

# Risk Assessment and Mitigation in Drafting Translation Contracts

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*Abstract:* - The Internet has indeed revolutionized all careers worldwide. Work can now be found for corporations and a whole range of clients on a global scale. Translation-related risks are, by nature, difficult to identify, requiring probing/testing the source text in order to determine its degree of translatability and the potential linguistic challenges that may pose a threat or may generate loss of revenue in case of confusions, misunderstandings, wrong text segmentation, or inconsistencies in terminology. A linguistic review of the source text, by a source-language native speaker, familiar with interpretation activities, prior to translation, may reveal linguistic properties, such as complexities, flaws and ambiguities that may present a risk during the subsequent translation process, usually carried out by a target-language native speaker. Once spotted, the potential errors can be addressed through specific training of translation resources across all target languages, preventing problems that could otherwise emerge in translated contracts or in various other legal documents.

*Key-Words:* - risk assessment, mitigation, translations for contracts and other legal documents

## 1 Introduction

Language translation is the appropriate conversion of text authored in one source language into another target language. Necessary to enable effective communication between speakers/readers of different languages, translation is applied in various commercial and non-commercial settings for a variety of purposes: literary translation (fiction, poetry), legal translation (agreements, patents), and commercial translation in connection with trade (sales, marketing, promotional content or product packaging/labeling). As technology makes our world smaller, many businesses choose to promote themselves beyond the borders of the English-speaking world. This means translating their marketing materials into one or more different languages. Companies with websites are the ones that mostly hire translators as it is more cost-effective to reach international clientele through the Internet.

Translation services contracts often are more cost-effective than establishing in-house language programs. Contractors develop fluency in a certain language and maintain it as their core competence, which is significantly easier than trying to draw from a limited pool of employees or attract new hires. Subcontracting has become more frequent, and the use of freelance language service providers is on the rise. Small companies and even individuals have

recently obtained government contracts, although the trend is toward bigger agreements.

Language services have become essential in ensuring effective communication in all fields, between people in all walks of life, and the newly developed programs for foreign trade, diplomacy and domestic multiculturalism urge governments to improve their translation and interpretation services.

## 2 Problem Formulation

On today's international market, to cover a wide array of subject matters, provide low cost, and enable quick time-to-market, commercial translation is largely an outsourced service. Translation shoppers contract translation vendors, companies, agencies or individuals to carry out the translation, which is typically provided as a full service that may/may not include value-added services (Quality Assurance, DesktopPublishing/Formatting, Project Management)

### 2.1 Translation quality control

Translation quality is generally judged by the absence of loss, modification, or addition of meaning as well as by adherence to target language rules and conventions. Like all human activities, however, language translation is subjective and subject to variation and human error. Perceived variations in meaning between the original source

language and translated content or linguistic errors in the target text are considered translation errors.

In standard translation processes, the risk of translation error is mitigated by means of process and resource controls. These controls can include:

- redundant reviews,
- translation process support, (through glossaries or reference materials),
- increased resource qualification, (assigning the task to translators with advanced knowledge of the subject matter or of that specific document type).

Effective quality control measures, however, vary according to document and subject matter complexity and the intended requirements & purpose of the translated document. For instance, when translating a simple business letter for informational purposes, an appropriate transposition process might be extremely basic, e.g., translation by anyone with source/target language familiarity, with no further review required. In another instance, complex user instructions for hazardous technical equipment may require translation in accordance with regulatory purposes connected with safety, export, import, workforce management and deployment. Elaborate quality assurance processes are required in order to produce documents which meet both the intended purpose of effective operation and all relevant national and supra-national regulatory conventions.

