



# Erik Ketzan

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 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.
- Thumbnails of images in search engine results. Kelly v. Arriba Soft (2002, 2003), Perfect 10 v. Amazon.com (2007)

# 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

- Caching by search engines. Field v. Google (2006), Parker v. Yahoo (2008)
- 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...”  
Raymond Nimmer, 2009.

# <content="notranslate">

- 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?