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Translation licensing and copyright issues under United States law
The problem

- Scholars and corporations are building corpora from copyrighted information on the internet, or training their algorithms on them.
- You need an author’s permission to create derivative works, like translations, of a copyrighted work. United States Code, Title 17.
- Berne Convention: ditto
- No permission: copyright infringement
Could your company be sued?

1) Direct infringement: sued for what you do

2) Secondary liability: sued for what your users do
Direct infringement

- Direct infringement does not require intent, but does require a volitional act.
- Linking to copyrighted content with MT links?
Secondary liability

sued for what your users do

- Established where a defendant has knowledge of the infringement and induces, causes or materially contributes to the infringing conduct of another.
Secondary liability

sued for what your users do

• **Examples of inducement:**
  • Promote/advertise infringing uses
  • Target users of shady websites
  • Court will also look at efforts to filter copyrighted material
But copyrighted material makes up the best stuff on the Internet!
Defenses to Infringement

• Fair use
• Implied license
Fair use

- The fair use of copyrighted work, for purposes such as criticism, comment, news reporting, teaching, scholarship and research is not an infringement of copyright. 17 USC § 107
  - Purpose and character of the use. Commercial?
  - Amount translated
  - Economic harm
Fair use

- Decades of statute and case law defining fair use.

A new doctrine: Implied license?

• Defense to infringement

• This argument assumes that web site owners imply a license to *do things* with their content (crawl, cache, RSS)

• Courts are increasingly supporting this idea, but no one knows if/how it will apply to language technology
The ongoing debate over Implied License


- Implied license is no defense when there are express restrictions (terms of use, click-wrap agreements, contract). *Ticketmaster v. RMG Technologies* (2007)

- “[Such use of implied license] inverts the meaning of property rights... This should not be the law...”
• Google and other are promulgating such metatags.

• All online MT providers should use and respect such tags.
US vs. EU

• US has much less copyright protection of databases than EU.

• Databases have limited protection under US copyright law. **Feist v. Rural** (1991)

• Copyright extends only to the compilation (selection and ordering), not the data and facts.
Some licensing issues

• License: rights, scope, limitations

• Define “use”: Worldwide use? Office use? Certain industry use?

• “Perpetual” licenses are subject to termination. “Irrevocable” licenses are not subject to termination.

• “exclusive” license (you and the licensee may make use) vs. “sole and exclusive license” (only the licensee, not you, may use)
Contract termination

- Important language: “the following provision shall survive termination”
- Payment: after termination, what about payment, interest, taxes?
- Notice: upon termination, whom to notify?
- Confidentiality clause - survive X years?
- Termination for bankruptcy clause - may not be enforceable
Indemnification clause

- Limitation of liability clause—in no event shall liability be in excess of money we pay you.

- Other side: if they don’t pay, they’re not liable!

- “In no event shall liability extend beyond direct damages”

- What’s the measure of damages? Lost profits?
Indemnification clause

- Indemnification “including attorney’s fees”
- “in no event shall liability exceed fees paid within X months of breach”
- “In no event shall we be liable to you or any third party” – WRONG. Not effective against third party, who was never a party to this K
Conclusion

• Be aware that the United States-specific legal doctrines of “fair use” and “implied license” are currently evolving.

• Adequately prepare for termination, indemnification and bankruptcy in license agreements.
Questions?