## 2.2 Typical mistakes

Examples of bad practice are known all over the world, for the losses they caused, for the new legislation they spurred, or for the mere fun that they generated. Here are some samples:

- During a trade fair in the 1990s, a company drafted a Romanian/German bilingual contract, stipulating the delivery of 3,000 cars, half black, half yellow. Obviously, the firm wanted 1,500 yellow cars and 1,500 black. What happened (as a result of mis-translation) was that all products had yellow hoods (half yellow) while the rest was black (the other approximate half). The contractor did not accept them and a new lot with the correct specifications had to be manufactured. The initial products were delivered to the domestic market and became taxis.
- A Dublin-based company was ordered to pay each foreign member of its staff €5,000.00, totaling to €290,000 for failure to provide them with foreign language translation of the work contracts and safety documentation. According to the findings, some foreign workers were treated less favorably than Irish employees and other foreign members who, on a seemingly selective basis, have received document translation of their employment contracts and safety

procedures. As not everyone was granted the same opportunity, the complainants were disadvantaged in relation to their access to and understanding of such documents. The chances for such an incident to erupt in other countries are very high, considering that many immigrants on the job have different levels of English proficiency and need help with foreign language translations. The employers are at risk of becoming selective, should they choose to render translation services only to those they have thought would need it rather than to all the non-English-speaking employees. As a result, HR managers must ascertain that all the foreign immigrants they employ (without exception, and regardless of race), have fully understood all items stipulated in their employment contracts/company policies/safety procedures.

- In the case of emergency calls, optimization procedures concerning cost reduction and speed increase include the services of a translator in multicultural/multilingual areas. If dispatchers cannot understand the caller, they just send a police officer to the scene. A good percentage of those calls are misdials, hang-ups, and non-emergency calls, which leads to a huge waste of time and resources. With language services in place, a dispatcher could patch in a translator to handle the call, rather than uselessly sending the police to the scene.

There is wisdom in resorting to the services of a professional foreign language translation company, in order to avoid the legal pitfalls and waste in the cases cited above. The translators will take the following measures:

- critically read different documents translated by different official institutions, to find typical inconsistencies in using words, phrases, paragraphs, legal terminology and identify mistakes in style
- translators shall make the national legal document consistent
- translators shall officially report all inconsistencies to the institutions concerned, via the national press or online media, until they get the measures to rectify such mistakes. The process goes faster, if the translators have an institution representing them.
- translators need access to different documents to comparatively study them.

## 2.3 Consequences of translation errors

In a business environment where multinational corporations and organizations interact on a global scale, the laws and legal systems of several different nations can come into play. In such cases, it can be necessary to translate contracts, deeds, certificates, and a number of other legal documents for various purposes.

Mistakes in this arena are costly, often causing unexpected delays, mounting legal fees, and loss of opportunities. Incorrectly translated written evidence may not be accepted in a foreign court, and, in the worst case scenario, a legal dispute may even be completely dismissed because of something as seemingly minor as a poorly translated legal brief. As such, it is necessary to take the utmost care when dealing with matters of legal documents translations, because they play such a large role in the operations of global business.

Certified legal translations (also known as legal service translations) may be required under the circumstances where a legal document (a document considered official/legally binding, like a contract) must be translated from its source language into a new target language for use in a foreign country. In order for the original document to remain valid under the legal system of the target country, steps must often be taken to change the legal terminology, syntax, and structure of the document so that it aligns more closely with the target legal system. These translations must be certified by a certified legal translator, and they also need to be notarized, or authenticated, before they are considered valid under the target country law.

In the case of mistranslations, the risks to the consumer and the manufacturer may be judged to be quite severe. Thus, within the commercial realm, the product of the translation activity should be assessed according to its risk for the consumer and for the manufacturer. For the consumer, this risk can be quantified as a function of the nature of translated document type and of the severity of the mistake: in Instructions for Use for a complex technical device, a simple typographic error may produce very little risk to the consumer or, alternatively, it may produce tremendous risk should the error cause the consumer to use the device inappropriately or incorrectly.

### 3 Problem Solution

However, any language translation process that fails to manage the inherent risks of the activity that leads to an inappropriately translated product may lead to serious consumer risk and/or harm. The resulting negative publicity (from resulting litigation and/or recall), may affect the manufacturer's market share and/or cast the manufacturer in an undesirable light. Furthermore, erroneously translated documents may also violate regulatory requirements, leading to sanctions and additional commercial and organizational harm.

Next, hazards and mitigation strategies related to the main sectors of translation are discussed.

