

Patenttranslator's Blog

Diary of a Mad Patent Translator

Posted by: **patenttranslator** | September 21, 2013

How the So-Called Translation Industry Turned “Confidentiality Agreements” into Declarations of Acceptance of Servitude

Most translators probably noticed that the length and the character of agreements between freelance translators and many of so-called LSPs (Languages Service Providers, also known as translation agencies), which used to be known as Confidentiality Agreements and these days are mostly called NDAs (Non-Disclosure Agreements), have changed considerably within the last decade or so.

Twenty or even ten years ago, these agreements were legitimate confidentiality agreements aimed at what they were originally designed to do: protecting confidential information of clients whose documents are being translated by freelance translators.

They were usually only two or three hundred words long, and all a translator had to do was to sign an agreement acknowledging that confidentiality of such documents will be protected by the translator.

But within the last decade or so, quite a few translation agencies have changed the style and content of these agreements.

These days, the so-called NDAs read more like a declaration of undying loyalty and obedience of a grateful servant to a hopefully merciful, but potentially merciless feudal lord and master. In other words, these are declarations of acceptance of servitude, not seen on such a scale since feudal time. Any day now, these agreements will probably include (in addition to the 2,600 words of a typical NDA sample attached below) also the following clauses:

1. *Jus Primae Noctis* Clause (also known as *droit du Seigneur* in French), or legal right allowing a medieval lord and master to take the virginity of his serfs' maiden daughters.
2. Sacrificing the firstborn son (of serfs who for some reason have no maiden daughters) for any perceived transgression against the translation agency, the natural lord and master of so-called translators.

Once these two new clauses are included, they will complete the cycle of history repeating itself (first, as a tragedy, next time, as a farce) and take us back a couple of centuries back to feudal times, or a couple of thousand years back to biblical times.

The NDAs already have a clause stating that should the lords and masters of serfs also known as translators decide to sue in their infinite wisdom a hapless translator for any reason at all, the translator must pay any "reasonable attorney's fees" of the natural lord and master of all translators.

It should be noted that since "reasonable attorney's fees" are generally calculated at 400 dollars an hour, the term itself is clearly an oxymoron. There is no such thing, just like there is no such thing as "being a little bit pregnant".

It is amazing how many clauses that have nothing to do with confidentiality of clients' documents the XYZ translation agency managed to cram into what is dressed up as a confidentiality agreement. These extraneous clauses include (but are not limited to, as they like to say in these contracts):

1. Non-competition.

Huh??? Don't they know that it is illegal to try to prevent another businesses from competing with their own business? Competition is what the capitalist system, such as it is, is based on. Without competition, it cannot work.

It is one thing to ask your subcontractors not to abuse information obtained while they were working for you to steal your customers. That would be a legal clause enforceable in an employment contract, for example, and employees are often asked to sign a non-competing agreement. But even though a blanket clause preventing translators from competing with brokers is blatantly illegal, most NDA agreements are drafted to at least imply that translators may not work for direct customers who, unbeknownst to the translator, may be agency's customers, although many clients obviously send translations to several agencies and several freelance translators.

2. Ownership of copyright translator's work product.

Huh??? Why should a broker own the copyright to your translation? Once it is sold to a client, is it not the client who will own your translation, if anyone, rather than a broker? How can this requirement be possibly legal?

3. Having one's home office "audited from time to time" by the translation agency.

WTF??? Are we talking about regulations in Cuba or North Korea, or about “freelance contractors” who live and work in the so-called “free world”? This is actually as close to *Ius Prima Noctis* as it gets. Make sure your maiden daughters are away from your house during these raids on your home! The people who put this contract together are certifiable lunatics and there is not telling what they might do to people who sign on the dotted line.

4. All kinds of other things that have nothing to do with translating, including (but not limited to):

- a) agreeing to undergo background checks (we've got to make sure that the translator is not a libertarian or liberal who is voting for the wrong party),
- b) agreeing to undergo drug testing (what about alcohol consumption and smoking, is it legal for translators to drink and smoke? shouldn't that be in the contract too?),
- c) agreeing to undergo training (would that be based on obedience training for dogs by Cesar Milan, the Dog Whisperer?),
- d) many other seemingly random and completely nonsensical items are also thrown in for good measure, such as Health Insurance Act and other assorted acts (is that the Private Health Insurance and Big Pharma Bailout Act, the greatest accomplishment of Obama so far, or is it something else?), and something called “ARRA” and “GLB” (I have no idea what these things are, but what the hell do they have to do with translating?).

Nothing, obviously. So why are they included?

You can read the Non-Disclosure, Non-Compete [sic] contract and judge for yourself whether this is something that a freelance worker living in “the free world” should sign, although it may be better just to scan it because it is so long (2,600 words). It should be noted that the sample below is a medium-sized “NDA”, many run to 4 or 5 thousand words.

I only changed the name of the company to XYZ corporation and added bolding to what I consider the juiciest parts, nothing else was changed in it.

I would like to emphasize that I did not ask to be sent this contract. It was sent to me when I asked to be sent a sample of documents for translation when an agency asked about my availability for a rush job, even before I had a chance to find out whether the agency is willing to pay my rate (almost certainly not, given what's in the agreement) and what are the payment terms.

Although the contract is unsolicited e-mail, and therefore junk mail, I removed the name of the company from it. In any case, since quite a few basically identical contracts were sent to me in this manner by several translation agencies, this is really just a boiler plate representative of the garbage contracts that translation agencies are now asking translators to sign, even before any discussion of rates and payment terms takes place.

Even the most arrogant agencies probably understand that most translators must hate it when they are asked to sign this kind of garbage.

But why should they care about being hated by lowly peons hungry for work? They know that a translator who signs this kind of contract is somebody who is desperate for work, and who will be eager to work at low rates (they call low rates “best rates”) with crazy deadlines, through weekends and holidays.

Because that is exactly the kind of translator that these agencies are looking for. As Caligula used to say “*Oderint, dum metuant*” (let them hate us, as long as they fear us).

Whether somebody calling himself or herself a translator can in fact translate is much less important than whether this person is ready to sign on the dotted line a declaration of acceptance of servitude.

