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Legal thoughts on translation and interpretation

The Interpreter of the Future and its Legal Liability

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The development of new internet and communication technologies (NICT) has made remote working possible, especially in the service sector. With COVID-19, teleworking has become mandatory. How have interpreters overcome the obstacles of remote working? Is it viable in their sector? What are the legal requirements of being an interpreter and what legal changes has off-site interpreting imposed?

Le développement des NTIC (Nouvelles technologies de l'information et de la communication) a rendu possible le télétravail et ce, notamment dans le secteur tertiaire. A l'arrivée de la COVID-19, le télétravail est devenu de rigueur. Comment les interprètes ont-ils surmonté les obstacles liés au télétravail? Est-il viable dans ce secteur? Quelles sont les exigences légales liées à fonction d'interprètes et quels ont été les changements juridiques imposés par le télétravail?

特别是在服务部门，新互联网和通信技术（NICT）的发展使远程工作成为可能。随着冠状病毒的发展，远程工作已成为强制性的。口译员是如何克服远程工作的障碍？远程工作在这个领域是否可行？作为一名口译员，法律要求是什么？对口译员来说，远程工作带来了哪些法律变化？



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I. Introduction

Since 2020, COVID-19 has changed the way we work and the spaces we work in and has made virtual working a reality, especially for the tertiary sector. Interpreters too had and continue to work remotely. This implies working with new equipment and complying with new requirements that were not enforceable while interpreting in-person and on-site.

II. The rise of remote interpreting

■ The development of remote interpreting

Before the arrival of the Internet, remote interpreting already existed through telephone services. In an interview¹, Amanda Galsworthy, former interpreter for French presidents Mitterand, Chirac and Sarkozy, narrates one of her first interpreting sessions between former president Mitterand and former POTUS² Georges H. W. Bush which occurred through the presidential phone. She hardly heard what Mr. Bush was saying because of the scrambled sound made by old telephone lines.

Nowadays the development of new internet and communication technologies (NICT) eased remote interpreting by providing better quality of communication with *“high-speed Internet with sufficient bandwidth to provide the services of a qualified interpreter to the people who speak”*³ and new equipment but also by introducing diversified communication methods such as video conferencing and VRI⁴. Those methods allow spoken language interpreting but also sign language interpreting which is a big step forward for people having issues communicating.

¹ [#](https://youtu.be/zS7qZQ6qidA)

² President of the United States

³ <https://www.rafiky.net/en/2020/07/from-teleprinter-to-simultaneous-remote-interpreting-a-brief-history/>

⁴ (video remote interpreting, which is a telecommunication relay service *“allowing people who are deaf, hard of hearing, deafblind, or have a speech disorder to place calls to standard telephone users via a keyboard or assistive device”* https://en.wikipedia.org/wiki/Telecommunications_relay_service



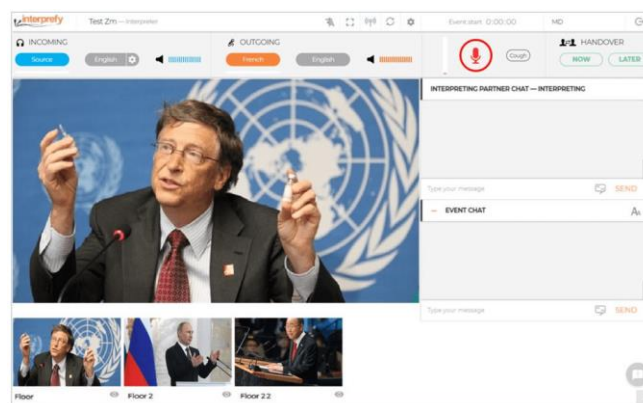
■ Remote by default

Nevertheless, the pandemic has heavily impacted the interpreting field. As the French Superior Audiovisual Council (CSA) demonstrates in a survey from August 2020⁵, freelance interpreters have lost 24 percent of their income from January to June 2020. As a matter of fact, the fields in which interpreting was the most practiced (events, tourism industry, international conferences⁶ etc.) had to halt their activities and cancel almost every international event because of the pandemic. Even the United Nations (UN) had to cease interpreting at first and use only one working language⁷ despite their high compliance with the multilingualism rule.

