

More Creativity and Less Restriction: About the Relationship between Translation and Copyright

Zhengyan Cai¹

¹ Communication, Culture & Technology Program, Georgetown University, Washington, D.C., United States

Correspondence: Zhengyan Cai, Communication, Culture & Technology Program, Georgetown University, Washington, District of Columbia 20057, United States.

Received: August 10, 2022

Accepted: September 10, 2022

Available online: September 13, 2022

doi:10.11114/ijsss.v10i5.5681

URL: <https://doi.org/10.11114/ijsss.v10i5.5681>

Abstract

This article discusses the importance of adjusting the attitude toward the copyright of translation, taking the articles in United States Copyright Law and the Berne Convention as the reference. By looking into various incidents and examples in translation across different languages and areas, and among licensed and voluntary translator communities, the article discusses the significant amount of creative labor and intellectual work in the translation and why less restriction from the original work's copyright can lead to quality improvement in translation. The article concludes that creativity takes an influential role throughout the translation process, and an environment with fewer restrictions from the copyright holder of the original work can boost the average quality of the translations. Hence, society can fully benefit from U.S. copyright law's core purpose of promoting "the Progress of Science and useful Arts."

Keywords: translation, copyright, copyright law, U.S. copyright law, Berne Convention

1. Introduction

According to the United States copyright law, copyright provides the copyright holder with the exclusive right to "prepare derivative works based upon the work (U.S. Copyright Office, 2021)." Meanwhile, as it states in Circular 14 (U.S. Copyright Office, 2020), "A derivative work is a work based on or derived from one or more already existing works. Common derivative works include translations [...]." Analogous regulation of translation can be found in Berne Convention that "Art. 8 Berne Convention affords authors of literary and artistic works 'the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works' (T. Lee, 2020)."

The purpose of ensuring the author's "authorial control over translations" is to "ensure the quality of translation (T. Lee, 2020)," and such purpose also reflects the idea that translators lack originality and intellectual work in their contributions. Nevertheless, many translators do not fully accept such ideas, whether professional or amateur. Both the translator and the translation audience are affected by these regulations. This article will discuss the value of creative labor in the translations underestimated by the current copyright regulations and why the translations should be less restricted by the original work's copyright.

2. Contradictions between Translators and the Copyright

The translators in fandoms (the community of fans) do voluntary works of translating works in foreign languages, yet in such a "take-for-free" community culture, some moral codes are common sense about the translations. Whether the original work is "official" or "by fans," it is usually not acceptable in fandoms to republish a translation without citing the translators or remake a translation using another translator's script without authorization. Fans believe every translator's work is unique and to the translator's credit. While the fans are trying their best to obey these moral codes, they have trouble with infringements from outside the community now and then.

The translators in the commercial sphere also have challenges to face. In China (which joined Berne Convention in 1992), for instance, a translator named Li Jihong commented on pre-2000 Chinese translations of classic foreign literature as "unreadable due to overwhelming mistakes" and received great controversy (S. Tang, 2020). Though many readers accused Li of his arrogance in criticizing previous translators' efforts, some translators agreed with Li's opinion about the problem. A translator said that the younger generation of translators lack proficiency in literature and

academic reading because “the book publishers are struggling to make money from even original works, not to mention translated works,” and many translators are doing their works “driven by passion, not payments” (S. Tang, 2020). This opinion reflects the public’s and the market’s neglect of the translators’ efforts, which in turn causes a low level of proficiency in translated works.

The above phenomenon seems quite contradictory to the ideas and purposes expressed in the articles from the U.S. copyright law and the Berne Convention. Fans cared very much about the translator’s right to control their translations’ remaking and originality, even though they enjoy a take-for-free community culture. Licensed translators sometimes lack professional skills, while translations are supposed to be professional and trusted by the author (copyright holder) to convey the original work’s content to foreign audiences with high quality. These contradictions question the recent copyright law in how it treats the translation.

