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In this issue

Editor in chief:
Julie Clement

Guest editor for this issue:
Sandra and James Fisher-Martins

Guest editor for *Clarity* 66:
Sally McBeth

Country representatives

Argentina
Maximiliano Marzetti
maximiliano.marzetti@erasmusmundus-alumni.eu

Australia
Christopher Balmford
christopher.balmford@cleardocs.com

Bangladesh
A.K. Mohammad Hossain
mita_mohiuddin@yahoo.com

Canada
Nicole Fernbach
juricom@juricom.com

Chile
Claudia Poblete Olmedo
claudia.poblete@uv.cl

Finland
Heikki Mattila
heikki.mattila@ulapland.fi

Germany
Siegfried Breiter
s.breiter@t-online.de

Hong Kong
Eamonn Moran
eamonnmoran@doj.gov.hk

India
Dr. K.R. Chandratre
krchandratre@gmail.com

Israel
Myla Kaplan
mylak@law.haifa.ac.il

Italy
Christopher Williams
cjwilliams72@hotmail.com

Japan
Kyal Hill
kyal.hill@hplt.jp

Lesotho
Retsepile Gladwin Ntsihlele
ntsihlele@lec.co.ls

Malaysia
Juprin Wong-Adamal
juprin.adamal@sabah.gov.my

Mexico
Salomé Flores Sierra Franzoni
claritymex@gmail.com

The Netherlands
Hélène Butijn
helene@BureauTaal.nl

New Zealand
Lynda Harris
lynda@write.co.nz

Nigeria
Dr. Tunde Opeibi
drtundeopeibi@gmail.com

Peru
Ricardo León-Pastor
ricardo@leonpastor.com

Philippines
Victor Eleazar
attyvye@msn.com

Portugal
Sandra Fisher-Martins
info@portuguesclaro.pt

Slovak Republic
Ing. Ján Rendek
jan.rendek@gmail.com

South Africa
Candice Burt
candice@simplified.co.za

Spain
Cristina Gelpi
cristina.gelpi@upf.edu

Sweden
Helena Englund Hjalmarsson
helena.englund@sprakkonsulterna.se

UK
Daphne Perry
daphne.perry@clarifynow.co.uk

USA
Prof Joseph Kimble
kimblej@cooley.edu

Zimbabwe
Walter Zure
wzure@cbz.co.zw

Other European countries:
Catherine Rawson
legal_easy@hotmail.com

All other countries:
Please contact the USA representative

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clarity

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President
Candice Burt
candice@simplified.co.za

Editor in chief
Julie Clement
PO Box 13038
Lansing, Michigan 48901
Fax: 1 517 334 5781
clementj@cooley.edu

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Contact Joe Kimble, kimblej@cooley.edu

Submissions
We encourage you to submit articles to be considered for publication in *Clarity*. Send submissions directly to editor in chief Julie Clement. Please limit submissions to approximately 1,500 or 3,000 words.

This issue

Clarity2010 seems so long ago now. It's hard to believe that it has been only a year since we had the pleasure of hosting so many of you in our home town, Lisboa, and we'd like to say a big 'obrigado' to everyone for making such a good impression on the locals. Plain language was regarded with some suspicion in Portugal before the conference, but holding the event here really boosted its profile. Giving local lawyers the chance to meet established plain legal language practitioners certainly helped them work around their skepticism. Impenetrable official language is endemic in Portugal and although many people are crying out for change, they need guidance on how to make it happen. So we were very pleased that all the huffing and puffing that went into organising the conference contributed to these winds of change.

At Clarity2010 we looked at all the factors that influence clarity and understanding. Angela Morelli, a designer, made a memorable impact by condensing complex data about the use and abuse of water into some powerful imagery. In this issue of Clarity, Angela tells us how clarity requires empathy. Susan Hoogwater, the visual lawyer who created beautiful 'graphic recordings' of the main conference sessions, and Helena Haapio explain how imagery can create a connection with legal content. Whitney Quesenbury discusses the usability of voting ballots and instructions, an essential step to fair elections, and Karel van der Waarde talks about what a headache it is to make sense of medicine leaflets.

The conference was also about 'clarity around the world'. We welcomed delegates from more than 20 countries, including Norway, Argentina, Brazil, South Korea and Japan. In this issue Paul Strickland, from the European Commission, tells us about their Clear Writing Campaign and Mami Okiwara, from Japan, explains how plain language helped the new

'lay-judge´ system reach its potential. João Tiago Silveira, the Portuguese Secretary of State for the Presidency of the Council of Ministers, announced the Simplegis initiative which included plain-language summaries of the new laws produced by the government and provides us with a summary of his own presentation in this edition of Clarity.

You can also read about four multidisciplinary projects in which teams of writers, lawyers, usability specialists and designers user-tested, rewrote and redesigned a document of their choice. From video games to high-speed trains, the teams, working together across continents, simplified all sorts of legal writing—some of it not just obscure literature but literally obscured.

We hope you enjoy this issue of Clarity as much as we enjoyed putting it together but before we sign off, we'd like to say a final thank you to Neil James, Nicole Fernbach and Lynda Harris for their support and the Português Claro team for all their hard work at Clarity2010.

Sandra Fisher-Martins

James Fisher-Martins

Clarity 2010 opening welcome: closing farewell

Christopher Balmford

Clarity's then president

Welcome

Welcome to Clarity's 4th international conference.

From Cambridge, England—our first conference in 2002—to Boulogne Sur Mer, in France in 2005, then to Mexico City in 2008, and now here in Lisboa today, it is clear that the themes and concerns that unite us at Clarity are shared in many languages and in many countries.

The need for clear legal and administrative communications is universal. For helping us to explore these universal themes, Clarity's warmest thanks:

- to our principal sponsors the Presidency of the Council of Ministers, the Institute of Social Security, the software firm Opensoft, and the law firm Vieira de Almeida & Associados, and to the Law School at Universidade Nova de Lisboa for providing this beautiful venue;
- to you for being here; and
- in particular, to our sponsor and host Português Claro, represented by Sandra Fisher-Martins, a member of the Clarity Committee and Clarity's official representative in Portugal.

Sandra tells me that 3 or 4 years ago the concept of plain-language was almost unknown in Portugal. The fact that this conference is taking place here makes clear that plain Portuguese is making great progress. So does the number of local organisations actively supporting the conference through sponsorship. So does the fact that 150 delegates to the conference are from Portugal.

As is often the case on the plain-language front, progress is made first in areas other than in the law. In many ways, this is completely understandable. Lawyers are conscious of the (at least, perceived) accuracy, certainty, and precision of traditional legal language. They are sometimes initially concerned that plain language may jeopardize that treasured accuracy, certainty, and precision. However, their concerns can be safely put to one side.

The fact is that detailed research throughout the world, and many "real-life" plain-language documents, have conclusively shown that the concerns about, and arguments raised against, plain language are myths. Other speakers today will say more to reassure you about that.

Perhaps the strongest demonstration of the legal validity of plain-language documents comes from the spectacular legislative development in the US this month—*The Plain Writing Act* was passed by the House and the Senate. Now, it is with the President for signing [Editor's note: The President signed the Act during the conference. It is now law, see http://centerforplainlanguage.org/blog/government/wheres-the-accountability/.] The Act gives US federal agencies one year to implement the use of clear language in all public documents. It requires agencies to appoint senior officials to oversee implementation and compliance.

Clarity congratulates all involved—especially, Clarity Committee member Annetta Cheek, who drove the project on behalf of the US Center for Plain Language. [Editor's note: Loud applause for the Center and for Annetta, who was present.]

If the US government is legislating to require government documents to be in plain language, then lawyers everywhere can be even further reassured that legal accuracy, certainty, and precision are compatible with clarity. In that light, we can see that the valid concerns lawyers initially feel about plain language can be worked through and overcome.

Sandra tells me that in recent years many members of the legal profession here in Portugal have felt those concerns. So it is tremendously exciting:

- that this conference is being held in a law school; and
- that one of the major sponsors of the conference is the Portuguese Bar Association and that the Association's President will be speaking at the closing session.

This support from the profession is exciting in 2 ways:

- First, it is exciting for Clarity itself because Clarity has a focus on plain-language in legal communications. I should add that although Clarity has a legal focus—on plain-language in the law, in legal documents and in related documents:
  - we welcome members who aren't lawyers—indeed, nearly half our members are non-lawyers; and
  - many of the articles in our journal have a broad "non-legal" focus and so are relevant to anyone interested in plain language in any field.
- Second—and much more importantly—the legal profession's support for plain language in Portugal is so exciting because it suggests the stunning progress of plain Portuguese over the last 3 years is likely to accelerate.

And that acceleration will have benefits for readers everywhere. Other speakers will talk of the benefits of plain language. So I don't need to say much about them now—save to say that the theme and aims of this conference are to promote clear communication in the public and private sectors. We see this work as making an important contribution to the European Year for Combating Poverty and Social Exclusion. Plain language has an important role in facilitating access to education, to healthcare, to social benefits, and to justice.

It is wonderful that so many Portuguese organisations—especially the bar association—are supporting this conference.

Thank you for coming to the conference. May the conference be interesting, entertaining, and useful for you. May it help plain language everywhere—especially here in Portugal where our hosts and our sponsors have already done so much and are being so hospitable.

* * *

In closing

Our conference has shown that clarity everywhere is gaining momentum—for example:

- the US *Plain Language Act* is now law;
- the European Union is back in the game—that was made clear by Paul Strickland's paper, and by the EU booklet *How to write clearly* that he distributed; (See page 14)
- Neil James's update on the Options Paper being prepared by the International Plain Language Working Group shows again that plain language has evolved from a movement to a profession. (The Group is formed of representatives of Clarity, PLAIN www.plainlanguagenetwork.org/, and the Center for Plain Language www. centerfor plainlanguage.org/,).

The conference has reflected developments in our world—for example:

- a further increase in the number of speakers who reported on projects that involved the testing of draft documents both to help improve the documents and to measure any improvements in outcomes for readers; and
- thanks to the involvement of the International Institute for Information Design, www.iiid.net/, we continued to expand our knowledge of how design is crucial to plain language and to communication generally. A highlight for me was Angela Morelli's presentation about her design project to take a text-heavy and table-heavy report on the Global Water Footprint of Humanity and present it visually. [Editor's note: See page 20.]

After Angela's stunning presentation, Mami Okawara brought us gently back to earth with a reminder of the importance of the words themselves. In her research on Japan's project to simplify courtroom language, she found that when court officials and advocates speak about "the facts", lay people often think that the word *facts* refers to factual certainties. But in that context, *facts* is being used merely to refer to the various things that various people claim happened—and the so-called "facts" may be very much in dispute. (See page 17)

To be sure, plain language involves many things—including good design and the ordering of ideas, and testing documents on a sample audience—but the words matter as well.

Though Mami Okawara focussed us on the words, much of the conference—and our members' meeting in particular—focussed us on bigger issues. As our world is changing, Clarity is changing too: we have moved to an online payment model, we are revamping our website, we are adding new roles to engage more people—please volunteer to help [Editor's note: *Clarity* No 64, page 62].

The proceedings of our conference will be published in the May 2011 issue of *Clarity*—which you will receive as part of your conference package.

