

Knut Selmer Memorial Lecture 2022/23

18 January 2023, University of Oslo, Norway

**Lawyers as Engineers,
Designers and Architects**
wanting to make something useful that works for their clients



Helena Haapio, University of Lapland | University of Vaasa | Lexpert Ltd

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Agenda

The Who

- Who's talking - invited & uninvited?

The What & the Why

- What's wrong with what we've got?
- Example: contracts - what do we want from them?
- Changing mindsets with proactive legal thinking & design

The How

- Redesigning content and presentation
- Examples, tools and resources

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Who's talking?

CATEGORY: ACADEMIA & EDUCATION



WINNER

European Women of Legal Tech 2020

FINLAND

Dr. Helena Haapio

Associate Professor of Business Law,
University of Vaasa, Adjunct Professor of
Proactive Law and Contract Design, University of
Lapland & Contract Strategist, Lexpert



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Who's Talking? A Lawyer on a Mission



Helena Haapio, LL.M. (Master of Laws), MQ (Master of Quality),
DSc (Doctor of Science (Econ.) in Business Law)

- Professor of Practice & Docent of Proactive Law and Contract Design,
University of Lapland, Associate Professor of Business Law,
University of Vaasa
- Contract Strategist, **Lexpert Ltd**, Helsinki; formerly corporate counsel in
Europe and the US; arbitrator in contract disputes
- a pioneer of **Proactive Law** and **Contract Design**, merging proactive
legal thinking with design thinking & doing
 - co-founder of the **Nordic School of Proactive Law**, the **ProActive ThinkTank**, the
International Network for Proactive Law (INPL), and the **Legal Design Alliance**;
co-creator of **WorldCC Contract Design Pattern Library**; founder and coordinator
of the Contract Management Theme Group of Project Professionals Finland
 - **on a mission** to change the way contracts and law are designed, communicated,
perceived and taught, in order to make them work: legally and operationally
functional & business- and human-friendly, not just lawyer-friendly

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Law as Engineering

“Like engineers, transactional and legislative lawyers want to **make something useful that works for their clients**. ... Unlike the objects created by engineers, lawyers’ objects are embodied not in metal or concrete or plastic, but in **relationships between people**, and they are **designed in words** rather than in drawings.”

David Howarth

Law as Engineering, Thinking About What Lawyers Do.
Edward Elgar 2013, p. 67

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What’s wrong with what we’ve got?

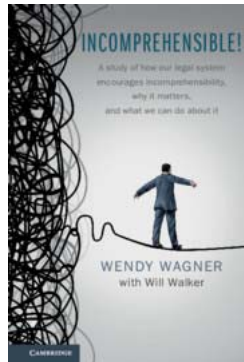
Research and practice tell us that there is something wrong with current legal documents, policies and contracts. They do not work for the people they are expected to serve.

Let’s face it: they are just too complex, incomprehensible for many. They may be lawyer-readable, but are neither machine-readable nor easily human-readable. Most people dislike them (and the people who write them).

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What's wrong with what we've got?



“... the ‘incomprehensibility’ problem is not simply one that afflicts the masses in consumer markets who are preyed upon by payday lenders and credit card companies. Rather, incomprehensibility’s victims can include powerful Wall Street investors, expert regulators, and elected officials who run our country.”

Incomprehensible! A study of how our legal system encourages incomprehensibility, why it matters, and what we can do about it, Wendy Wagner, University of Texas School of Law, with Will Walker
Cambridge University Press 2019 (p. 9).

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“I teach contract law at Harvard Law School and I can’t understand my credit card contract. I just can’t. It’s not designed to be read.”

Elizabeth Warren
Professor of Law, Harvard Law School
NOW on PBS interview Week of 1.2.2009
<http://www.shoppbs.pbs.org/now/shows/501/credit-traps.html>

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Some Still Prefer Their Contracts to Remain Unread

Some organizations and lawyers may prefer that their contracts and terms are *not* read or understood; they may use it for their benefit - or just do not care.

Our work does not focus on such organizations or lawyers, but instead on those that embrace the values and mentality of **Proactive Law**:

- enabling the parties to reach their business objectives
- promoting business success while preventing problems
- balancing risk with reward, business with legal

Example: Contracts – what do we want from the ones we prepare?

Do we want our contracts to

- be hard to read, understand and implement?
- minimize one party's responsibilities and risks and transfer all obligations and liabilities to the other party (and further down the supply chain)?
- prepare for the consequences of failure and allocate risk?

Or do we want to

- achieve and maintain long-term relationships?
- foster reciprocity, loyalty and mutual success?
- ensure that both parties' goals are met?
- share responsibility and prevent unnecessary problems?

What is the purpose of our contracts?

The Purpose of a Contract

1. A record of rights, responsibilities and obligations
2. Providing protection and remedies in the event of a dispute
3. **A framework for a mutually successful business outcome**
4. A tool for risk apportionment
5. Support for a business relationship
6. Governance and **performance management**
7. A tool for risk management
8. An **effective communication tool** for those with a need to know
9. **Providing operational guidance**
10. An instrument for generating financial benefit
11. Demonstrating brand and corporate values

The Purpose of a Contract: An IACCM research report
International Association for Contract and Commercial Management (IACCM)
www.worldcc.com/Resources/Content-Hub/View/ArticleId/8673/The-Purpose-of-a-Contract-An-IACCM-research-report

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Remember: Our contracts
and other documents are
not only read by lawyers
and are not only used in
adversarial settings!

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What's wrong?

Fred Rodell (1936): two things

"There are two things wrong with almost all legal writing. One is its *style*. The other is its *content*."

Fred Rodell

Professor of Law, Yale University

Goodbye to Law Reviews,

Virginia Law Review, Vol. 23, 1936, p. 38 &

Goodbye to Law Reviews-Revisited,

Virginia Law Review, Vol. 48, 1962, p. 279

Content

Contracts: Top Terms

Question:

Where do negotiators spend most of their time?
What terms are most frequently negotiated?

Answer:

1. Limitation of Liability
2. Price / Charge / Price Changes
3. Indemnities

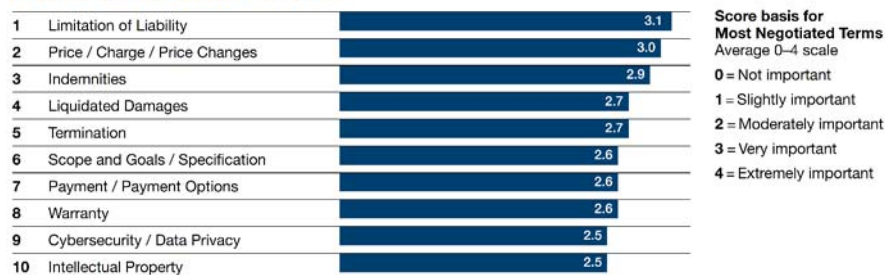
WorldCC, Most Negotiated Terms 2022: Negotiating in a time of turmoil
https://www.worldcc.com/Portals/1/ACCM/Resources/11465_1_Most-Negotiated-Terms-2022-Report.pdf

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WorldCC Top Terms: most negotiated

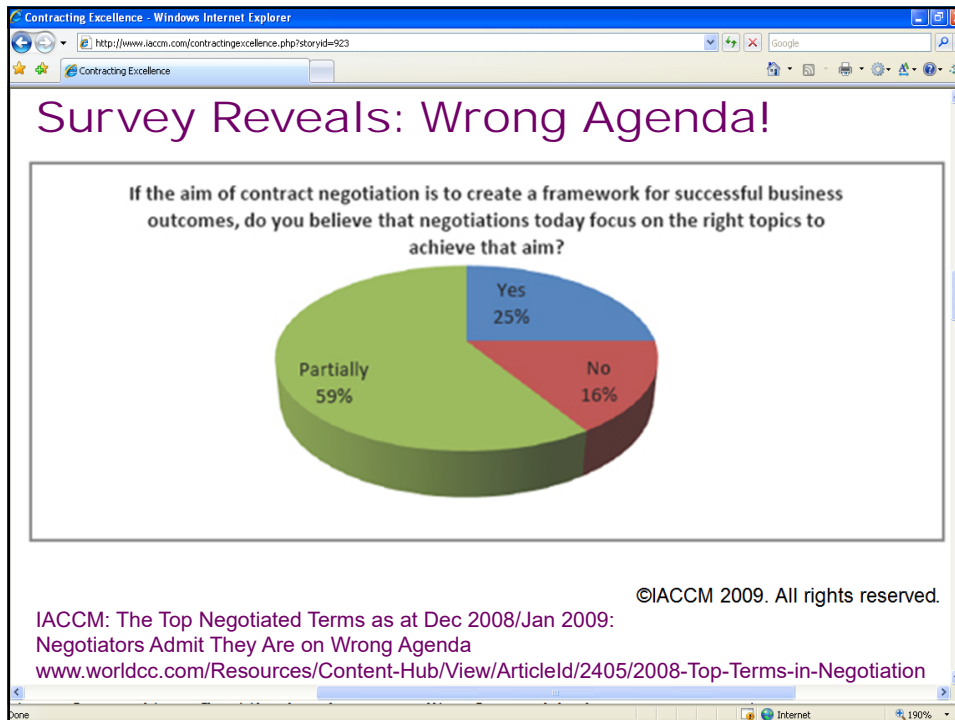
Figure 1 – Most Negotiated Terms top 30



WorldCC, Most Negotiated Terms 2022: Negotiating in a time of turmoil
https://www.worldcc.com/Portals/1/ACCM/Resources/11465_1_Most-Negotiated-Terms-2022-Report.pdf

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Most Important Terms

Question:

Where should negotiating time be focused?