#### 3.1 Error risk via human translation activity

1. Insufficient or incorrect project specifications.
  - Communication with client for clarification of required specifications (client education about the translation process and resources may be required).
  - Documented/controlled project specifications;
  - Translation quality plans, project plan, client dossier, document/print specifications (additional custom specification forms, as required).
  - Pro-Forma risk management plans provide general process guidance if detailed specifications are not available
2. Overly complex instructions/specifications
  - Revisit/discuss requirements and specifications with client and functional areas
  - Break project down into sub-components and milestones for more structured planning
  - Detailed project planning and strategy
  - Consider custom planning tools appropriate for project complexity
3. Rush turnaround requirements
  - Client communications/negotiation
  - Advanced scheduling of resources
  - Utilize time zones, weekend resources
  - Production and delivery schedule on rush projects
4. Insufficient or deficient reference material
  - Request additional resources from the client
  - Obtain 3<sup>rd</sup> party references/resources
  - Exclude questionable references from consideration (such as deficient legal translations)
5. Inconsistent file naming conventions
  - Create clarifying file list/matrix
  - Tag files for easier internal tracking
6. Inaccurate lines or changing tables
  - Document change verification prior to project start (proofreading/verification by client), client sign-off
7. Mid-project document changes
  - Analysis/evaluation for the best method to incorporate changes into the workflow (interrupted current process, parallel process, manual updates)
8. Uncontrolled client review activities
  - Educate client about the linguistic review process
  - Determine review purpose and objective
  - Direct communication with reviewers
  - Implement the reviewer change control process (assessment of changes)
9. Unconventional linguistic specifications
  - Analyze and assess the scope of requirements
  - Educate the client about the quality impact and the added risk of forced linguistic specifications
  - Educate the client about the lack of benefit and risks of forced cross-language consistencies
  - Develop detailed guidelines for linguists and staff

### 3.2 Hazards related to source content

1. Obscure, novel, or highly specialized subject
  - Clarification by client
2. Excessive use of jargon
3. Inconsistently written content (in point of style)
4. Inconsistent use of terminology
  - Develop project lexicon and client glossary
5. Lack of sufficient grammatical context (isolated strings or fragments)
  - Obtain and provide context through appropriate reference materials (text and/or graphics)
6. Lack of sufficient subject matter context
7. Lack of subject matter/product reference
8. Strictly defined target audience
  - Obtain detailed target audience data from client
  - If the target audience is general, adjust translation styles accordingly (coordinate the educational and reading level requirements with the client)
9. Updates to legal translations of questionable source or quality
  - Audit the legal portions prior to update
  - Probe legal translations for terminology and style, and match to the allowable extent.

### 3.3 Hazards related to project management

1. Project complexity (resulting in hand-off errors)
  - Revisit/discuss requirements and specifications with the client and the translation departments
  - Conduct a project kick-off meeting
  - Break the project down into sub-components and milestones for more structured planning
  - Detailed project planning and strategy
  - Consider custom planning tools appropriate to the project complexity
  - Consult/develop client dossier
  - Update client dossier with later information
2. Large number of source files and target languages
  - Controlled project directory structure for effective document control
3. Multiple source document formats
  - Use the custom file list/matrix to organize the project files and language requirements
4. Miscommunication or lack of communication
  - Documentation on specification-related communications (correspondence and specifications folders)
  - Communication redundancy (reiterate/rephrase complex descriptions of specifications/requirements)
  - Communication diversity (provide both oral instructions and written communication support)
5. Project transfer between project managers
  - Effectively documented/maintained risk
  - Management file and process forms
  - Structured hand-off meeting

6. Insufficient production
  - Increase production time
  - Increase resource pool (short term/long term)

### 3.4 Hazards related to Desktop Publishing

1. Highly manual formatting tasks demand increased rigor in formatting
2. Copy/paste activities
  - Increased rigor/specific focus
  - Cut&paste logical full segments (avoid numerous small segments or individual words)
  - track changes when cutting/pasting from Word
3. Unintended joining/breaking of segments
  - Formatting optimization
  - Segmentation check
4. Accidental deletion of text
  - Specific focus scheme (sentence/paragraph/count)
5. Text typing (typing of foreign language text by unqualified resource)
  - Final linguistic inspection
  - Back Edit
6. Extensive formatting optimization
7. Import/export between applications
8. Uncontrolled character set conversions (character corruptions or replacements, font substitutions)
9. Automated text references of all kind

