

Translating End-User License Agreements from English into Spanish

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Abstract. Observation of the general practice of translating End-User License Agreements from English into Spanish led to the finding that some translations accounted for the difference between the legal requirements of the source text - the original text, in English - and the target text - the translated text, in Spanish - whilst others did not. This finding flagged up the need to improve the way in which these documents were translated by providing professional translators with the appropriate tools. An application was thus developed to provide translators with all the information they would need in both the legal field - in the form of advice and links to Spanish and European statute law existing in the matter - and the linguistic field - in the form of a terminological database with specific advice for the translation of key terms; a revised corpus with suggestions for translating typical clauses; and other tools described in detail in this article.

Keywords: legal translation, localisation of legal texts, end user license agreements, cultural adaptation of legal texts, knowledge transfer to translation companies, translation process.

1. Introduction

Software products that are sold in foreign markets are adapted to different technological standards. Product descriptions, as well as associated documentation and files, are rewritten. This process of adapting a product to different local markets is called localization, and has been defined by the Localization Industry Standards Association (LISA) as “the process of modifying products or services to account for differences in distinct markets” (Arle, 2007). Linguistic, cultural and technical issues must be addressed during

the process of translation of software products, so that the resulting interface is idiomatic and easily understood by end-users. Many changes must therefore be made, including eliminating unnecessary contents, adapting cultural references to the target culture, etc.

In theory, given the legal issues involved, the localization of end-user license agreements, should be carried out by local lawyers and not translators (Landy, 2008: 658) but observation by the LAW10n research team¹ showed that most of the time these contracts were translated into different languages by professional translators without taking into consideration their possible interpretation by national laws in case of dispute. The translators effectively carried out what may be called “cosmetic” localization.

As Ginsburg (2013: 26) has pointed out, End-user License Agreements (henceforth EULAs) and Terms of Use of websites have become ubiquitous. As the author says, “these agreements typically require users to ‘click-through’ the terms of use to indicate acceptance before accessing the website and its content”. In fact, everyone at some time or another has accepted the terms of license agreements, a practice that is now increasingly common with the mass incorporation of electronic devices into our everyday lives. As consumers of software products, we all download applications for our computers, tablets and mobile phones that require us to ‘agree’ to specific legal terms and conditions before obtaining authorised access to the chosen application or program.

Most people do not read these license agreements carefully before accepting them with a simple click on a box, despite the fact that, in the event of a

¹ LAW10n (Localisation of technology law: software licensing agreements) was an international, interdisciplinary research project funded by the Spanish Ministry of Science and Innovation (sub-programa FILO: FI2010-22019) conducted from 2010 to 2013. Main researcher: Dr. Olga Torres-Hostench, Universitat Autònoma de Barcelona (Spain). Researchers: Dr. Carmen Bestué, Dr. Pilar Cid, Dr. Mariana Orozco and Dr. Ramon Piqué, Universitat Autònoma de Barcelona (Spain); Dr. Roberto Mayoral, Universidad de Granada (Spain); Dr. Adelina Gómez González-Jover, Universitat d’Alacant (Spain); Dr. Elina Lagoudaki, Imperial College London (United Kingdom); Dr. Fernando Prieto, University of Geneva (Switzerland).

problem arising, the terms they have agreed to are legally binding (Hillman, 2010: 1530; Marotta-Wurgler, 2010: 3). These contracts usually target English-speaking consumers and are included in standard forms drafted following Common Law rules, as for instance the ALI principles for the USA market (Hillman and O'Rourke, 2010).

When translating EULAs, the legal specificities of the target culture and legal system are of particular relevance and must be taken into account. On examination, however, the translations into Spanish of EULAs originally written in English and accepted in Spain show that few companies adapt the legal content of the source text to the requirements of the Spanish – or even the European – legal system. Many of the EULAs translated into Spanish and accepted by Spanish consumers would thus probably be declared null and void by a Spanish judge in case of a legal conflict between the consumer and the company (Bestué, 2013).

One of the problems posed by the translation of EULAs is how to deal with contents of a source text that does not conform to the requirements of the target legal system. Indeed, some clauses imposed by a particular source legal system are included in contracts that are meant to regulate the relationship between the software company and potential local consumers in another country and subject to a different legal system. This is, for instance, the case of export control clauses that are imposed for compliance with United States and foreign import and export control laws. These clauses are systematically found in contracts drafted in Spanish and aimed at customers or consumers resident in Spain.