Answer:

1. Scope and Goals/Specification
2. Price / Charge / Price Changes
3. Delivery

WorldCC, Most Negotiated Terms 2022: Negotiating in a time of turmoil
https://www.worldcc.com/Portals/IACCM/Resources/11465_1_Most-Negotiated-Terms-2022-Report.pdf

Style

GENERAL TERMS OF THE TENANCY AGREEMENT 01.01.2014

1. Premise
The Founder's student apartments are meant for full-time students during the period in which they are studying in institutions of higher learning in the Helsinki, Vantaa, Espoo and Akaa/kuusinkangas (HKA) Student Housing in respect for full-time students who are members of the HVI (i.e. the Student Union of the Helsinki University). These agreement terms also concern the new estate complexes owned together by the Foundation and the municipalities, and apartments whose Lesors are the Helsinki University. In addition to the terms of this agreement, tenants are subject to the law concerning rental apartments (Laki, 40/1995), the use and regulations of the housing company, the instructions and regulations given in resident notifications, the residence Guide, Tenant Charge Sheet, the Tenant Responsibility Chart, and other instructions and regulations that are currently in effect and available on the HOAS website, as well as the law (1150/2013) concerning the use, maintaining and buying of state subsidised low-income rental apartments and housing projects.

2. Tenancy period
The tenancy agreement is for a fixed period or subject to notification. Only full-time students are allowed to sign tenancy agreements that are subject to notification or in cases where the notification company is concerned. The Tenant of the housing apartment of the municipality according to the principles decided upon by the Board of Directors of the company. A fixed period tenancy agreement ends when the period is completed, unless there is an agreement or contingent on points 16 or 17 below. An agreement made for less than 6 months or a fixed-term agreement in international exchange student housing cannot be terminated by giving notice. Agreements that are subject to notification end upon giving notice, upon cancellation or termination, or by mutual agreement. The Tenant is committed to handing over the apartment to the Lesors for the duration of summer months 1-6-31.6 to be used as a summer home or other such activity.

3. Deposit
When leasing an apartment the Tenant will pay a deposit to the Lesors. The deposit will be returned to the Lesors of the deposit within one month after the termination of the tenancy only if the Tenant has returned the keys to the apartment, the apartment is in a clear and normal condition and there are no outstanding payments for any other outstanding obligations. The Lesors may use the deposit for settlement of any outstanding payments mentioned above without consulting the Tenant. Returned deposit does not absolve the tenant from the general terms of the tenancy agreement. During the tenancy period the Tenant does not have the right to request that the deposit be used to cover the cost of rent. The Tenant will not receive interest on the deposit.

4. Move-in day
The Tenant is entitled to take possession of the apartment at the beginning of the tenancy period. However, if the tenancy period starts on a weekend or on a national holiday, the possession right begins the next weekday. The Tenant's liability to pay rent comes into effect the day the tenancy period starts as stated in the tenancy agreement. At the termination of the tenancy, the apartment must be returned by the last day of the tenancy agreement.

5. Keys
The Tenant gets the keys at the beginning of the tenancy period. The keys are for the use of the apartment only and they are to be handled with care and responsibility. Tenant must notify the Lesors immediately if a key is lost or damaged. If a key is lost the Tenant will be responsible for the costs (i.e. rekeying costs). Making copies of the keys is prohibited. The Tenant is responsible for collecting and returning the keys to the Lesors in a secure sealed key box. Any request concerning the keys will be charged from the tenant according to the valid resident price sheet. A security lock may only be installed with the Lesors' permission and at the Tenant's own expense. The Tenant consents to providing the Lesors with a key to the security lock. When missing out, the said lock must be left as installed and all keys handed over to the Lesors.

6. Handing over the apartment to another person
The Tenant living in student housing may not, without the permission of the Lesors, hand over the apartment to part of, or have someone living there who are not parties to the tenancy agreement, or transfer the tenancy agreement. The Lesors requires that the Tenant must be used for student housing (Laki, 11, 18, 44 and 45).

7. The Tenant's responsibilities during occupancy
The Tenant is responsible for giving written notification to the Lesors concerning details of moving in or out or when vacating the apartment for a longer period of time, for more than one month. The Tenant is also responsible for notifying the Lesors of any changes concerning the identity or number of people living in the apartment during occupancy. The Tenant is responsible for cleaning, taking care of and carefully maintaining the apartment and the equipment therein. The Tenant must immediately attached to it and to follow the instructions given by the Lesors. The Tenant is responsible for keeping smoking and drinking to a minimum. The Tenant is not responsible for the normal wear and tear of the apartment, but the Tenant is required to compensate for any damage caused by themselves. The Tenant is responsible for the normal wear and tear of the apartment. In the beginning of tenancy any complaints concerning the condition of the apartment must be made directly to the Lesors. In the case of a complaint that specific action must be taken during the lease. You must notify the Lesors directly immediately after reporting it, if there are any complaints concerning the apartment. The Tenant must notify the Lesors of any defects in the apartment or a representative of the Lesors of any defects in the condition of the apartment within two weeks of moving in, and continue to file claims immediately when moving in. During the period of occupancy the Tenant is also required to immediately inform the Lesors of any defects or omissions occurring in the apartment. The Tenant must notify the Lesors of any damage or defects that the Lesors is responsible for repairing. The notification must be done immediately, unless the damaged/defect is causing the risk of getting worse if not fixed right away. A tenant who does not notify the Lesors, will be held responsible for the resulting damage. The Tenant is required to inform the Lesors immediately if a hole in the wall, cracks etc. so that the Lesors can take action and start the preservation. The Lesors reserves a right to carry out preservation work without a separate advance notification if necessary.

8. Common areas of the apartment
All the Tenants in the apartment are jointly responsible and liable for the condition and upkeep of the common areas, and of the furniture and equipment in them. The Tenant is responsible for informing the Lesors or representatives of the Lesors of any changes in the condition of these areas and the equipment.

9. HOAS/Net
If the apartment is connected to HOAS/Net, the Tenant, by signing the tenancy agreement, acknowledges and agrees to the terms of delivery. HOAS is not responsible for the possible short disconnections in the internet service. Bittoriinnet, Byssefinetti, J. Röntönkatu, 2 has been connected to Bittoriinnet local network. The Tenant acknowledges and agrees to the terms of delivery. The same principles are in effect also in the Trust network of Ombia Oyj. Using the previously mentioned services is voluntary, but using them does not entitle to reimbursement of the rent.

10. Compensation
For such time as the apartment cannot be occupied, or is not in the required or agreed upon condition, and the Tenant has fulfilled his responsibility to notify the Lesors as stated on point 7, the Tenant has the right to apply for compensation. A written notification of the matter must be made immediately, after which compensation can be agreed upon. The Tenant may apply for compensation for the amount of rent or immediate expenses that is equivalent to the time period and amount of the inconvenience caused by the defect (Laki, 23 § 2 mom.). Compensation is paid under the condition that the damage or defect can be determined to be the fault of the Lesors through neglect or other carelessness (Laki, 23 § 3 mom.). Any outstanding payments to the Lesors may be subtracted from the compensation to the Tenant. The Lesors and the property owners have the right to carry out general repairs in the building and in the tenant's apartment during the tenancy, without the tenant being compensated for the time of repairs. The companies that supply heat, water, electricity, telecommunications and internet services are solely responsible for the operation of these services in accordance with their general delivery terms, regardless of whether the scope of these services are included in the rent or paid for separately. HOAS is liable only for damages caused by its own negligence.

11. The Lesors' right to enter the apartment
To issue and supervise the condition and upkeep of the apartment the Tenant must allow a representative of the Lesors to enter the apartment without delay as soon as convenient. Should need be or cases that need immediate action, a representative of the Lesors has the right to inspect an apartment without the Tenant's consent. HOAS inspects all apartments at the termination of the tenancy. An apartment inspection may include two inspection visits, the first of which is a preliminary check that is carried out unless the current tenant is still living in the apartment. There will be a second check after the tenant has moved out and the new tenant has just signed a tenancy agreement. The tenant will not be notified of other inspections and they will be opened up by using a master key. Repair work may be carried out during the inspections, or a drawing may be scheduled as a result of the inspection.

12. Transferring the tenancy agreement
On grounds of equivalence, the Lesors may, in accordance with the terms of notice transfer the tenancy to an equivalent apartment or an equivalent part of an apartment that is under the Lesors' authority.

