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When things go wrong or Fixing what's broken: the importance of using professional legal translators



John O'Shea



JurTrans



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Let's talk about quantum physics



Liabile / not liable



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Disclaimer

- Nothing in this presentation is legal advice.
- Nothing in this presentation is intended to be legal advice.
- It merely seeks to raise pertinent issues and stimulate thinking about these important issues.



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Why care?

“Any errors in legal translation could have dire consequences for the client, which of course ultimately leads to dire consequences for the translator”

Not only can legal translation errors have severe consequences in courtrooms, but they can also generate never-ending legal disputes between companies and countries. This sort of tension can cause substantial legal bills and generate unnecessary costs that are hard to quantify.

“Translation error is a real-world phenomenon which has real-world implications ... the consequences of translation error are very real and are something we should be genuinely concerned about” Jody Byrne



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Why care?

Moreover, for people who buy real estate or invest in startups overseas, translation errors can change the details of a transaction. This can result in capital loss and future legal actions that can drag on for years.

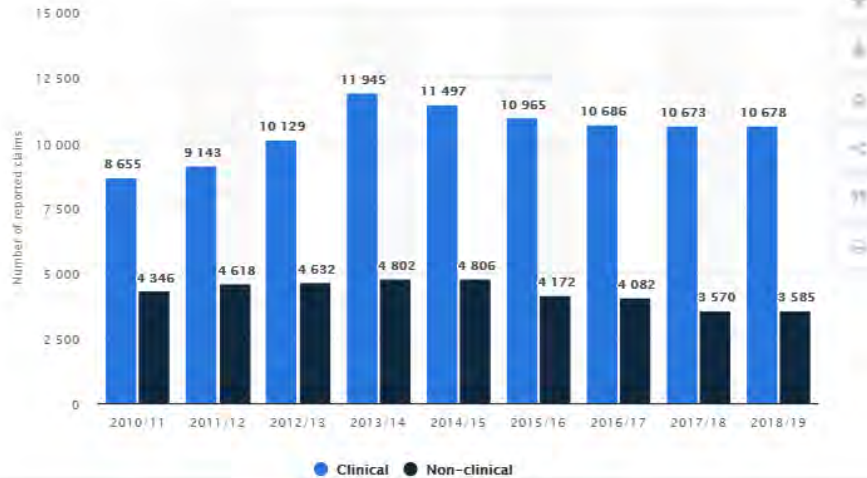
The smallest of errors in any legal documentation could well lead to disastrous results for the people concerned.



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Other professions



Auditors
Engineers
Accountants
Lawyers
Doctors

Number of negligence claims reported to NHS England from 2010/11 to 2018/19, by type
<https://www.statista.com/statistics/893770/number-of-claims-reported-to-nhs-england-by-type/>

2016: Some 130 claims were filed against solicitors in the High Court this year compared to 98 last year, an increase of one-third, according to evidence gathered by law firm RPC. This confirms a trend—the number of professional negligence claims against solicitors and barristers in the high court has risen 170% since 2012.

<https://www.newlawjournal.co.uk/content/claims-against-solicitors-increase>

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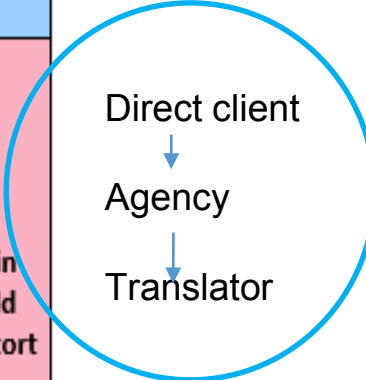
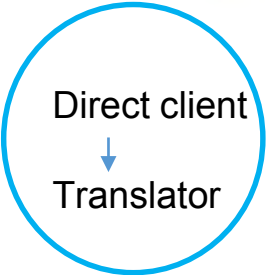