Another problem that arises is when the translated text reproduces or uses legal terms that do not exist or are unknown in the target legal system or culture, as is the case with terms such as “tort”, “statutory rights” or “direct and consequential damages” (Bestué 2013). Whilst the use of parallel texts and corpora for the purposes of documentation may prove useful when translating other types of texts, this is not the case with EULAs. This is because, although licensing agreements originally written in Spanish do exist, they conform to the requirements of civil law as opposed to the principles of common law - the

legal system regulating English-language EULAs.

Mindful of the negative effects of the mistranslation of these documents and the fact that EULAs are so commonplace today, it was clear that an in-depth study of the translation of EULAs was required. Researchers thus decided to undertake an interdisciplinary, international research project to assist the translation industry in improving the quality of the translation of EULA's in what was considered to be a particularly suitable case for knowledge transfer from scholars to practitioners. The aim of the said project was, first, to collect data to determine the way in which EULAs were translated before proposing improvements to the translation process². These improvements would be aimed at solving the legal issues arising during the process in order to obtain a target text that fulfilled the legal requirements of the target country while remaining faithful to the spirit and legal effects of the source text. Secondly, the project aimed at improving the quality of these translations by providing an application to assist translators during the translation process. Use of the application would enable translators to access all the information they needed in one website thus facilitating the documentation process and ensuring that the differences in the legal requirements of the source and target texts would be taken into account during the translation process, thereby best satisfying the communicative goal of any translation brief.

2. Aims of the application

An initial study conducted by the LAW10n team showed that making suggestions, giving advice, or providing information on available resources was not enough to encourage the translation industry to change its approach to

² This article does not include the research design, the data collection process, the analysis of the data, the findings and the description of the usual process of translation of End User License Agreements (EULAs) from English into Spanish. To read about all this information, see Orozco-Jutoran, 2014.

the translation of EULAs and adapt the legal content of EULAs to the requirements of the target country legal system if necessary, since this would involve investing greater time and effort in the translation process, something the companies and translators were reluctant to do unless it was their obligation to do so.

It was therefore decided to develop a customized tool that could be embedded in the actual translation process to make it easier, in terms of time and effort, for translators to adapt the legal content of the source text to target text requirements.

The tool developed is a prototype which takes the form of a free, open access website that integrates all the interdisciplinary information required, namely legal and linguistic, in such a way that a single consultation provides translators with all they need to solve the problems faced in the translation of EULAs. The resources included in this tool have been put together by members of the multidisciplinary LAW10n research group which includes terminologists as well as experts in software engineering, information retrieval and legal translation.

3. Comparison of principles (1992-2002) and emerging consensus

The application, available online at <http://lawcalisation.com/> contains four tools in a single website. On accessing the website, a general explanation of the application appears and eight tabs are presented. All information is provided in Spanish, since the prototype has been designed for use by translators who wish to translate EULAs from English into Spanish, for use in Spain. As explained in the main screen, only the use of the variety of Spanish spoken in Spain is contemplated at present, so that if the tool is to be used for translations into Argentinean or Mexican Spanish, for instance, the legal terminology of those countries and cultures would need to be added. One of the advantages of the prototype tool developed is precisely the fact that it has been designed to

include as many legal fields and language combinations as desired.

3.1. INFORMATIVE TABS

Of the eight tabs present on the main screen of the website, the two on the right contain information about the team that developed the tool – the tab “EQUIPO LAW10n” (LAW10n team) – and about the different actions made by the team in order to make the project visible, that is, articles published in journals, conferences given and organised – the tab “DIFUSIÓN ” (Dissemination)

3.2. INTERACTIVE TABS

The six remaining tabs on the left contain all the features of the application. The first tab, starting on the left-hand side of the website, is “ADVERTENCIA” (Warning) It provides information about two possible approaches to the translation of EULAs, i.e. instrumental or documentary translation (see section 4.). It also contains a questionnaire that may be used by translators to determine whether the EULA to be translated is to be used for instrumental or documentary purposes. The questionnaire is interactive, so depending on translators’ answers to each of the questions posed, they are directed either to the final result or to a further question until the final result is reached. The three possible final results are: (i) The text you are going to translate will be used as a legal instrument and therefore it must comply with Spanish legal requirements, we recommend you use the options marked as “instrumental” both at the corpus and translation records; (ii) The text you are going to translate will be used as an informative tool and therefore it must reproduce the original or source text legal requirements, we recommend that you use the options marked as “documentary” both in the corpus and translation records; (iii) The final use of the target text is not absolutely clear, therefore a lawyer should advise the licensor, i.e. your client, in order to decide whether the translated text will serve as a legal instrument or only an informative text.

