



Office of Language Access
Office of the Colorado State Court Administrator



Policy on Interpretation of Digital Files on the Record

Process Description

National standards for best practice require that the portion of a digital file needed for use in the courtroom be transcribed and translated prior to the hearing.

Interpreting a digital file on the spot in court is different from interpreting for a live speaker. The following considerations may affect the accuracy of the message:

- The interpreter is not familiar with the material and/or the quality of the recording
- The interpreter lacks the opportunity to request clarification of a word or ambiguity in the audio
- Portions of the audio may be unintelligible or may contain a high level of background noise
- Statements may be incoherent at times due to the sound of overlapping voices or other noises
- Replaying portions of the audio before the Court, the jury and others causes confusion. In fact, transcribers routinely listen to recordings multiple times because there are almost always articulation problems that do not allow for clear understanding of utterances. Moreover, although audio files can be replayed, an interpreter may not be able to request clarification of an unintelligible utterance.

The task of transcribing and later translating a recording is time-consuming. It requires special equipment and conditions that enable full concentration. Depending on the length, quality, number of speakers, noise level, intelligibility and speed, the time required to transcribe and translate a portion of audio is approximately 1 to 1½ hours for every minute of recording.

Once the translation has been submitted prior to a hearing, any party may object to the accuracy of another party's translation by pointing out the specific inaccuracies of the translation and by stating with specificity what the objecting party contends is a fair and accurate translation.

Policy Guidance

The Office of Language Access (OLA) advises that all non-English audio, video, and other electronic files (e.g., text messages) be transcribed and translated by the presenting party prior to being submitted as evidence, and that the court interpreter not perform an interpretation of recorded evidence into English.



The only exceptions to this policy are cases involving the safety and security of an individual, such as a Temporary Protection Order, or in matters affecting the imminent safety of children. In these situations, interpreters must be allowed sufficient time during a recess to listen to the recording and prepare their rendition, and allowances must be made for the imprecision of their work due to the conditions mentioned above.

- A. The OLA issues the following guidance for the interpretation of a **non-English digital file** (either audio-only or audio/video) that will be presented in court:
1. Interpretation of a digital file requires preparation time and resources. This transcription and translation process is considered background information and/or trial preparation per Chief Justice Directive 06-03: II.D., and is therefore beyond the scope of scheduling and payment by the courts. Assignments and payment must be arranged directly between the requestor and the language professional.
 2. If the interpreter(s) is asked to render the interpretation of a digital file in open court without prior notice, the interpreter(s) is required to ask that the proceeding be stopped in order for the judicial officer to determine the length of the recording and audibility. Interpreters must notify the Managing Interpreter or designee of the request.
 3. If the interpretation of the portion of a digital file required for use in the courtroom is ordered by the court and that portion of the original file is **no longer than two minutes**, the following steps apply:
 - a. The interpreter(s) who will be on the record for the proceeding may interpret that portion of the digital file only after being granted time for off-the-record review and consultation. Interpreters may take that time to draft a written translation of the digital file being reviewed for their own use during sight interpretation on the record.
 - b. Should any part of the recording be inaudible, the interpreter will inform the judicial officer of the inability to interpret that section of the recording.
 - c. Before the interpreter begins interpreting the digital file in open court after the required review, the interpreter will inform the court that it is best practice that the digital file be played and stopped as guided by the interpreter(s) in order to ensure accurate consecutive interpretation for the record.
 4. If the transcription/translation of the digital file is not prepared prior to the hearing, the interpreter will not be considered an expert witness for either party, but rather shall remain a neutral officer of the court.
- B. **Digital files recorded in English** that will be played in open court for a case involving a Limited English Proficient (LEP) party may be reviewed prior to the proceeding by the interpreter(s) who will be providing language services for that hearing. There is no time restriction for an English recording. The attorneys may waive the court interpreter(s) for that portion of the hearing/trial if they have previously reviewed that digital file with their client during trial preparation.



National Standards

In 2006 the National Association of Judiciary Interpreters and Translators (NAJIT) published the position paper *“Onsite Simultaneous Interpretation of a Sound File is Not Recommended”*. This document and the published position paper *“General Guidelines and Minimum Requirements for Transcript Translation in any Legal Setting”*¹ provides an overview of the transcription/translation (TT) process for digital files in languages other than English and the highly skilled language expertise required to complete the task accurately and completely.

As stated in this position paper, there are “unique factors that come into play when converting information on a sound file from one language to another: knowledge of the transcription/translation process, time, technology and research tools.”²

In order to provide accurate and complete interpretation, an interpreter must be able to hear the verbal interactions clearly and request repetitions of the speakers if an utterance is not heard or understood, among other things. An interpreter who is asked to interpret a digital file in a courtroom is not privy to these requirements. “The quality of in-court interpretation of a sound file will almost always fall short of the evidentiary standards that must be met, due to the lack of time, technology, and resources required by the practitioner to perform the task correctly.”³

Interpreters working for the Colorado State Courts have sworn to uphold the Interpreter’s Code of Ethics which includes the mandate to interpret faithfully and accurately to the best of the interpreter’s ability. “[...] an immediate rendition of the material in question will likely fail to meet the high standards set forth by the oath.”⁴

Revised May 4, 2018

¹ National Association of Judiciary Interpreters & Translators, *“General Guidelines and Minimum Requirements for Transcript Translation in Any Legal Setting.”* www.najit.org (May 2009).

² National Association of Judiciary Interpreters & Translators, *“Onsite Simultaneous Interpretation.”* www.najit.org (May 2006), p. 1.

³ *Ibid.*, p. 1.

⁴ *Ibid.*, p. 2.