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A little bit of law

	Who can sue?	How?			For what?
Contract	Parties to the contract Third parties?	Claim made under terms of specific contract What are the terms? Delivery date Use of glossaries Terms of payment Quality specifications? Are there TR performance criteria? No. of mistakes will be tolerated?		When is a mistake a breach of contract? If there is a breach, is the TR liable?	To put the claimant in the position he would have been in had the contract been properly performed Damages that client incurred due to the breach = amount of money it will take to correct the mistake
Tort	Any person reasonably foreseeable as being affected by the translation	(a) Duty of Care imposed by law	(b) Breach of that duty	Did TR breach legal duty of care?	To put the claimant in the position he would have been in had the tort not occurred
		(c) Harm suffered	(d) Causal connection between (b) and (c)	X relied on mistaken translation which resulted in measurable loss	



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Hurdles to liability



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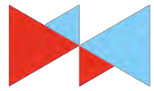
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Duty of reasonable care



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Was there loss?

- Failed transactions



Number of projects
of the 10-year period



172 cases where rectification
was requested
Potentially other cases of real-
world loss
An issue to be explored?



8 cases of real-world self-reported
loss

- 4 property / planning law
- 2 investment law
- 2 business contracts



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The Investigation

Approached clients to explore the issue

Interesting phenomenon

After rectification and transactions
were able to proceed

Clients contacted to discuss the
issues which had arisen
and gain better understanding

Type of questions

Some simple yes / no responses
required

Most open ended

Qualitative approach

Size

8 cases of failed transactions self-
reported by clients

Over the period 2007-2017

3 examples discussed here due
time constraints



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Meet Mr X

- ✓ Iranian businessman wanted to buy a property in Athens
- ✓ Some complications with the property
- ✓ Sitting tenant – planning law issues with the swimming pool – documentation needed to sort out the pool issue was “garbled”

The transaction failed.



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Meet Mrs Y

- ✓ Investor applying for a permit to allow her investment to move forward
- ✓ Documentation rejected by the permitting authority
- ✓ "Nonsensical Greek"

The transaction failed.



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Meet Mr Z

- ✓ Russian purchasing a property on a Greek island
- ✓ Nature of ownership rights incorrectly translated
Delays – loss arose because of an enclosed balcony
- ✓ Planning law violations

The transaction failed.



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Statistics

Just to show what had gone wrong we also had the texts revised

Client	Word count	Overall number of changes	Serious errors per 1000 words
Mr X	27,000	3,743	62/1000
<u>Mrs Y</u>	15,000	2,431	12/1000
Mr Z	23,000	57	2 in total

Client	Transaction value	Failed transaction costs	Cost category
Mr X	€ 750,000	€ 22,700	Planning law fines
Mrs Y	Potentially millions	[...] € 4,500	Lost profits Fees & lawyers
Mr Z	€ 324,000	€ 18,890	Planning law fines