XYZ Corporation

Non-Disclosure, Non-Compete Agreement

This agreement is made between

herein referred to as Contractor, located at

and XYZ, Inc. referred here in as Company, located at 1234 Any Street, Any State, USA.

This Agreement shall govern the conditions of disclosure by Company to Contractor of certain “Confidential Information”, as defined in this Agreement under Section 1.

With regard to the Confidential Information, Contractor hereby agrees to the following provisions:

- 1. Confidentiality and Nondisclosure of Company Confidential Information.** Under this Agreement, Company shall furnish Contractor non-public and commercially valuable information relating to Company (hereinafter referred to as “Confidential Information”). Contractor agrees to hold such Confidential Information, including but not limited to the identities and contact information of Company customers, the vendors Services delivery process, Company internal processes and procedures, Company pricing and Contractor rates, communications between Company and Contractor, and Company reference materials, in trust and confidence, and agrees that such Company Confidential Information shall be used only as directed to provide Services for Company and shall not be disclosed in whole or part to any third parties or used for any other purpose. At any time, on demand by Company, Contractor shall deliver to Company all Company Confidential Information, including all reference materials and other documents, whether in print, electronic or other form created or given by Company to the Contractor.

Contractor shall not make or retain any copies of any documents or electronic records of any kind in any medium containing Company Confidential Information without the express written permission of Company. All communications conducted between Company employees and Contractor on Company premises and/or Company employees and Contractor on remote locations must be recorded for future reference. Contractor acknowledges that all Company Confidential Information shall be owned exclusively by Company and/or its Customers and that no information furnished by Company under this Agreement or in contemplation of this Agreement shall be owned by or deemed confidential or proprietary to Contractor.

2. Confidentiality and Nondisclosure of Information of Customers and Third Parties; Privacy and Information Security.

In the course of performing Services under this Agreement, Contractor may be exposed to or become aware of proprietary and/or confidential information of Company's customers and third parties (including Company customer's clients), including but not limited to medical, financial, insurance, and other private matters and Personally Identifiable Information such as social security numbers, addresses, phone numbers and credit card numbers ("PII"). All information of every kind provided by Company Customers, including all documents, and the information contained therein, is confidential and proprietary information of Company's customers (all such information hereinafter referred to as "Customer Confidential Information"). Company is contractually responsible for safeguarding the confidentiality of such Customer Confidential Information, subject to the possible disclosure thereof pursuant to legal process. Much of the information exposed to Contractor, in addition to being proprietary and/or confidential, is subject to government regulations. That includes but not limited to **Health Insurance Portability and Accountability Act ("HIPAA")**, the **American Recovery and Reinvestment Act of 2009 ("ARRA")**, Safe Harbor provisions established by the U.S. Department of Commerce, Section 605 of the Communications Act of 1934, 47 U.S.C. Section 605 and Gramm-Leach Bliley Act ("GLB"). Pursuant to those government regulations and similar agreements, Contractor is obligated to maintain the confidentiality of all of this information and not use it for any purpose other than for providing Services to the Company customer that provided the information.

Because of the importance of protecting Customer provided and government regulated information, and because Company is by law or contractual obligation required to keep confidential all Personally Identifiable Information and Customer Confidential Information, it is Company's policy that *all* of the information and documents Contractor receives, creates or observes during the course of providing Services or otherwise in communicating with a Customer, or which Contractor otherwise receives in the course of working for Company, will and must be treated as Customer Confidential Information. Contractor must respect and keep the confidence of all Customer Confidential Information.

Accordingly, Contractor agrees that Contractor shall not:

- (a) communicate, publish, transmit, distribute, display or otherwise divulge or disclose for any reason any Customer Confidential Information to any organization or person other than the organization or person engaging the Services of Company and that is providing the Customer Confidential Information during the translation project; or (b) use any Customer Confidential Information for any purpose other than for the delivery of Services on behalf of Company and only for the organization or person

providing the Customer Confidential Information; or (c) make any copies of documents or other media containing any Customer Confidential Information or otherwise retain any Customer Confidential Information obtained by or disclosed to Contractor in the course of providing Services or (d) accept remuneration, directly or indirectly, in exchange for any Customer Confidential Information. Electronic

devices (computers, smart phones, PDAs, iPads, etc.) may be used to assist in completing a project. If Contractor uses electronic devices to complete a project, any files, including without limitation documents, spreadsheets, PowerPoint presentations, and temporary files must be saved to a file folder or hardware drive which is kept separate from all other files on Contractor's electronic device, and to which only Contractor has access. The separate file folder or hardware drive must be password-protected, and Contractor must safeguard the secrecy of that password. Upon successful completion of the project, and confirmation of receipt of the completed project from the Customer, Contractor must delete from Contractor's electronic devices all electronic and hardcopy files created in the course of completing the Assignment. This includes, without limitation, all temporary files. Company reserves the right to audit from time to time each Contractor's workplace, including home offices, to ensure that this policy is being followed. In addition, when working remotely, Contractor must have up to date anti-virus and spyware software installed on its computers. Any deviation from the foregoing requires the prior written consent of the Chief Compliance Officer of Company.

Should Contractor disclose any Customer Confidential Information, inadvertently or otherwise, or discover a potential risk that Confidential Information may be or has been disclosed, Contractor must inform Company's Chief Compliance Officer of this disclosure immediately, and in no case later than twenty-four (24) hours after discovering the disclosure or risk of disclosure. Contractor must disclose to Company's Chief Compliance Officer the name of the customer for which the Assignment was being done, the identity of the individual whose protected information has been disclosed (if PII has been disclosed) and, if known, any contact information that Contractor has for that individual. Additionally, Contractor must provide a brief description of what happened, including the date when the disclosure or risk of disclosure occurred, and a description of the types of Customer Confidential Information that were involved (such as Social Security Number, date of birth, home address, account number, disability code, credit card information, etc.). Failure to report any disclosure of Customer Confidential Information may result in disciplinary action.