Translation plays an essential role in the global exchange of knowledge, and its thriving should be ensured to fulfill the core purpose of copyright law stated in the U.S. Constitution, which is “to promote the Progress of Science and useful Arts (Loren, n.d.).” Some scholars have already raised several possible improvements in the copyright laws about translation: allowing translators to share some stake of originality and authorship “as the work distributes itself across different languages and/or media” while the author keeps holding “a major stake in the work” (T. Lee, 2020); and shorten the period of the author’s restriction over the translations (Venuti, 2008, as cited in T. Lee, 2020).

The value of creativity in translations should be admitted and protected to a greater extent and given more space beyond the scope of the original work’s authorial control during “the life of the author plus seventy years after the author’s death (U.S. Copyright Office, 2021).” Thus, the translators would be willing to improve the quality of translations when their efforts are fully recognized, and the public can access more high-quality translations when the translators learn from each other effectively.

3. Creativity in Translations

While a work eligible to be copyrighted should “possesses at least some minimal degree of creativity” (U.S. Copyright Office, 2021), it has been argued by many people that translating a work is more than telling the meaning in the original text with another language. Such an argument has a long history. For example, Justice Grier emphasized the creative efforts in translation in the case *Stowe v Thomas* (1853), in which Harriet Beecher Stowe sued unauthorized publication of a translated version of *Uncle Tom’s Cabin*, “[t]o make a good translation of a work requires learning, talent and judgment (as cited in Hoffheimer, 2013).”

Different cultures have different grammars, vocabularies, and cultural contexts lying within the words. Therefore, on many occasions, it is impossible to make a simple word-by-word replacement in the translation. Through the translator’s efforts in negotiating the cultural difference between the source text and the target text, translation is more than “the reproduction or transfer of an invariant [form, meaning, or effect] that is contained in or caused by the source text (Venuti, 2019, as cited in T. Lee, 2020).” Instead, it is “an interpretive act that inevitably varies source-text form, meaning and effect according to intelligibility and interests in the receiving culture (Venuti, 2019, as cited in T. Lee, 2020).” People at large usually think that translators’ creative efforts should be shown at a macro and high-profile level, such as translating Disney’s animation movie *Mulan* into Chinese. The translated version includes expressions from ancient China, “colloquial and slang expressions,” dialect words from Taiwan Mandarin, and Chinese rhetorical devices “to please the local audience” (J. Tang, 2008). However, creativity also functions in texts without noticeable cultural marks and can play an essential role in concise texts.

Taking the Japanese honorific system as an example, there are various words in the system to call oneself and the hearer – based on the speaker’s gender, age, the relationship with the hearer, and the occasion the dialogue takes place. How a Japanese calls him/herself reflects the speaker’s character to a certain degree: is s/he humble or arrogant, does s/he respect the hearer, what gender identification does the speaker take, and so on. The system also demands certain verbs to have different honorific ending phrases. The variations in such ending phrases can indicate the speaker’s attitude and the hierarchy among the dialogues. In many languages, there is no such honorific system, so translators have to use other expressions to convey the meaning of the honorifics.

When in a Japanese TV drama, a captain says “shiru ka” to his team member, a Chinese translator may translate it as “how could I know (wo zen me zhi dao),” while the English translator does it as “like I care” (ULTRAMAN OFFICIAL by TSUBURAYA PROD., 2021). A more plain translation of “shiru ka” is “do I know?”, functioning as “how could I know” when the speaker does not have the answer. This original line uses a simplified verb form of “shiru (know)” without honorific endings and adds the questioning word “ka” after it to indicate a cavalier and informal tone, which shows that the captain has a cozy and close relationship with his team. The Chinese translator thinks that a somewhat functional translation is enough for the Chinese audience to get the informal tone in the dialogue, while the English translator uses an idiomatic English phrase to emphasize such an informal atmosphere. Though this Japanese line has

only three syllables, the translators still have to decide whether to reflect the function of honorifics in the translated text and how to reflect the honorifics, and they use different strategies based on their audiences' perceptions of respective cultural backgrounds. The strategy used by translators is way beyond the labor work of matching words in the dictionary.