13. Rent and other charges
Rent is determined according to the amount that is needed in conjunction with other services to cover expenses and financing the upkeep of the apartment and related areas in accordance with price-development. Rent will be adjusted in accordance with changes in the amounts listed above. The rent in different buildings and apartments may be averaged. Rent is set monthly rates, of which the average rent per square metre for each estate is calculated. Rent will be charged annually or when necessary according to these principles even if the reduction on state subsidised low-income rentals have ended. In addition to the rent the Tenant agrees to pay the current utility charges, for example, the charges for electricity, water and parking, and fees according to the Resident charge sheet. Showers, and other parts of a joint agreement are jointly responsible for the rent and utility charges during the entire period of the tenancy agreement.

14. Notification of changes in rent and charges
The Lesors will inform the Tenant of changes in rent and charges in writing before they come into effect.

15. Payment collection
Rent and other charges will be paid monthly in advance to the Lesors' bank account, at least the sixth day of each month, unless otherwise stated in the tenancy agreement. The Tenant is responsible for the payment of the rent in accordance with the law. Tenant's account will be referred to a collection agency at the latest 30 days after the due date.

16. Termination and dissolving of the tenancy agreement
When either party gives notice, the agreement will dissolve after the term of notice is over. The Tenant's term of notice is two (2) months, which is calculated from the last day of the month in which notice is given. Cancellation of termination of tenancy agreement will be charged according to the resident price sheet in force at the time of cancellation unless the Lesors gives notice of the tenancy agreement, the term of notice is three (3) months. If the tenancy has, prior to the giving of notice, been terminated immediately for at least one year, the term of notice for termination is set at (3) months. A fixed period agreement will and without a separate notice, unless after having made an agreement with the Lesors to extend the validity of the agreement. The notice of termination shall always be made with the form for notice of termination. The notice of termination for a tenancy agreement and other joint agreements may also be done by all tenancy agreement signatories. The Lesors has a right to terminate the tenancy agreement due to the provisions. The Lesors reserves a right to schedule for the property but primarily the Lesors has a separate tenancy agreement notification from HOAS for the period of the renovation. The tenancy agreement can also be

Does this work for 20-something students?

“The language of the law is ‘full of long sentences, awkward constructions, and fuzzy-wuzzy words.’ The result is often **nothing less than a failure of communication.**”

David Mellinkoff: *The Language of the Law*.
Little, Brown and Company, Boston 1963, p. 27,
citing Fred Rodell: Goodbye to Law Reviews, 23
Virginia Law Review 38, 39 (1936)

The lawyer mindset

“Some day someone will read what you have written, trying to find something wrong with it. This is the special burden of legal writing, and the special incentive to be **as precise as you can.**”

David Mellinkoff: *Legal Writing: Sense & Nonsense*.
West Publishing Co. St. Paul, MN, 1982, p.15

On a mission to fix the problem: merging proactive legal thinking with design



Helena Haapio (LL.M, MQ, D.Sc.), the founder of Lexpert and a pioneer of Proactive Law, is a contract practitioner by day and a researcher, author, and editor by night.

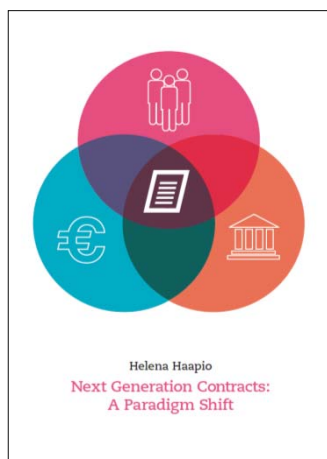


Stefania Passera (MA, D.Sc.), the founder of Passera Design, is a designer, consultant, and researcher who believes that contracts can be user-friendly, clear, and effective. By design.

We have worked on projects and co-authored pioneering research on contract design, simplification and visualization for 10+ years. We designed and built the Contract Design Pattern Library for WorldCC <https://contract-design.worldcc.com>.

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Helena Haapio
**Next Generation Contracts:
A Paradigm Shift**

Doctoral dissertation, University of Vaasa
Lexpert Ltd 2013, contact@lexpert.com

Cover: Stefania Passera



Stefania Passera
**Beyond the Wall
of Contract Text**

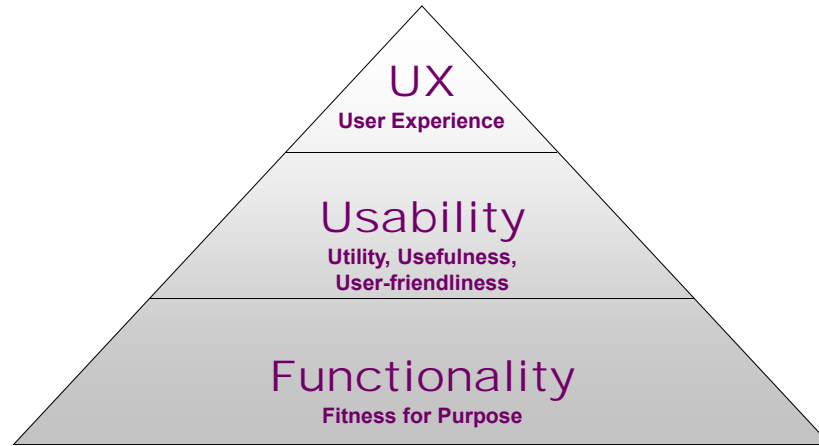
Doctoral Dissertation, Aalto University 2017.
<https://stefaniapassera.com/shop>

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Users' needs and expectations

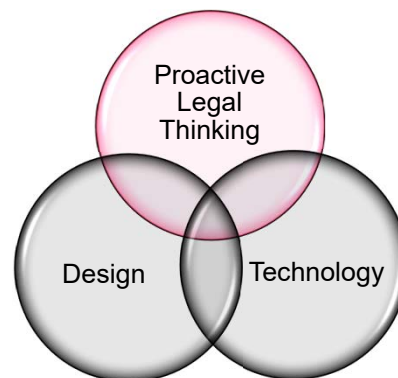


Adapted from Helena Haapio: Next Generation Contracts: A Paradigm Shift (2013), based on Patrick W. Jordan; Designing Pleasurable Products. An Introduction to the New Human Factors (2002).

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Putting People at the Centre – How? Our Proposed Solution



Proactive legal thinking, user-centered design (of content & presentation), without too much manual work

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Conventional Approach: Reactive, Corrective

Traditionally, the focus in the legal field has been on

- the past
- past failures
 - problems, shortcomings, failures to comply
 - delays, infringements, breaches
- reaction to past failures
 - legal proceedings, remedies to force compliance
 - sanctions, punishment, fines

Even contracts are often directed toward failures.

Proactive Approach

What if scholars and practitioners would focus on

- the future
- success rather than failure: how contract partners can
 - succeed together, stay on the happy path
 - prevent and resolve problems together
- contracts (and laws) that are made primarily for the users, the business community, rather than the legal community alone

Preventive Law: Shifting Focus

Focus away from	Focus toward
<ul style="list-style-type: none">• the past• minimizing cost• winning in court• lawyers as fighters	<ul style="list-style-type: none">• the future• eliminating causes• preventing litigation• lawyers as advisors, planners and problem-solvers

Helena Haapio: *Next Generation Contracts: A Paradigm Shift*. Lexpert Ltd, 2013.

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Proactive Law: Shifting Focus Again

Focus not just on	Focus also on
<ul style="list-style-type: none">• rules, legal tools: helping the parties to comply with the rules• minimizing risks, problems, disputes, losses• preventing causes of failure and negative effects• lawyers as advisors, practicing preventive law; the law office as a preventive law laboratory	<ul style="list-style-type: none">• goals, managerial tools: enabling the parties to reach their objectives• maximizing opportunities, desired outcomes, benefits• promoting drivers of success & positive effects• lawyers as designers and coaches, working with clients as part of cross-professional teams

Helena Haapio: *Next Generation Contracts: A Paradigm Shift*. Lexpert Ltd, 2013.

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Our Goal: Proactive Contracts

“A **proactive** contract is **crafted for the parties**, especially for the **people in charge of its implementation** in the field, **not for a judge** who is supposed to decide about the parties’ failures. ... the proactive contracting process and documents **seek to align and express the interests of both sides** of the contract in order to **create value for both.**”

Gerlinde Berger-Walliser, Robert C. Bird & Helena Haapio:
Promoting Business Success through Contract Visualization.
Journal of Law, Business & Ethics, Vol. 17, Winter 2011, 55–75, at 61.

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Is this all brand new?