Contractor agrees:

that Company may take steps to ensure that Contractor is in compliance with its obligations under Sections 1 and 2 of this Agreement, and may terminate Contractor immediately for any violation of Sections 1 or 2. Contractor acknowledges that in addition to such termination, Company (directly or through an insurance company), and/or Company Customers or their customers may seek legal remedies against Contractor for any such violation.

3. Non-Compete/Non-Solicitation. Contractor agrees to the following provisions: (a) the identity of Company customers and customer contacts, unless publicly available, is Company Confidential Information and may not otherwise be used by Contractor except as permitted in this Agreement, and (b) for 24 months upon termination of the engagement with Company, Contractor shall not directly or indirectly solicit any service assignments, including but not limited to linguistic

Services, accept employment or provide Services from said customer unless otherwise agreed to in writing by Company, (c) further, Contractor shall not, for a period of 24 months following termination of the engagement with Company, directly or indirectly, contact or solicit any of Company's service providers, clients or employees either on behalf of self or for another entity.

Contractor acknowledges and agrees that a breach of any of the agreements contained in this paragraph will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law and, in the event of such breach, Company will be entitled to injunctive relief and/or a decree for specific performance, in addition to and without limiting any other remedy or right Company may have (including monetary damages, if appropriate).

4. Ownership of Work Product. To the extent the work product delivered to Company hereunder includes material subject to copyright, Contractor agrees that Company or its Customers shall own all copyrights in the work product. Contractor hereby assigns and agrees to assign to Company, its successors and assigns, all right, title and interest in and to the work product, including all copyrights, patents, trade secrets, and other proprietary rights therein (including renewals thereof). Contractor shall execute and deliver such instruments and take such other action as may be required and requested by Company to carry out the assignment contemplated by this paragraph. Any documents, magnetically or optically encoded media, or other materials created by Contractor pursuant to this Agreement shall be owned by Company and be subject to the terms of this paragraph.

5. Return of Materials. On conclusion of any particular Assignment, upon Termination or as requested by Company, Contractor will return to Company all materials or documents produced or provided in connection with the Services.

6. Restriction on Assignments. This Agreement is personal, and is being entered into based upon the singular skill, qualifications and experience of Contractor. Contractor shall not assign any of its rights, or delegate any of its duties or obligations, under this Agreement without the prior written consent of Company, and not before such other person or firm enters into a Nondisclosure/Confidentiality Agreement with Company.

7. Relationship Between the Parties. Contractor is retained only for the purposes and to the extent set forth in this Agreement and Contractor's relationship to XYZ Corporation shall be that of an independent contractor and

not as an employee. As such, Contractor represents and warrants to XYZ Corporation:

1. No Benefits. XYZ Corporation has no obligation to withhold or pay any amount due from Contractor by

way of income or employment taxes, and Contractor is not entitled to any pension, stock, bonus, profit-sharing, health, or similar benefits which may be available to employees of XYZ Corporation;

2. No Authority to Bind XYZ Corporation. Contractor has no authority, either expressed or implied, to assume or create any obligation or responsibility on behalf of or in the name of XYZ Corporation or to bind XYZ Corporation in any manner. Contractor will not hold itself out as a representative of XYZ Corporation or imply that Contractor has any authority to act on behalf of XYZ Corporation;

3. No Right to Control. XYZ Corporation has no right to control or direct the manner or measures by which Contractor performs its duties hereunder. Contractor is free from direction and control over the means

and manner of providing the Services, subject only to the right of XYZ Corporation to specify the desired results;

- 4. Permits and Licenses.** Contractor shall be responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for Contractor to conduct its business;
- 5. Equipment.** Contractor shall provide the tools or equipment necessary for performance of the Services unless provided otherwise in a Work Order;
- 6. Public Representations.** Contractor represents to the public that its services are provided by an independently established business;
- 7. Other Activities.** Subject to Contractor's obligation to perform the duties specified in this Agreement, Contractor shall be free to devote its time and attention to such other activities so long as such activities do not materially interfere with duties required under this Agreement;
- 8. Background Check.** Contractor may be required by a Customer to undergo a background check, drug testing or other security procedure as a condition for working on that Customer's project. Contractor understands that its failure to agree to undergo such testing or comply with such procedures will disqualify Contractor from working either on that Customer project or for that Customer; and
- 9. Training.** Contractor may be required by a Customer to undergo special training and agrees to undergo such training if required by an Assignment
- 10. 8 .Miscellaneous Provisions**
- 11. Binding Effect.** This Agreement shall be binding on the parties and their respective directors, officers, partners, providers, agents, affiliates and successors.
- 1. No Third-Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.
- 2. Amendment and Waiver.** This Agreement may be amended, supplemented or modified only by an instrument in writing executed by both parties. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.
- 3. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions will continue in full force and effect as if the Agreement had been executed without the invalid provision.

- 4. Attorney Fees.** If any suit or action is filed or arbitration commenced by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation, prosecution and defense of such suit or action as fixed by the court or arbitrator.
- 5. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State, where Company located. Any suit, action or arbitration filed or commenced by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement shall be filed or commenced in Court District of Company location. Each party hereby irrevocably submits to the jurisdiction of such courts for the purpose of such suit or action and hereby expressly and irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the venue of any such suit or action in any such court and any claim that any such suit or action has been brought in an inconvenient forum.
- 6. Injunction.** A breach of any of the agreements contained in this Agreement will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law and, in the event of such breach, Company will be entitled to injunctive relief and/or a decree for specific performance, in addition to and without limiting any and all other applicable remedies at law or equity, including the recovery of damages.
- 9. Entire Agreement.** This Agreement and all Work Orders issued under it, constitute the entire, final and complete agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces all written and oral agreements and understandings heretofore made or existing by and between the parties or their representatives with respect thereto.

AGREED TO AND ACCEPTED:

CONTRACTOR NAME (Printed) COMPANY (Printed)

CONTRACTOR NAME (Signed/Date) COMPANY (Signed/Date)

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Perhaps the worst excesses might currently be limited to US-based agencies; I haven't seen that much of it on this side of the pond.

Deleting all trace of a project after successful delivery would invalidate my professional-indemnity insurance, so I cannot accept NDAs that insist on that. I'm not sure I'd want to work with people with such a seemingly litigious attitude, anyway; it puts me right off.