We hope you join Clarity and remain a member for many years.

christopher.balmford@cleardocs.com

Christopher Balmford, *a former lawyer, is the founder and managing director of:*

- *Cleardocs, an online business providing 'ready-to-sign' legal document packages in Australia and the UK—the hallmarks of the Cleardocs brand are 'clarity, simplicity, and ease of use'*
- *Words and Beyond, a plain-language training and rewriting consultancy in Australia (Sydney and Melbourne) which helps organisations to develop cultures that value and deliver clear communication.*

Christopher Balmford's news

On 1 July 2011, the online journal of the American Bar Association reported as follows on the sale of a plain-language related business founded by Clarity's immediate past president, Christopher Balmford:

> **Thomson Reuters buys Aussie Online Legal Documents Company**
>
> Although it shed the legal consultancy Hildebrandt Baker Robbins, Thomson Reuters acquired the Australian online legal document company Cleardocs this week—a move that may signify the information giant's confidence in the growing market for cost-effective commoditized legal goods.
>
> Cleardocs will be aligned with Thomson Reuters' tax and accounting business in Australia, according to a press release. [http://www.cleardocs.com/clearnews/cleardocs-products/thomson-reuters-acquires-cleardocs.html]
>
> "The motivating force behind the foundation and growth of Cleardocs is the desire to improve the clarity of legal documents everywhere and to help move plain language further into the mainstream—and to do all that profitably," Cleardocs founder and former managing [director], Christopher Balmford, wrote at the Cleardocs [http://www.cleardocs.com/resources-blog.html] blog. "Thomson Reuters has the content, customers, and expertise to do that in more places and for more documents—while further meeting its customers' needs by delivering on its strategy of making its content more active."
>
> Cleardocs, a plain-language advocate, allows users to quickly create legal documents online using master documents and question interfaces written and signed off by the 200-lawyer Melbourne and Sydney law firm, Maddocks, which also provides a free legal helpline to customers."[1]
>
> You can read Christopher's full blog post here http://blog.cleardocs.com/2011/07/dream-fit-for-cleardocs.html

[1] http://www.abajournal.com/news/article/thomson_reuters_buys_aussie_online_legal_documents_company/

Transparency—an idea whose time has come

Eleanor Sharpston

Advocate General
European Court of Justice

After hearing Advocate General Sharpston's talk at the Transparency and Clear Legal Language in the EU seminar in Stockholm we knew she had to take part in Clarity2010. And we were right—her after-dinner speech at the gala dinner was as inspiring as her impromptu guitar recital. In this article Advocate Sharpston argues that the concept of transparency encompasses three separate strands: transparency of thought, transparency of process and transparency of expression. —Ed

There are fashions in important and worthwhile concepts. A little while ago, solidarity was all the rage. Now it's the turn of transparency—and we find its virtues being trumpeted by the great and the good up and down the land. As with solidarity, I suspect that some of those who are now eager to put the word into their latest recorded sound-bite have little real idea what transparency actually means, or why it is so important. Lip-service does not always equate with understanding. Don't misunderstand me: such high-level support is vital if transparency is to take its rightful place as an essential principle of our 21st century, civilised lives. But if we are to apply transparency to our own words and actions, and require it of those who govern us or take decisions that affect our lives, something rather more substantial than the sound-bite is required.

To illustrate some of the issues that lie behind the sound-bite, let us take an ordinary, day-to-day example of a single mother applying for a social security benefit to which she thinks that she may be entitled. The benefit was created to implement a political commitment in an election manifesto. There are—of course—rules governing entitlement. There is a form for the applicant to fill in. The completed form then disappears into 'the ministry' (the relevant part of the public administration). There may or may not then be an individual interview, in which a ministry official asks the single mother supplementary questions. In due course, a decision is taken awarding or refusing the benefit. That decision can be brought before a specialist social security tribunal for review. If necessary, it is possible then to appeal to a higher court to challenge the way in which the specialist tribunal interpreted 'the law': that is, the rules governing entitlement to the benefit.

What might we mean by transparency in this context? The term can be used to cover at least three different concepts, all of which repeatedly play a part in this story: transparency of thought, transparency of process and transparency of expression.

Transparency of thought

The generally phrased political rhetoric in the election manifesto ('we are committed to providing increased support for single mothers') has to be transformed into a specific policy to be implemented. To do that, the policy-maker has to be much clearer and more precise about what is to be done. Are all single mothers going to qualify, or just some (and why)? What are the conditions for entitlement going to be? Is this a flat-rate benefit, or does it vary depending on family income, number of dependent children? And so on. Once the rules are written, equal care needs to be given to drafting the application form; to framing the supplementary questions to be asked during the individual interview; and to how the decision awarding or refusing the benefit is worded.

It is impossible to achieve clarity—and hence transparency—of expression in drafting (or speaking) if the author (or speaker) has not formulated clearly what he wants to say. Charity, says the proverb, begins at home. *Clarity* also begins 'at home': with transparency of thought.

Transparency of process

The procedure that is followed, from application to final ruling, has to be one that will enable the applicant—here, the single mother applying for her benefit—to understand what is happening and, in due course, why the final decision has been taken in a particular way, generating a particular result. She will only understand if the process and the result are both 'accessible': if they are explained to her, as an ordinary citizen, in sufficient detail.

For centuries, those who ruled did so in the secure belief that there was no obligation to explain to those whom they governed why particular decisions were really taken. Political thinking has changed. The ordinary citizen is now entitled to ask that the much-publicised principles of transparency and accountability be applied to each and every process that affects him.

Transparency of expression

An explanation given in gobbledegook—in 'administration-speak' or in legalese—is not an explanation. The single mother in my example has quite enough challenges in her life without having to try to decode incomprehensible forms and official letters. Transparency of thought and transparency of process have to be put into effect through transparency of expression. That means using sentences that are reasonably structured and reasonably short, and words that are clear and comprehensible.

The application form for the benefit has to be one that can be filled in without possession of special skills, the investment of hours of careful study or going along to the citizens' advice bureau or a lawyer for help. The individual interview, if there is one, has to consist of questions that are clear, neutral and fair (not traps for the unwary, to try to discover a reason for *not* awarding the benefit), as well as being conducted in an appropriate way. The decision, if favourable, should explain clearly whether there are particular conditions which have to be complied with if entitlement to the benefit is to be preserved. If the decision is negative, it is equally vital that it explains with real clarity the reasoning that has led to the benefit being refused. Otherwise, it is impossible for the disappointed applicant to tell whether the benefit has been refused correctly ('ah, I see: I didn't meet that condition—well, that is very sad but I understand why I don't qualify') or whether the decision may be wrong and it may be worth trying to challenge it.

How to go about it

Transparency of thought requires intellectual rigour and a willingness not to 'fudge' crucial elements by leaving something ambiguous that needs to be defined. Transparency of process requires application of principles (transparency and accountability) that are now an accepted part of the political and democratic landscape—which does not, of course, mean that their application is automatic. Transparency of expression requires care and attention to detail, a willingness to look at words and expressions from the perspective of the reader rather than the author—and a certain humility. Control over this element of the story lies with each and every one of us.

It is very easy, as a professional working under pressure, to draft quickly and move on to the next point or the next task. The challenge is *not* to be satisfied with such an approach, but instead to go back over the text and work on it to better it. All drafting can, almost certainly, be improved. The meaning can be brought into sharper focus. The structure can be straightened out so that it is easier to follow.

All authors (of course) know what they meant to say. That does not necessarily mean that the text which they have produced actually says it. Some of us are better than others at pretending that we are the reader approaching the text afresh. An outsider reading your text with permission to be honest about it will often find ambiguity and lack of clarity where you thought you had been exceptionally straightforward and clear.

Finally, humility is required. To preserve the dignity of government, administration and the law, it is *not* necessary to use arcane and lofty and convoluted language. Such an approach truly has no place in the 21st century. Anyone holding public office can make simple things sound complicated. The true skill, and the true measure of good work done in the public service, is to make complicated things clear and therefore (relatively speaking) simple.

rf@curia.europa.eu

Eleanor Sharpston *read economics and modern languages at King's College Cambridge before switching to law. After doing interdisciplinary graduate work in law and economics at Corpus Christi College Oxford, she was called to the Bar in 1980.*

With the exception of three years as a référendaire *at the Court of Justice of the EC (CJEU), she spent the next twenty five years in private practice at the Bar in Brussels and London, becoming a QC in 1999. In parallel, she also pursued an academic career at University College, University of London (1990-1992), and then back at King's College Cambridge (1992-2010). As both practitioner and academic, she has specialised in EC law, comparative law and the ECHR, appearing for the United Kingdom in Luxembourg and against it,* pro bono, *in London and Strasbourg.*

On 10 January 2006 she was appointed to serve as one of the eight Advocates General at the CJEU.

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Prospective members in Canada, Italy, and the United States may also pay by bank draft. If you prefer to submit a hard copy of the application, you may contact your country representative for submission instructions. Country reps are listed on page 2.

Holding visual space for clarity and connection

Susanne Hoogwater

Creative Lawyer
Legalvisuals
Netherlands

Those of you who attended Clarity 2010 will remember Susan as the flurry of activity in the corner of the auditorium sketching on a large canvas. The vivid graphics she was producing represented what was being said during the presentations. They were a real talking point and truly engaging reminders about what was covered in the sessions. Here, Susan tells us a bit about her approach to clear communication and real-time graphic recording. You can have a look at the color version on-line at the Clarity 2010 blog —Ed

Holding visual space for clarity and connection.

Plain Language and the process of visual note taking, called 'graphic recording' or 'business sketching,' are a strong match. Graphic recording is an active expression of the principles of Plain Language. In this contribution, I will briefly lay out the common ground and shared qualities. One of the maps created during the Clarity 2010 Conference in Lisbon will be discussed as an example. See page 13.

The big themes I see for plain legal language are clarity and connection. Clarity encompasses what people have to know and do with the legal information that they encounter in their daily roles. It also includes transparency, legibility, a clear purpose, accessible language, and brevity. Clarity refers to the quality of the content—the legal information in relation to the context in which it will be used.

Connection is the human element in the equation. This is about the quality of the relationship between the makers and the users of legal information. How much effort, care, and friendliness do the makers and distributors of the information demonstrate for those who will have to read, understand, and act on the information given to them? This care includes understanding of the readers' needs, good use of plain writing techniques, the smart use of visual entry points, and other forms of way-finding support. The finishing touch is an inviting and attractive layout and packaging.

However, all these wonderful qualities will only be appreciated when people READ the materials. Even glossy brochures, easy websites, and plain leaflets may end on the 'to read' pile or folder. In our information jungle, no one is ever short on words to read. Therefore, some additional communication tools may be helpful to reach the final goal: information warmly welcomed and clearly understood at its final destination. Sometimes this happens easily, mostly if the information comes with a sense of real urgency for the user and is linked to serious punishments or rewards. Think of tax return forms, insurance claim reports, and immigration documents. Other information that is not of immediate, vital interest to the readers needs more: an invitation for a lively experience, refreshing excitement, active engagement.

Graphic recording is a process that actively draws people to the information. While they listen to a presentation at a conference, meeting, or training, they simultaneously see the story evolve on paper in hand-drawn maps. It looks like a super-sized flip chart. A graphic recorder is an active listener in the room. He or she listens, synthesizes, and organizes the information. The essence of the legal information will be captured and enriched with examples, personal stories, metaphors, and other visual elements. The real-time drawing process gives a uniquely human touch to the information. For the audience, it mimics the process of hearing something, trying to understand it, and extracting "what is in it for them". Seeing someone else draw also has a magical effect on people's brains. Although they sit in their chairs, they still get a hint of the creative experience. It is like listening to a concert and feeling a little more musically sensitive yourself, or watching a dance performance and

feeling a little lighter and more elegant when walking back to your car afterwards. Neuroscientists attribute this effect to our 'mirror neurons.'

Another benefit of graphic capture is the direct contact between the sender and the receiver of the information. Everything they need to know is in the room, on the wall. PowerPoint slides are on display during the presentations. The maps will stay visible after the presentations. The drawings on the wall naturally invite people to walk towards the paper and start a conversation with the speaker, the graphic recorder, or with other participants. After the conference, people will more easily memorize elements of the information that they have seen on the maps, especially with visual references to the metaphors and stories of the presenter. Handouts with bullet points will serve the need for the factual information, but a photo of the map creates engagement.

This approach, in addition to other plain-language modalities, also benefits other occasions where communication is the key to success. Printed information can be supported with hand-drawn conceptual illustrations or with a visual storyboard to tell the legal story. The big picture could also be provided in the form of video that shows a time-lapsed version of the mapping work. Some graphic recorders provide services for online meetings and learning environments.

The image of the conference session 'Plain Language and Government' illustrates some of the characteristics of graphic recording. The map is divided into three panels, one for each speaker. The presentations were about twenty minutes each. The images were drawn in real time during the sessions. They all include elements of the big picture as expressed by the speakers. The first presentation was about assessing and sorting out sets of laws and regulations, so I drew a trashcan for the laws that didn't pass the test. The second presenter described the process of implementing plain language as a road with different obstacles, including some resistance in the organization. In the third presentation, the call centre seemed to stand out as the central solution of the project, so I worked around this central image. These images function as the focal point around which other themes and words are organized. Color is used to add an extra layer of visual organization.