Not really! Even before we embarked on our mission, the focus started to shift:

- Louis M. Brown, Preventive Law 1950s
- James P. Groton, Conflict Anticipation and Prevention 1970s
- **Proactive Law, Proactive Contracting 1990s**
- **Nordic School of Proactive Law 2004**
- **ProActive ThinkTank 2007**
- **EESC Opinion on Proactive Law 2009**
- Using the Law for Competitive Advantage
- Law and Strategy, Law and Management
- Visual Law, Contract Visualization, Contract/Legal Design
- Law and CSR, Sustainable and Responsible Contracting

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Changing Conceptions of Law & Lawyers

Law as

- engineering (David Howarth, 2013)
- social engineering (Roscoe Pound, 1923)

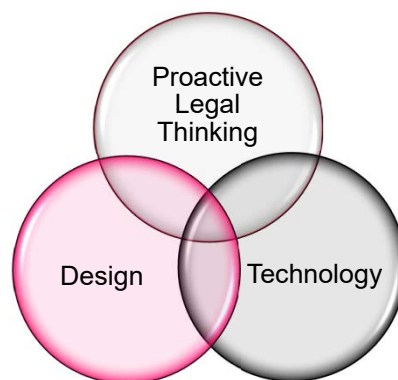
Lawyers as

- architects of social structures (Lon Fuller, 1981)
- transaction cost engineers (Ronald J. Gilson, 1984)
- legal designers (Colette Brunschwig, 2001)
- enterprise architects (George W. Dent, Jr., 2008)
- information/knowledge engineers (Richard Susskind, 2008)
- engineers making legal devices (David Howarth, 2013)
- information designers (Helena Haapio & Stefania Passera, 2013)
- designers, engineers and innovators (Helena Haapio, 2014)

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Our Proposed Solution



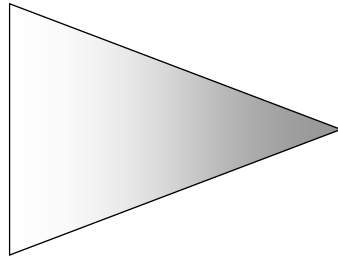
Proactive legal thinking, user-centered design (of content & presentation), without too much manual work

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Lawyers' Roles

1. "Fighter"



3. "Designer"

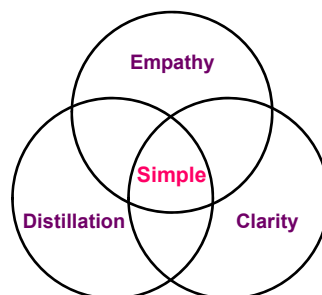
2. "Problem Solver"

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Simplicity: the three building blocks

- 1) **Empathize** with the users' needs and expectations
- 2) **Distill** the communication: boil it down to its essence
- 3) **Clarify** through the use of plain language and design



The building blocks and the idea of the image are adapted from Alan Siegel & Irene Etzkorn, *Simple: Conquering the Crisis of Complexity* (Twelve 2013)

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To work, our contracts need to be in plain language

Plain language

A communication is in plain language if its **wording, structure, and design** are so clear that the intended readers can easily **find** what they need, **understand** what they find, and **use** that information.

Klarspråk - Bokmål

Klarspråk er kommunikasjon med så tydelig **ordlyd, struktur og visuell utforming** at leserne i målgruppen **finner** informasjonen de trenger, **forstår** den og kan **bruke** den.

International Plain Language Federation, Plain language definitions
<https://www.iplfederation.org/plain-language/> - forthcoming: ISO/WD 24495-1
Plain language — Part 1: Governing principles and guidelines

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Proactive Lawyers as Designers: Proactive Contract Design

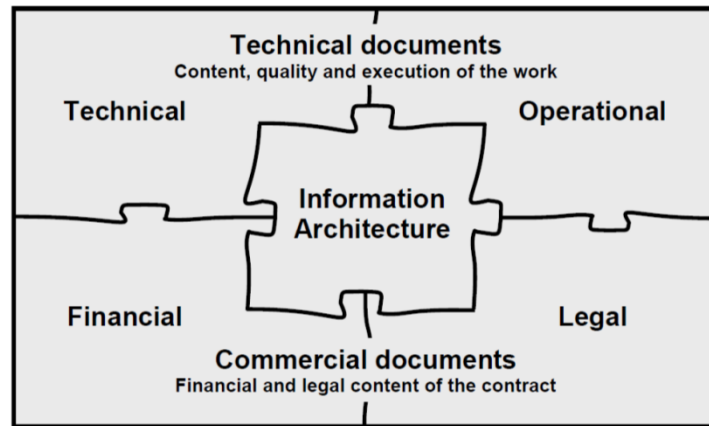
Designing contracts that **work**

- work **proactively**
 - to **promote good**
 - to **prevent harm**
- and are both **legally** and **operationally functional**
 - to help reach party goals – even societal goals, fostering sustainable and responsible corporate behavior throughout global supply chains
 - to communicate well, guiding performance and interpretation/understanding as the parties intended

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Different Users, Different Needs and Expectations

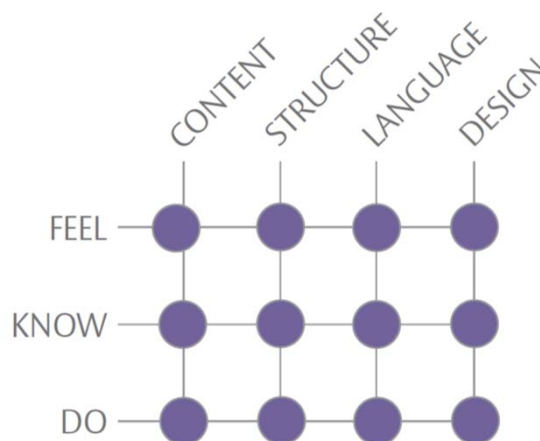


The Contract Puzzle: Contract Documents and their Contents. Adapted from Helena Haapio: Next Generation Contracts (2013) and YSE 1998 (RT 16-10660)

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Criteria for good, clear documents



Martin Evans: *Criteria for clear documents: a survey*. Technical paper 8. Simplification Centre, University of Reading, April 2011, p. 3. www.simplificationcentre.org.uk/reports2/technical-paper-8-criteria-for-clear-documents-a-survey

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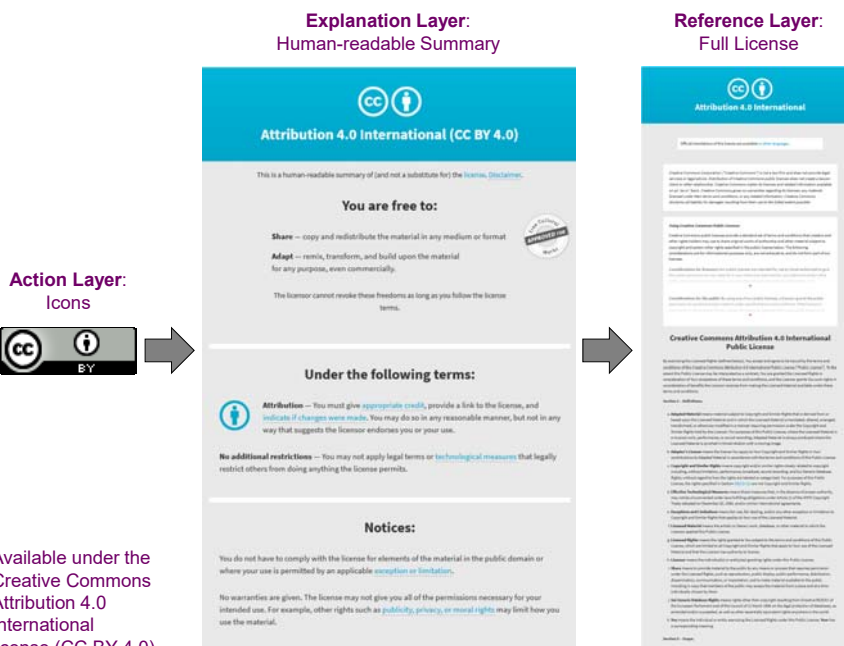
Early Examples of Layered Information: Creative Commons Licenses



Three Layers of Licenses at <http://creativecommons.org/licenses/>
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Marcelo Corrales Compagnucci,
Helena Haapio and Mark Fenwick (eds)

Research Handbook on Contract Design

Edward Elgar 2022

“This Research Handbook inspires a **new vision of contracts**, with practical illustrations of **how they should be designed, rather than just drafted**. The contributors offer a **proactive approach**, merged with innovative design, to show how contracts can be **both user-friendly and legally functional**.”

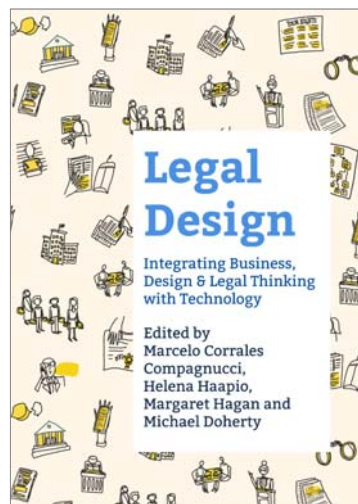
<https://www.e-elgar.com/shop/gbp/research-handbook-on-contract-design-9781839102271.html>

Chapter 1 by the Editors, *The many layers and dimensions of contract* can be viewed and downloaded here:

<https://www.elgaronline.com/view/book/9781839102288/9781839102288.xml>.

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Marcelo Corrales Compagnucci, Helena Haapio,
Margaret Hagan and Michael Doherty (eds)

Legal Design: Integrating Business, Design, & Legal Thinking with Technology

Edward Elgar 2021

“This innovative book proposes new theories on how the legal system can be made **more comprehensible, usable and empowering for people** through the use of design principles. Utilising key case studies and providing real-world examples of legal innovation, the book moves beyond discussion to action. It offers a rich set of examples, demonstrating how various design methods, including **information, service, product and policy design**, can be leveraged within research and practice.”