The second tab “P+F” (FAQs) includes more than 50 questions and answers on five different topics: (i) the translation of EULAs; (ii) use and features of the LAW10n website; (iii) software licenses in the Spanish legal system; (iv) copyrights that apply in EULAs and (v) the typical contents of the EULAs produced in the USA.

The third tab “FICHAS” (Records) contains terminological records, i.e., all the information needed by translators to be able to correctly translate a specialised term in the field of EULAs. In cases in which the same term in English would need a different translation solution depending on whether the text is to be used for instrumental or documentary purposes, there is a separate record for each option. Such is the case of the term “merchantability”, for instance. In cases where the same solution serves for both options, only one record is provided. This is the case for the term “tort”, for instance.

Each record contains seven fields which together provide all the information needed by translators to be able to fully comprehend the original term in English, in its context, before choosing an equivalent term in Spanish having clearly understood the legal implications of the term used.

The seven fields included in each record (see Figures 1 and 2) are:

1. “*Definición*”(Definition) Definition of the English term together with its source (i.e. “Black’s Law Dictionary”)
2. “ES”: Term or terms proposed to translate English terms into Spanish. Next to “ES” there is either the word “*instrumento*”, to remind the user that these solutions are adequate if the purpose of the translated text is to be used as a legal instrument (as in Figure 1), or the word “*documento*”, when the solutions proposed in the record are adequate for a translated text for documentary or informative purposes, as in Figure 2.
3. “*Técnicas de traducción*” (Translation techniques”): Next to each proposed solution in Spanish in Field 2, on the right and in orange – orange indicates throughout the website that the word or sentence marked in this colour is a hyperlink that can be accessed by clicking on

it - there is the acronym of the translation technique used for translating the term. For instance, “EF” stands for “*Equivalente funcional*” (functional equivalent), and a whole list and explanation of the possible translation techniques used can be found by clicking on any given technique, marked in orange colour.

4. “Subcampo” (Domain): All records currently belong to the same thematic field, that is, software licenses, but as this tool is a prototype, it is important that this feature appears in order to be able to include other fields and domains in the future.
5. “Opciones no recomendadas” (Solutions not recommended) This field is unique in that it is not contained in any dictionary or terminological database that we know of and is of particular importance to translators since there are many translation solutions that are “bad” solutions (e.g.. mistranslations). These “bad” solutions are however widespread on the internet where we can find many examples of badly translated EULAs. It is important to bear in mind that a solution can only be considered a bad solution in relation to the domain under study (software licenses) and the approach defined in the specific record consulted, so that a “bad” solution listed in the record of a term used for instrumental purposes (such as “*mercantibilidad*” as a translation of “merchantability” for instrumental purposes) may be listed as a “good” solution for the same term in the record used for documentary purposes, as in the case of the example “merchantability” (compare Figures 1 and 2).
6. “Comentarios para la traducción” (Translation comments) This field is also unique to the tool developed and is one of the features that saves translators most time and effort. It includes all the relevant comments on the legal and the linguistic contexts of terms in English and Spanish, thereby providing translators with the information they would usually have to consult in several places (monolingual specialised dictionaries, multilingual databases, law reference publications, comparative law

treaties etc.) all in one place.

7. Contexto” (Context) This field includes, on the left hand-side of the screen, one of the original contexts in which a term was found (all terms were found in a corpus of original EULAs in English) and, on the right hand-side of the screen, a reviewed translation of the sentence or paragraph in Spanish. The term the translator is consulting appears in bold type in both contexts, to enhance visibility. It should be noted that a comparison of the contexts appearing in Figures 1 and 2, shows that the contexts and the translations change since they have been chosen to be representative of two different approaches to translation, instrumental or documentary. By clicking on either of the two contexts, English or Spanish, the translator can access the corpus tool and other contexts where the same term can be found with its translation into Spanish.