By: [Oliver Lawrence](#) on September 21, 2013
at 10:45 am

[Reply](#)

@Oliver

I was wondering whether these types of "contracts" are used also in other countries.

But even if this disease is limited only to the American continent at this point, it is likely to spread to other parts of world unless it is stamped out in time.

By: [patenttranslator](#) on September 21, 2013
at 10:51 am

[Reply](#)

I haven't seen anything of this kind here either. My "favourite" part: "Company reserves the right to audit from time to time each Contractor's workplace, including home offices, to ensure that this policy is being followed". Really?? They have the right to come to your home and check if your files are password-protected or whatever? Unbelievable! I'd be curious how they could even enforce this clause. I am not sure if it is even legal. Is it?

By: [Alina Cincan](#) on September 21, 2013
at 11:09 am

[Reply](#)

@Alina

Are these agencies in England or other European countries, or here in America?

By: [patenttranslator](#) on September 21, 2013
at 11:43 am

[Reply](#)

Sorry, didn't realise I had not mentioned where "here" was. I was referring to the UK.

By: Alina Cincan on September 21, 2013
at 11:48 am

For the first three decades of my work as a translator, I only lost one client because they refused to accept my changes in their contract. In the past few years, I have lost several simply because I refuse to sign what I can't promise to fulfill or what is impossible or too stupid to fulfill, but the agencies refused to accept my changes. It's like the problem with loyalty oaths – the dishonest people sign them, intending to violate them anyway; the honest folk balk at it.

Some lawyers wanted me precisely because I was familiar with the highly technical subject of their patent case. But they wanted me to decline all work on that topic for three years after some indefinite date (I think when their case was concluded). Well, the reason I know the subject is because it comes up frequently in my work, usually as a small part of a text. Some version of the device involved is present in every laboratory and frequently mentioned in every experimental section of every journal article. No, I didn't sign. I did suggest a large retainer if they really wanted me to sign... 😊

I always cross out legalese about jurisdiction and write that any payment disputes will be settled by third party mediation, and I also cross out anything with any form of the word "indemnify". Also I modify the non-compete sections, since I 1) have to actually know they are the agency's clients and 2) not have had any prior contact with them, and of course 3) have to be free to take work from other agencies who happen to have the same end client as the agency.

Here is my reply 8 years ago to an agency about one end client's new request to eliminate any trace of their work from my workspace for confidentiality reasons. Unfortunately, they are no longer my client because a few years later, they made their draconian contract a universal requirement:

=====

[Agency X]

"The second thing that we need for you to do is to erase any and all electronic files from your computer and destroy any hard copies that you may have for any [Agency X] job beginning with the any of the following prefixes..."

[Translator Me]

Your client seems to have us confused with typists. That does happen a lot... 😊

I sympathize with the security concerns your client (and your client's clients) may have. But your client needs to understand that

- 1) it is impossible to "get rid" of all the intellectual material a translator has created in the course of a job and to disentangle it from other such material created on other jobs from other clients, and
- 2) doing so even partially would cripple the translator in general, and in particular would adversely affect the translator's ability to provide quality translation for future jobs on your client's projects.

In other words, your client may not realize the full implications of forcing translators to "reinvent the wheel" endlessly on their projects both pre-computer and in the computer age. We are not monkeys with a dictionary and a typewriter, after all.

We can't erase our own flesh-and-blood memories, and nowadays our computer "memories" are an extension of our brains. The final translation is just what you see at your end. But in the process of providing it, I typically have generated considerable notes and collected reference material that are

my own intellectual property. These notes are inextricably enmeshed with the source text and my English translation. I would no more agree to erasing such valuable professional resources than I would agree to a lobotomy.

The words and phrasings I've chosen in prior translations to solve linguistic problems are a valuable asset for me as I work on other jobs, and having those in searchable form ensures consistency on your jobs in particular. Even in pre-computer days, I kept extensive terminology notes on index cards for future use that you will pry only from my cold, dead hands. Let's not even get into the problem of dealing with copies of notes files and translations hidden away during routine backups on other volumes in the computer age.

I can't even recommend blanking out the name of the client in documents as a security measure, since that may make it harder for the translator to locate appropriate background information needed for an accurate translation. Within the text of documents, blanking out names can be a nightmare for a translator trying to coherently translate a sentence (much the same problem as occurs with sentences sprinkled with company acronyms – without knowing the nouns, how can we choose the verbs and prepositions and order of the words in the sentence?). You would have to replace the names with analogs (before sending the source material to the translator) as the best option if you really don't want the translator to have material on their computers with that client's name attached. However, admittedly often I myself don't even know the name of the client (yours or your client's client), since usually I work on background technical material accessible to the public.

I have no objection to shredding hard copies of the source and any printouts of the translation itself, of course, and regularly do so even though the odds of industrial spies going through my Rosie Roller in the alley here in a small Midwestern town (pop. 40,000) between Thursday night and Friday morning (trash pickup time) is highly unlikely. I could promise to mix the shavings with the used kitty litter on request. I've always considered that to be the ultimate in spy-thwarting, since the spies would have to be pretty desperate to go through that.

I take appropriate care to protect my computer from hackers (I am on a mac, so that is easier than for those on non-macs) and I am the only human in the house/office. Visitors tend to be rather monolingual, but I do not allow them to see possibly confidential material onscreen. I also promise for every client (even without a signed confidentiality agreement) to not reveal any company-specific information, which does also include keeping confidential the fact that any particular client is interested in any particular subject. So, for instance, I would not tell someone else that company XYZ ordered a particular journal article even though it is a public document, since that information could be useful information for XYZ's competitors. I extend that confidentiality to the intermediate client such as translation agencies (e.g., [agency name]). If I need to query other translators about particular terms or phrases, I always remove anything from the query that could identify the agency or the end client.

If that is not sufficient, then you should not assign work for this client to me. If it is sufficient, let me know and I will sign the confidentiality agreement only with the understanding that I will very liberally interpret the phrase "to the extent practicable", as outlined above.