No
apparent
correlation
between error
rate & costs
incurred

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Causation

Facets of Legal Translation Performance 53

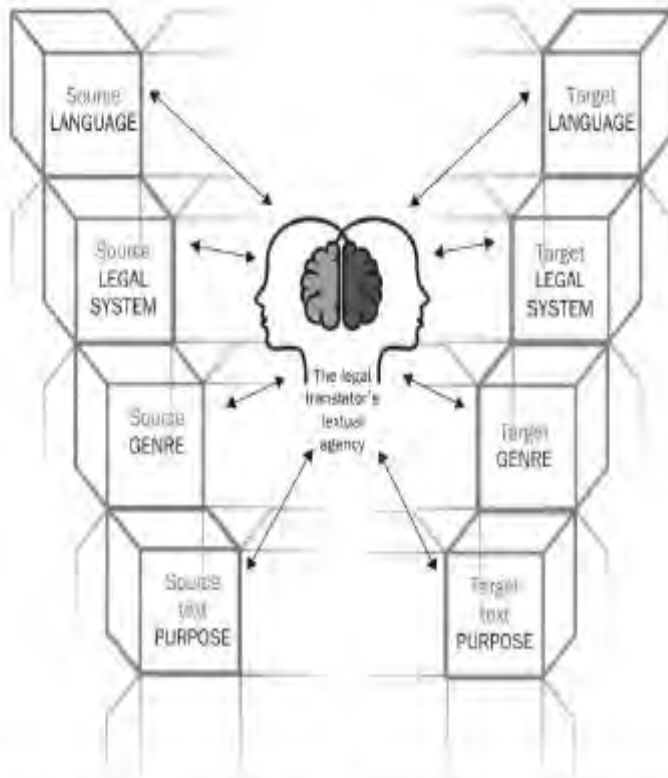


FIGURE 2.3. A simplified representation of the tesseract of the legal translator's textual agency.

- What would cause the chain of causation to break?



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Key findings...

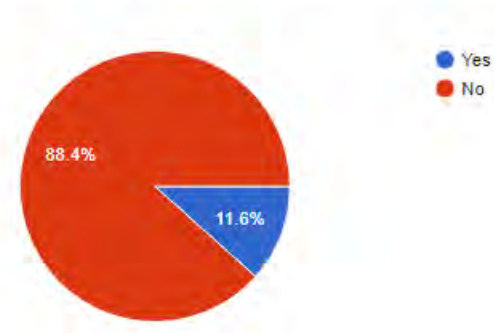
18. Did the matter go to court?

31 responses



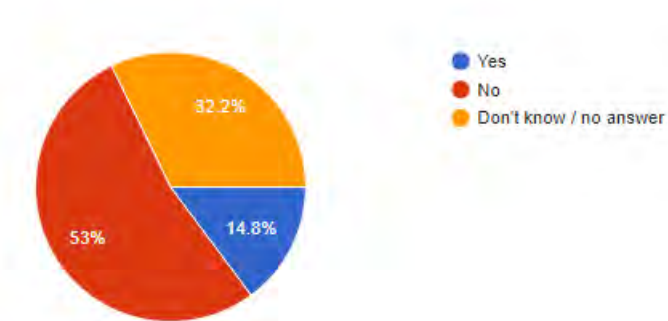
13. Have you ever had to pay compensation for a translation you did that was deemed to be poor quality? Compensation could be money/having to redo a translation/having something deducted from a subsequent job.

267 responses



20. You indicated you personally have never had to pay compensation for legal translations you have done. Are you aware of cases of other translators you know having to pay such compensation?

236 responses



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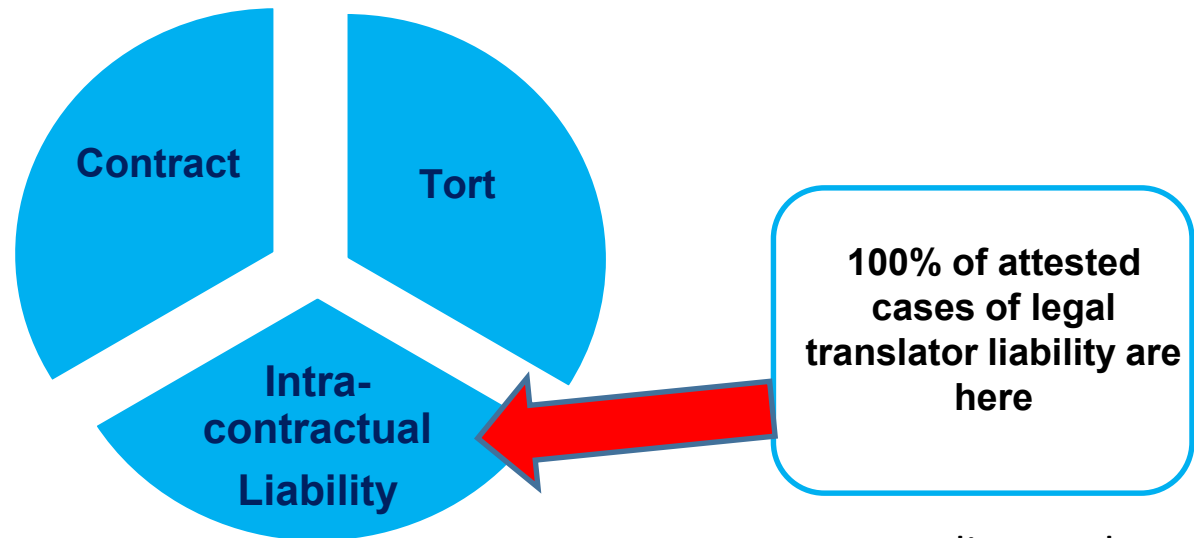