The main goal of graphic recording is connection, rather than perfection. The sketchiness and imperfection reflects the human factor in rapid information processing. Connection serves as the platform for clarity. The more people feel engaged, the bigger the chance they will actually read all the beautiful plain language. Then, they can absorb printed and digital information about the same subject and appreciate it for its clarity on those things that matter for them.

Graphic recording is part of what some have called "the Doodle Revolution". (www.SunniBrown.com). Other leaders in this field are Dan Roam, with his book *The Back of the Napkin*, and Dr. Martin Eppler, author of *Sketching at Work*.

Susanne Hoogwater *is a graphic facilitator and creative lawyer, specialized in legal information design and visual communication. She is originally from the Netherlands, and lives in the United States. She is the owner of www.legalsketchpad.com, www.legalvisuals.nl and www.goodmoodlaw.com.*

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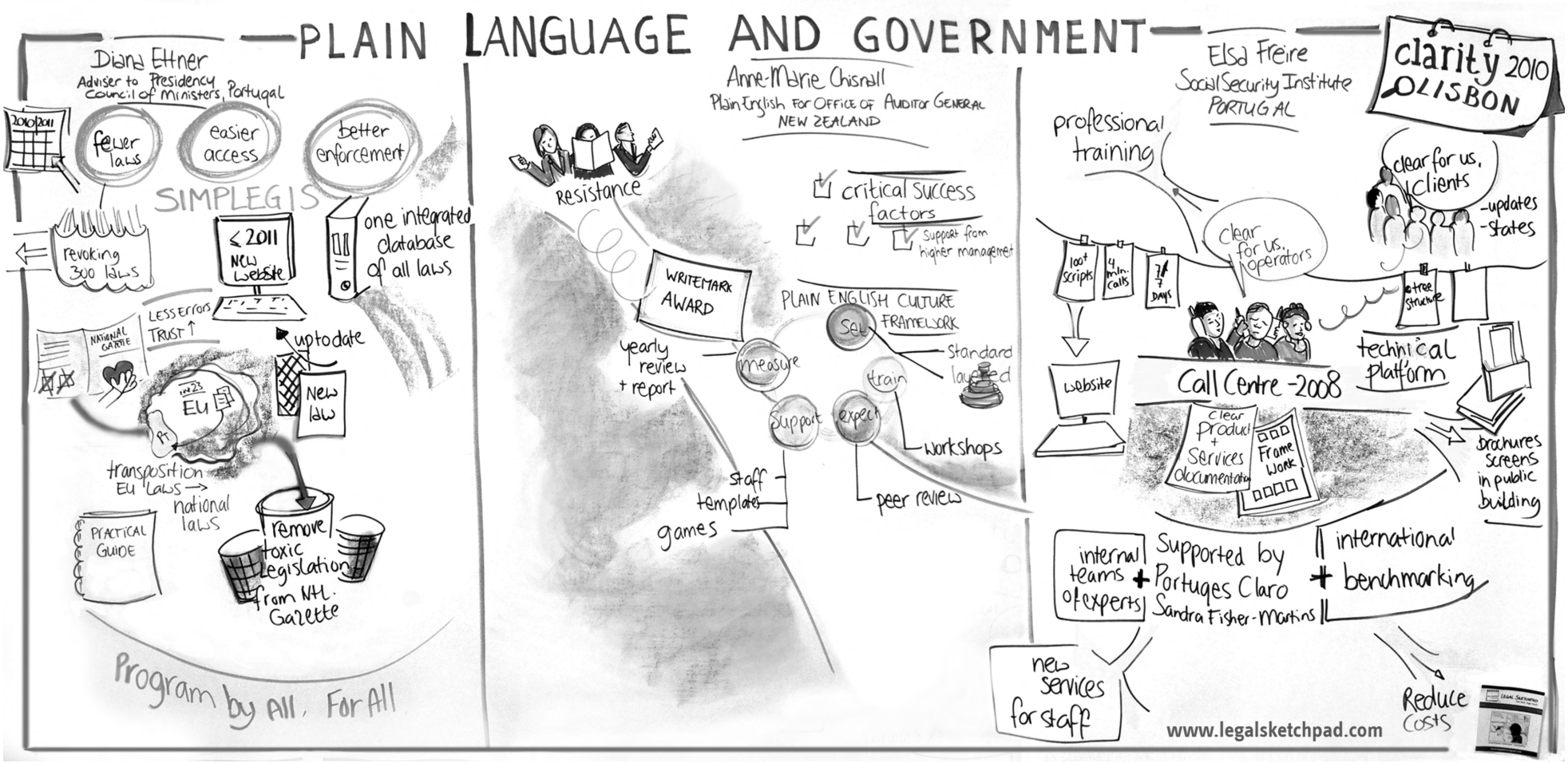
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Directorate-General for Translation
European Commission

At Clarity2010, Paul Strickland told us about the Clear Writing Campaign, an ambitious and much needed project to make EU writing clearer in all official languages. The campaign has been well received. Unfortunately, the results are not yet available to be published, but you can view a presentation of the report along with a panel discussion online.

http://tinyurl.com/eu-clear-writing-campaign
—Ed

I was delighted to take part in Clarity2010 as it is a subject I feel very strongly about. At the conference I spoke about:

- Multilingualism in the EU—why it matters and how it has grown
- The challenges it creates
- How the Commission is tackling these challenges—in particular through its Clear Writing campaign

1. Multilingualism in the EU

No other organisation uses anything like as many languages as the European Union. It is often compared to the Tower of Babel.

"Wouldn't it be easier," people ask, "if there were one single language for EU business?"—and they go on to propose Esperanto or French or (usually) English.

There is a fundamental objection to this proposal. It is, quite simply, democratic legitimacy.

The EU—unlike any other organisation—passes laws which are directly applicable in more than one country. The ministers and Members of the European Parliament who debate the proposed laws must be free to do so in their own language.

Similarly, EU citizens have a right to read those laws, to obtain information about European affairs, and to correspond with the EU institutions in their own language—or at least in an official language of their own country.

Multilingualism is written into the EU's ground rules. Indeed, its very first Regulation (back in the 1950s) specified that its official languages were to be Dutch, French, German, and Italian. Gradually, as new countries joined, more languages were added: English and Danish in 1973, Greek in 1981, Portuguese and Spanish in 1986, Finnish and Swedish in 1995, bringing the number of official languages to eleven.

That number suddenly doubled in 2004–2007 when twelve more countries—mostly from Central and Eastern Europe—became EU members. Irish was also given full official status in 2007, so that there are now 23 official EU languages.

And there are more to come, with Croatia and Iceland likely to join in the next few years, negotiations under way with Turkey, and applications received from other Balkan countries.

2. The challenges

Multilingualism, although essential, poses challenges for the EU institutions.

In particular: drafting, translation, and legislation.

The Commission doesn't need to use all 23 languages all the time. For internal purposes, we use only English, French, or German—and in fact these days it's usually English.

Most Commission officials are not native speakers of these languages. Yet they use them every day to draft complex legal and technical texts. Unfortunately, the results are often hard to read.

There are three main reasons for this.

- First, vocabulary from one language gets imported into another, thus creating "franglais" and other hybrid forms of expression.
- Second, there are all the usual problems of differences in style and grammar.
- Third, bureaucrats of all nations and in all continents delight in long sentences, technical jargon, and obscure acronyms.

When you put all these factors together in my institution, you get a new form of language we call "Commissionese". Here's just a short example:

> *"Analysis has shown the need for an intensification of intervention at European Union level for the prevention of the pollution of the coastal waters of Europe through the accidental spillage of oil".*

In other words, the EU must do more to protect Europe's coasts from oil spills!

To make matters worse, a Commission document is usually not written by one single person but by a whole team of experts. It will be further revised as it is passed up the chain for approval. No surprise as to the result. It's like that famous definition of a camel—a horse designed by a committee!

This might not matter if all our readers were in-house experts. But they're not. Moreover, and thanks to word-processing, Commissionese from an internal document is all too easily copied and pasted into a public information booklet or a web page. The result? The man or woman in the street won't want to read it, and our message will fail to get across.

The second challenge is translation. If a text is to be published or used in draft legislation, it will have to exist in all 23 official EU languages. If the original text has been badly drafted, the 22 translations will take more time, there may be divergences between them, and the original will in any case remain unclear.

This leads directly to the third challenge: legislation. If a Commission proposal is not clearly drafted, the result may well be an EU law that is poorly understood and incorrectly implemented. The European Court of Justice will then have to sort out the mess, which may take years and cost a lot of public money.

3. How is the Commission tackling these challenges?

Back in 1998, our English language translators launched a campaign, urging staff to draft shorter, simpler documents in clearer English. They called the campaign "Fight the Fog", and it proved very popular for a while. But Rome was not built in a day, and one campaign does not change an entire culture. The perception that document quality still needed to be improved remained. So in 2009, a Task Force—which I chair—was set up to look into the problem. Last autumn, we carried out a survey, which produced some interesting results.

For example, the survey confirmed that English has indeed become the main drafting language in the Commission. Yet the vast majority of those people writing in English are non-native speakers. On top of that, it appears that more than half of them say they don't have time to have their work checked by a native speaker! But the survey also showed there would be strong support for a new campaign to promote clear writing. So we launched one, on 15 March 2010. It's called simply the Clear Writing Campaign, and it is aimed at all Commission staff.

The Campaign is designed to raise awareness of the need for clear writing and of the principles involved. Because most of these principles apply in most languages, we decided to make the campaign as multilingual as possible. Our booklet 'How to write clearly' was produced in all 23 EU languages. And by 'produced' I mean not just translated, but also adapted.

The booklet's top 10 techniques for clearer writing will not be new to most of you, but they are already helping many of my colleagues draft clearer documents.

For example, our advice includes

- Think before you write
- Focus on the reader
- Keep it short and simple
- Cut out excess nouns
- Be concrete, not abstract
- Revise and check

Practical help is also available on our internal website. An online interactive tutorial helps staff practise these techniques. And we offer a helpline for 'Drafters in Distress' to give colleagues quick advice via e-mail.

We are also urging Commission staff to send more of their core documents for professional editing by my team. At present, editing documents at the European Commission is not compulsory, so quite a lot of important texts never reach us.

On 26 November 2010, the Commission hosted a conference on 'Clear writing throughout Europe'. Clarity specialists from all over the EU told us how clear writing is promoted in their country. I believe it's important for the Commission to learn from outside experts.

So there is plenty going on, and I'm excited at what has already been achieved. But what of the future? As I said earlier, one campaign does not change the entire culture of a major institution. Yet that is what I believe the European Commission needs—a radical shift to a culture of quality control.

Why is the European Commission one of the few major international institutions that appears to lack such a culture? How, in the long term, can we change that?

Part of the problem is that it is the Commission's job to propose European laws and policies. I sometimes feel that we are so focused on getting our proposals through the institutional obstacle course that we fail to consider whether the public will understand and accept them. More attention is paid to content rather than to concision and comprehension. We campaigners must therefore persuade our senior management to make clarity a priority.

But how can we achieve this?

First, the campaign Task Force has been actively discussing clarity issues with the Directors and Directors-General of the Commission's various policy departments. We've been encouraged by the response.

Second, the Task Force will issue a report on the campaign, with recommendations for future action. For example, we want more opportunities for staff to learn and develop their writing skills. All staff should be encouraged to take ownership of their documents and assume responsibility for making them clear. People who draft well should be rewarded. And quality control should be built into the workflow.

Third, editing has a crucial role to play. Indeed, all important documents should be checked and edited before they are circulated, translated, or published.

I'm not alone in taking this view: it is shared by over 90% of Commission officials who responded to our survey. But we're also looking into whether software could help Commission officials edit their own documents, at least in part. And we'd like individual departments to set up 'quality cells' in-house.

The Commission is unlikely to change the complex way it drafts documents, so "camels" will still be produced. But at the end of the process there should be one person—a native speaker—responsible for ensuring that the final document is clear, concise, and correct. In other words, turning the camel back into a horse.

Fourth, and finally, we aim to persuade the Commission to make a commitment to Clear Writing by, for example, inserting it into its Rules of Procedure.

We are only just starting out. It will take time and effort to instill a clear writing culture at the European Commission. Is it worth it?