You also will need to tell me in the job negotiating stage if the kitty litter security option is required on any project. I can't easily track down my work on your projects according to your project numbers months after the fact, since I use my own internal referencing system. And also the shavings will probably have already gone out the door in something other than the used kitty litter bag by that time.

Feel free to share this note with anybody in whole or in part, privately or publicly, including with your client.

By: **Cathy Flick** on September 21, 2013
at 11:17 am

Reply
@Cathy

I was once asked by a law firm at the end of 1999 about my backup contingencies for the end of the world known as Y2K that never was.

I told them that I had hard copies of everything, and that was all I needed.

I remember that I felt sorry for the poor paralegal who had to send the message to every "vendor" on the list.

By: **patenttranslator** on September 21, 2013
at 11:46 am

Reply

Hey Steve,

Another great post!

The thing with a lot of these NDAs and Non competition agreements is that even if the translator, in their opinion, was to break them, 1) they would never know because they couldn't care less for one of their "suppliers"; 2) they would not bother charging the translator because in order to do that they would have to care about him/her that, and even if they managed to care enough about the translator, it would probably take too much resources to sue the translator successfully. And if they did sue, it would mean that they're after a large amount of money. I can't imagine any one going after a freelance translator based in Botswana for small claims.

So it's ridiculous and absurd. The agreement is generally there to give agencies a psychological "peace of mind" that you're legally bound to them. It's like how you need to be subjected to a lie detection test even when legally speaking, the lie detector test can't be used in most courts. In the end, these contracts are only psychological artifices used by those in charge to make themselves feel better, and to scare people into thinking that they're enslaved to a corporation.

Don't get me wrong, I'm all about translation ethics and privacy and confidentiality. NDAs and Non-Competition Agreements are the crux of how mid to large sized corporations protect and enforce their private property.

But it's total overkill when a translation agency wants freelance translators to read, understand, agree, and sign 10-20 pages of contracts with pointless clauses. It's a waste of time, pretentious, and pompous.

Anthony

By: **TransBunko** on September 21, 2013
at 6:02 pm

Reply

@Anthony

“... and even if they managed to care enough about the translator, it would probably take too much resources to sue the translator successfully. And if they did sue, it would mean that they’re after a large amount of money.”

I agree with most of what you said, but not with the 2 sentences above.

You already signed on the dotted line that you will pay “reasonable attorney’s fees” should an omnipotent agency decide to sue your a*s.

How many underemployed lawyers are there in US ready to sue anyone for any reason whatsoever armed with such a contract clause? Even if you don’t have much money, you probably have a car or a house that can be attached.

Maybe things are better in Canada where you live, but probably not by much.

By: [patenttranslator](#) on September 21, 2013

at 6:14 pm

Reply

Not long ago, I received an NDA from a (US) agency, running to 4,600 words (I win :-). It was clearly a ‘contract of adhesion’ disguised as an NDA, and as always, I told them: “thank you but no thank you, here are MY terms of service delivery”.

However, I am reminded of what I have touched on elsewhere, namely the need for us, the professionals who provide the very personal and professional service involved, to control the relationship with our clients.

We should provide our own NDA as well as our own ‘terms of service provision’, rather than being corralled into the ‘product chain’ set up and controlled by ‘Language Services Dealers’, as you so accurately described them.

If there is a lawyer among us, I would be interested in developing a universal (one page) NDA that would be suitable and acceptable to all but the most opportunistic, I would be very happy to contribute in its drafting.

By: [Louis Vorstermans](#) on September 21, 2013

at 9:49 pm

Reply

@Louis

I do agree that translators should offer their own agreement to agencies instead of accepting these illegal schemes that they are asked to sign.

If somebody really wants you work for them, there is no reason not to sign a reasonable translator’s agreement. Direct customers would sign it, although at this point I have no such agreement for them. I either decide to risk giving them credit, or ask them to prepay on a case-by-case basis. This system has been working quite well for me for more than 20 years.

Do you have a sample of such a translator's agreement?

If an agency insists that you should sign their agreement, such as it is, they are just looking for another obedient warm body.

(Sign it if that is what you are and aspire to be).

By: patenttranslator on September 22, 2013

at 7:57 am

Reply

Not yet Steve, but I'm working on it when I can. Any assistance will be welcome.

By: Louis Vorstermans on September 22, 2013

at 7:59 pm

Reply

What do you think of these two?

<http://www.translationclientzone.com/getting-what-you-want/agreements/>
[\(http://www.translationclientzone.com/getting-what-you-want/agreements/\)](http://www.translationclientzone.com/getting-what-you-want/agreements/)

http://www.atanet.org/careers/translation_agreements.php
[\(http://www.atanet.org/careers/translation_agreements.php\)](http://www.atanet.org/careers/translation_agreements.php).

By: **Vincenza** on September 23, 2013

at 2:21 pm

@Vincenza

Both of these linked agreements make sense, unlike the sample shown in my post.

But I don't use any agreement.

When a client says "yes" to me in an e-mail response to my price quote, I simply do one of the following 2 things.

1. If I don't know anything (or not enough) about the client, the client must prepay the order first. I do this for example with individuals who need to have their personal documents translated.
2. When the client is a legitimate company, such as a patent law firm, I bill them and give them 30 days to pay the bill.

No written agreement is necessary for either of these options, and I have never been stiffed by a law firm so far (in more than 2 decades).

On the other hand, when the client is a translation agency, the risk that I will be stiffed is always there, and it happened to me at least half a dozen times so far.

I don't believe that a written agreement would help in such a case either.

I just try to keep in mind that the risk is there in such cases and never accept huge jobs from agencies that I don't know very well in order to minimize the risk.

That is why I don't use written agreements.

By: [patenttranslator](#) on September 23, 2013
at 2:42 pm

Hi Steve!

Thank you for your post which I read, with greatest interest as well as astonishment. Since I am getting back to freelance activity, after five years of in-house translation and interpretation. Things seem to have changed remarkably!?! Years before (1982-2008) I used to be a freelancer and work on really important projects, at the highest levels and with the strictest security measures to protect clients' personal and business information. Nevertheless, I had never experienced something like that. I wonder, whether this is really going to be "the rule". I cannot believe that: "Big-Brother", notwithstanding.

