice*, Caserta.
- Garzone, Giuliana 2000. *Legal and functionalist approaches: A contradiction in terms?* Paper presented at Legal translation, history, theory/ies, and practice. Retrieved from <http://www.tradulex.org/Actes2000/Garzone.pdf>
- Gémar, Jean-Claude 1998, September 25. *Les enjeux de la traduction juridique. Principes et nuances*. Paper presented at Equivalences 98, ASTII seminar. Retrieved from <http://www.tradulex.org/Actes1998/Gemar.pdf>
- Gilley, K. Matthew / Rasheed, Abdul 2000. Making more by doing less: An

- analysis of outsourcing and its effects on firm performance, *Journal of Management*, 26(4), 763-790.
- Gotti, Maurizio 2012. Text and genre. In Tiersma, P. M. / Solan, L. M. (eds.), *The Oxford Handbook of Language and the Law* (52-66). Oxford: Oxford University Press.
- Gouanvic, Jean-Marc 2005. A Bourdieusian Theory of Translation, or the Coincidence of Practical Instances: Field, 'Habitus', Capital and 'Illusio'. *The Translator*, 11(2), 147-166
- Hackman, J. Richard / Wageman, Ruth (1995). Total quality management: empirical, conceptual, and practical issues. *Administrative Science Quarterly*, 40, 309-342.
- Inghilleri, Moira 2005. The sociology of Bourdieu and the construction of the 'object' in translation and interpreting studies. *The Translator*, 11(2), 125-145.
- Katan, David 2009. Translation theory and professional practice: a global survey of the great divide. *Hermes*, 42, 111-153.
- Kinnunen, Tuija 2010. Agency, activity and court interpreting. In Kinnunen T. / Koskinen K. (eds.), *Translators' agency* (126-164). Tampere: Tampere.
- Kinnunen, Tuija / Koskinen, Kaisa 2010. Introduction. In Kinnunen T. / Koskinen K. (eds.), *Translators' agency* (4-10). Tampere: Tampere.
- Logan, Mary S. 2000. Using agency theory to design successful outsourcing relationships. *The International Journal of Logistics Management*, 11(2), 21-32.
- Milton John / Bandia Paul (eds.) 2009. *Agents of Translation*. Amsterdam: John Benjamins.
- Nord, Christiane 1997. *Translating as a purposeful activity*. Manchester: St Jerome.
- Olohan, Maeve 2011. Translators and translation technology: The dance of agency, *Translation Studies*, 4(3), 342-357.
- Pym, Anthony / Grin, François / Sfreddo, Claudio / Chan, Andy L. J. 2012. *The status of the translation profession in the European Union*. Luxembourg: European Commission.
- Reiss Katharina / Vermeer Hans J. 1984. *Grundlegung einer allgemeinen Translationstheorie*. Tübingen: Niemeyer.
- Rigdon, Mary 2006. Trust and reciprocity in incentive contracting. *MPRA Paper No. 2007*. Retrieved from <http://mpra.ub.uni-muenchen.de/2007/>

- Šarčević, Susan 2000, February 17-19. *Legal translation and translation theory: a receiver-oriented approach*. Paper presented at Legal translation, history, theory/ies, and practice. Retrieved from <http://tradulex.org/Actes2000/sarcevic.pdf>
- Schäffner, Christina 2001. Skopos theory. In Baker, M. (ed.), *Routledge Encyclopedia of Translation Studies* (235-238). London: Routledge.
- Sharma, Anurag 1997. Professional as agent: Knowledge asymmetry in agency exchange. *The Academy of Management Review*, 22(3), 758-798.
- Strandvik, Ingemar (2012). Legal harmonization through legal translation; Texts that say the same thing? In Baaij, C. J. W. (ed.), *The Role of Legal Translation in Legal Harmonization* (25-49). London: Kluwer.
- . (forthcoming). On Quality in EU Multilingual Lawmaking. In Šarčević, S. (ed.), *Language and Culture in EU Law: Multidisciplinary Perspectives*, Farnham: Ashgate.
- Tate, Wendy L. / Ellram, Lisa M. / Bals, Lydia / Hartmann Evi / van der Valk, Wendy 2010. An agency theory perspective on the purchase of marketing services. *Industrial Marketing Management*, 39(5), 806-819.
- Walker, David M. 1980. *The Oxford Companion to Law*. Oxford: Oxford.
- West, Douglas C. 1997. Purchasing professional services: The case of advertising agencies. *International Journal of Purchasing and Materials Management*, 33(3), 2-9.
- Zu, Xingwing / Kaynak, Hale 2012. An agency theory perspective on supply chain quality management. *International Journal of Operations & Production Management*, 32(4), 423-446.