How can we manage the risks and liabilities associated with legal translation in the age of machine translation and generative AI?

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Abstract

This contribution studies the less discussed ethical and legal considerations around translation with specific focus on the role of legal translators. The paper analyses the case of legal translation through the lens of legal liability, also touching upon copyright and professional rules. We explore what it means to advance legal translation in a legal and ethical manner with the aim of supporting, *not suffocating*, the human expert in the centre of the process.

1. Introduction

Legal translation is an area of 'specialised translation' alongside other categories – 'scientific or 'technical' translation. (Rogers, 2018; Olohan, 2015; Scarpa, 2020) Like most areas of translation, legal translation progressively became assisted by machines. In fact, jurisdictions that invested in machine translation research were those with early needs for machine translation in the legal sector, namely Canada and Europe, due to their official bilingual or multilingual policies. (Hutchins, 1995)

In the current context of neural machine translation (NMT) and generative AI, this paper poses the following question: How can we manage the risks and liabilities associated with legal translation in the age of machine translation and generative AI?

The main question is divided into the following sub-questions: 1. What can and what cannot be fully automated when it comes to legal translation? 2. What is the role of the human expert in the process of legal translation? 3. Should Generative AI include "certified" legal translation 4. Who is liable for mistakes, bias, misinterpretation, or miscom-

munication in technology-mediated legal translation? 5. Is human liability for AI-assisted translation acceptable?

The paper explores the above questions drawing from law, translation studies, and ethics. It does not aim to provide final answers to all the questions, but rather to examine the risks that AI-assisted translation introduces, identify key challenges related to liability, and make preliminary suggestions. Our preliminary analysis suggests an urgent need for narrative change described in our conclusion.

2. Legal translation deserves special attention

We start with the premise that legal translation deserves special attention in view of its impacts and repercussions (Scott O'Shea, 2021) and in view of the actual and potential risks involved. For instance, globalisation has seen a mushrooming in the volume of legal transactional documents being translated. In criminal proceedings the translation of court documents —and interpretation[1] — during hearings are critical to ensure a fair trial. (Brown-Blake, 2006; Orlando, 2016; Ng, 2023)

Meanwhile, with the increase of court proceedings (outside the criminal context) involving individuals who do not speak the language of the court, demand for court-related translation services is also increasing. (Vigier-Moreno Pérez-Macías, 2022; Killman, 2020)

In addition, as a matter of access to justice in general, and governmental transparency, the availability of legal information/data (i.e. legal texts, legal translations, information about legal processes etc.) in people's own language is critical. Surveys have regularly shown legal translation to be one of the most in-demand areas of translation. However, in a world with a finite number of translators but growing demand for legal translation services, technology has unavoidably been developed to fill the gap.

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[1]While we specifically exclude interpreting from the scope of our paper, it is important to note its vital role in the administration of justice.

2.1. Risks

Recent developments in generative AI, as well as the so-called Web 3.0 applications represent the promise of facilitating seamless translation and communication across linguistic borders in real or virtual contexts (Heikkilä, 2022) but also come with serious risks of bias, exacerbating rising mis- and disinformation. (Yanisky-Ravid Martens, 2019; WHO, 2023)

Furthermore, the widespread use of online machine translation tools comes with additional risks of breaking confidentiality in contexts where confidentiality is important, for instance in a lawyer-client relationship (Vieira et. al., 2021), or of intensifying challenges in contexts where individuals are particularly vulnerable, for instance in asylum adjudications. (Schroeder, 2017)

2.2. Legal liability

This phenomenon raises new questions about responsibility, trustworthiness, and legal liability especially in the context of specialised translations such as legal translations where the tolerance for risk is low. Compare, for example, the risk tolerance associated with misinterpretation of a poem or a recipe to that of a judicial decision or of medical records. (Scott O'Shea, 2023)

Furthermore, we believe that mainstream use of machine translation and generative AI for legal translations is, in the case of the first, already increasing, and will, in the case of the second, increase the risk of inaccuracies. In fact, NMT alters the very notion of accuracy, which is the primary goal of legal translators; AI's translation methods are fuzzier and thus inaccuracy becomes more fluid. (Schumacher, 2020)

In the meantime, the ways the legal translation market has dealt with legal liabilities for inaccuracies thus far will likely not suffice to address machine-generated inaccuracies, such as omissions (which are rather common at the moment). (Wahler, 2018; Wiesmann, 2019)

How can we ensure that the human expert in the centre of an AI-assisted legal translation will be supported, rather than suffocated, by liability rules that allocate risks of inaccuracies properly?

Legal translators are trained to generate the most accurate translation of the original text. When translators choose to use machine translation tools, they would typically exercise professional judgement and bear the relevant risks. However, when asked to review/correct an AI-assisted translation the translators in reality have less control (other than saying no to the job), especially about the use of specific machine translation tools. From a liability perspective, we claim that these two scenarios should not be treated in the same way.

Furthermore, legal translators abide by their own professional rules, which include confidentiality, rules on attribution, and other professional rules of conduct, as well as contractually imposed rules allocating copyright rights and legal liability. The proliferation of AI-assisted translation is already disrupting translators' negotiating power when signing such contracts and, thus, we posit may alter their own liability risks without necessarily improving the quality of the translation.

3. Conclusion: need for narrative change

In view of the above considerations, the paper identifies the need for some short-term and longer-term solutions to mitigate the risks and issues of legal liability discussed.

Short-term solutions include inserting due diligence standards into the certification process for legal translation generated using NMT or generative AI. Long-term solutions include a narrative change to enhance the role of the human expert, namely the legal translator who is, for example, asked to review and/or certify (thus also take responsibility for) a machine-generated legal translation.

The positive claims made above lead us to a normative claim that we believe will be helpful for policymakers to manage existing risks and legal liabilities associated with legal translation in the age of machine translation and generative AI. We believe that the popular 'human-in-the-loop' narrative (Amershi et al., 2014; Stankovic et al. 2015) is misleading as to the role of the human expert - in our case the legal translator - whose work is being used to train machine translation tools, whose expertise is vital to correct machine-generated mistakes or biases, and who can "certify" that the translated content is accurate and, thus, trustworthy.

In addition, we suggest that legal systems will need to match this changing of narrative with liability solutions that support human experts and are appropriate considering increased needs for trusted specialised translations.

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