My answer is, emphatically, yes. All of us who work in the European Union institutions have a duty to inform citizens about the EU, its laws and policies, in clear language they can understand. Only if we write clearly will our messages get through. Only if legislation is clear will it be implemented correctly. Ultimately, it's about making the European Union more democratic, more transparent, and more efficient. And that is surely the kind of Europe we all want.

Paul Strickland *graduated in Modern History and Modern Languages from Oxford University and worked as an accountant, teacher and translator before joining the European Commission's Translation Service in 1989. He subsequently moved to the Directorate-General for Trade where he worked for several years on commercial defence, public procurement and intellectual property issues. He also spent four years at the Commission's Delegation to Australia and New Zealand, based in Canberra. He has since returned to his roots and is currently Head of Editing in the Directorate-General for Translation. He combines this job with chairing an inter-departmental Task Force which recently launched a Clear Writing Campaign in the Commission.*

Japan's project to simplify courtroom language

Dr. Mami Hiraike Okawara

Professor and Dean
Graduate School of Regional Policy, Takasaki City University of Economics (Japan)

1. Introduction

The implementation of the lay judge (*saiban-in*) system in 2009 has opened the way to plain legal language in Japanese courts. In this paper, I will introduce Japan's first plain-language project, of which I was as a member.

2. The lay judge (*saiban-in*) system

The Japanese lay judge system is a middle-of-the-road system between the common-law jury system and the Roman-law lay-judge system. Like the common-law juries, Japanese lay judges serve a term of only one case. However, unlike the jury system of common-law countries, Japanese lay judges deliberate on cases together with professional judges. The deliberation body consists of three professional judges and six lay judges.

3. The plain language project

The Japan Federation of Bar Associations (JFBA) set up the lay-judge preparatory headquarters in preparation for the lay-judge system. In August 2005, the headquarters formed a project to simplify courtroom language, and designated Attorney Miyuki Sakai as the project director. The project was characterized by collaboration between legal and non-legal experts. To reflect daily Japanese usage, the project team included language-related experts such as linguists, social-psychologists, and television newscasters, together with lawyers and criminologists. As legal experts regard themselves as language experts, the incorporation of non-legal experts in a JFBA project was a highly unconventional method for Japan.

4. The survey

The project team needed to gain a clearer perception of how lay people feel about legalese. Therefore, the team identified three things about courtroom language:

(1) the legal terms that lay people felt they knew;

(2) how they actually understood those terms; and

(3) the type of vocabulary they used when they were explaining those terms.

The project team selected fifty legal terms commonly used in the courtroom, including oral exchanges from criminal trials. Needless to say, the criminal court experience of the attorneys on the team was reflected in the results of selecting these fifty words.

The purpose of the survey was to obtain lay people's thoughts on the fifty legal terms, using a field research method called cognitive interviewing. Renowned social psychologist Masahiro Fujita played a pivotal role in conducting the survey.

The respondents of this survey were 46 lay people consisting of university students and company personnel. They were first asked Question (1) 'Have you heard this word?' to each of the fifty words. If a respondent answered 'no' to a word, then the respondent was not asked anything further about that word. If they answered 'yes', then they were asked Question (2) about that word.

Question (2) contained five choices, indicating how well they felt they knew the word, from 'not at all' to 'very well'. The responses were converted into a five-point rating, where 1 point was attributed to 'not at all', 5 points to 'very well', and proportionate points to responses in between these two. After obtaining answers to Question (2), the interviewer encouraged respondents to talk freely about fifteen or twenty of the terms from Question

(2). By doing so, the experimenter collected verbal information on legal terms used in Japanese court. The survey thus identified the types of vocabulary respondents used to explain the legal terms they felt they knew.

To analyze the responses received, the fifty words were first arranged in order of the number of 'yes' answers to Question (1). The average score of each legal term answered in Question (2) was then calculated, and the terms were listed in descending order by score. The degree of importance of the fifty words was then measured by a survey of attorneys, using a five-point scale indicating how important they felt the term was, from 'unimportant' to 'important'. Although there was a definite correlation between terms lawyers felt were 'important' and terms lay people felt they 'had heard of', there was only a distant correlation between terms lawyers felt were 'important' and terms lay people felt they already knew. This means that lay people have heard of 'important' legal terms, but it does not necessarily mean that they feel that they know the meaning of these important legal terms.

With these findings, the fifty words were then classified into four groups:

(a) important but not known;

(b) important and well-known;

(c) not important but well-known;

(d) neither important nor known.

The project team then paraphrased legal terms in the order of (a), (b), (c), and (d).

5. Re-wording the terms

Most of the time spent on the project was on re-wording the terms. The re-wording work was conducted through a joint effort between legal and non-legal experts. Legal experts offered legally adequate but rather lengthy explanations for legal terms under examination. Language experts then provided understandable but brief paraphrases to these words. After a long discussion about each legal term, comprehensible and sufficient re-wordings were produced. When re-wording was not achieved, adequate explanations were provided instead.

I would like to illustrate the process of paraphrasing and seeking an explanation with the example of 'suppression of rebellion' (*hankou no yokuatsu*). 'Suppression of rebellion' is not a legal term of art, but it is used in charging facts in robbery cases because the element it represents is necessary to distinguish 'robbery' from 'theft'. 'Theft' is the taking of someone's property with the intent to permanently deprive the person of it, while 'robbery' requires 'theft' combined with the use of a form of violence, or threat of violence, to deprive someone of property. The phrase 'suppression of rebellion' is therefore used to clarify that the defendant used force against or instilled fear in the victim to prevent resistance as follows: "The defendant suppressed the victim's rebellion and stole 32,000yen from the victim's bag . . . "

In Japanese, 'suppression' (*yokuatus*) indicates that someone in authority is suppressing an anti-social or anti-establishment movement by using force or by making it illegal. And 'rebellion' (*hankou*) means a more personal violent action by someone who is trying to change his or her current status, such as when we refer to a child as 'rebellious'. So when Japanese people hear that there has been a 'suppression of rebellion', they would conjure up images of a policeman 'suppressing' the 'rebellious' conduct of the defendant.

At a project meeting, non-legal experts were confused by the phrase 'suppression of rebellion' and could not understand 'who' did 'what' to 'whom'. Language experts therefore offered a clearer re-wording: the use of 'resistance' (*teikou*) instead of 'rebellion'. As 'resistance' indicates 'an attack that consists of fighting back against a person who has attacked you', language experts predicted that on hearing the phrase 'suppression of resistance', lay people could imagine that the defendant suppressed the victim's resistance. However, attorneys and criminologists disagreed with the use of 'resistance' instead of 'rebellion'. They believed that 'rebellion' includes the notion that the degree of the defendant's threat prevents the victim from being able to fight back. The use of 'resistance', they said, therefore limits the interpretation of the defendant's act of robbery. After a long discussion, the project team concluded that 'suppression of rebellion' means that the defendant instilled fear into the victim—physically as well as mentally—and that the term includes the victim's submission to the crime, despite his or her failed resistance.

6. Results

In November 2005, the project team presented an interim report on sixteen legal terms; the report was widely covered in the media. The public prosecutor's office was mildly critical of the paraphrase of 'opening statement' (*boutou chinjutsu*), which is perhaps much clearer in English than the Japanese phrase is in Japanese. In our paraphrase, 'opening statement' is 'a story read by a public prosecutor or a defense counsel at the beginning of the examination of evidence' (*kensatsukan ya bengonin ga shoukoshirabe tetsuzuki no saishoni noberu jiken no story*). As public prosecutors indict defendants for crimes with absolute confidence in Japan, they thought the usage of 'a story' made it seem like their opening statements are mere conjecture of criminal acts. This is contrary to Article 296 of the Code of Criminal Procedure, which provides that 'at the outset of the examination of evidence, a public prosecutor shall make clear the facts to be proved by evidence'. As a result, public prosecutors would have used the term 'fact', not 'story'. But in daily Japanese, the term 'fact' means 'a piece of information that is known to be true'. If the word 'fact' is used in a paraphrase of 'opening statement', lay people would find it difficult to understand that the burden of proof is placed on the prosecution. As a result, the term 'story', which was originally considered a misuse, has now become an acceptable word in the era of the lay-judge system.

The project team added eleven more words for paraphrasing. In April 2008, the work of paraphrasing 61 legal terms was completed and published in two books by a well-known publisher named Sanseido: *Handbook of Courtroom Language for Lay People* (*Saiban-in no tame no HouteiYougo Handbook*), which is for lay people, and *Courtroom Language in the Era of Lay Judges* (*Saiban-in Jidai no HouteiYougo*), which is for legal experts. The latter includes highlights of the discussion between lay people and legal experts. The paraphrased terms are also included in an electronic dictionary made by Casio.

Mami Hiraike Okawara *is Professor and Dean at the Graduate School of Regional Policy, Takasaki City University of Economics, Japan. She is also a conciliation commissioner at Maebashi Family Court. She received her doctorate in linguistics at Sydney University. Her research interest is the analysis of legal language. She published* Saiban kara Mita America Shakai *(*American Society Viewed through Trials*, 1998),* Shimin kara Mita Saiban *(*The Japanese Lay Judge System Viewed through Lay People*, 2008),* Saiban Omoshiro Kotoba-Gaku *(*Peculiar Legal Language Studies *2009) and* Minna ga Shiranai Saiban Gyoukai Urabanashi *(*An Inside Story of the Courtroom World*, 2010).*

Contributing to the journal

Clarity often focuses on a specific theme (like conferences or drafting or standards), but we also publish articles on a variety of other plain language topics. Please submit your articles to the editor in chief for consideration.

Would you like to be a guest editor? Our guest editors gather articles, work with the authors, make layout decisions, and edit and proofread a single issue. If you would like to guest edit an issue of the *Clarity* journal, send an email to the editor in chief.

Finally, if you have ideas about improving the journal, the editor would like to hear from you, as well. Our editor in chief is Professor Julie Clement, with the Thomas M. Cooley Law School. Email her at clementj@cooley.edu.

Clarity: an empathic journey towards understanding

Angela Morelli

Information Designer
Central St Martins University
United Kingdom

Angela made quite an impact at the conference with her beautiful presentation about the use of fresh water on our planet. It was a powerful example of how design can help make sense of complex information and data. It clearly had an effect on me as a wave of guilt now passes over me every time I turn a tap on. Here, Angela tells us about her approach to clarity. Don't worry, you won't feel guilty after reading it. —Ed

Clarity: an empathic journey towards understanding.

At the Clarity2010 conference, I gave a talk with the aim of telling the story of a voyage I took as an information designer—a long journey from data to knowledge. My goal was to show how information design can be a powerful aid in facilitating reasoning and in illustrating what tables of numbers sometimes fail to reveal. The project was called The Global Water Footprint of Humanity, and it utilizes data from research carried out by UNESCO and the University of Twente in the Netherlands. The aim of the project was to visualize and make tangible the impact of human consumption on the natural water environment. Two elements were crucial for my journey: research, because we have to master content in order to design it; and passion, because passion is the powerful engine that will steer your course through the inevitable pitfalls and storms you will meet along the way.

The word 'Clarity' is a magic word when you are an information designer utterly convinced that your job is about communicating knowledge and

facilitating reasoning. It is a word that hides the inevitable struggle and hard work that every journey towards Clarity involves, but the reward is a precious treasure and this treasure is called 'understanding'.

You can be a designer, a plain language expert, a lawyer, a regulator—it does not make any difference. Passion and respect for human nature, for individuals, for people's lives and their time, is the common ground in the pursuit of Clarity. In Lisbon I shared something strong with the audience and speakers: the belief that without Clarity there is no understanding and that without understanding we increase the number of things in society that do not work properly. Plain language can help, good information design can help, knowledge and common sense can help. We have the tools to begin our journey towards bringing about such understanding.

