



Annex to guidelines for fair translation contracts “Work made for hire” contracts

Publishers based in the US or European publishers trying to “import” foreign contract models they deem more favourable can be tempted to propose translators “work made for hire” contracts.

According to the US Copyright Law, if a work is “made for hire”, the (natural or legal) person for whom the work was prepared, and not the actual creator, is considered the legal author and the initial owner of the copyright. In some countries, this is known as “corporate authorship”.

Section 101 of the Copyright Act (title 17 of the U.S. Code) defines a “work made for hire” as either:

(1) a work prepared by an employee within the scope of his or her employment; or (2) **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.**

In “work made for hire” contracts, translators do not have any rights to their work (not being considered its authors at all).

This is different from the provisions some European countries have which state that, in the case of works created by an employee within the scope of their employment, the economic rights belong to the employer or similar provisions because: 1) the workers are always recognized as the actual authors and maintain their moral rights and 2) such provisions do not extend to freelance workers.

“Work made for hire” contracts contravene the principles of the Berne Convention and most (if not all) European countries copyright laws. Therefore, they should be sternly refused as one should with any type of contract “imported” in any country that does not respect the standards and laws of that country.

An example of a “work made for hire” translation agreement is Babelcube’s standard contract which states:

11) Ownership. *Subject to the restriction on Translated Book production rights above and the distribution rights granted by Rights Holder [“Rights Holder”= writer of the original text] to Babelcube, Rights Holder will retain all right, title, and interest **in and to the Book and the Translated Book**, including the copyright in the Book and **the copyright in the Translated Book. Translator agrees that the Translated Book is a “work made for hire” to the full extent permitted by applicable law, with all copyrights in the Translated Book owned by Rights Holder. To the extent that the Translated Book does not qualify as a work made for hire under applicable law, Translator assigns to Rights Holder all right, title and interest and all intellectual property rights Translator may have in and to the Translated Book including, but not limited to, all copyright or rights of authorship (including moral rights) in the Translated Book. Translator agrees to execute all documentation reasonably required to evidence the ownership interests and rights of the Rights Holder.***