

Copyright, Open Access and Translation for Scientific and Academic Research

To ensure that information is widely available to end-users, it is important that the results of scientific and academic research should be translated into local languages. In the agricultural sciences, translation is key to ensure that smallholder farming communities, local agricultural scientists, and extension agents have meaningful access to information.

To maximise uptake, it is important for translations of scientific and academic publications to be:

- readily accessible;
- available as soon as possible; and
- accurate.

If the publications are protected by copyright, it may be challenging for research institutions to meet the goals of open access. This is because where a work is protected by copyright, the copyright owner has the ability to control whether and under what conditions that work may be translated into another language. As a result, copyright has the potential to undermine the widespread dissemination of research results.

Where a work is protected by copyright, the work may be translated without permission of the copyright owner under either (i) the general exceptions to copyright, or (ii) the special provisions for developing countries in relation to translations. Alternatively, (iii) a work may be translated with permission under a licence.

(i) General exceptions to copyright protection

While the rights given to the owners of copyrighted works are extensive, they are not absolute. Several exceptions limit the exclusive rights of copyright owners. One of the most well-known exceptions is the fair dealing/fair use defence, which allows the use of copyright protected works in circumstances that ordinarily would be construed as infringements, provided that the use is 'fair'. However, the general exceptions to copyright are unlikely to facilitate the translation of protected works if the copyright owner will not agree to a translation or is imposing unreasonable demands.

(ii) Special provisions for developing countries in relation to translations

Under international treaties that set the terms for national copyright laws, developing countries can:

- introduce a compulsory licensing scheme for translations, or
- amend their laws so that translation rights lapse if the rights are not exercised within a ten-year period.

Compulsory licenses for translations:

International law allows countries to replace the right of translation with a system of non-exclusive and non-transferable ('compulsory') licenses. Countries including Colombia, India, Indonesia, Malaysia, Mexico, and the Philippines have introduced compulsorily licensing schemes for translations.

A person who wishes to obtain a licence to translate a copyrighted work must make an

application to the relevant government agency, which will review the application and decide whether to grant the licence. Where a translation has not been published in a language in general use in a given country, the applicant can apply for a license for translation three years after the date of the first publication of the original work.

However, they must wait an additional six months before the licence comes into effect. Meanwhile, if the applicant wishes to translate the work into a language that is not in general use in any developed country, the applicant can apply for a compulsory licence to translate one year after the date of the first publication of the original work. After complying with the relevant national protocols, the applicant must wait an additional nine months before the licence to translate will come into effect.

In both cases, the applicant must show that the copyright owner has refused their request to translate the protected work. Where the owner cannot be found, the applicant must show that he or she exercised due diligence to find the owner. The applicant is also required to send by registered airmail copies of the application for the license to the publisher of the work and to any designated national or international information centre.

The compulsory licencing system is limited to works published in printed or analogous forms of media. A licence to translate should only be granted 'for the purpose of teaching, scholarship or research'. While it is normally not possible to export a translated work to another country, in some cases public bodies can export translations. The copyright owner must receive 'just compensation' for translations made under compulsory licenses, consistent with royalties that normally would be paid for access to the work. The translations should also be 'correct'.

Lapse of translation rights: International law also allows countries to amend their national copyright laws so that translation rights lapse if they are not exercised within a 10-year period after publication. This option is open to all developing countries, so long as they have not created a system of compulsory licencing.

Problems with the existing scheme

Although it may appear that international law provides an effective system to facilitate the translation of copyright protected works, the

current regime has been criticised for failing to meet the needs of developing countries.

One problem may arise where institutions conduct research across multiple countries, in which different languages are spoken and which have different copyright laws. While global standardisation in copyright law has occurred to a certain extent, differences still exist between different national systems. Given that the extent to which a copyright owner is able to control the translation of his or her works depends on the laws of individual countries, this means that it is often necessary to navigate the intricacies and idiosyncrasies of local laws.

Delays: The fact that the translation rights lapse 10 years after publication means that this option will be of limited use for most scientific publications. This is because the long gap between the initial publication and the permissible translation would render the translation of little value. Although countries that recognise compulsory licenses may permit translations one or three years after the initial publication, as noted above, several issues limit the usefulness of compulsory licences.

Online Matter: Because compulsory licences are limited to works published in printed or analogous forms of media, they do not apply to works published online.

Administrative burdens: The usefulness of compulsory licenses may be undermined by the administrative burdens, such as the need to file applications with government agencies, to demonstrate that due diligence was exercised, to pay administrative fees, and to maintain communications with several parties.

Cost for access: Countries with compulsory licencing frameworks for translations must ensure that the author is paid 'just compensation'. This gives rise to the question of who will pay the royalty costs. If the end-user were to pay, it would undermine the open access principle that materials should be freely available.

(iii) Licences

Given the issues associated with both the general defences in national copyright laws and the special options available under international law for translations in developing countries, it is likely that research institutions will need to consider licensing protected works to make them openly accessible. This may be

challenging if there is uncertainty about who owns copyright in a given research publication.

Problems may arise especially where multiple authors from different institutions were involved in the research.

The question of whether a published work can be translated depends on the terms of the initial

research agreement and/or the conditions under which the authors of the work were engaged (if any). Where a contract is unclear or does not deal with translation, the only option will be to renegotiate with the relevant copyright owner to license the right to translate.

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