<https://www.e-elgar.com/shop/gbp/legal-design-9781839107252.html>

<https://www.elgaronline.com/view/edcoll/9781839107252/9781839107252.xml>

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LEGAL CONTRACTS, LICENSES AND POLICIES ARE NOW LONG, DULL, DIFFICULT AND BORING DOCUMENTS. COME CHANGE THAT!

WHAT?
 A Legal Design Jam is a design-driven hackathon to reimagine how we visualize and communicate legal information. It brings together motivated individuals from different fields (law, design, education, journalism, computer science & beyond) together, we give an extreme, user-centric, visual makeover to a legal document.
 During an intensive hands-on workshop, the group will brainstorm and prototype a new version of a legal document, creating visualizations in order to further clarify the trickiest parts of the text.

WHEN?
 Friday 17th October 2013
 12 PM - 6 PM

WHERE?
 d school @ Stanford University
 d reserve Studio - room 209, 2nd floor
 Building 550 (Peterson Laboratory)
 550 Panama Mall
 Stanford, CA 94305

WHY?
 The Wikimedia Foundation will provide its forthcoming trademark policy draft as a document for visualization. Once completed, it will be a very public document and many people should be able to benefit from the visualizations developed at the Jam. The trademark policy is being developed and negotiated online with Wikimedia's wide user base. Visualizations can be a further way to communicate clearly and engage users democratically. The visualizations will be part of the draft proposed to the users during a consultation period currently scheduled to start on November 11. The Wikimedia community will ultimately accept, modify, contribute to, or reject the visualizations as part of the final trademark policy.

FOCUS OF THE JAM

FACILITATORS
 Stefania Passera – PhD Student, Aalto University Helsinki / Graphic Designer
 Margaret Hagan – JD/PhD, fellow at Stanford d school
 Helena Haapio – International Contract Counsel, Lexpert Ltd, Helsinki / University of Vaasa
 Yana Welinder – Legal Counsel, Wikimedia Foundation
 Junior Affiliate Scholar, Stanford Center for Internet and Society

SIGN UP
 Sign up by Monday 7th October — *Space is limited!*
<https://docs.google.com/forms/d/1U7LNAb-6G0nyakR0YpnJyJH9Y6-Uk4NVPF4wqWg/viewform>

INFO stefania.passera@aalto.fi

<https://www.legaltechdesign.com/2013/10/legal-design-jam/>

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THE whiteboard
 A project of the Stanford dschool fellows

Blog

Meet the Fellows
 Program
 Leadership
 Advisors and Alumni
 About Us

ILLUSTRATION

5 insights from a legal design jam

a LEGAL DESIGN JAM

THIS MONTH, I PARTNERED UP WITH

Stefania Passera, an Italian PhD student from Aalto University in Finland & Helena Haapio, a lawyer & contract expert from Finland

to Host a LEGAL DESIGN ONE DAY @ Stanford, JAM ONE DAY IN SF.

by MARGARET HAGAN
 October 25, 2013

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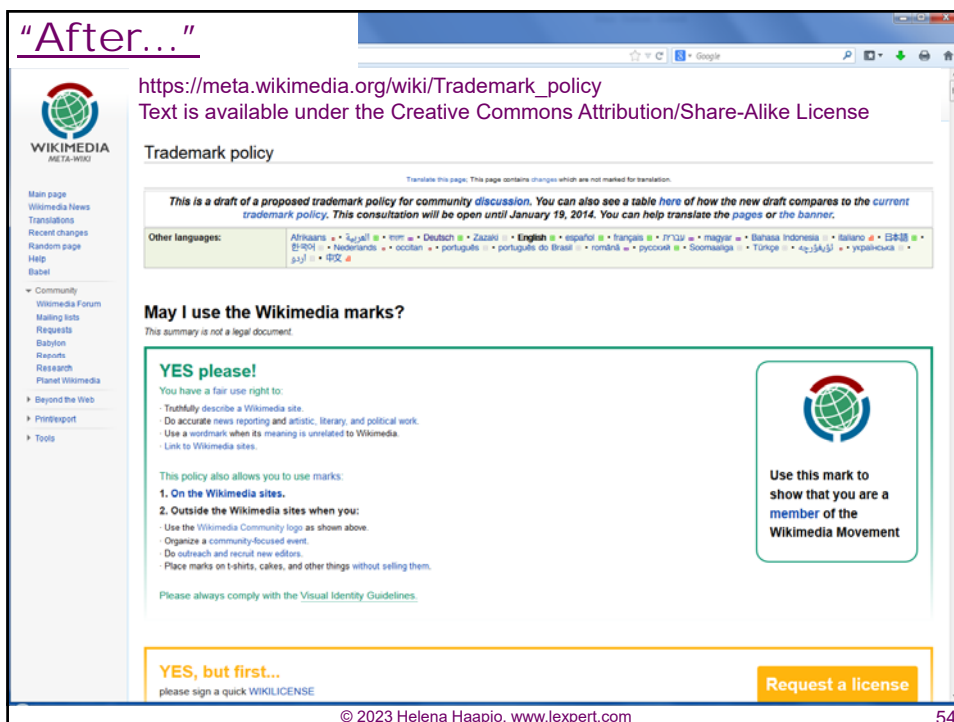
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"Before..."

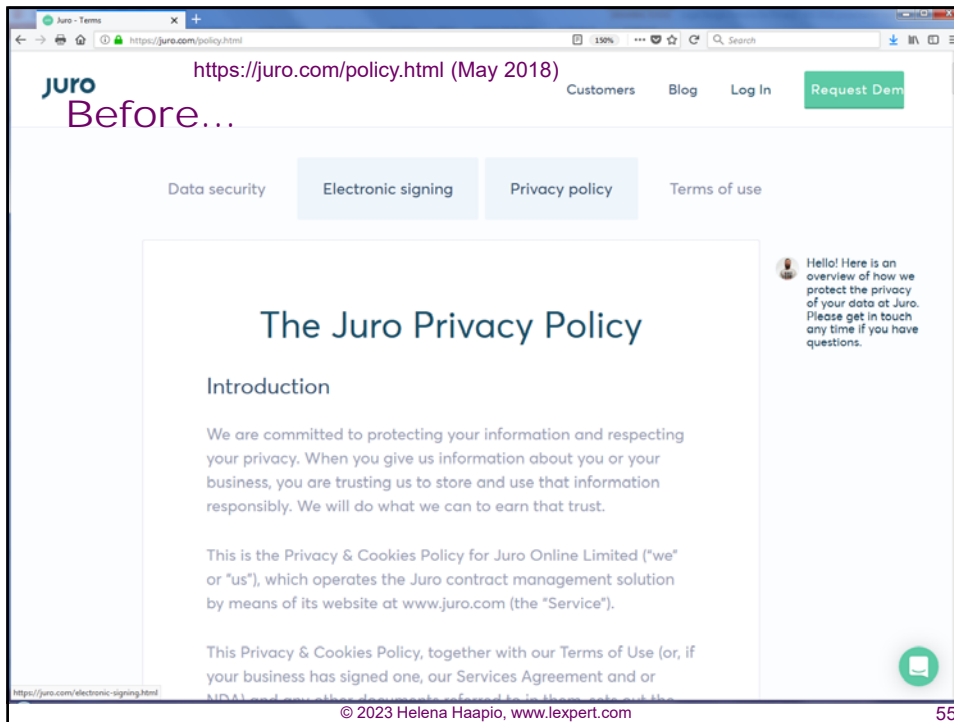


The screenshot shows the Wikimedia Trademark Policy page as it appeared in 2009. The page title is "Wikimedia Trademark Policy" and it was updated on Oct 10, 2009. The introduction states that this revision of the Wikimedia Foundation's general policy regarding the protection and licensing of its trademarks has been developed pursuant to the Wikimedia Foundation Board of Trustees' "Trademark statement" resolution, passed unanimously during its April 2009 meeting. The overview section explains that the document outlines the policy of the Wikimedia Foundation regarding the use of the Wikimedia Marks. It notes that any use of any Wikimedia Mark must be in accordance with this policy. The page also includes a sidebar with navigation links such as "Travel", "Travel approval", "Whistleblower", "Feedback/privacy statement", "Friendly space policy", "Fundraising principles", "Funds dissemination principles", "Legal policies", and "Purchasing and disbursements procedures". At the bottom of the page, there is a URL: http://wikimediafoundation.org/wiki/Trademark_policy and a note that the text is available under the Creative Commons Attribution/Share-Alike License. The footer of the page reads "© 2023 Helena Haapio, www.lexpert.com" and the page number "53".

"After..."



The screenshot shows the Wikimedia Meta-Wiki page for the Trademark Policy draft. The page title is "https://meta.wikimedia.org/wiki/Trademark_policy" and it includes the same Creative Commons Attribution/Share-Alike License notice. The page content is in draft form, with a notice that it is a draft of a proposed trademark policy for community discussion. It includes a table of other languages and a section titled "May I use the Wikimedia marks?". The "YES please!" section lists guidelines for using the Wikimedia marks, such as "Truthfully describe a Wikimedia site" and "Do accurate news reporting and artistic, literary, and political work." A "Request a license" button is visible at the bottom right. The footer of the page reads "© 2023 Helena Haapio, www.lexpert.com" and the page number "54".