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Something missing ...

5.3 To the full extent permitted by the law, the Contractor bears full responsibility and liability for compensation of any loss and/or material damage suffered by the Company as a result of improper cooperation, execution and untimely implementation of the project, as well as the breach of this Agreement. The Company can refuse to pay the Contractor for the implementation of a Project if the work has not been executed completely and/or within the deadline and/or fails to comply with the provisions of this Agreement and/or the assignment's instructions. The right to refuse remuneration does not remove the Company's entitlement to damage compensation.



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The liability ecosystem

TRANSLATION ECOSYSTEM

Translation commissioned

(checked?)

Delivered

(complaint?)

Addressed

Compensation



No liability attested

So why not?
What aren't we seeing?
What are we seeing
here?

Release

11.6% paid "compensation"

Of them 74.2% just 1-2 times

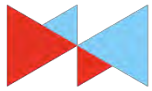
**Of them 80.6% paid to LSPs / 19.4%
to direct clients**

**73.7% said preference was for
issues to be resolved in-house**

THE WILD

The real world

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Who else is inside the box?



Why should the question just be about translator liability?

Who else has a duty of care?

And if translators aren't being sued, who is?

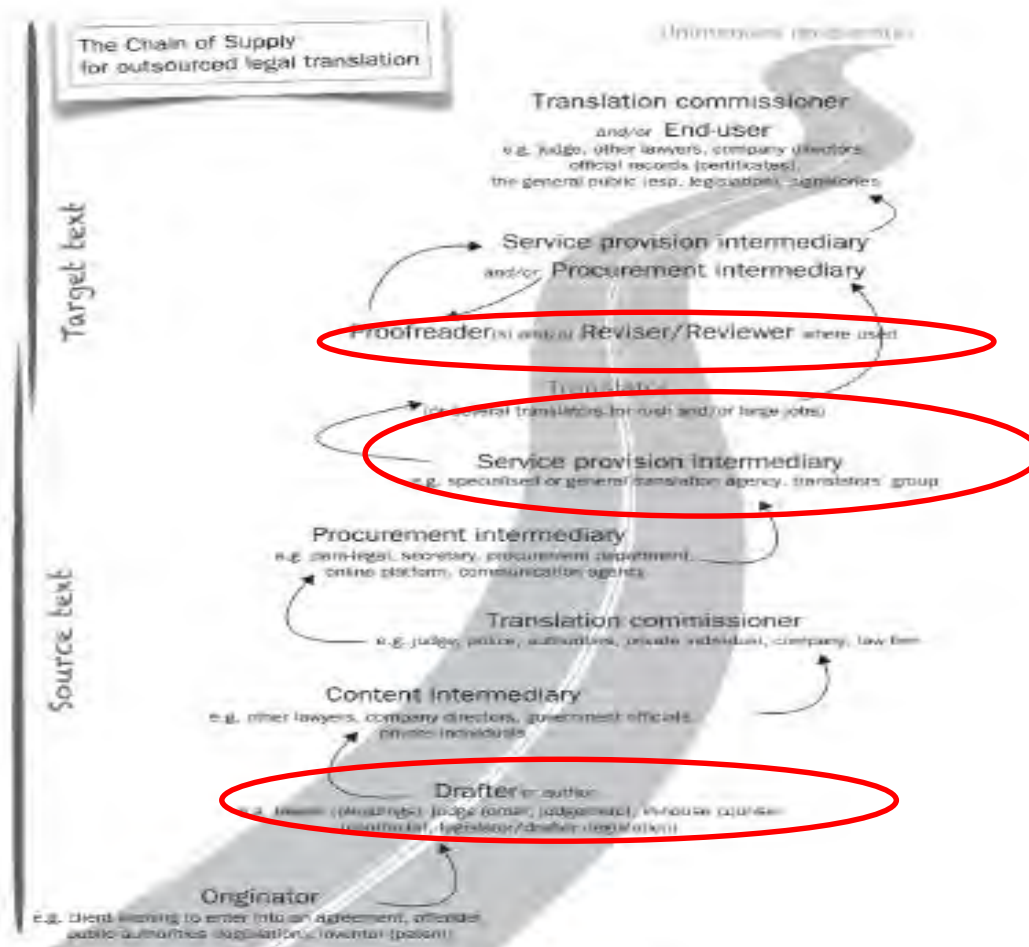


FIGURE 1.1. The Chain of Supply for outsourced legal translation.



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... the lawyer's duty of care ...

- **Would the lawyer be acting diligently if he didn't brief the LSP / legal translator?**

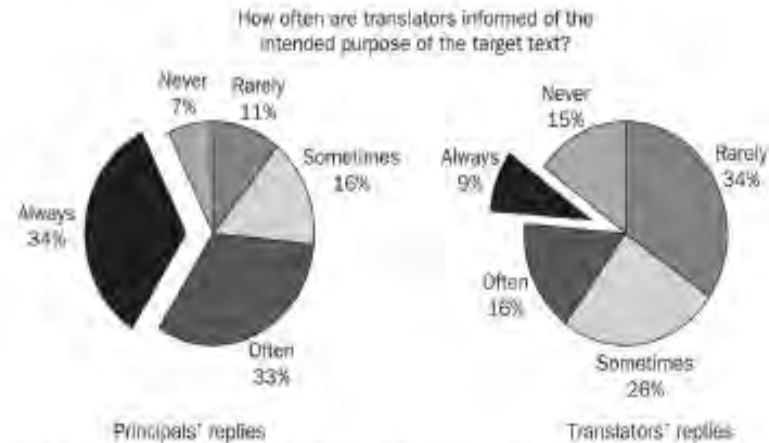


FIGURE 5.13. How often translators are informed of the intended purpose of the target text.

- **Will the lawyer check/proofread the document before using it?**
- **Is the lawyer even capable of checking the document's quality?**
- **Legal process outsourcing (LPO)**



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Is liability inevitable?

liability is one measure of professionalism. once translators are ... taking full responsibility for providing the customer with a document to suit his or her needs it is only fitting that they are liable when their work amounts to an accidental disservice

Hammond

suits should be brought against providers ... such legal threats may help send a broader signal to the (legal) translation industry to exercise care in the provision of language services

Dellinger



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If it came would it be a bad thing?

Facets of Legal Translation Performance 53

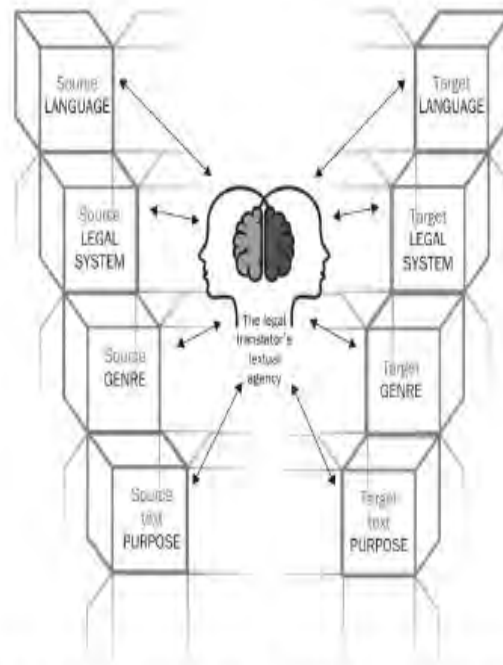


FIGURE 2.3. A simplified representation of the tesseract of the legal translator's textual agency.