The vocabulary can be unique among different languages; grammar and language habits can be hard to do a simple transformation into the targeted language. The Bollywood song "Ek Radha Ek Meera" is translated as "Radha and Meera (Yuehunhuangyeshengliang, 2017)" by some translators, while the famous Punjabi tragic romance *Heer Ranjha* in English is referred to as "Heer and Ranjha ("Heer Ranjha," n.d.)." Though these two phrases are both translated as "Name A and Name B," there are different meanings indicated by the grammar in the original text. "Ek" means "one" and "a" in Hindi. "Ek Radha Ek Meera" in straightforward translation would be "A Radha, A Meera," indicating a context saying Radha and Meera are two personas that contrast each other. The contrast is not highlighted in the translation of the title, so the audience has to understand its accurate meaning from the whole lyrics. On the other hand, in Indian culture, putting two names together without any preposition in between usually expresses an intimate relationship between the two figures, such as "Heer Ranjha," which shows a pair of lovers.

However, such practice of putting two names together as the title of a romance is not common in some other cultures. Sometimes the context in the phrase is given up by the translator. Like in "Heer and Raanjha," the intimate emotion of putting the characters' names together in the title is left for the audiences to understand on their own after knowing the whole story. Meanwhile, some other translators would choose to abandon the name of the two leading roles, giving the story a new title that highlights the romance in the story. The 2015 Bollywood romance movie *Bajirao Mastani* is known as "The Imperial Pair of Flawless Jade Pieces (Di Guo Shuang Bi)" in China ("Bajirao Mastani," n.d.). In Chinese culture, titling romance literature with the name of the two lovers is not a widespread practice, and Chinese audiences are not familiar with these two historical figures in India. Meanwhile, the "Flawless Jade Piece (Bi)" is famous in Chinese culture as a literary allusion to its preciousness enough to trade for cities between countries. Since Bajirao is the Peshwa (prime minister) of an empire and Mastani is his beloved concubine, calling them a pair of "flawless jade pieces" shows the couple's influential status in the history of the empire in a more understandable way for the Chinese audience. Many Bollywood movies are titled with the name(s) of the leading role(s), and many of their Chinese titles are translated based on the plot of the story instead of just assigning some Chinese characters to imitate the pronunciation of the Hindi names.

The negotiation between the cultures operates throughout the translation process, not only when the translation is "less functional and more creative/expressive (Cunningham, 2018)", nor when the original text is long and full of localized imageries, slang, and idioms. Even translating a medical questionnaire needs to take the cultural difference carefully because "changes to the original instrument or inadequate translation can destroy the validity and alter both the measurement properties and interpretability" (Juniper, 2009). The translators are always thinking about what strategies to apply when translating the texts, so it is better to take translating a whole process being done with creativity. Therefore, extending the author's right "to exclude others from translating (Hoffheimer, 2013)" is unfair to the creative efforts made by the translator. The derivative status of translations weakens the translator's willingness to improve their knowledge and skills because their efforts do not receive enough recognition by the copyright law. Meanwhile, such a lack of recognition also causes translators to receive less work payment.

4. Authorial Control over Translations vs. Quality of the Translation

Though the derivative status of the translation discouraged the translators to a certain degree, it may be argued that such limitation is a necessary sacrifice to ensure the quality of the translation. While it is true that the copyright law in the U.S. and Berne Convention at present gives the author the right to decide who can translate the original work, such right cannot decide how the original work will be translated. Authors seldom judge the quality of the licensed translation, either because they do not have time or they could not understand the target foreign language. Most audiences who rely on the translated work cannot tell the translation's quality, either. Even professional distributors in the media industry could fail foreign audiences with poor translation due to some reasons. Limiting access to the translated original text does not guarantee the translation's quality. Furthermore, since the value of a translator's creative efforts is not recognized enough, the media industry also lacks the motivation to help improve the condition of professional translators, further weakening the quality of translated works on the market.