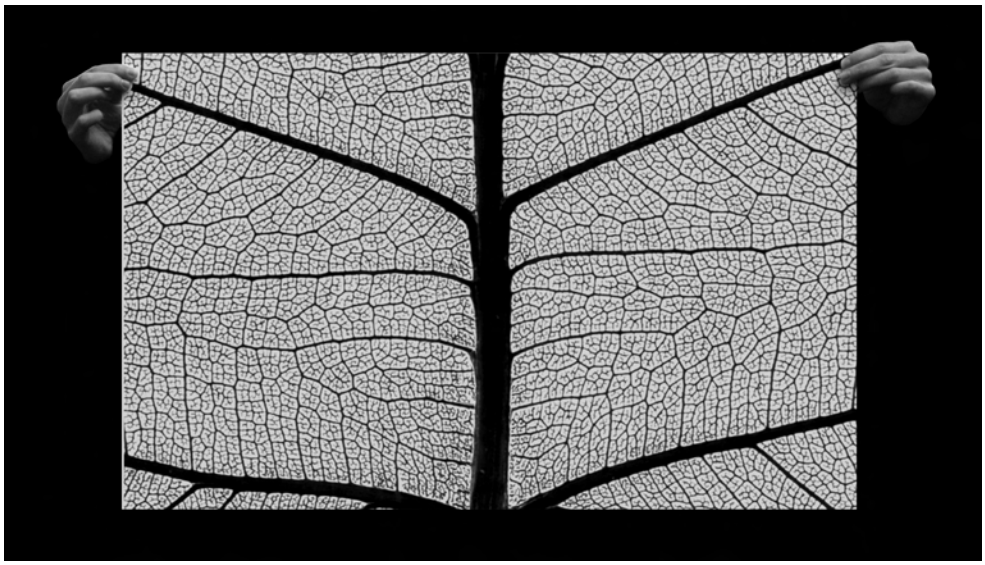
Before I undertook my design studies, and before I started my journey in the world of information design at St Martins in London, I spent a relatively long period of time surrounded by information presented in a very analytical way, sometimes easy to read, sometimes less so, sometimes beautiful, sometimes less so. In fact, I was studying engineering and the task was to deal with different modes of evidence—words, numbers, diagrams—in order to understand complicated subjects and basically to pass exams.

Already during my engineering adventure, my perception was that modes of evidence are often *not* evident—they can hide content instead of revealing it; they can confuse instead of explaining; they can impede understanding instead of facilitating it. The result is information anxiety, time wasted, and an inability to accomplish the task the information was provided for.

To quote Edward Tufte:

> "Evidence is evidence whether words, numbers, images, diagrams, still or moving. The information does not care what it is. The content does not care what it is. It is all information. And for readers and viewers the intellectual tasks remain constant regardless of the mode of evidence: to *understand* and to reason about the materials at hand and appraise their quality, relevance and integrity."

Understand: That to me is the key word. Whether it is words or images, I believe that the goal of designing information, the goal of effective com-



munication, is to help and facilitate the user's understanding. When this is so, clarity becomes the essential framework on which communication depends. Clarity is to effective communication as an invisible skeleton is to a functional organism. It is vital.

The result of clarity can be beautiful. Nathan Shedroff claims that Information design does not banish aesthetic concerns. However, if beauty is a consequence of clarity, beauty can contribute to effective communication and understanding. Victor Papanek, in his book *Design For The Real World*, writes that aesthetics is one of the most important tools in our repertory as designers. It is a tool that helps us in shaping forms and colors into entities that move us, please us, and that are beautiful, exciting, filled with delight and meaningful.

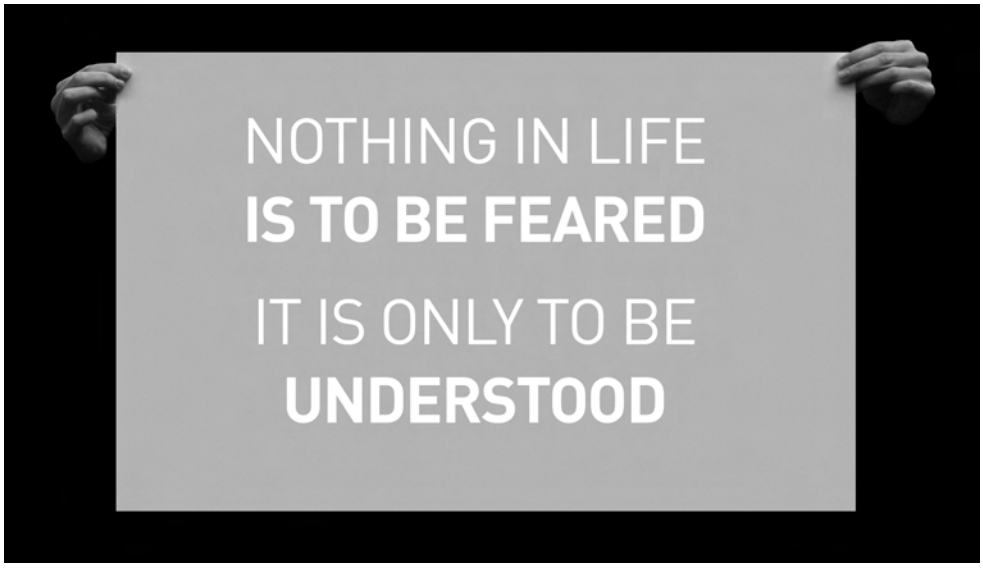
Beauty is not a dazzling ephemeral facet that vanishes or perishes if it is defined, as the Greeks defined it, as inseparable from Good: *'kalos kai agathos'*. What is good is beautiful. What engages our senses also enriches the mind and the soul. What is clear and provides understanding can entertain and please. Dostoyevsky once let drop the enigmatic thought, "Beauty will save the world". Of course it will because beauty is at the core of what it means to be human. What we call a 'user', what we term a 'message recipient', is still a human being. Not a profile, not a number, not a bunch of descriptions, but a human being. Remembering our human nature and the need we have for beauty will help us in facilitating understanding when we design words and images.

But how do we get to Clarity? How do we design words and images so that we support understanding and reasoning. My answer is empathy, and I would like to tell you why. The minute we know or understand something, we forget what it was like *not* to know it. So the road to Clarity lies in our ability to remember and feel what it is like not to know when communicating new information to others. It lies in our ability to put ourselves in the shoes of those who don't know or do not understand. This ability to feel what it is like being someone else is called 'Empathy'. The '*pathy*' in the word '*em-pathy*' suggests that we enter into the emotional state of another human being. The interesting thing is that Empathy has a physiological root. A team led by Italian scientist Giacomo Rizzolatti discovered the 'mirror neurons' that allow us to grasp the minds of others– not through conceptual reasoning but through direct simulation. By feeling, not by thinking. The popular science press has begun to refer to mirror neurons as "empathy neurons".

So we wise humans are wired for Empathy. Richard Saul Wurman reminds us that if we can simulate what it is like to be blind by covering our eyes, we can try to remember what it is like not to know when we communicate new information to others. I profoundly believe that this ability forms the basis for producing modes of evidence that are truly evident, in the sense that they make the content clear, visible, understandable.

The Clarity2010 conference convinced me even more that the biggest need for designing information is found far from the spotlight, where we designers often stand talking to other designers about how we have *crafted* a sensational application, visualization, info graphic or website. The more I work and talk to people from different fields, the more I sense the need for design in places that are not even close to the design industry, where users are supposed to process information faster and better in order to accomplish complex daily tasks. So why aren't designers called in to help with these design solutions? Many of those who need them might not look for designers because they do not know the power of design in supporting understanding and reasoning. Designers do. And it is our responsibility to find those areas and those users.

To quote Marie Curie—physicist and winner of the Nobel Prize for physics and chemistry—"*Nothing in life is to be feared. It is only to be understood.*" Good information design and plain language are tools that can be used to achieve a common goal: providing understanding and eliminating the fear of not understanding. Achieving that goal is not an easy task because the tools themselves are not a guarantee of success—what is crucial is the way we use them. When we design words and images, when we communicate new information to our audience, we should never forget our empathic ability to put ourselves in the shoes of those who do not know or do not understand. This to me is the starting point to understanding design.



an.morelli@mac.com
www.angelamorelli.com

Angela Morelli *is an Italian designer. She gained her MA in Communication Design from Central St Martins, where she specialised in Information Design. Her first degree was in Engineering from Politecnico di Milano and she has an MA in Industrial Design from Milan. She has collaborated with a number of research and commercial organisations in Europe and works in London as a Graphic and Information Designer. She has lectured at international conferences on design and communication and is Associate Lecturer at Central St Martins in London.*

Multidisciplinary project

Plain-language writers, designers, usability experts and lawyers put their heads together

At Clarity2010 we wanted to give delegates a taste of what other communication professionals were doing in the world of clear communication. To demonstrate how a range of expertise could complement each other we put together four teams of specialists and challenged them to simplify a document of their choosing. It was an opportunity for everyone to do what they do best without a client steering the project 360 degrees or demanding that their logo be bigger.

The teams were made up lawyers, plain-language experts, designers and user testers.

It was quite challenging as everyone who took part had to work in their free time, and many of them had not even met face-to-face before. A big thank you to everyone on the teams for making the project a success.

You can see more about the projects on the Clarity2010 blog. http://blog.clarity2010.com/ —Ed

World of Warcraft terms of service

Project team: Sarah Carr, Lubya Herbert, Katharina Hoslzl, Lauren Moler, Whitney Quesenbery (author)

Our team's choice was the World of Warcraft Terms of Service, an online game played by millions of people around the world. It's a typical game agreement. It gives the company strong rights:

- Ownership of all information in the game
- Control over who may play

Whether players like the rules or not, we wanted to make sure that they could understand the document, so they can make an informed decision as to whether to play the game.

Loren Moler and Whitney Quesenbery started the project with usability testing of the current agreement. We worked with 5 people who play WoW (as players call it) or similar games, from casual players to intense, committed team members. Using software to share our screen, they read through the page and then answered questions about the agreement to recall facts and test understanding. They were not surprised to find a long, legalistic agreement, but they generally understood it. Like many people, they didn't pay much attention to these agreements: They said:

- They either scan quickly or skip these agreements entirely
- The rules were not really surprising
- None really affect people who play the game honestly

But they did have two important problems:

- The information was confusing and disorganized

- It was hard to separate the legal boilerplate from important rules about the game that would be useful at any time

We all wanted to really cut the agreement down to a minimal set of rules. But we were also very aware that without a "client", we had no way to find out which rules were important. (We also heard about controversy and lawsuits over how the company enforced the rules.) In a real project it would be hard to make such sweeping changes without discussion.

We worked on the revision in several rounds:

1. Lubya Herbert, the lawyer on the team, went through the document, untangling the terminology and simplifying the language.
2. Sarah Carr then further simplified the text, cutting "noise words" and putting lists into bullet points for easier scanning.
3. Sarah and Whitney worked to reorganize the information so that the rules were presented in a logical order. In the end, there were three sections: rules about who may sign up and play, the Code of Conduct, and legal information about disputes.
4. Katharina Hoslzl added some light formatting, making headings stand out clearly and putting secondary information in shaded boxes.

This style of working in layers is useful for any plain language project. Each round of work on the document made it easier to see the next steps. It also suited a volunteer project with people scattered in different countries.

In the end, however, our revision is still not really "plain":

- It is too long
- It still has too much legal boilerplate
- It is legalistic, cumbersome, and even hostile sounding.

We can do a lot with our plain language and information design skills. But there are limits to what we can do without collaboration and agreement from the business. A complete transformation requires a change in attitude, not just editing and design.

The World of Warcraft Terms of Service are online: http://www.worldofwarcraft.com/legal/termsofuse.html

Original	**First round**	**Second round**
3. Eligibility You represent that you are an adult in your country of residence. You agree to these Terms of Use on behalf of yourself and, at your discretion, for one (1) minor child for whom you are a parent or guardian and whom you have authorized to use the account you create on the Service. (54 words)	1. Who can agree to the terms You confirm that you are an adult in the country where you live. You agree to these terms for yourself and, if you wish, one child who you are a parent or guardian for, and who you have authorized to use your account on the service. (46 words)	1. Who can agree to the terms? You must be: • An adult in the country where you live • The parent or guardian of a child who you have allowed to use your account (28 words)

Gautrain—not plain!

Project team: Frances Gordon, Miriam Vincent, Robert Hempsall and Natasha Rust (author)

Background

The opening of the Gautrain—South Africa's very first rapid rail network—on 8 June 2010 was a huge occasion and part of the build up to the FIFA World Cup. Any excitement first-time passengers felt probably disappeared when they tried to decipher the first sentence of the Gautrain disclaimer. The first sentence alone was 166 words.