Otherwise, "viel Spaß & Ciao" to the all of you and to me!

Vincenza

By: **Vincenza** on September 22, 2013
at 12:27 pm

[Reply](#)

@Vincenza

"I used to be a freelancer and work on really important projects, at the highest levels and with the strictest security measures to protect clients' personal and business information. Nevertheless, I had never experienced something like that. I wonder, whether this is really going to be "the rule"."

These so-called NDAs are not about protecting the confidentiality of clients' documents. That is just a pretext. They are designed to ensnare translators and turn them into obedient slaves.

Whether this is how things are going to be depends on whether most translators decide to go along with this scheme in order to survive, although just barely, or refuse to work for these shady operators in order remain human beings who are according to a certain document endowed with certain inalienable human rights.

By: [patenttranslator](#) on September 22, 2013
at 12:42 pm

[Reply](#)

Experience as well professional and quality work deserve fair remuneration and "no peanuts". And I am actually getting into difficulties with my "re-startup" because of that in Germany, where I have been since 2003. Being a sworn translator with specialization in business administration, law, economics, and finance, I should have accepted 0,04 Cent/word and bought the required translation software which was considered to be the prerequisite condition to get the interested project. So far I should have bought at least four of them and, eventually, "plaid with the matching-rate" of translated sentences to know how much my work would have been paid for. Moreover, I should have given my developed glossaries "gratis et amore Dei"! I did not do nothing of that all, of course. CAT tools are great and useful. Notwithstanding. If the client does not provide me with his favorite software, I do not agree on having my honorarium cut off,

according to a “matching rate” of any kind. Advantages of my purchased CAT tools ought to be used to my benefit, only. Is an engineer paid 1/3 or 1/2 less or, otherwise, nothing at all whenever he happens to develop something he has already done? What about a surgeons and physicians or barristers and lawyers? I don’t know whether I could explain you properly what I mean (English is not my native language; please feel free to amend and propose better and qualifying examples). I think, there are fair translators’ providers somewhere: the interesting question is where. I do not give up and go on with my research. In the meantime, “viel Spaß & Ciao” to the all of you and to me.

Vincenza

By: **Vincenza** on September 22, 2013
at 3:49 pm

Reply

“I think, there are fair translators’ providers somewhere: the interesting question is where.”

Fewer and fewer these days.

My suggestion would be to work only for smaller agencies run by intelligent people who are often not as greedy as the people running bigger outfits, and, most importantly, try to figure out how to find direct clients.

By: **patenttranslator** on September 22, 2013
at 4:59 pm

Reply

You are right, Steve.

On considering results of my marketing action, ten providers out of one hundred have called or written me back and, in actual point of fact, they are the smaller ones. As far as direct clients are concerned, twelve out of fifty companies have followed up and written. They all do not have projects in my native language at present (it is not as frequent as English and German are), but they will take contact when needed. How many of them, whether providers or direct clients, are eventually going to propose a project is “another story”. I appreciate and thank you for your advice.

Viel Spaß & Ciao!

Vincenza

By: **Vincenza** on September 22, 2013
at 6:00 pm

Reply

I am disappointed, Steve. Your sample NDA does not include “death by hanging” of the contractor (read translator) in case of infringement :)... Not so long ago, an agency sent me an NDA to sign even before they delivered the questionnaires and other material to apply to work with them, can you believe it? I told them thanks but no thanks, natch. I do prefer to lose an opportunity (that maybe is not one, at all) than bind myself into serfdom...

I must have signed 3 or 4 NDAs when I first started out, and was then never contacted by the

requesting agencies, so what's the point in requesting them in the first place. I really don't get these people. Then I wised up and stopped signing them. I am glad that I am not the only weird person willing to stand my ground on this!

By: **Nelida K.** on September 23, 2013
at 3:08 pm

Reply
@Nelida

This "NDA" was also sent before I agreed to do any work for them and even before I was given a chance to mention my rate, which no doubt would be too high for them anyway.

By: **patenttranslator** on September 23, 2013
at 3:59 pm

Reply

It does make them sound slightly paranoid, doesn't it? If all professionals decided to dig in their heels and refuse to be dragged into signing these ridiculous NDAs, they would be forced to review their policy on this. But this is just wishful thinking, it's not going to happen, more's the pity. 😊

By: **Nelida K.** on September 23, 2013
at 5:24 pm

Reply

@Nelida

To be paranoid these days ("you think the government is reading your e-mail and listening in to your phone calls" used to be paranoid not so long ago) is to be perfectly normal and sane.

They are not paranoid, they are insane.

By: **patenttranslator** on September 23, 2013
at 7:23 pm

Reply

LOL. You're so right!

By: **Nelida K.** on September 23, 2013
at 7:59 pm

Reply

The way I look at it, these "NDA's" are a handy way for us translators to separate the wheat from the chaff when it comes to the agencies we choose to work for. From my experience, these contracts are usually issued by agencies who, after I sign them (when I used to sign such things), you never hear from again. Those are usually the agencies who want to have a huge stack of impressive CV's to show their client, but of course, the most qualified translators will never work on the clients' project, because the job will go out to the lowest bidder. The agencies that have actually given me work, and

done so consistently, either have no such agreement or only a very simple agreement that really is about keeping the end-client's material confidential. In general, I agree that it's best to work for small agencies, especially those who are really translators themselves and have become outsourcers over time. But that's only a rule of thumb and doesn't always apply. For example, I receive very regular work from one agency that, judging by their internet advertising presence and the number of project managers that they have, is a fairly large company, and they have never asked me to sign any such agreement, always pay on time, etc. I think, in general, if a company is asking you for the world even before they have a project to assign to you, it's best to walk away and remain available for the jobs that come in from decent clients.

By: [Barbara Pavlik](#) on September 24, 2013
at 6:13 am

[Reply](#)

"In general, I agree that it's best to work for small agencies, especially those who are really translators themselves and have become outsourcers over time. But that's only a rule of thumb and doesn't always apply. For example, I receive very regular work from one agency that, judging by their internet advertising presence and the number of project managers that they have, is a fairly large company, and they have never asked me to sign any such agreement, always pay on time, etc."