merchantability

▼ Traducción-instrumento

Definición: A warranty that the property is fit for the ordinary purposes for which it is used. [Black's Law Dictionary]	ES instrumento: idoneidad de los bienes EF conformidad de los bienes para un propósito general EF garantía de calidad satisfactoria EF
Subcampo: licencias de programas de ordenador	Opciones no recomendadas: aptitud para el comercio mercantabilidad mercadeo comercialización negociabilidad comerciabilidad
Comentarios para la traducción: En el derecho español, el artículo 116 de la Ley General de Defensa de los Consumidores y Usuarios (RDL 1/2007) regula esta garantía, considerada irrenunciable y, por tanto, implícita en cualquier producto que adquiera un consumidor. El párrafo 1 de ese artículo señala tres requisitos para que los bienes sean conformes con el contrato: a) que se ajusten a la descripción realizada por el vendedor y posean las cualidades del bien que el vendedor haya presentado al consumidor en forma de muestra o modelo; b) que sean aptos para los usos a que ordinariamente se destinen los bienes del mismo tipo; y c) que sean aptos para cualquier uso especial requerido por el consumidor cuando lo haya puesto en conocimiento del vendedor en el momento de celebración del contrato, siempre que este haya admitido que el bien es apto para dicho uso. Por lo tanto, no existe una equivalencia total entre los conceptos original y meta, y la figura que cumple habitualmente la función de <i>merchantability</i> en derecho español es la idoneidad o conformidad de los bienes. En el caso de una traducción-documento, recomendamos el neologismo "comerciabilidad" (ver ficha). [Fuente: equipo LAW10n]	

▼ Contexto

merchantability WHERE ALLOWED BY YOUR LOCAL LAWS, ACME EXCLUDES IMPLIED WARRANTIES OF MERCHANTABILITY , FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.	idoneidad de los bienes EN LA MEDIDA EN QUE ASÍ LO PERMITA LA LEGISLACIÓN DE SU ESTADO O PAÍS, ACME EXCLUYE LAS GARANTÍAS IMPLÍCITAS DE IDONEIDAD PARA UNA FINALIDAD GENERAL O PARTICULAR Y DE NO VIOLACIÓN DE LOS DERECHOS DE TERCEROS.
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Figure 1. Example of translation record of the term “merchantability” with an instrumental approach.

As can be seen in Figure 1, each record has a heading showing whether the record is intended for instrumental or documentary purposes. In this case, Figure 1 displays the instrumental approach for the term “merchantability”, while Figure 2 displays the record for the documentary translation of the same term.

Traducción-documento	
<p>Definición:</p> <p>A warranty that the property is fit for the ordinary purposes for which it is used. [Black's Law Dictionary]</p>	<p>ES documento:</p> <p>comerciability ET</p>
<p>Subcampo:</p> <p>licencias de programas de ordenador</p>	<p>Opciones no recomendadas:</p> <p>aptitud para el comercio mercantabilidad mercadeo comercialización negociabilidad</p>
<p>Comentarios para la traducción:</p> <p>En el derecho español, el concepto de "comerciability" no existe como tal; por lo tanto, para transmitir el sentido de <i>merchantability</i> en un encargo de tipo documental, se puede utilizar el neologismo, con bastante implantación en el contexto internacional y preferible a las opciones encontradas en textos paralelos (ver formulaciones no recomendadas). Sin embargo, si el encargo es de tipo instrumental (ver ficha), conviene tener en cuenta la legislación española al respecto (artículo 116 de la Ley General de Defensa de los Consumidores y Usuarios, RDL 1/2007). [Fuente: equipo LAW10n]</p>	
Contexto	
<p>merchantability</p> <p>This warranty is given in lieu of all other express warranties, implied warranties, including without limitation implied warranties of merchantability and fitness for a particular purpose, are limited to the duration of this limited warranty.</p>	<p>comerciability</p> <p>Se otorga esta garantía en lugar de las demás garantías expresas o implícitas, incluidas, entre otras, las garantías implícitas de comerciability o de aptitud para un fin particular, y que se limitan a la duración de esta garantía limitada.</p>

Figure 2. Example of translation record of the term “merchantability” when using a documentary approach

The fourth tab is “Detector” (Detector) and contains a tool aimed at making the documentation process faster. It allows translators to introduce the text to be translated in a window – by writing or copy-pasting from any of the usual text formats, such as .txt .doc or .pdf. Then, by clicking on the button “analizar”, the tool finds two features within the text: (i) all the terms included in the records of the tool and (ii) all the sentences or word chains included in the corpus of the tool. These features appear highlighted for translators - the terms in orange and the sentences or chains of words in yellow, - so that they can access records of all the terms in the text and the corpus of all the sentences or

words chains by just clicking on them.