The team and process

Frances Gordon and I first tested the original disclaimer with respondents who had recently travelled on the Gautrain.

Miriam Vincent re-wrote the disclaimer in plain language, and Robert Hempsall re-designed the layout. The writing and design changes included:

- a clear and concise heading that captures the essence of the document
- a bigger text size and different font to give the best possible legibility
- shorter sentences and paragraphs, which reduced the word count from 333 to 136
- replacing jargon and legalese with lay terms
- a clear separation of content and definitions
- improved design.

We then tested the new version with a different sample of passengers.

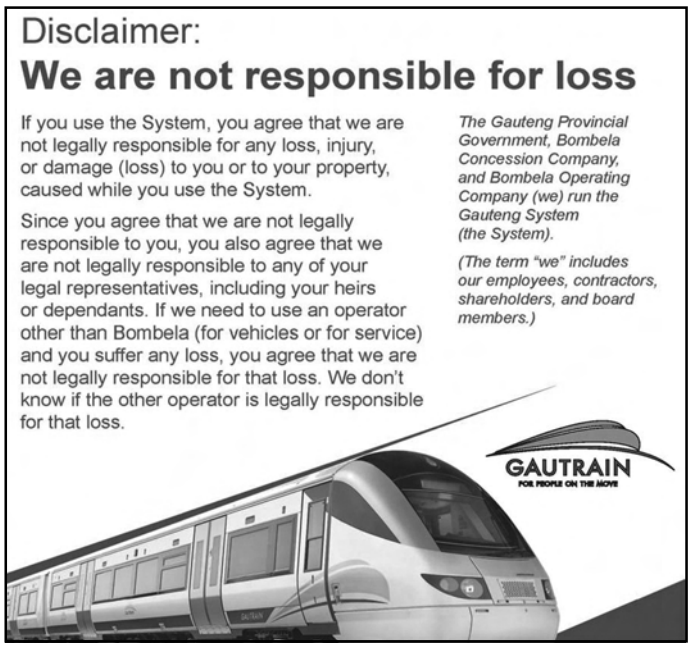
The findings

The respondents' reactions indicated that they struggled to decipher the original disclaimer:

> "I was so discouraged after reading the first paragraph that I just gave up."

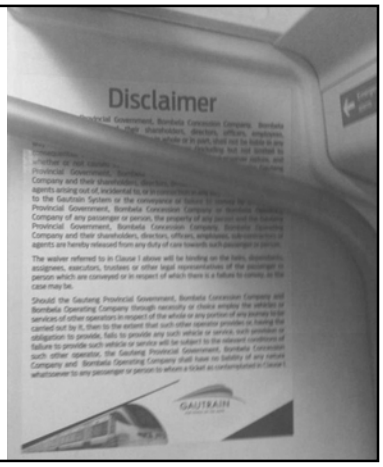
> "I had to read it over and over and still have NO idea what they're on about. The only thing I got is that we are screwed. You get on that train regardless."

The original disclaimer



The new version of the disclaimer

I've heard of a "Legal Bar" but this is taking it a bit far — Ed



> "I understand this part—'released from duty of care'. Whatever happens, they don't care."

Respondents interpreted the lack of clarity on the original disclaimer as being deliberate. According to them, it creates the impression that the Gautrain company does not really care about the passengers.

We also found that users engaged more with the new version than with the original disclaimer.They were more inclined to read the full text of the new version, whereas some users gave up on the original disclaimer.

Conclusions

A document that is clear and understandable could, however, lead to more, not fewer, queries. Users of the new version, who understood the disclaimer much better, disagreed even more strongly with the disclaimer than readers of the original disclaimer.

Even when the respondents understood the content, they were still unsure whether it would apply to all situations. For example, if a passenger missed a flight because the train was late, would the passenger be refunded?

Success factors and gaps

All communication and drafts were posted on Basecamp (a web-based project management and collaboration tool http://basecamphq.com/).

It is a great way to connect people online, especially when they are continents apart. The different expertise and perspectives of several disciplines are available to you at the touch of a button.

The critical success factors for such a collaborative project are:

- Sufficient time and commitment;
- Clear deliverables and timeframes; and
- Project management.

The timeframe for the project was very tight. As a result, we did not contact the Gautrain management. With their input, we would have been able to test passengers on the premises and share the results with the client—results that could change users' perceptions and trust in the company for the better.

Gibson Sheat lawyers' standard terms of engagement

Project team: Lynda Harris, Melissa Wharewera, James Dyson, Tania McAnearney, Anne-Marie Chisnall (author)

Choosing the document

We asked Gibson Sheat Lawyers if they had a document they'd like us to work on free of charge. They offered their Standard Terms of Engagement for the project. This important client-facing document was one they'd already tried to redraft in plain language, but without success.

The Terms of Engagement set out the conditions of the firm's working relationship with its clients. The document needed to be in plain language so that clients could easily understand both parties' responsibilities. As well, Gibson Sheat wanted the document to show consistency with their brand by matching the clear, reader-friendly style of their website.

Assembling the team

Our team included a legal specialist, plain language consultants, and a user-testing expert. Team members were geographically spread from Wellington and Auckland in New Zealand, to Rhode Island in the United States.

Transforming the document

We consulted with Gibson Sheat throughout the project—a key feature of the project's success. We outline the three main phases of the project below.

Assessing the original document

We assessed the original document in three ways:

- an initial heuristic evaluation;
- a WriteMark Plain English Standard assessment; and
- a user-testing survey.

The results of the three assessments showed problems with structure, language, and visual organisation. The user-testing survey revealed that, for more than half the readers, the content was not very clear.

WRITEMARK
PLAIN ENGLISH STANDARD

What is the WriteMark?

The WriteMark Plain English Standard is a quality mark given to documents that demonstrate effective use of internationally accepted plain language techniques.

Rewriting and redesigning the document

We used the feedback from the assessments to rewrite and redesign the document. We used an iterative process, consulting with Gibson Sheat throughout.

Reassessing the document

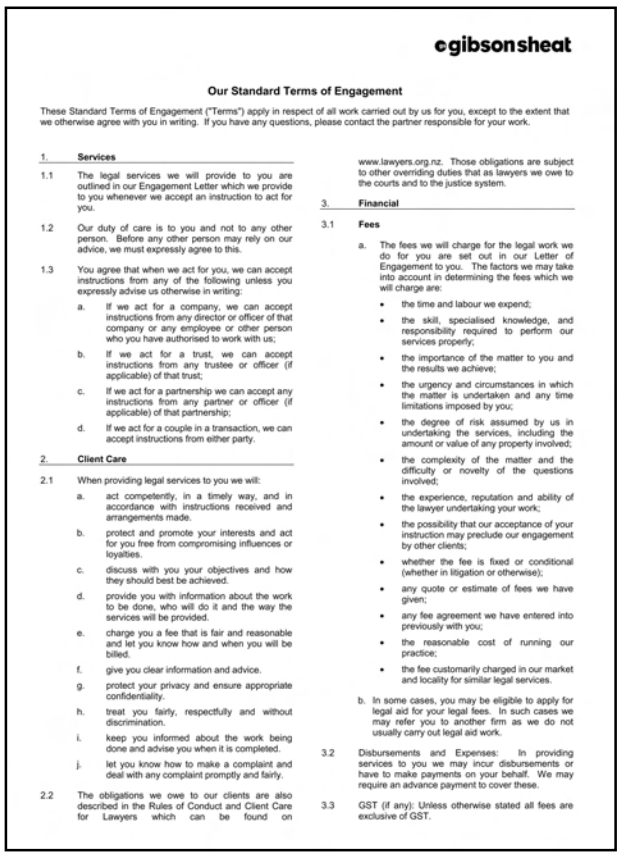
We reassessed the rewritten document using the WriteMark assessment tool and a second user-testing survey.

The Terms of Engagement met the WriteMark Standard on the second assessment, by showing a clear purpose, appropriate structure, clear language, correct grammar, and reader-friendly presentation. The second user-testing survey found a significant improvement in the overall clarity of the document, across all questions.

What we learnt from this project

Although this project went largely as anticipated, the exercise did emphasise the importance of testing with readers, consulting with the original writers, and testing again. Had the project team rewritten the text without gaining the valuable insights from the testing, or the context, statutory requirements, and business need from the writers, the finished document would not have been the success that it was.

And we were reminded that when you embark on an iterative process, with as much consultation as it takes, it's very hard to estimate, and keep to, a set number of hours to complete the job. Such is the life of a plain language practitioner!



gibsonsheat

Our Standard Terms of Engagement

These Standard Terms of Engagement ("Terms") apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing. If you have any questions, please contact the partner responsible for your work.

1. Services

1.1 The legal services we will provide to you are outlined in our Engagement Letter which we provide to you whenever we accept an instruction to act for you.

1.2 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

1.3 You agree that when we act for you, we can accept instructions from any of the following unless you expressly advise us otherwise in writing:

a. If we act for a company, we can accept instructions from any director or officer of that company or any employee or other person who you have authorised to work with us;

b. If we act for a trust, we can accept instructions from any trustee or officer (if applicable) of that trust;

c. If we act for a partnership we can accept any instructions from any partner or officer (if applicable) of that partnership;

d. If we act for a couple in a transaction, we can accept instructions from either party.

2. Client Care

2.1 When providing legal services to you we will:

a. act competently, in a timely way, and in accordance with instructions received and arrangements made.

b. protect and promote your interests and act for you free from compromising influences or loyalties.

c. discuss with you your objectives and how they should best be achieved.

d. provide you with information about the work to be done, who will do it and the way the services will be provided.

e. charge you a fee that is fair and reasonable and let you know how and when you will be billed.

f. give you clear information and advice.

g. protect your privacy and ensure appropriate confidentiality.

h. treat you fairly, respectfully and without discrimination.

i. keep you informed about the work being done and advise you when it is completed.

j. let you know how to make a complaint and deal with any complaint promptly and fairly.

2.2 The obligations we owe to our clients are also described in the Rules of Conduct and Client Care for Lawyers which can be found on www.lawyers.org.nz. Those obligations are subject to other overriding duties that as lawyers we owe to the courts and to the justice system.

3. Financial

3.1 **Fees**

a. The fees we will charge for the legal work we do for you are set out in our Letter of Engagement to you. The factors we may take into account in determining the fees which we will charge are:

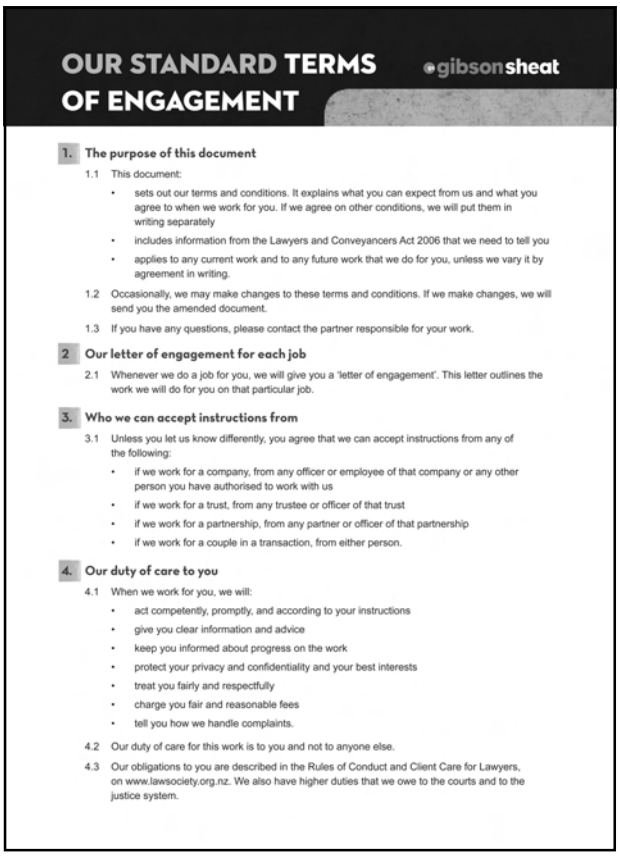
- the time and labour we expend;
- the skill, specialised knowledge, and responsibility required to perform our services properly;
- the importance of the matter to you and the results we achieve;
- the urgency and circumstances in which the matter is undertaken and any time limitations imposed by you;
- the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
- the complexity of the matter and the difficulty or novelty of the questions involved;
- the experience, reputation and ability of the lawyer undertaking your work;
- the possibility that our acceptance of your instruction may preclude our engagement by other clients;
- whether the fee is fixed or conditional (whether in litigation or otherwise);
- any quote or estimate of fees we have given;
- any fee agreement we have entered into previously with you;
- the reasonable cost of running our practice;
- the fee customarily charged in our market and locality for similar legal services.

b. In some cases, you may be eligible to apply for legal aid for your legal fees. In such cases we may refer you to another firm as we do not usually carry out legal aid work.