I have exactly the same experience.

In fact, I work for one fairly large translation agency who sends me work very frequently and pays me every two weeks like clockwork by a transfer to my bank account.

So not all big translation agencies are bad, although I think that most of the big ones are simply horrible and it is better to stay away from them.

By: [patenttranslator](#) on September 24, 2013
at 9:49 am

[Reply](#)

We do not have such "agreements". We work with professionals who understand that what they are working on is confidential (and we write that on the PO) and if a client wishes the translator to sign an NDA for a specific job, it should be something simple and in plain English.

What some of you have received is appalling and ridiculous.

@cathy Flick: Brilliant reply!

By: [Alina Cincan](#) on September 24, 2013
at 12:28 pm

[Reply](#)

Hat off to you. That is exactly the right (and logical) attitude!

By: [Nelida K.](#) on September 24, 2013
at 12:40 pm

[Reply](#)

Thank you. Yes, I think this is what things should be like(don't even get me started on those contracts that say the translator shall be penalised x% for each mistake...ridiculous!!!). But, like some of you have mentioned, having been a freelance translator myself helps.

By: [Alina Cincan](#) on September 24, 2013
at 12:49 pm

As our business has grown, we have refused to sign such contracts. We grow a little, lose an agency and shrink a little. This process has continued for years. Now we work with a small handful of them. This is fine because we charge more for direct work and have less stress. Thanks for the great blog!

By: [JWAlfonso](#) on September 26, 2013
at 10:43 am

[Reply](#)

@Alfonso

Thanks for your comment.

I have the same strategy.

Hitching your wagon to an agency that wants to make you sign this kind of an agreement is asking for major trouble.

By: [patenttranslator](#) on September 26, 2013
at 11:19 am

[Reply](#)

When we finally reached the point of getting a lawyer, well, let's just say he marked up the contract with a red pen. He then proceeded to explain everything to me in English I could understand. I could not bring myself to sign away my rights.

Big deal breaker for me was that if they decided not to pay me for whatever reason, I could request that they review it and decide if it is fair! Crazy Stuff! Don't get me started!

By: [Jeff Alfonso](#) on September 26, 2013
at 1:20 pm

[Reply](#)

[...] be difficult to argue that translators working for agencies who prescribe to these translators in demeaning and incredible intrusive "Non-Disclosure Agreements", which sometime even border on..., exactly how and under what conditions these translators must work, think of the workers who work [...]

By: [Are Translators Knowledge Workers or Just Easily Replaceable Worker Bees? | Patenttranslator's Blog](#) on September 26, 2013
at 7:57 pm

[Reply](#)

Great article that touches upon a sad reality (although it is important to remember that this is just a sliver of what is out-there).

I also received similar NDAs, which are in fact adhesion contracts masked by a seemingly harmless title. Two additional trendier clauses that I have identified and don't think that were mentioned here (although I admit that I haven't read the example NDA above thoroughly) are:

1) An attempt to roll all the responsibility onto the translator. Usually buried somewhere in the Indemnify or Hold harmless clauses. The agency actually saying that they are not responsible in anyway to run a QA check (i.e. they just forward the files to the client), and in case of any error that results in a law suits the translator takes all the legal liability to hold the company harmless of any legal proceedings.

2) A clause stating that for every of the following error categories there is an automatic penalty of X%. The funny part is that the agreement states the it is the company which will unilaterally determine if there was an error, and the error categories are very vague and clearly open to interpretation, meaning that they can potentially take one misplaced comma and use it to penalize the pay. The step-brother of this clause is the (un)reasonable indemnify amount, I've seen NDA with up to 500,000 USD! as the alleged reasonable amount (usually between 50,000-100,000). Who in their right mind will sign such a thing? The amount of compensation should NEVER exceed the total project value, even if one sees this clause as reasonable.

For the most part, this is just a cheap and dirty mechanism used by the agencies to spread fear and "make sure" that their incompetent word slave will keep vigilant.

In a way, they know that for what they are willing to pay and the way they do business in they can mostly attract certain types of "translators" who are not necessarily honest, and this is the agencies' way to protect themselves from fraudulent translators.

@Louis

I will get in touch with you about the NDA. I had a similar idea in mind.

By: [Shai Nave \(@HiFiText\)](#) on September 28, 2013
at 7:12 pm

[Reply](#)

The bottom line is there are local hair salons, big cheap chains like Supercuts, and then there are high-end places. They all find customers and employees. As a professional, it is up to us to decide at what level we wish to work and how much effort we put into reaching the kind of clientele we want. Obviously, the agencies are like the cheap chain hair salons. There is a market for it, although personally I chose to move past that.

By: [Jeff Alfonso](#) on September 30, 2013
at 12:06 pm

[Reply](#)

@Shai

The only thing that I find useful about these "NDAs" is that they identify to me highly unethical scoundrels that a self-respecting translator should never work for.

Self-respecting translators should never agree to work for translations agencies who ask people to sign this kind of garbage if they know what's good for them.

But some people are born to be slaves, and that is what they will be.

By: [patenttranslator](#) on September 28, 2013
at 7:24 pm

Reply

No doubt about it, Steve.

This type of contracts will continue to exist as long as those companies remain in business.

In the past I thought that educating translators about the pitfalls of freelancing and warning them about abusive practices might be more effective than educating clients, because all those scoundrels companies exist just because they find someone to leech off from, but not I'm no longer so sure. If anything, it just enforces my opinion that translators (although I'm wrongfully generalizing and classifying professional and armatures/scoundrels together) are their own worst enemies.

This is why I appreciate posts like this one (and other of yours) that bring some important issues to light.

By: [Shai Nave \(@HiFiText\)](#) on September 28, 2013
at 9:17 pm

Reply

Hi,

Very interesting discussion. I also received such stupid NDAs.

I even replied to one potential client that I won't sign a clause asking me to delete/erase completely all their data from my computer, because it is technically impossible to do so, except if you destroy the hard disk (will you buy for me a HD after every job I'll do for you + pay the fees of the technician needed to install the new one and all my software?; and still, don't forget that even after a fire, data can be retrieved from a burnt, roasted HD).