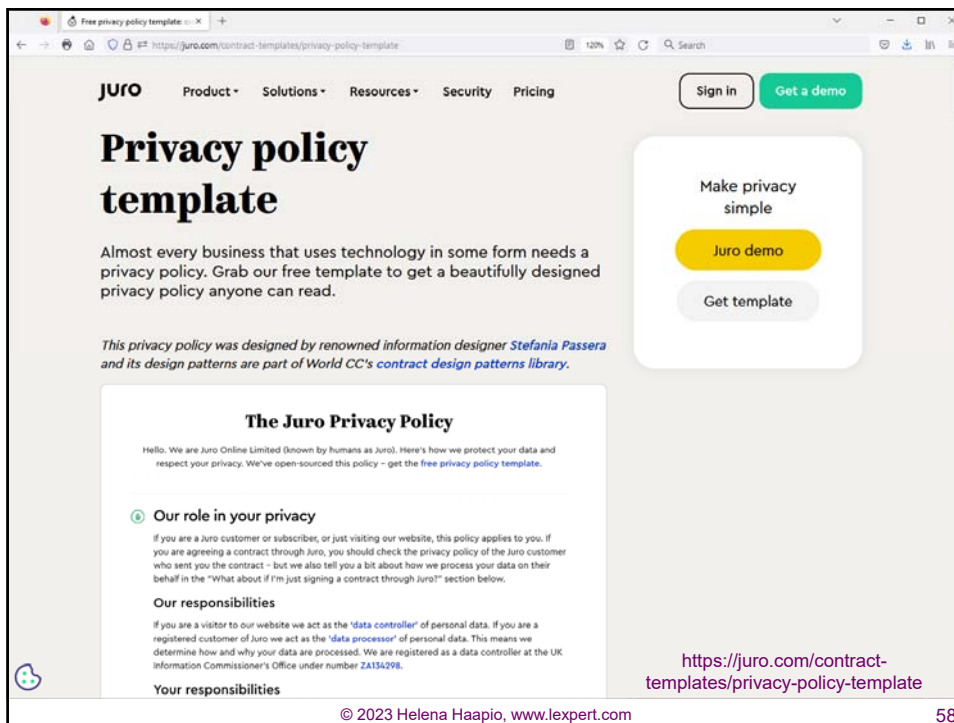
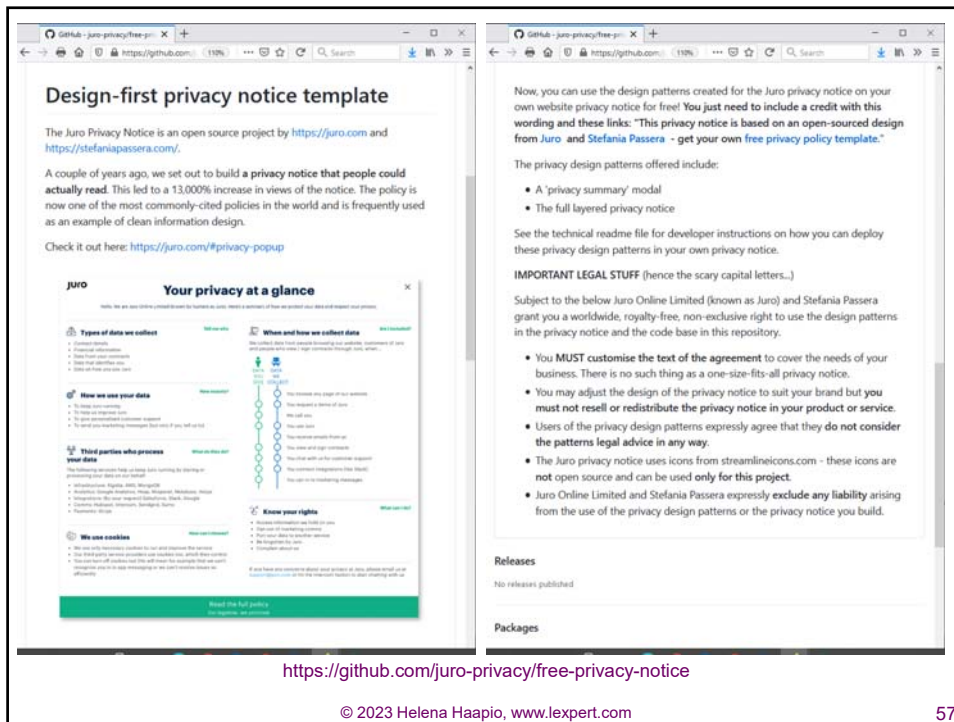
After... Juro Privacy Policy: Short Summary



© 2018 Juro, redesign by Stefania Passera

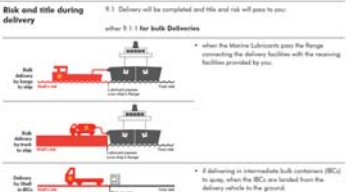
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Shell – Visual Contracts

The goal, according to Adam Khan, Senior Legal Counsel, was to create and implement easy to understand and balanced Visual Sales Contracts that mirror Shell's business practice across Lubes and Specialities to reduce transaction time, increase opportunity and customers on Shell's terms.

Traditional Contracts	Shell Visual Contracts
<ul style="list-style-type: none"> COMPLEX: existing approach to contracts is to create complex legal text to reduce risk and cover all possible contingencies ADVERSARIAL: contracts aim to outwit the counterparty into accepting risk IGNORED: only referred to during commercial negotiations, thereafter only consulted during disputes or used in litigation <p>EXAMPLE</p> <p>10. Risk and Title</p> <p>10.1 Except as may be otherwise agreed, delivery of Marine Lubricants at a Delivery Port shall be deemed to be complete and title and risk shall pass to the Buyer either:</p> <p>(a) for bulk Deliveries, when the Marine Lubricants pass the flange connecting the delivery facilities with the receiving facilities provided by the Buyer; or</p> <p>(b) for delivery in containers:</p> <ol style="list-style-type: none"> when delivering to a quay or other point on land when the goods are landed from the delivery vehicle to the ground; when delivering by a barge operated by the Seller and using the Seller's barge's lifting equipment, when the goods are landed on the deck of the customer vessel; when delivering by barge or vehicle and using Buyer provided and operated lifting equipment, when the goods are lifted off the deck of the barge or off the vehicle; or 	<ul style="list-style-type: none"> SIMPLE: visual contracts are designed so that the commercial agreement is easily understood by the customer FRIENDLY: contracts are designed to be read and understood by customers during negotiations, not just Lawyers ADOPTED: should be used as a useful guide to the relationship and consulted regularly by both parties to manage understanding around ways of working <p>EXAMPLE</p> <p>Risk and title during delivery</p> <p>10.1 Delivery will be completed and title and risk will pass to you either 10.1.1 for bulk Deliveries</p>  <p>10.1.1 for bulk Deliveries</p> <ul style="list-style-type: none"> when the Marine Lubricants pass the flange connecting the delivery facilities with the receiving facilities provided by you. <p>10.1.2 for Bulk Deliveries in containers</p> <ul style="list-style-type: none"> Delivering to intermediate bulk containers (IBCs) in quays, when the IBCs are landed from the delivery vehicle to the ground.

© Adam Khan, Shell. Used with permission.

Pilot project on Marine International produced...

Before

10. Risk and Title

10.1 Except as may be otherwise agreed, delivery of Marine Lubricants at a Delivery Port shall be deemed to be complete and title and risk shall pass to the Buyer either:

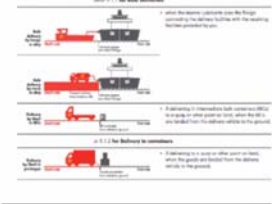
(a) for bulk Deliveries, when the Marine Lubricants pass the flange connecting the delivery facilities with the receiving facilities provided by the Buyer; or

(b) for delivery in containers:

- when delivering to a quay or other point on land when the goods are landed from the delivery vehicle to the ground;
- when delivering by a barge operated by the Seller and using the Seller's barge's lifting equipment, when the goods are landed on the deck of the customer vessel;
- when delivering by barge or vehicle and using Buyer provided and operated lifting equipment, when the goods are lifted off the deck of the barge or off the vehicle; or

After

10.1 Delivery will be completed and title and risk will pass to you either 10.1.1 for bulk Deliveries



10.1.1 for bulk Deliveries

- when the Marine Lubricants pass the flange connecting the delivery facilities with the receiving facilities provided by you.