However, other fields such as the health and pharmaceutical industries or social media and Information Technology (IT) needed more and more interpreters. Therefore, the COVID-19 has fostered the use of remote interpreting by forcing interpreters to adapt to those changes by working off-site.

■ How does off-site interpreting work?

Today, parties and interpreters work through several platforms allowing RSI (Remote Simultaneous Interpreting). Different audio streams or “floors” with different languages may be chosen by the attendants through those applications as pictured below⁸:



⁵ Sondage réalisé par le CSA auprès d'interprètes et traducteurs en août 2020

⁶ Sondage réalisé par le CSA auprès d'interprètes et traducteurs en août 2020

⁷ Adrian Delgado, *COVID-19 : comment les interprètes de l'ONU adaptent leurs méthodes de travail*, 2020

⁸ Interprefy application interface



■ What future for remote interpreting?

As in many other sectors, remote working has proved its upsides. Thus, remote interpreting allows clients to respond to urgencies as parties do not need to move from their office. There is also an environmental benefit as there is no need to take planes or cars. Above all, remote interpreting made it possible to keep working despite a pandemic, other public health crisis or natural disasters. Therefore, RSI may be permanently established.

However, remote interpreting entails harder working conditions for interpreters (decrease of their vision and audition). Moreover, in-person interpreting is preferred by the parties as video conferences may not convey all the implicit subtleties which interpreters capture while on-site.

Finally, remote interpreting implies to comply with new legal requirements.

III. General interpreting legal requirements

When they join an interpreters' association such as the AAIC (International association of conference interpreters) or the AFICI (French association of freelance conference interpreters), interpreters are subject to a Code of ethics. This Code of ethics regulates the professional behaviour of those who adhere to it and "*protect the interest of the parties during international meetings*⁹".

For instance, the AFICI Code of ethics imposes to its members "*professional secrecy*". Interpreters also have to be discreet and must not "*take advantage of confidential information gathered in the course of their work*¹⁰".

⁹ <https://aiic.fr/qui-nous-sommes/>

¹⁰ AFICI, *Code of ethics*, article b



■ Legal liability

As well as any citizen, interpreters may be held accountable under the dogma of legal liability, subdivided in civil and criminal liability.

■ Civil liability

In French law, there is a *summa divisio* in civil liability. As a matter of fact, civil liability is composed of extra-contractual and contractual liability.

Even when no contracts have been signed, civil liability may be incurred: it is called extra-contractual liability or tortious liability, which results from articles 1240 to 1244 of the French Civil Code¹¹. In this case, *"any act of man, which causes damage to another, obliges the person by whose fault it was done to repair it"*.

However, most of the time interpreters and their clients sign contracts, so they may be exposed to contractual liability which is governed by articles 1231 to 1231-7 of the French Civil Code¹². Contractual liability is incurred because of the non-performance of a contract, entailing for the person who is at fault or who is legally presumed to be at fault, the obligation to repair the damage suffered (by one or more persons).

While interpreting, interpreters may make mistakes as misunderstandings, solecism or approximations¹³ with important consequences, which lead to the incurrence of their civil liability. The interpreter has no right to make mistakes, which can be costly. This was the case in 1945 after the Potsdam Conference. As author William Craig tells in his book¹⁴, an ultimatum was addressed by the Allied forces to Japan when they demanded an unconditional surrender. The expression *mokatsu* is translated by "to reject" instead of the "abstention" initially intended to gain time. The consequence was the bombing of Nagasaki and Hiroshima.