3.2 Disbursements and Expenses: In providing services to you we may incur disbursements or have to make payments on your behalf. We may require an advance payment to cover these.

3.3 GST (if any): Unless otherwise stated all fees are exclusive of GST.

Original Page 1



OUR STANDARD TERMS OF ENGAGEMENT

gibsonsheat

1. The purpose of this document

1.1 This document:

- sets out our terms and conditions. It explains what you can expect from us and what you agree to when we work for you. If we agree on other conditions, we will put them in writing separately
- includes information from the Lawyers and Conveyancers Act 2006 that we need to tell you
- applies to any current work and to any future work that we do for you, unless we vary it by agreement in writing.

1.2 Occasionally, we may make changes to these terms and conditions. If we make changes, we will send you the amended document.

1.3 If you have any questions, please contact the partner responsible for your work.

2 Our letter of engagement for each job

2.1 Whenever we do a job for you, we will give you a 'letter of engagement'. This letter outlines the work we will do for you on that particular job.

3. Who we can accept instructions from

3.1 Unless you let us know differently, you agree that we can accept instructions from any of the following:

- if we work for a company, from any officer or employee of that company or any other person you have authorised to work with us
- if we work for a trust, from any trustee or officer of that trust
- if we work for a partnership, from any partner or officer of that partnership
- if we work for a couple in a transaction, from either person.

4. Our duty of care to you

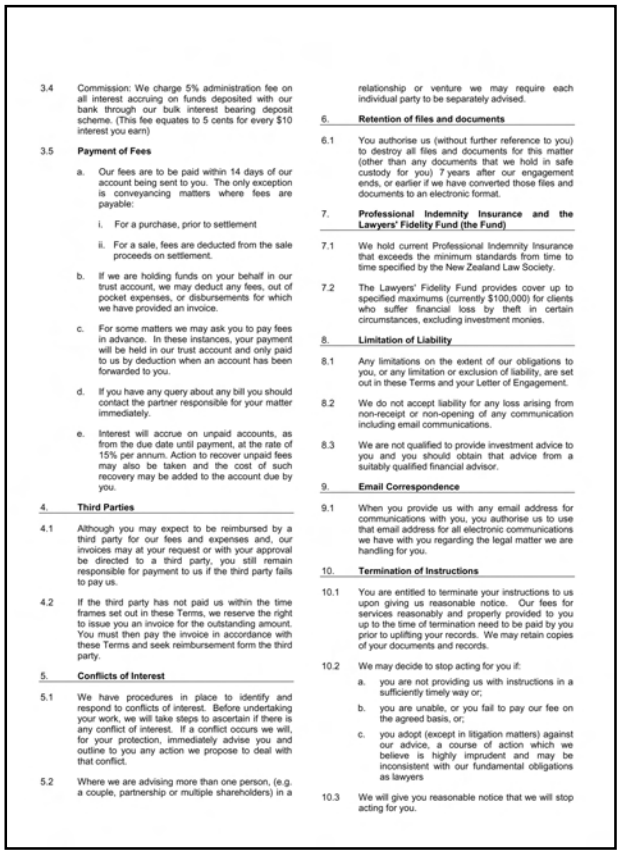
4.1 When we work for you, we will:

- act competently, promptly, and according to your instructions
- give you clear information and advice
- keep you informed about progress on the work
- protect your privacy and confidentiality and your best interests
- treat you fairly and respectfully
- charge you fair and reasonable fees
- tell you how we handle complaints.

4.2 Our duty of care for this work is to you and not to anyone else.

4.3 Our obligations to you are described in the Rules of Conduct and Client Care for Lawyers, on www.lawsociety.org.nz. We also have higher duties that we owe to the courts and to the justice system.

Final Page 1



3.4 Commission: We charge 5% administration fee on all interest accruing on funds deposited with our bank through our bulk interest bearing deposit scheme. (This fee equates to 5 cents for every $10 interest you earn)

3.5 **Payment of Fees**

a. Our fees are to be paid within 14 days of our account being sent to you. The only exception is conveyancing matters where fees are payable:

i. For a purchase, prior to settlement

ii. For a sale, fees are deducted from the sale proceeds on settlement.

b. If we are holding funds on your behalf in our trust account, we may deduct any fees, out of pocket expenses, or disbursements for which we have provided an invoice.

c. For some matters we may ask you to pay fees in advance. In these instances, your payment will be held in our trust account and only paid to us by deduction when an account has been forwarded to you.

d. If you have any query about any bill you should contact the partner responsible for your matter immediately.

e. Interest will accrue on unpaid accounts, as from the due date until payment, at the rate of 15% per annum. Action to recover unpaid fees may also be taken and the cost of such recovery may be added to the account due by you.

4. Third Parties

4.1 Although you may expect to be reimbursed by a third party for our fees and expenses and, our invoices may at your request or with your approval be directed to a third party, you still remain responsible for payment to us if the third party fails to pay us.

4.2 If the third party has not paid us within the time frames set out in these Terms, we reserve the right to issue you an invoice for the outstanding amount. You must then pay the invoice in accordance with these Terms and seek reimbursement form the third party.

5. Conflicts of Interest

5.1 We have procedures in place to identify and respond to conflicts of interest. Before undertaking your work, we will take steps to ascertain if there is any conflict of interest. If a conflict occurs we will, for your protection, immediately advise you and outline to you any action we propose to deal with that conflict.

5.2 Where we are advising more than one person, (e.g. a couple, partnership or multiple shareholders) in a relationship or venture we may require each individual party to be separately advised.

6. Retention of files and documents

6.1 You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

7. Professional Indemnity Insurance and the Lawyers' Fidelity Fund (the Fund)

7.1 We hold current Professional Indemnity Insurance that exceeds the minimum standards from time to time specified by the New Zealand Law Society.

7.2 The Lawyers' Fidelity Fund provides cover up to specified maximums (currently $100,000) for clients who suffer financial loss by theft in certain circumstances, excluding investment monies.

8. Limitation of Liability

8.1 Any limitations on the extent of our obligations to you, or any limitation or exclusion of liability, are set out in these Terms and your Letter of Engagement.

8.2 We do not accept liability for any loss arising from non-receipt or non-opening of any communication including email communications.

8.3 We are not qualified to provide investment advice to you and you should obtain that advice from a suitably qualified financial advisor.

9. Email Correspondence

9.1 When you provide us with any email address for communications with you, you authorise us to use that email address for all electronic communications we have with you regarding the legal matter we are handling for you.

10. Termination of Instructions

10.1 You are entitled to terminate your instructions to us upon giving us reasonable notice. Our fees for services reasonably and properly provided to you up to the time of termination need to be paid by you prior to uplifting your records. We may retain copies of your documents and records.

10.2 We may decide to stop acting for you if:

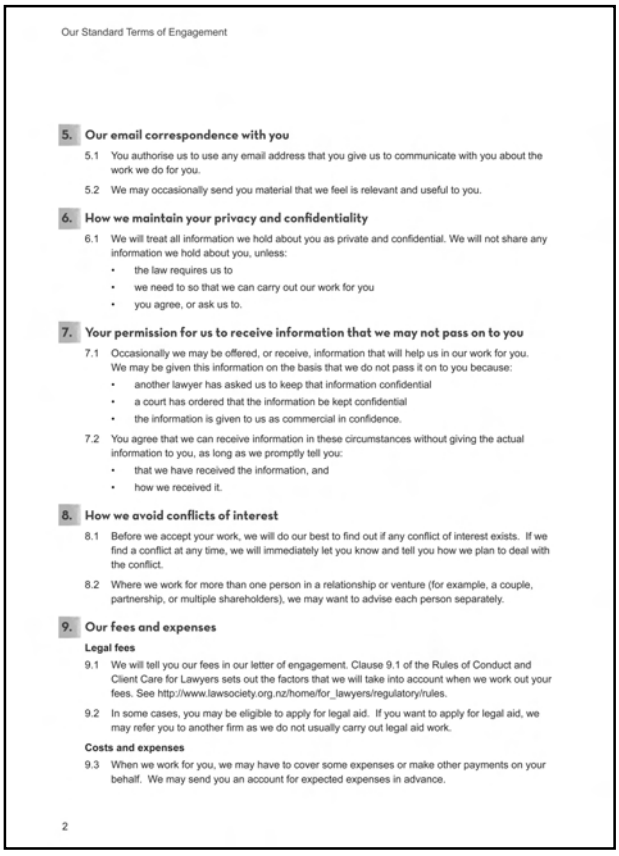
a. you are not providing us with instructions in a sufficiently timely way or;

b. you are unable, or you fail to pay our fee on the agreed basis, or;

c. you adopt (except in litigation matters) against our advice, a course of action which we believe is highly imprudent and may be inconsistent with our fundamental obligations as lawyers

10.3 We will give you reasonable notice that we will stop acting for you.

Original Page 2



5. Our email correspondence with you

5.1 You authorise us to use any email address that you give us to communicate with you about the work we do for you.

5.2 We may occasionally send you material that we feel is relevant and useful to you.

6. How we maintain your privacy and confidentiality

6.1 We will treat all information we hold about you as private and confidential. We will not share any information we hold about you, unless:

- the law requires us to
- we need to so that we can carry out our work for you
- you agree, or ask us to.

7. Your permission for us to receive information that we may not pass on to you

7.1 Occasionally we may be offered, or receive, information that will help us in our work for you. We may be given this information on the basis that we do not pass it on to you because:

- another lawyer has asked us to keep that information confidential
- a court has ordered that the information be kept confidential
- the information is given to us as commercial in confidence.

7.2 You agree that we can receive information in these circumstances without giving the actual information to you, as long as we promptly tell you:

- that we have received the information, and
- how we received it.

8. How we avoid conflicts of interest

8.1 Before we accept your work, we will do our best to find out if any conflict of interest exists. If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict.

8.2 Where we work for more than one person in a relationship or venture (for example, a couple, partnership, or multiple shareholders), we may want to advise each person separately.

9. Our fees and expenses

Legal fees

9.1 We will tell you our fees in our letter of engagement. Clause 9.1 of the Rules of Conduct and Client Care for Lawyers sets out the factors that we will take into account when we work out your fees. See http://www.lawsociety.org.nz/home/for_lawyers/regulatory/rules.

9.2 In some cases, you may be eligible to apply for legal aid. If you want to apply for legal aid, we may refer you to another firm as we do not usually carry out legal aid work.