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4

Brain surgeon	Air traffic controller	Lawyer	Legal translator
<ul style="list-style-type: none">• Attention to detail and precision• Manage stress efficiently• Problem-solving / information gathering abilities• Specialist knowledge• Good communication skills• Bright, eager mind• Ability to adapt to a changing environment• Blend of confidence and caution• Good organisational ability• Strong interest in the field• High level of focus• Mental toughness• Critical thinking	<ul style="list-style-type: none">• Excellent memory• Rapid decision-making• Calm under pressure• Concentration• Well-organised• Problem-solving skills• Able to adapt to changing situations• Self-disciplined• Able to concentrate for long time periods• Aptitude for working with technology• Flexibility	<ul style="list-style-type: none">• Good judgement• Analytical skills• Research skills• Perseverance• Creativity• Detail-oriented• Broad awareness• Creative problem-solving• Initiative• Writing skills• Able to work under pressure• Good time management• Stress management• Tenacity• Able to take in and process lots of info + distil key points• Able to work to deadlines• Able to ask right questions	

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Cont...

- Do people still trust brain surgeons / doctors?





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Limiting liability

- Insurance
- Can you get it in your country?
- Would the limit be enough to cover potential liability?
- **“I think it's seen as a mark of professionalism, just as other professionals such as lawyers would hold insurance policies so that risk can be allocated appropriately”**



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#proTips

Respondents suggested

- Incorporate
- T&Cs
- Limitations on liability
- Disclaimers



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#proTips – Before delivery

- Demand a brief
- Include that in your T&Cs
- No brief – no reliance can be made on the translation = denial of liability
- Examine how other professions regulate these issues
- General disclaimers
- Engage with the direct client/agency – query like crazy



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#proTips – upon delivery

- Comment like crazy
- Caveat your delivery
- X errors in source
- T&Cs should include a statement that comments upon delivery are integral to the contract
- Indicate whether 4/6/8 eyes required depending on importance of text



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All comes down to one thing

- Be Proactive – act like a member of any other profession would

#proTips for LSPs

And what are LSPs doing to safeguard themselves against liability?





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Next steps

**THERE IS ALWAYS
SO MUCH WE DON'T KNOW**

- Qualitative analysis of the data
- Conduct follow-up interviews with respondents to legal translator liability survey
- Explore intra-contractual liability more
- Explore whether LSPs are being sued
- Explore whether lawyers acting on behalf of their clients are being sued