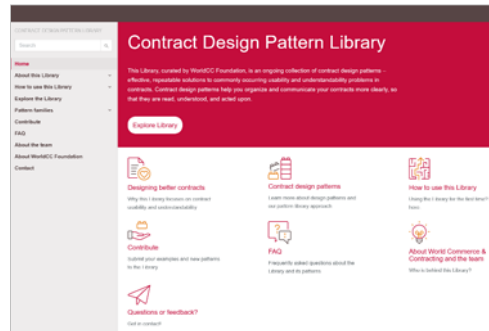
10.1.2 for Bulk Deliveries in containers

- Delivering to intermediate bulk containers (IBCs) in quays, when the IBCs are landed from the delivery vehicle to the ground.

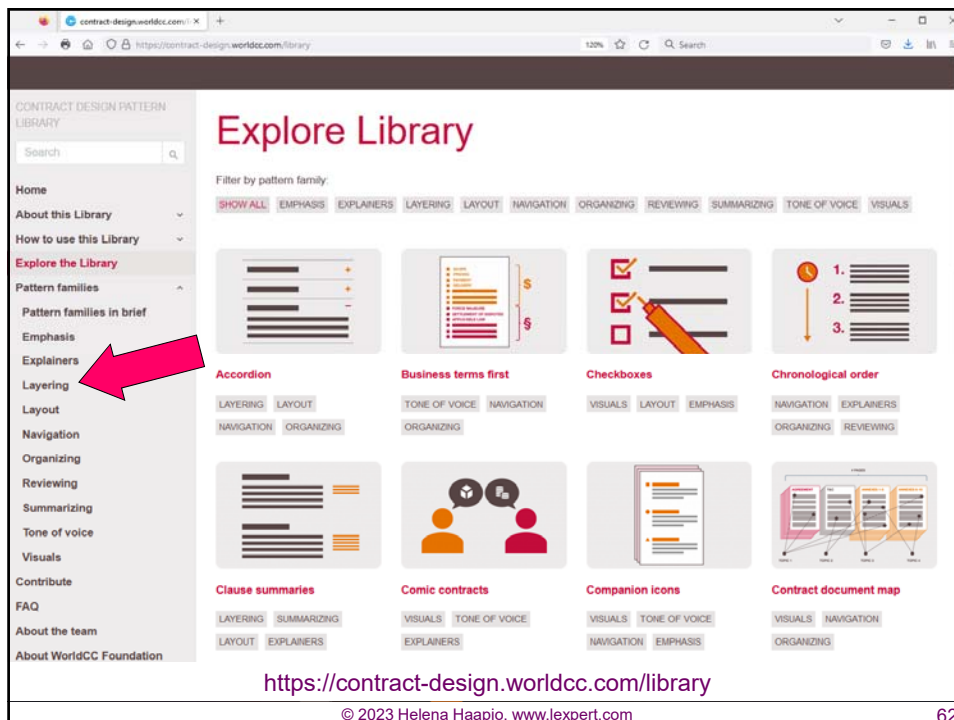
Shell Pilot Project: Visual Contracting Journey at Shell.
 WorldCC Contract Design and Simplification - Examples
<https://www.worldcc.com/Research-Analytics/Contract-Design-Simplification>

WorldCC Contract Design Pattern Library

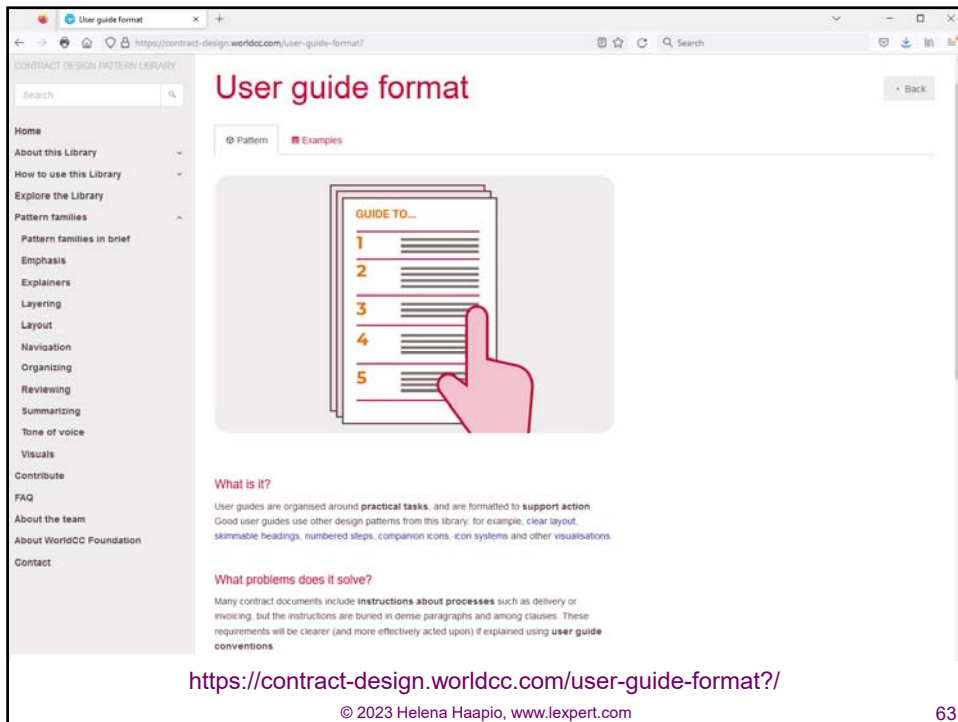
- A research-based, practice-oriented Library built for WorldCC by Stefania Passera and Helena Haapio.
- An ongoing collection of patterns – effective, repeatable solutions to commonly occurring usability and understandability problems.
- Contract design patterns help you organize and communicate your contracts more clearly, so that they are more likely to be read, understood, and acted upon.



<https://contract-design.worldcc.com>



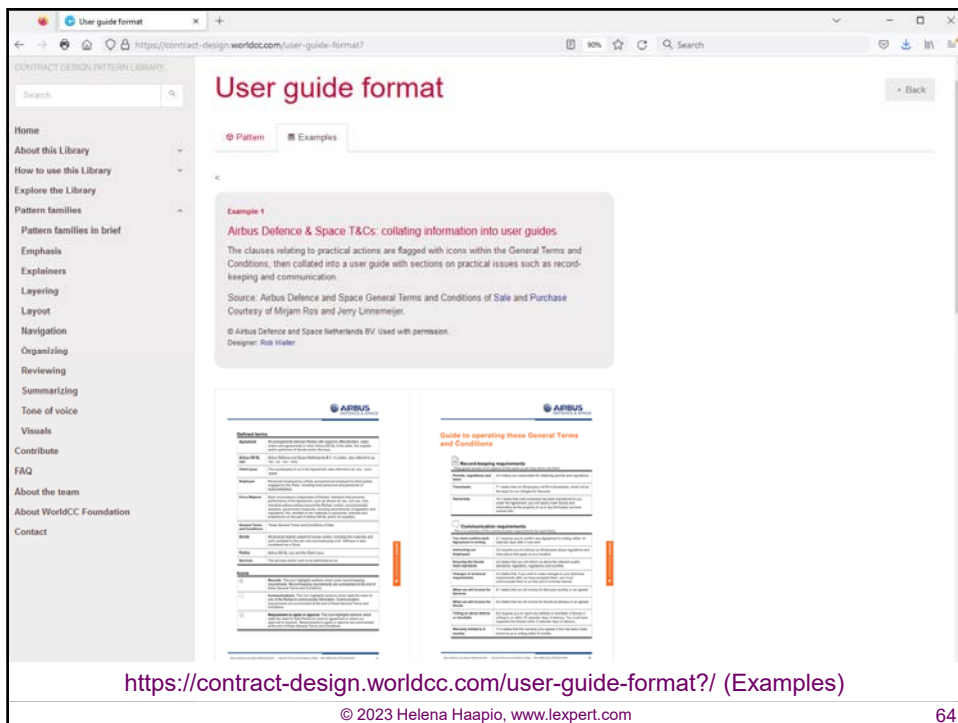
<https://contract-design.worldcc.com/library>



[https://contract-design.worldcc.com/user-guide-format/?/](https://contract-design.worldcc.com/user-guide-format?/)

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<https://contract-design.worldcc.com/user-guide-format?/> (Examples)

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<https://contract-design.worldcc.com/user-guide-format/> (Examples)

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Record-keeping requirements	
Keep good records of all aspects of the work, as we may ask to see them.	
Social insurance and tax	3.6 states that we can ask you to show us evidence that you are complying with your legal obligations to pay tax and social insurance for your Employees.
Permits and exemptions	4.4 makes you responsible for obtaining permits and regulations.
Administrative records	6.1 requires you to keep good records of all aspects of the work, and we may ask to inspect these.
Records to send when invoicing	7.2 requires you to attach the original of the signed acceptance form and timesheets to invoices.
Monthly timesheets	If you are supplying Services, 10.3 requires you to submit timesheets at the end of every calendar month.

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European Declaration on Digital Rights and Principles 15 Dec 2022 presents the EU's commitment to a secure, safe and sustainable digital transformation that **puts people at the centre**.