In China, Hollywood copyright holders' control over the choice of translators is proved to be inefficient in assuring good movie subtitles for quite a few years. The subtitles for Hollywood blockbusters in cinema are always a hot topic for movie fans about how disappointing they are. It is common sense among movie fans that fan-subbing is always better than official subbing, even though the subtitles by fans are technically "amateur" and "un-licensed." Movie fans in China would go to the cinema to support the newly released movies at first and then watch the fan-subbed versions

later to “really enjoy the story itself” after the pirate resources are available on the Internet. Such a situation is also actual for many foreign TV series, comics, and variety shows; Chinese fans are not the only ones who rely on fan-subbing to enjoy foreign works (H. Lee, 2011).

Avengers: Age of Ultron is one of the most famous cases of poorly translated cinema subtitles (Coonan, 2015). After the movie got released in China, the accusations of many mistakes in subtitles flooded into social media, including wrong tenses in the translation, falsely understanding the idioms, not translating the jokes, and messing the character’s name with other words (“What Are The Translation Mistakes,” 2015). The most obvious mistake that even changed the figure’s characteristic was when Captain America encouraged his partners by saying, “You get hurt, hurt them back. You get killed...walk it off,” the Chinese subtitle translated the second sentence as “if someone is going to kill you...then just run away” (“What Are The Translation Mistakes,” 2015). The audience who could not understand the original English dialogues found some subtitles very confusing, and the audiences who could understand English complained about the disturbing mistakes in the movie.

The subtitle issue also shocked the audience because they used to believe that an influential entertainment brand like Marvel would offer high-quality subtitles for its biggest overseas box office. At first, the public thought that perhaps Marvel mistakenly went to some inexperienced translators. Nevertheless, after several media interviewed the translator and the studio in charge of *Ultron*’s subtitles, it turned out that the translator was quite experienced in translating imported English movies, and he is an employee of August One Film Studio – one of the oldest studios in China. The translator, Liu Dayong, started translating imported English movies in 1994 and had translated *Hulk*, *Iron Man* and *Thor* before he took part in *Ultron*. Liu was selected by the director of the studio’s translation department because he was supposed to be more familiar with superheroes (FZ, 2015). The director of the translation department also argued that nowadays, the translator only has seven to ten days to translate, and movies like the *Avengers* series need the translator to go through much background knowledge about superheroes. Besides, Liu only got paid 2000 RMB for translating *Ultron*, which was not a satisfying payment for a professional employee in the media industry (Tian, 2015). However, such defense for the translator made the superhero fans even angrier. Many fans pointed out that most experienced fan-subbing groups can subtitle a two-hour movie in less than two days without any payment but with more accurate and understandable translations.

The *Ultron* incident shows both the unreliability of official translation and the underestimated hardness for a professional translator to make a living. Notably, the phenomenon of “amateur” fan-subbing excelling licensed translation is considerably benefited from the translator-friendly environment in the fandom. First, free from the worries about licensing (in the fan community), the fan-subbing groups have a great range of original works to choose from, and through their choices, they can develop specialized knowledge and experiences in a particular genre of translations. Second, when multiple translators are focusing on the same genre of works during the same period, and their translations are openly accessible, translators can improve the translation through complementarity more effectively. Third, the audiences in the fandom are positive and active in showing respect to the subbing group’s efforts and interacting with the group. Fan-subbing groups do not rely on salaries but care about emotional satisfaction, which mainly comes from feedback and gratitude from other fans. The fandom knows the importance of recognizing their contribution, and the fans are encouraged to be grateful. Since most fan-subbed works are published on social media and online forums, the audience can interact with the translators actively and conveniently. Their audiences generously offer the requital needed by the translators. The great range of available material for translating, the community encouraging complementarity, and the high recognition of the efforts in translation help the fan-subbing groups to thrive and produce high-quality translations. Unfortunately, so far, these helpful conditions can hardly be enjoyed by licensed translators due to the limitation from the copyright holder’s right to prepare derivative works.