Nevertheless, my dear colleagues established in the European Union, you must be aware that any said applicable out-of-EU law SHOULD NOT contradict the provisions of the Community law !!
I'm more at ease with the medical jargon, so please excuse my bad legal English 😊 But I suppose that you understand the basic meaning of this.

For those you can understand French, below is the copy of a part of a guide on International Contracts, published by Enterprise Europe Network, with the support of the European Commission (Enterprises & Industry):

“Même si la règle reste la liberté de choix des parties, ce règlement pose une atténuation à ce principe, afin de protéger contre un droit étranger (hors UE) qui serait en total désaccord avec le droit européen. Ce règlement dispose en effet que si le contrat se rapporte à un ou plusieurs États membres, la loi applicable choisie, autre que celle d'un État membre, ne doit pas contredire les dispositions du droit communautaire.”

In : Pages 7-8, Chapter 1 – “What law is applicable to the contract?”

URL : <http://www.veillestrategique-champagne-ardenne.fr/static/pdf/europe/numero2/guide-contrats.pdf> (<http://www.veillestrategique-champagne-ardenne.fr/static/pdf/europe/numero2/guide-contrats.pdf>)

So, you may sign those stupid things, those clauses (or parts thereof) in contradiction with the provisions of the EU law being considered as invalid and unenforceable.

This being said, I agree with you all : this NDA epidemic reflects an unacceptable and disrespectful behaviour towards professional translators.

Have a nice day.

By: **Catherine Guillaumet - CGTRADMED** on October 1, 2013
at 5:26 am

Reply

[...] The problem is, if you are a freelancer who works mostly through middlemen, brokers and intermediaries (who used to be called translation agencies, although they prefer the abbreviation LSPs these days), some if not most of these brokers, inspired by what happened in the rest of the economy, now try to turn freelancers into obedient serfs who have many duties and essentially no rights through so called NDAs (Non-Disclosure Agreements, which as I wrote in this post at this point in time have very little to ...). [...]

By: **Employee v. Freelancer – What Makes More Sense These Days? | Patenttranslator's Blog** on October 5, 2013
at 10:54 am

Reply

Very interesting discussion here.

My question relates to one aspect of non-disclosure agreements: the confidentiality clause that essentially bars a contracting freelancer from using any work product as a sample for attracting potential customers. This restriction is also being applied to texts meant for general public distribution (marketing texts, terms and conditions, exhibition texts, etc.), materials that can in no wise be considered confidential in the traditional legal sense. A journalist has his/her clippings file. Seems to me that (anonymized) excerpts from past projects are the translator's equivalent to the journalist's clippings file. Comments?

By: **KM Prince** on October 6, 2013
at 5:05 am

Reply

@KM

It seems to me that translators have two choices if they want to be able to have samples to show to new clients.

1. Ignore the NDA, which is what most are probably doing because some clause are in fact impossible to comply with (remove from your hard disks all files with materials relating to this or that – what about your terminology database, and what about the database in your head? The terminology is still there. Should translators periodically undergo lobotomy?)

2. Instead of working for agencies, concentrate on finding direct clients and work only for agencies that appear to be sane. One of the signs of such sanity is that they don't force translators to sign insane agreements.

This is what many translators are doing.

By: [patenttranslator](#) on October 7, 2013
at 7:09 am

[Reply](#)

[...] Legitimate "Non-Disclosure Agreements", designed to protect confidentiality of documents, have been in the last few years turned by many translation agencies into what I called Declaration of Acceptance of Servitude in this post. [...]

By: [Five Essential Characteristics of a Good Translation Agency | Patenttranslator's Blog](#) on October 8, 2013
at 2:00 pm

[Reply](#)

[...] of my blog will be on their best disruptive behavior next time when they are asked to sign another incredible restrictive and demeaning "Non-Disclosure Agreement" presented to them by another translation agency even before any rates are [...]

By: [Disrupting the perceived order of things can be a very good thing | Patenttranslator's Blog](#) on November 2, 2013
at 4:59 pm

[Reply](#)

[...] for "full and fuzzy matches and repetitions" based on translation memory tools, extremely restrictive, unfair and demeaning contracts called "Non-Disclosure Agreements", or to reject these conditions and look for [...]

By: [What Is Behind the Relentless Pressure to Lower Rates Paid to Translators by Certain Translation Agencies? | Patenttranslator's Blog](#) on January 18, 2014
at 2:03 pm

[Reply](#)

[...] The agreements that some translation agencies want independent contractors to sign these days are in fact detailed descriptions of the relationship between a master and a slave. [...]

By: [How Many Translators Can Dance on the Point of a Very Fine Needle? | Patenttranslator's Blog](#) on March 31, 2014
at 7:18 am

[Reply](#)

[...] What can translators do when a translation agency asks them to sign an incredibly demeaning "Non-Disclosure Agreement (NDAs)" that may among other things give the agency carte blanche to sue us for just about any reason should they decide to do so? [...]

By: [One Possible Strategy for Dealing with Unfair and Demeaning “Non-Disclosure Agreements” Pushed Recently by Translation Agencies | Patenttranslator's Blog](#) on April 22, 2014 at 7:32 am

[Reply](#)

[...] purpose was still to protect clients' confidential information, were turned into what I call Declarations of Acceptance of Servitude which these day can easily run well over 3,000 [...]

By: [Many translators have a one-dimensional view of who they are | Patenttranslator's Blog](#) on May 8, 2014 at 1:14 pm

[Reply](#)

Great post! Been reading a lot about nondisclosure agreements. Thanks for the info here!

By: [Confidentiality Agreements](#) on June 18, 2014 at 10:47 am

[Reply](#)

[...] were very long and extremely demeaning, as I wrote in several posts on this blog, such as How the So-Called Translation Industry Turned “Confidentiality Agreements” into Declarations of ... , or One Possible Strategy for Dealing with Unfair and Demeaning “Non-Disclosure Agreements” [...]

By: [How to Train a Translator Like a Dog | Patenttranslator's Blog](#) on December 29, 2018 at 2:19 am

[Reply](#)

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