The fifth tab, “Normativa” (Regulations) and contains direct links to all the relevant Spanish and European laws and regulations regarding the legal context of EULAs, classified into six categories: Intellectual Property; Consumer Rights; Electronic Commerce and Electronic Contracts; Information Society Development; Personal Data Protection; Private International Law.

Finally, the sixth interactive tab is “Corpus”, and contains a tool into which translators can introduce any given word, chain of words or sentence, either in English or Spanish, and obtain all the paragraphs where the words/sentence introduced appear in the corpus analyzed by the LAW10n Project. The results appear always in three columns, as in Figure 3: the source text in English on the left hand-side of the screen; the reviewed translation of the paragraph in Spanish in the centre of the screen, and the purpose of the translation – instrumental, documentary or indistinct– on the right hand-side of the screen.

Búsqueda: EN - merchantability

Código	EN	ES	Notas
1391599553001	WHERE ALLOWED BY YOUR LOCAL LAWS, ACME EXCLUDES IMPLIED WARRANTIES OF MERCHANTABILITY , FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.	En la medida en que así lo permita la legislación de su estado o país, ACME excluye las garantías implícitas de idoneidad para una finalidad general o particular y de no infracción de los derechos de propiedad intelectual, industrial u otros derechos registrados de terceros.	Indistinto
1391599438001	WHERE ALLOWED BY YOUR LOCAL LAWS, ACME EXCLUDES IMPLIED WARRANTIES OF MERCHANTABILITY , FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.	En la medida en que así lo permita la legislación de su estado o país, acme excluye las garantías implícitas de comerciabilidad, adecuación para un fin particular y no infracción.	Traducción documento
1392630257001	DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE ACME SOFTWARE AND SERVICES , EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY , OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.	En relación con los servicios y el programa de ordenador de acme quedan excluidas todas las condiciones y garantías, expresas, implícitas o legales, incluidas, entre otras, las garantías y condiciones implícitas de calidad satisfactoria, idoneidad para un fin general o específico, conformidad con el contrato, disfrute pacífico y no infracción de los derechos de propiedad intelectual, industrial u otros derechos registrados de terceros.	Traducción instrumento
1392630183001	.DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE ACME SOFTWARE AND SERVICES , EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY , OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.	Excluyen todas las condiciones y garantías expresas, implícitas o legales, incluidas, entre otras, las garantías y condiciones implícitas de comerciabilidad, calidad satisfactoria, idoneidad para un fin determinado, exactitud, disfrute pacífico y no infracción de los derechos de terceros, todas en relación con el software acme y los servicios.	Traducción documento
138911089262121	Acme excludes all implied warranties, including those of merchantability , fitness for a particular purpose, and non-infringement. If your local law does not allow Acme's exclusion of implied warranties, then any implied warranties, guarantees, or conditions last only during the term of the limited warranty and are limited as much as your local law allows. If your local law requires a longer limited warranty term, despite this agreement, then that longer term will apply, but you can recover only the remedies that are described in this agreement.	Acme excluye todas las garantías implícitas y, en especial, la garantía implícita de comerciabilidad, de idoneidad para un fin particular y de ausencia de infracción de derechos. Si la legislación de su estado o país no permite dicha exclusión, cualquier garantía o condición implícita tendrá la misma duración que el período de vigencia de la garantía limitada, siempre y cuando la legislación de su estado o país lo permita. Si la legislación de su estado o país exige un período de garantía superior, pese a lo establecido en este contrato, dicho período de vigencia se aplicará, pero usted podrá reclamar únicamente los medios de reparación descritos en este contrato.	Traducción documento
138911089262122	Acme excludes all implied warranties, including those of merchantability , fitness for a particular purpose, and non-infringement. If your local law does not allow Acme's exclusion of implied warranties, then any implied warranties, guarantees, or conditions last only during the term of the limited warranty and are limited as much as your local law allows. If your local law requires a longer limited warranty term, despite this agreement, then that longer term will apply, but you can recover only the remedies that are described in this agreement.	Acme excluye todas las garantías implícitas y, en especial, la garantía implícita de conformidad del programa para un propósito general, de idoneidad para un fin particular y de no infracción de los derechos de propiedad intelectual, industrial u otros derechos registrados de terceros. Si la legislación de su estado o país no permite dicha exclusión, cualquier garantía o condición implícita tendrá la misma duración que el período de vigencia de la garantía limitada, siempre y cuando la legislación de su estado o país lo permita. Si la legislación de su estado o país exige un período de garantía superior, pese a lo establecido en este contrato, dicho período de vigencia se aplicará, pero usted podrá reclamar únicamente los medios de reparación descritos en este contrato.	Traducción instrumento

Figure 3. Example of results searching “merchantability” in the corpus.