The efforts in translation are always devalued. Not only people at large but also some publishers and distributors look down on the importance of translating skills. Assuming that proficient translator’s works will not attract most readers, some publishers turn to licensing untrained celebrities to translate literary works, hoping to sell more copies by using the celebrity effect. A famous representative case in China is Feng Tang translating Tagore’s *Stray Birds* (English version) into Chinese. Feng is a famous writer and was on the 2013 “Writers Rich List” in China. Although Feng is skilled in English (he finished an MBA program in the U.S.), he has never received professional training in translating literature. When Feng’s translation of *Stray Birds* was published, it received significant public attention because it was this famous writer’s first attempt at translating foreign literature. Soon after, critics of Feng’s translation flourished on the Internet. Many readers could not accept Feng’s attempt of abrasively putting his writing style into Tagore’s work now and then, such as translating “the world puts off its mask” into “the world takes off its pants,” “vagrant” into “bustard,” “hospitable” into “lewd.” Moreover, some more professional readers also criticized that Feng’s translation style is far from mature, frivolously wandering between imitating the graceful style in the original text and transplanting the “wild” style in his fiction (“How to Evaluate Feng Tang’s,” 2015). In the end, for the strong contrast between Feng’s

version and previous Chinese versions, and the overwhelming public critics, the publisher withdrew Feng's translation from the market (S. Tang, 2020).

Feng and the publisher's underestimation of the difficulty in making a translation appealing to readers caused their market failure in publishing a new translated *Stray Birds*. If Feng's translation were the first authorized Chinese translation, the Chinese audiences would have a different impression of one of Tagore's most famous works. However, the conditions to avoid such ill-skilled translation are hard to apply to many other works of literature. *Stray Birds* is well known worldwide for its English version translated by Tagore. Though they are not professional translators, many readers can understand the English version of *Stray Birds* and judge the quality of the translation of other languages. Moreover, *Stray Birds* is famous in China. The public knows that this literal work has its style. Third and most important, *Stray Birds* has been in the public domain for decades, and there are multiple complete translations in Chinese published before Feng's version, available for readers to compare their quality. For many other foreign works, the translation is still under the control of the author's copyright, and the number of translated versions is minimal for audiences to compare and for translators to learn from each other.

5. Conclusion

Creativity takes an influential role throughout the process of translation. The work of translating is far more than merely a copy of the original work in another language. The derivative status of translation defined in the United States copyright law and Berne Convention has shortcomings that would hinder translation development and the public's access to more high-quality translations. In the context of globalization, translators play an essential role in cultural and knowledge exchange on many occasions. Therefore, the value of translation should be taken seriously. Many creative translation efforts are not recognized enough in the copyright laws; such underestimation would discourage the translator's motivation to improve their translations because they will not receive enough requital both materially and emotionally.

Improvements in the quality of translations can be accelerated in an environment with fewer restrictions from the copyright holder. In contrast, the author's (copyright holder's) restriction on translations during the copyright protection era is ineffective in ensuring the quality of conveying the original work into other languages. More than that, authorial control may even impede the public from accessing good translations.

Without the prosperous development of translations, the knowledge exchange between different cultures would be severely clogged, and society cannot fully benefit from the copyright's core purpose of promoting "the progress of knowledge and learning (Loren, n.d.)." Hence, admitting the translator's contribution of creative efforts in the distribution of the work across different cultures and shortening the "period providing a temporal restriction on the translation rights given to authors (T. Lee, 2020)" are two possible revisions that the U.S. copyright law and the Berne Convention should consider to adopt seriously.