### 3.5 Hazards related to Translation Memory Processing

1. File import/export errors resulting in pseudo-translation
2. Incorrect or misleading text segmentation
3. Segmentation check (full or spot/risk-based)
4. Translation memory degradation over time
  - Assess memory quality at regular intervals in order to determine the risk level
  - Edit pre-translated exact matches on high risk memories
  - Incorrectly linked memory database

### 3.6 Hazards related to quality assurance

1. Proofreading against wrong source file
2. Overriding of specifications
  - Controlled project directory structure for effective document control
  - Ensure complete, detailed project specifications
  - Training/feedback
  - Provide detailed task guidance

### 3.7 Hazards related to human resources

- Assignment of unsuitable or unqualified resource
- Inability to execute (quality/time). Avoid rushing tasks/resources(consider multiple resources and parallel processes instead)

- Insufficient competence, experience, or education
- Lack of subject matter expertise
- Unfamiliar with the task
- Lack of source language comprehension
- Market supply limitations in minor languages and languages of lesser commercial diffusion
- Strategic recruiting
- Overloaded people need long production timelines

All the above show the mitigation processes that take in consideration the device risk classification, the intended use of the document, and the target audience.

## 4 Conclusion

As previously mentioned, translation activities carry inherent risks for error, due to several causes.

Firstly, there is the problem inherent between a source language and a target language. Translation is not a direct or mechanical conversion of lexical units (word-for-word translation) from one language to another; but, rather, a creative process (similar to originally authoring the translated text in the target language) that seeks to create or reproduce the equivalent meaning of a text written in a first source language in another target language. An equivalent meaning herein refers to content, context, style, tone, register, and so forth.

Secondly, translations, by their very nature, remove a text from the control and intent of its author, offering the translator control or poetic license over the final text. Unless the translation into the target language is carried out by the author of the original source text, risk of misinterpretation or misconstruction of the intended meaning of the source text is possible. Even were the author of the original source text to translate the text into the target language, the author's imperfect knowledge of the target language may generate risk.

Thirdly, there is the native fluency dilemma, by which, in order to express the equivalent meaning of a source-language text in a target language fully, the translator must have native fluency in the target language; not to mention that, in order to comprehend the source-language text fully, without any danger of misinterpreting or misconstruing the source text, native fluency in both the target and the source languages is required. Obviously, these requirements are mutually exclusive (unless the poly-lingual author is also the translator of his or her own document) and must be dealt with through the translation process design.

Finally, as a cognitive activity, every task within the translation activity is subject to human error. Although error rates can be measured

empirically, they are unpredictable and subject to variation depending on many environmental factors.

Within the realm of translation, inherent translation risks are challenges that cannot be eliminated. They, however, can be mitigated through a number of risk management techniques: the use of specialized tested, audited, and documented translation resources. Furthermore, at the process level, inherent risks can be effectively addressed through quality control activities, such as redundant checks, audits, testing, and proofreading steps by supervisors. Because all activity within a translation project—and, most commonly, document translation and text formatting—carries inherent and specific risks, a separate process is needed to control these risks throughout the activity, for instance through quality control steps following each production activity. Error risk cannot be completely eliminated from the translation effort, so it must be minimized by mitigation and strategic application of risk controls. Even if the probability of translation errors cannot be ruled out, translation quality systems must be implemented. They should be outcome-driven, based on the assumption that the consumer will act upon any translation error.

Not only are translators rare and carrying huge responsibilities, but they also act as gateways to new markets. They enable an even greater percentage of the literate world, initially deprived of access to certain information for lack of English-language skills, to access data and opportunities that can mean vastly improved gross turnover for any organization with significantly established interests.

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