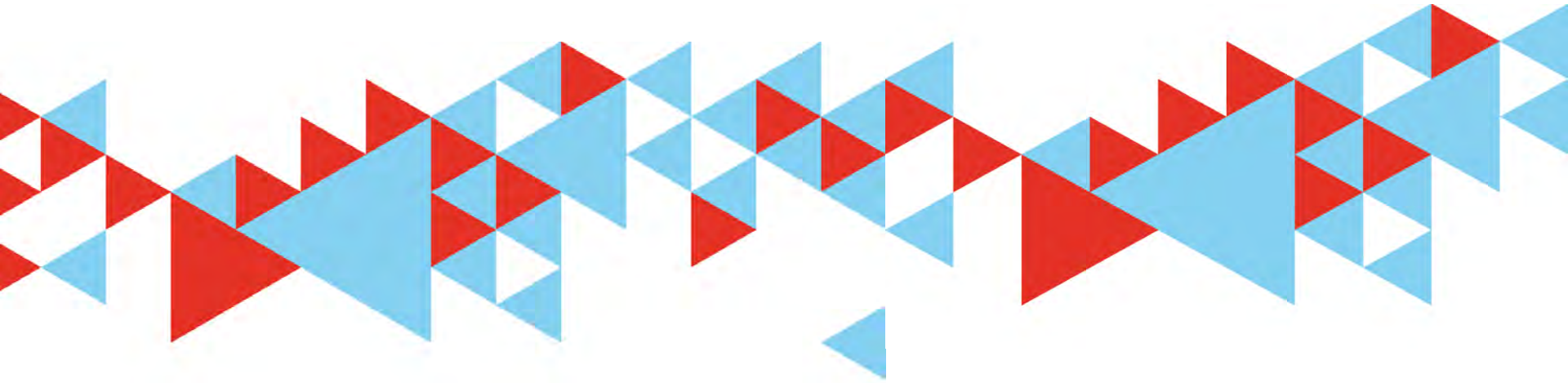


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elia.

european language
industry association



Thank you!

info@jurtrans.com

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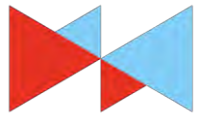


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If you want to read more...

- Byrne, J., Caveat Translator: Understanding the Legal Consequences of Errors in Professional Translation, *Journal of Translation Studies* 7/2007 (available online)
- Mann, T., Legal Translator Liability: Some Myths and Realities (ATA Chronicle)
- Delaney, R., A translator's liability (*ITI Bulletin*, May-June 2009)
- Rose Kennedy, Much Ado About Nothing: Problems in the Legal Translation Industry, 14(2) *TEMP. INT'L. & COMP. L.J.* 423, 440 (2000)
- Marianne Dellinger, From Jumping Frogs to Graffiti-Painted Walls: Legal Issues Caused by Mistranslation in International Commercial Arbitration, 7(2) *RUTGERS CONFLICT RESOL. L.J.* 1, 38 (2010)
- Erotokritou, C. (2012). "The Legal Liability of Air Traffic Controllers." *Inquiries Journal/Student Pulse*, 4(02).
- Hammond, M., A new wind of quality from Europe: Implications of the court case cited by Holz-Mänttari for the US translation industry
- Scott, J., *Legal translation outsourced* (OUP 2019)

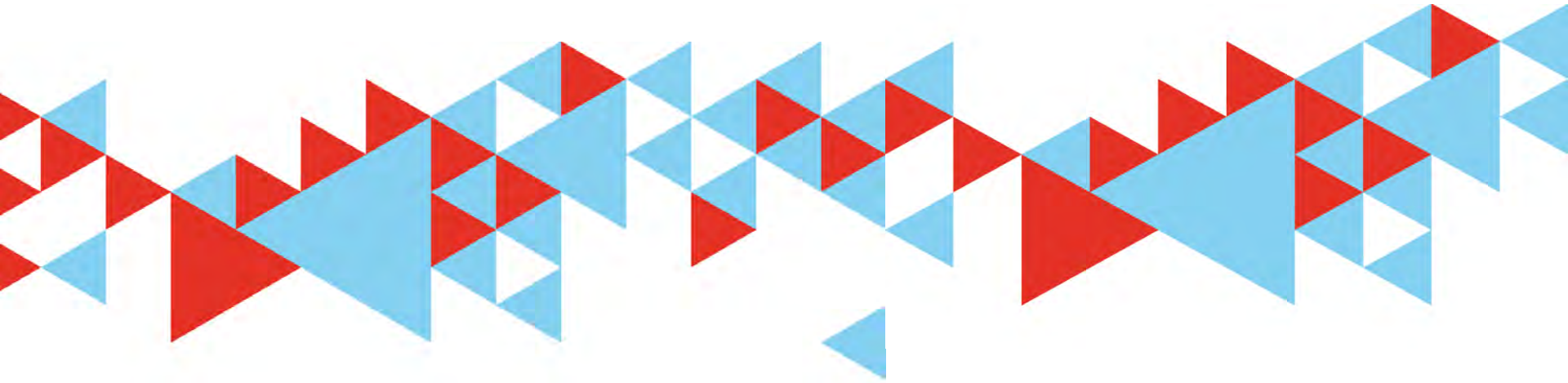


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Q&A

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