<https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles>



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European Digital Rights and Principles

The principles

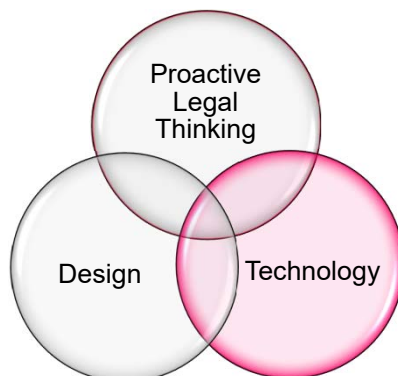
 PEOPLE AT THE CENTRE Digital technologies should protect people's rights, support democracy, and ensure that all digital players act responsibly and safely. The EU promotes these values across the world.	 SOLIDARITY AND INCLUSION Technology should unite, not divide, people. Everyone should have access to the internet, to digital skills, to digital public services, and to fair working conditions.	 FREEDOM OF CHOICE People should benefit from a fair online environment, be safe from illegal and harmful content, and be empowered when they interact with new and evolving technologies like artificial intelligence.
 PARTICIPATION Citizens should be able to engage in the democratic process at all levels, and have control over their own data.	 SAFETY AND SECURITY The digital environment should be safe and secure. All users, from childhood to old age, should be empowered and protected.	 SUSTAINABILITY Digital devices should support sustainability and the green transition. People need to know about the environmental impact and energy consumption of their devices.

European Digital Rights and Principles, European Commission,
<https://digital-strategy.ec.europa.eu/en/policies/digital-principles>

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Putting People at the Centre – How? Our Proposed Solution



Proactive legal thinking, user-centered design (of content & presentation), without too much manual work

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How? Have you tried Open AI's GPT-3, Generative Pre-trained Transformer 3?

- A *language model* that can generate text to
 - Simplify
 - Personalize
 - Explain
 - Benchmark

See, eg, Yonathan Arbel & Samuel Becher, **Contracts in the Age of Smart Readers**, 90 *George Washington Law Review* 83 (2022), <https://ssrn.com/abstract=3740356>

- It can help not only *readers* but also *writers* and *designers*

See, eg, Marcelo Corrales Compagnucci, Mark Fenwick & Helena Haapio, **Digital Technology, Future Lawyers and the Computable Contract Designer of Tomorrow**. In Marcelo Corrales Compagnucci, Helena Haapio and Mark Fenwick (eds), *Research Handbook on Contract Design*, Edward Elgar 2022, p. 421–444.

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Examples of existing & emerging tools for writers and designers

- **WorldCC Contract Design Pattern Library**, <https://contract-design.worldcc.com/>
- **DeepL Translator**: AI assistance for language translation, <https://www.deepl.com/en/translator>
- **WordRake**: editing software, <http://www.wordrake.com>
- **OpenAI's GPT-3, ChatGPT and InstructGPT** (translating, eg, legalese to human and vice versa and generating summaries and explanations); **OpenAI API** <https://openai.com/blog/openai-api/>, **DALL·E** and **GLIDE** (creating images from text), **Codex** <https://openai.com/blog/openai-codex/> (translating natural language to code, enabling the generation of images and layouts from ordinary language)
- Merging these tools opens up new opportunities (and raises new questions) for research and practice.

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How might **Open AI's GPT-3** help readers and writers? I asked it to explain in simple terms what Chapter I of the European Declaration on Digital Rights and Principles* means. In seconds, I got an answer...

* <https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles>

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GPT-3, explain in simple terms what this* means

Chapter I: Putting people at the centre of the digital transformation
1. People are at the centre of the digital transformation in the European Union. Technology should serve and benefit all people living in the EU and empower them to pursue their aspirations, in full security and respect for their fundamental rights.

We commit to:

- a. strengthening the democratic framework for a digital transformation that benefits everyone and improves the lives of all people living in the EU;
- b. taking necessary measures to ensure that the values of the EU and the rights of individuals as recognised by EU law are respected online as well as offline;
- c. fostering and ensuring responsible and diligent action by all actors, public and private, in the digital environment;
- d. actively promoting this vision of the digital transformation, also in our international relations.

* Excerpt from **European Declaration on Digital Rights and Principles**, European Commission, 15 December 2022, <https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles>. The image of the Pocket Lawyer was added by the presenter.

European Declaration on Digital Rights and Principles Chapter I: GPT-3 says...

This means that the European Union is focusing on making sure that digital transformation is beneficial for all people living in the EU. This includes making sure that the values of the EU and the rights of individuals are respected online and offline, encouraging responsible and diligent action from public and private actors, and promoting this vision of digital transformation to other countries.

This example was prepared using Open AI's GPT-3. Further research is needed into how successful it is and how different prompts can help address different needs. GPT-3 generated texts could serve as a starting point for a first draft of an explanation or a summary, which might be used as part of a layered layout – see examples on the following slides.

Example: layered layout



Action Layer

Put people at the centre!



Explanation Layer (GPT-3)

European Union is focusing on making sure that digital transformation is beneficial for all people living in the EU. This includes making sure that the values of the EU and the rights of individuals are respected online and offline, encouraging responsible and diligent action from public and private actors, and promoting this vision of digital transformation to other countries.



Full Text (Original)


Putting people at the centre of the digital transformation

1. People are at the centre of the digital transformation in the European Union. Technology should serve and benefit all people living in the EU and empower them to pursue their aspirations, in full security and respect for their fundamental rights.

We commit to:

- a. strengthening the democratic framework for a digital transformation that benefits everyone and improves the lives of all people living in the EU;
- b. taking necessary measures to ensure that the values of the EU and the rights of individuals as recognised by EU law are respected online as well as offline;
- c. fostering and ensuring responsible and diligent action by all actors, public and private, in the digital environment;
- d. actively promoting this vision of the digital transformation, also in our international relations.


This view is based on a layered information architecture presented by Rob Waller in **Contract Design for Humans: Preventing Cognitive Accidents**, available at www.simplificationcentre.org. The explanation was prepared using Open AI's GPT-3. The full text is an excerpt from **European Declaration on Digital Rights and Principles**, European Commission, 15 December 2022, <https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles>.



Episode 26: Proactive Legal Information Design with Helena Haapio and Rob Waller
Legal Design Podcast

Proactive Legal Information Design with Helena Haapio and Rob Waller.

Legal Design Podcast by Henna Tolvanen & Nina Toivonen, 20 October 2021, <http://legaldesignpodcast.com/episode-26-proactive-legal-information-design-with-helena-haapio-and-rob-waller/>



Rob Waller and Helena Haapio.

Making legal information more comprehensible and easier to use is a central theme in legal design. It is also a topic that has recently gained increasing research interest, sparking new ideas on how to enhance the usability of contracts and other legal documents in practice.

Research has shown that understanding what a document says, is all about human metacognition. If users are enabled to connect the content of a legal document with ideas that are meaningful to them, it can help avoid "cognitive accidents" and work as a proactive method to promote legal wellbeing of the users and other parties. When users can understand what is expected of them, legal conflicts and misbehavior due to misunderstandings are less likely to occur.

Rob and Helena share insights from their various projects and collaborations, like the contract simplification project with an energy industry facility and Canadian aboriginals. We also hear what proactive law is, and practical tips about how to improve the usability of legal documents. If you want to know what makes a good (legal) document, tune in!

Helena is an Associate Professor of Business Law at the University of Vaasa, Finland, and a Contract Strategist at Lexpert Ltd. In addition to her doctorate and LL.M. she is proud to hold a Master of Quality degree. Like engineers, Helena wants everything she does to be functional, useful, and usable.

Rob Waller's recent work is in the growing field of legal information design, working to improve consumer and business contracts through plain language, usable design and visualization. His other current focus is the Information Design Summer School, which introduces non-specialists to theories and techniques that help to simplify complex information.

Semi-retired from a career in research, teaching and consultancy, Rob has more time now for renovating a 200-year-old stone barn, gardening and playing sax - where no one can hear him. His 1987 PhD explored the relationship between language and design, and he continues to look for better ways to explain this and unify them in practice. Rob the current President of the International Institute for Information Design.

See also Robert Waller, Jenny Waller, Helena Haapio, Gary Crag & Sandi Morrisseau, **Cooperation through Clarity: Designing Simplified Contracts**. (2016) Journal of Strategic Contracting and Negotiation 2(1-2): 48-68. Manuscript available at https://www.researchgate.net/publication/308702086_Cooperation_through_clarity_Designing_simplified_contracts

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“In just a few years, we will look back
and wonder why it took so long to
make our contracts intelligible to the
mass of people they affect.”

Tim Cummins
CEO, IACCM

Contract & Commercial Management 2016: the year in prospect.
Procurement and Supply Australasia (PASA) News & Articles /
Comment, 7 January 2016, <http://procurementandsupply.com/2016/01/contract-commercial-management-2016-the-year-in-prospect/>

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Additional information



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Helena.Haapio@lexpert.com
<http://www.lexpert.com>

For publications, see <http://www.ssrn.com/author=104371> and
<http://www.lexpert.com/resources>

For a webinar on **Contract Design Trends 2022 & 2023** – go to Lawyers
Design School Legal Design Blog, <https://lawyersdesignschool.com/blog/> and
YouTube, <https://www.youtube.com/watch?v=nj2y6D7qObg>

WorldCC Contract Design Pattern Library,
<https://contract-design.worldcc.com>

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