This corpus is unique because it is a reviewed corpus, i.e., all the translations that were found of the 75 licenses used³ have been reviewed to ensure they comply with all the legal, linguistic and communicative requirements to be adequate translations. Two other corpora of monolingual licenses in English and Spanish were also used to build this tool.

4. Instrumental and documentary translations

Given the fact that EULAs translated into Spanish by licensors are made available directly to users of licensed software in Spain, these documents have now attained legal status within Spanish law. Translated end-user license agreements are thus documents that have legal implications in Spain. Therefore, the translation of EULAs falls mostly into the category of instrumental translations as defined by Nord (1997: 45-52 and 127) where the reader expects “that the target text fits nicely into the target-culture text class or genre it is supposed to belong to” (Nord, 2006: 39). When the end user is a consumer, protected by European and Spanish laws, the target text becomes the only contract between the parties and therefore the only source of interpretation of its legal terms. In practice, this means that the target text should avoid the use of terms that are non-existent or unknown under Spanish laws in order to ensure the intended legal interpretation.

However, there are cases in which the translated EULA (i.e. the target text in Spanish) is not a legal instrument because the license is not directed to a consumer but rather to a company or a professional. In these cases, the legal system of the source text (i.e. USA laws) is the one that rules, and the document in the target language (i.e. Spanish) is only informative, so that the user/reader has the information in his/her own language. Therefore, in this

3 The list of the licenses used can be seen in <http://lawcalisation.com/contenidos-y-fuentes>

case, the translations fall into the category of documentary translations as defined by Nord (1997: 45-52 and 127) where the reader of the target text knows that the text is a translation and is not supposed to be bothered by the “strangeness” of the target text, as pointed out by Nord (2006: 39) since the “purpose would be precisely not to resemble any text existing in the target culture repertoire”. This means that terms that are non-existent under Spanish laws may be used in the form of calques or loan words and its meaning will be always referring to the source legal system.

The way in which translators translate EULAs usually differs depending on the function (instrumental or documental) of the target text. This is why the tool designed sets so much store by making the differences between both approaches clear – via an explanation, a questionnaire and Frequently Asked Questions. It also provides translators with different options both at terminological and syntactic levels, depending on the different target text approach selected (instrumental or documentary).

5. Translation techniques

Ideally, using the instrumental approach, translators will produce a target text which first of all reflects the microstructure and phraseology of standard legal language in Spanish, in particular, the salient features of licensing agreements written originally in Spanish. Secondly, translators will ensure that the text has the same - or similar - legal effects in the Spanish civil law system as the source text in the English common law system. This approach requires the use of certain translation techniques (that is, a specific procedure used to obtain the best possible solution for a given term of the source text) for the translation of legal terms. Given the characteristics of the communicative context described, functional equivalents should always be used wherever possible instead of loanwords, since these do not belong to the target legal system and therefore end-users of license agreements will not only not understand loanwords, but,

because they are alien to a country's legal system, judges would consider them to be void or irrelevant⁴.

Functional equivalents, for our purposes, are terms that have the same legal function, or consequences, in the target legal system as in the source text system. For instance, the translator may find the term *tort* in a typical limitation-of-liability clause such as: “The Seller shall not be liable, whether arising under contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits [...] or for any indirect, special, incidental or consequential loss or damage”⁵. In this case, and using the approach suggested, instead of incorporating the loanword *tort* into the target text, as often occurs in legal translations (*tort* is a branch of common law that does not have an exact equivalent in the civil law system), we would advise the use of an equivalent that has a similar function in the target legal system such as *responsabilidad civil extracontractual* in Spanish (literally ‘extracontractual’ civil liability). This term is regulated under section 1902 of the Spanish Civil Code, that states the obligation to pay compensation (damages) by a person who “by action or omission, involving fault or negligence, causes tort to another” (as is translated in Luque et al. 2001: 3) because in this specific context, the legal principle underlying the term and the clause is to limit, as far as possible, the liability of the seller for, for instance, possible damages arising out of non-contractual liability.