References

- Bajirao Mastani*. (n.d.). Douban. Retrieved August 10, 2022, from <https://movie.douban.com/subject/26337355/>
- Coonan, C. (2015, May 13). 'Avengers: Age of Ultron' Subtitles Leave Chinese Baffled. *The Hollywood Reporter*. <https://www.hollywoodreporter.com/news/age-ultron-subtitles-baffle-chinese-795308>
- Cunningham, A. (2018). Translation, Copyright & Authority. *Polemos (Roma)*, 12(2), 361-391. <https://doi.org/10.1515/pol-2018-0021>
- FZ. (2015, May 14). "Avengers 2" subtitle translator responded to public's questioning about the mistakes: the translator is getting older. 163 Ent. Retrieved from <https://ent.163.com/15/0514/06/API920UR00031H2L.html>
- Heer Ranjha. (n.d.). In *Wikipedia*. Retrieved August 10, 2022, from https://en.wikipedia.org/wiki/Heer_Ranjha
- Hoffheimer, M. (2013). Copyright, competition, and the first English-language translations of "Les Misérables." *Marquette Intellectual Property Law Review*, 17(2), 163-190.
- How to evaluate Feng Tang's translation of "Stray Birds"?* (2015, December 10). Zhihu. Retrieved December 22, 2020, from <https://www.zhihu.com/question/33570599/answer/76075769>
- Juniper, E. (2009). Modification, Translation and Adaptation of Questionnaires: Should Copyright Laws Be Observed? *Quality of Life Research*, 18(5), 531-533. <https://doi.org/10.1007/s11136-008-9440-4>
- Lee, H. K. (2011). Participatory media fandom: A case study of anime fansubbing. *Media, culture & society*, 33(8), 1131-1147. <https://doi.org/10.1177/0163443711418271>
- Lee, T. K. (2020). Translation and copyright: towards a distributed view of originality and authorship. *The Translator*, 26(3), 241-256. <https://doi.org/10.1080/13556509.2020.1836770>

- Loren, L. P. (n.d.). *The purpose of copyright*. Open Spaces. <https://open-spaces.com/articles/the-purpose-of-copyright/>
- Tang, J. (2008). A cross-cultural perspective on production and reception of Disney's *Mulan* through its Chinese subtitles. *European Journal of English Studies*, 12(2), 149-162. <https://doi.org/10.1080/13825570802151413>
- Tang, S. (2020, January 3). How serious is the problem of mistranslation in famous books? *Beijing Youth Daily*. Retrieved from <https://shareapp.cyol.com/cmsfile/News/202001/03/web311352.html>
- Tian, W. (2015, May 14). *Liu Dayong was so wronged for getting criticized*. Sina. Retrieved from <https://ent.sina.cn/2015-05-14/detail-iavxeafs7489500.d.html>
- U.S. Copyright Office. (2020). *Copyright Registration for Derivative Works (Circ. 14)*. U.S. Copyright Office. Retrieved from <https://www.copyright.gov/circs/circ14.pdf>
- U.S. Copyright Office. (2021). *Copyright Basics (Circ. 1)*. U.S. Copyright Office. <https://www.copyright.gov/circs/circ01.pdf>
- ULTRAMAN OFFICIAL by TSUBURAYA PROD. (2021, July 25). *ULTRAMAN Z Episode 25 "Warriors Shining Beyond" -Official-* [Video]. YouTube. Retrieved from <https://www.youtube.com/watch?v=r2TFARovOS4&t=300s>
- What are the translation mistakes in the Chinese subtitles of Avengers: Age of Ultron?*. (2015, May 14). Zhihu. Retrieved December 22, 2020, from <https://www.zhihu.com/question/30296899>
- Yuehunhuangyeshengliang. (2017, September, 9). *Chinese subtitled Hindi Musical episode "Radha and Meera" – A Sad Wedding Mujra Dance by Mandakini* [Video]. Bilibili. Retrieved from https://www.bilibili.com/video/BV1Ax411b7h4?vd_source=bcdfce810e85f1c5f2ae58821eaa00a5

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the [Creative Commons Attribution license](#) which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.