¹¹ Articles 1240-1244 Modifié par Ordonnance n°2016-131 du 10 février 2016 - art. 2

¹² Sous-section 5 : La réparation du préjudice résultant de l'inexécution du contrat (Articles 1231 à 1231-7), modifié par Ordonnance n°2016-131 du 10 février 2016 - art. 2

¹³ **Ces erreurs de traduction juridique qui ont coûté cher ! (bonnefous.com)**

¹⁴ William Criag, *The Fall of Japan*, Open road media, 1 october 1997



Fortunately, not all translation errors have such appalling consequences although an interpreter may incur their civil liability if their client faces material or physical damage due to a mistranslation. Interpreters may also cause immaterial or non-consecutive immaterial prejudice which are pecuniary prejudices (as loss of profit) not resulting from material or physical damage.

Apart from civil liability, one can incur their criminal liability.

■ Criminal liability

Criminal liability is *“the responsibility for any illegal behaviour that causes harm or damage to someone or something¹⁵”*.

As stated before, interpreters may be sanctioned if they do not comply with professional secrecy, which is stated by article 226-13 of the French Criminal Code¹⁶. Hence, interpreters may engage their criminal liability if they reveal important pieces of information but also if they intentionally misinterpret¹⁷. In other words, if they omit determinant information on purpose, they may face jail, a fine, or both.

Indeed, this constitutes hindering of the administration of justice (governed by articles 434-7-1 to 434-23-1 of the French Criminal Code¹⁸) by distortion if the interpretation does not faithfully reflect in the translation language the substance of the words expressed in the translated language.

Since the pandemic and remote working, the interpreting field has welcomed new legal requirements which have changed interpreters' legal liability but not only.

¹⁵ CRIMINAL LIABILITY | signification, définition dans le dictionnaire Anglais de Cambridge

¹⁶ Article 226-13 du Code pénal, modifié par Ordonnance n°2000-916 du 19 septembre 2000 - art. 3 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002

¹⁷ Section 2 : Des entraves à l'exercice de la justice (Articles 434-7-1 à 434-23-1), Code pénal, modifié par Ordonnance n°2000-916 du 19 septembre 2000 - art. 3 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002

¹⁸ Section 2 : Des entraves à l'exercice de la justice (Articles 434-7-1 à 434-23-1)



IV. Remote interpreting legal requirements

■ Legal liability

The AIIC has given recommendations¹⁹ to interpreters during the pandemic about the proper way to work but also about legal requirements. Thus, concerning interpreters' legal liability, *"institutions must provide a disclaimer for interpreters that is enforceable under the relevant national laws"*. However, when working from home, interpreters are exempted from many of their liabilities as *"interruption of service; frozen image or loss of visual elements"* but most importantly *"unauthorized access to personal or confidential data; information leakage due to inadequate soundproofing; data loss"*.

Nevertheless, the undersigned shall notify the contracting party from all of the above. Furthermore, due to IT issues interpreters cannot always hear what is said so they must *"report to the microphone whenever something is "inaudible"*.

■ Privacy and data protection

In 2016, the European Union has implemented the GDPR²⁰ (General Data Protection Regulation) harmonizing the rules regulating the processing of personal data within the European Union. According to the National Commission for Data Protection (CNIL France), personal data designates *"any information relating to an identified or identifiable natural person"*²¹. With off-site interpreting, clients' data must stay protected according to the GDPR, therefore, the interpreter must ensure compliance with the GDPR.

Concerning clients' privacy and data protection, the AIIC states that the *"employer is solely responsible for ensuring that the infrastructure to connect to the event data system meets all necessary requirements to ensure confidentiality and data protection"*. Regarding the interpreters, according to intellectual property²², they must give their written consent if they are recorded.

¹⁹ [FR-AIIC Recommendations for Institutions.pdf](#)

²⁰ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016

²¹ [RGPD : de quoi parle-t-on ? | CNIL](#)

²² [Convention de Berne pour la protection des œuvres littéraires et artistiques \(1886\)](#)



To sum up, the interpreter of the future is here now, they work from home trying to continue their work off-site while coping with IT issues and complying with new regulations. However, we may wonder if, as in other fields, remote working for interpreters is a viable solution. Indeed, off-site interpreting works but is not as practical and efficient as in-site interpreting not only for the client but also for the interpreter as they have more restrictions and inconveniences.

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