In order to clarify the differences between the two approaches, it may be useful to give some examples. If the sentence “This warranty gives you specific legal rights” were to be translated using the instrumental or the documental approach, the results would be very different.

⁴ See Bestué and Orozco-Jutoran, 2011 for an in-depth discussion of the issue of the selection of given techniques in the translation of legal terminology.

⁵ This and other quotes from EULAs have been extracted from the corpus analyzed by the LAW10n research Project, there are many similar texts used by many different companies and therefore no author is quoted.

An instrumental approach would mean eliminating the sentence in the target text, since it does not apply at all to the requirements of the target legal system –the Spanish one– where it could be considered redundant. Instead, and taking into account the goal of the clause, which is the survival of the contract in case of different national or local requirements in consumer protection matters, an alternative translation could be introduced to facilitate readers’ processing of the information. In this case, the recommended translation, still using the instrumental approach, paraphrases the English sentence, “*esta garantía no supone limitación alguna a los derechos que por ley le correspondan*” (literally, “this warranty does not restrict the rights established by law”). The proposed translation could at the same time serve an instrumental goal (although redundant under Spanish law) and the communicative purpose of any given translation since it facilitates the comprehension of the text for a target reader in Spain.

A documentary approach, on the contrary, means *not adapting* legal terms or legal principles to the target text culture, and would therefore mean translating the sentence as “*La garantía limitada descrita le otorga derechos legales específicos*” (literally, “The described warranty gives you specific legal rights”) which is a word-for-word translation that could only work in a context in which the target reader is a Spanish speaker in the United States. In this case, the word-for- word translation would refer back to the underlying legal system. However, there is no approach that can justify not taking into consideration the target culture, language and context at all. For instance, it is unfortunately not uncommon to find the sentence “This limitation of liability might not be valid in some States” translated into Spanish as “*Esta limitación de responsabilidad puede no ser válida en algunos estados*”, which means exactly what it says in English, and therefore makes no sense for a Spanish reader if the context is not clarified, since there are no States in Spain and also the word used in Spanish to refer to States (*estados*) means also “countries”, so that the sentence translated in Spanish in this way is most probably interpreted by a Spanish reader as “This limitation of liability might not be valid in some countries”.

At the terminological level, the different approaches can also provide different solutions. For instance, using the instrumental approach the term “merchantability” would be translated using its functional equivalent, in this case, *garantía de idoneidad para un fin general* or *de conformidad de los bienes* (for an explanation, Bestué 2009c: 122-123). On the contrary, using the documental approach, “merchantability” could be translated as *comerciabilidad*, a neologism widely used in international law. In a document translation the actual meaning of the term refers to the underlying legal system and its different meanings depend on the actual jurisdiction. Indeed, this term has developed differently in the United States, New Zealand and the United Kingdom – where it has been changed to “satisfactory quality” or “fit for the purposes”.

Regardless of which approach is taken – instrumental or documentary - translation techniques such as the calque are almost never recommended, even though they are widely used in academic works, because in most cases they create confusion in the reader. For instance, whichever approach is used, the term “statute” should be translated as *ley*, avoiding the calque *estatuto*, since in Spanish this term refers to a specific kind of Act in Spain (as in *Estatuto de Autonomía* or *Estatuto de los trabajadores*) and also to bylaws in companies and associations –not only in Spain but in any country. When this term is included in a string of near synonyms –i.e. “any laws, regulations or statutes”- the technique recommended would be to use a synonym such as *legislación* (legislation) or, if necessary, a hyperonym such as *disposiciones legislativas* (legal regulations).

6. Conclusion

The LAW10n research project aimed at proposing a model of translation for end-user license agreements which ensured, on the one hand, that target texts fulfilled the legal requirements of the target country whilst, on the other, remaining faithful to the spirit and legal effects of the source text. The final

results of the project, however, reach far beyond this. We believe that the use of the prototype application created can not only improve the quality of translation of EULAs, but also be replicated in other language and legal system combinations and also other legal domains. Moreover, by evidencing the problems involved in the translation of EULAs and providing a solution, improvements have been made in the instrumental translation of legal texts in general, since this same methodology may be extrapolated for use with other types of legal texts that may require instrumental translation.

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