Costs and expenses

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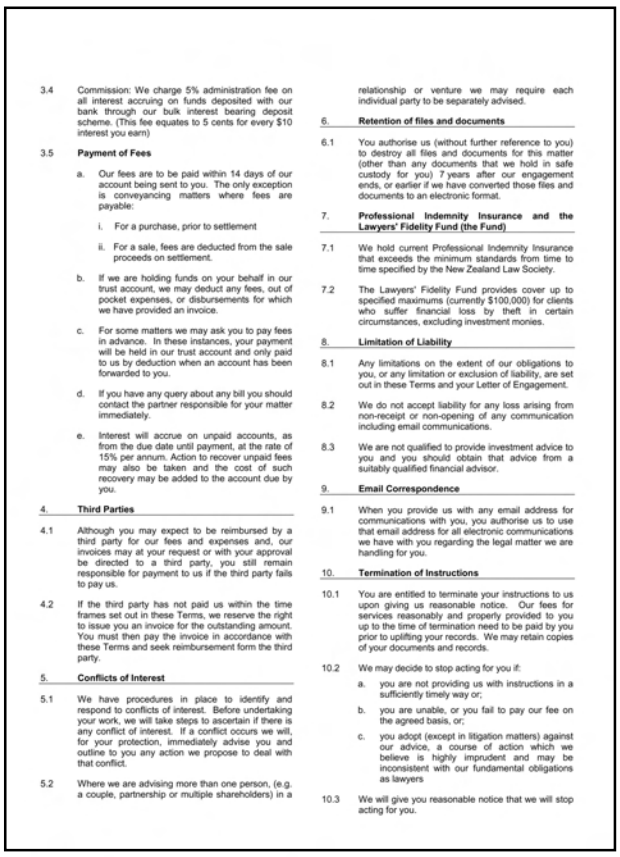
Final Page 2



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b. you are unable, or you fail to pay our fee on the agreed basis, or;

c. you adopt (except in litigation matters) against our advice, a course of action which we believe is highly imprudent and may be inconsistent with our fundamental obligations as lawyers

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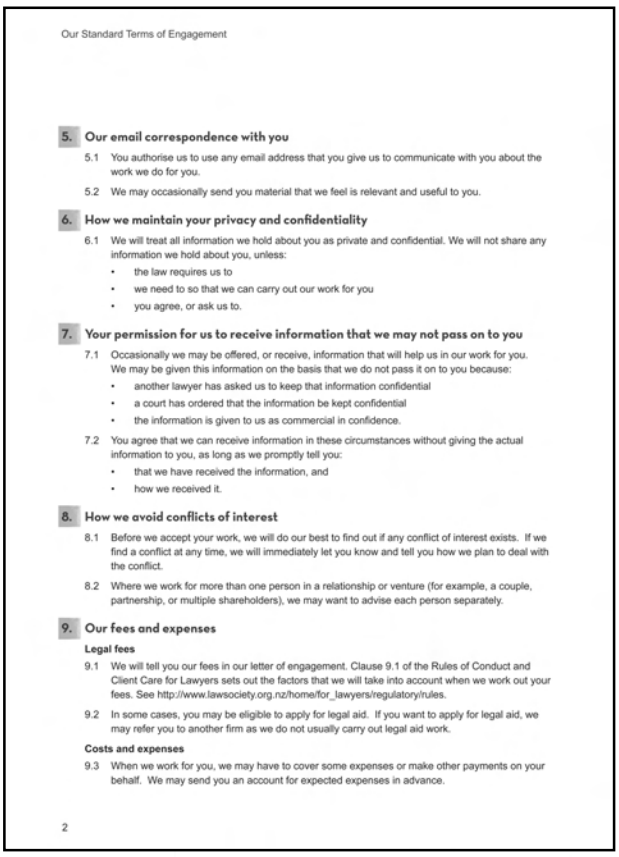

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5.2 We may occasionally send you material that we feel is relevant and useful to you.

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- we need to so that we can carry out our work for you
- you agree, or ask us to.

7. Your permission for us to receive information that we may not pass on to you

7.1 Occasionally we may be offered, or receive, information that will help us in our work for you. We may be given this information on the basis that we do not pass it on to you because:

- another lawyer has asked us to keep that information confidential
- a court has ordered that the information be kept confidential
- the information is given to us as commercial in confidence.

7.2 You agree that we can receive information in these circumstances without giving the actual information to you, as long as we promptly tell you:

- that we have received the information, and
- how we received it.

8. How we avoid conflicts of interest

8.1 Before we accept your work, we will do our best to find out if any conflict of interest exists. If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict.

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Legal fees

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Costs and expenses

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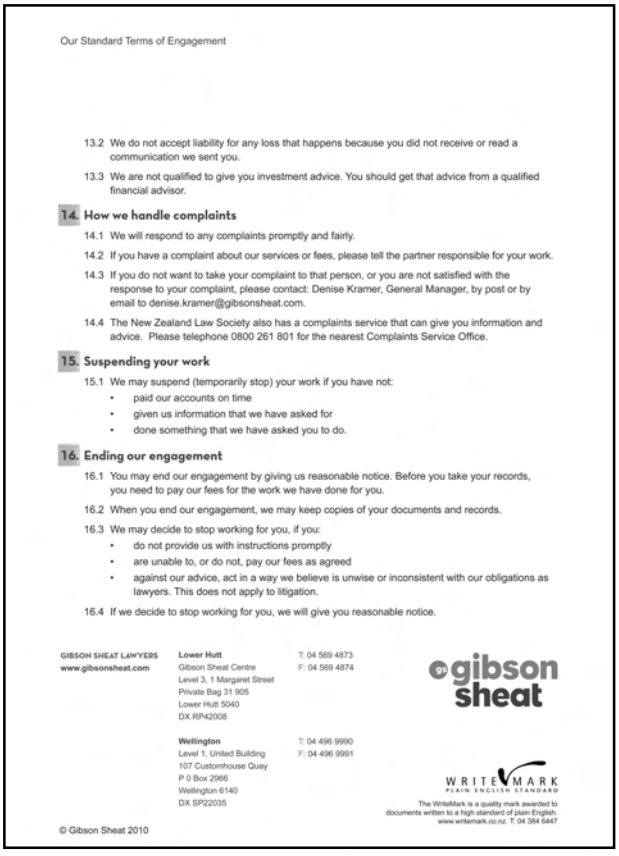
Final Page 3



13.2 We do not accept liability for any loss that happens because you did not receive or read a communication we sent you.

13.3 We are not qualified to give you investment advice. You should get that advice from a qualified financial advisor.

14. How we handle complaints

14.1 We will respond to any complaints promptly and fairly.

14.2 If you have a complaint about our services or fees, please tell the partner responsible for your work.

14.3 If you do not want to take your complaint to that person, or you are not satisfied with the response to your complaint, please contact: Denise Kramer, General Manager, by post or by email to denise.kramer@gibsonsheat.com.

14.4 The New Zealand Law Society also has a complaints service that can give you information and advice. Please telephone 0800 261 801 for the nearest Complaints Service Office.

15. Suspending your work

15.1 We may suspend (temporarily stop) your work if you have not:

- paid our accounts on time
- given us information that we have asked for
- done something that we have asked you to do.

16. Ending our engagement

16.1 You may end our engagement by giving us reasonable notice. Before you take your records, you need to pay our fees for the work we have done for you.

16.2 When you end our engagement, we may keep copies of your documents and records.

16.3 We may decide to stop working for you, if you:

- do not provide us with instructions promptly
- are unable to, or do not, pay our fees as agreed
- against our advice, act in a way we believe is unwise or inconsistent with our obligations as lawyers. This does not apply to litigation.

16.4 If we decide to stop working for you, we will give you reasonable notice.

GIBSON SHEAT LAWYERS
www.gibsonsheat.com

Lower Hutt
Gibson Sheat Centre
Level 3, 1 Margaret Street
Private Bag 31 905
Lower Hutt 5040
DX RP42008
T: 04 569 4873
F: 04 569 4874

Wellington
Level 1, United Building
107 Customhouse Quay
P O Box 2966
Wellington 6140
DX SP22035
T: 04 496 9990
F: 04 496 9991

Final Page 4

Test, redesign, and retest of Chase credit card agreement

Project team: Angela Colter, Martin Foessleitner, Gianna Merki, Emilia Boleszczuk, Deborah Bosley (author)

Our interdisciplinary team, using an onine meeting tool, had several conversations before we decided to test and redesign the Chase Credit Card Agreement. This agreement won the WonderMark Award from the Center for Plain Language in Washington, D. C. in 2010. This Award is given to a document that makes us "wonder what they were thinking." However, this agreement was a common example of credit card agreements in the U.S.

Who was on our team?

Our team functioned quite well. Angela was the testing and project manager. In that capacity, she organized online meetings, kept up with schedules, and created the survey we used to test the original document. Martin designed the new agreement, and Deborah wrote much of the content. Gianna and Emilia gave us feedback on survey questions and the content.

- Deborah S Bosley (USA)—plain language expert and professor
- Emilia Boleszczuk (Poland)—legal translation student
- Martin Foessleitner (Austria)—information designer
- Angela Colter (USA)—usability consultant
- Gianna Merki (Portugal)—law graduate

What did the original document look like? (1 of 5 pages)

ADV10607

Cardmember Agreement

AGREEMENT ACCEPTANCE AND AMENDMENTS

Acceptance: This Cardmember Agreement (the "Agreement") is effective February 22, 2010. This Agreement or any portion of it could become effective on an earlier date because of new federal law. This Agreement incorporates by reference all of the numerical rates and fees (including those set forth in your previous Rates and Fees Table as it may have been amended or superseded) that are applicable to your account ("Account") as of February 22, 2010 (or such earlier date that this Agreement or any portion of it becomes effective). Your revised Cardmember Agreement also incorporates by reference any promotional program terms set forth in your previous Rates and Fees Table. This Agreement governs your credit card Account. You promise to pay for all transactions, interest charges and fees assessed on your Account, and any past due amounts. The words "we," "us" and "our" mean Chase Bank USA, N.A., which is the issuer of your credit card and lender for your Account. The words "you," "your," and "yours" mean everyone responsible for this Account, including the person who applied for the Account and the person to whom we provide the billing statements. The word "card" means each card or other access device, such as Account numbers, that we give you to use your Account.

Amendments: We have the right to change the terms of this Agreement for any reason, and in any respect, by adding, deleting or modifying any provision, including APRs, fees, the Minimum Payment and other terms. We can add a new provision without regard to whether the provision deals with a matter already addressed by this Agreement.

In certain circumstances, we are required by law to notify you of changes to the terms of this Agreement, and in other circumstances we may not be required to do so. When required by law to advise you that you have a legal right to reject any changes we make, we will provide an explanation about how to do that.

In some circumstances, APRs or other aspects of your Account may change even though the terms of the Account do not change, for example when the Prime Rate changes or the Penalty APR becomes applicable. See the Penalty APR section about our right to increase APRs on outstanding balances and/or future transactions for events of default including late payment.

USING YOUR ACCOUNT

Your Account is to be used only for personal, family or household purposes. You promise that you will not allow your Account to be used for Internet gambling, and you will not use it for any unlawful purposes or transactions, including check kiting.

Authorized Users: If you let anyone use your Account, that person is an authorized user. You may request another card for each authorized user. If you do, this Account may appear on the authorized user's credit report. You are responsible for all use of your Account including charges by authorized users. You must tell us if you want to stop an authorized user from using your Account. If you do, we may close the Account and issue a new card(s) with a different Account number. It is your responsibility to get any cards, checks or any other means of access to your Account from the authorized user and destroy them or return them to us upon request.

Billing Cycles/Statements: Your Account will have time periods called "billing cycles" or "billing periods." Each billing cycle is about one month in length. We will provide a billing statement each month one is required by applicable law.

Credit Access Line: We may also call this a revolving line. We will assign a credit access line to your Account. Amounts over your credit access line may be referred to as a non-revolving line. The credit access line is the maximum amount upon which you may defer payment on your Account, subject to the Minimum Payment due. Your statement will show the amount of your credit access line as of the date of the statement. There is no pre-set spending limit for your Account. Instead, each charge is evaluated based on the spending and payment patterns on the Account, your other relationships with us, information from consumer credit reports obtained from credit bureaus including your experience with other creditors, and our understanding of your resources. We may decline an authorization request for any transaction at any time as described in this Agreement. We may also request additional information from you at any time to evaluate a transaction request or your use of the Account.

We may restrict the extent to which your Account can be used for different types of transactions (for example, purchases, balance transfers and/or cash advances) such as by limiting the dollar amount or number of or time period available for any such transactions, and we may completely prohibit use of your Account for particular types of transactions. You are responsible for balances on your Account including amounts charged in excess of your credit access line. We may change or cancel your credit access line without telling you ahead of time. If we do, it will not excuse you from your obligations to pay us.

Lost or Stolen Cards, Checks or Account Numbers: If you lose or someone steals your card or any other means to access your Account, or if you think someone has used your Account without your permission, you must tell us immediately. Call the Cardmember Service telephone number on your card or billing statement. Do not use your Account after you notify us. We may end your credit privileges and close your Account if we consider it appropriate. You agree to provide us information to help us find out what happened.

TYPES OF TRANSACTIONS AND AUTHORIZATIONS

Purchases: You may use your card to pay for goods or services.

Balance Transfers: In our discretion, we may allow you to transfer balances from other accounts or loans from other credit card companies, other lenders or other balance transfers we may allow, using balance transfer checks we provide or our website, or by calling us to make the transfer on your behalf. Those uses are "balance transfers". You are not authorized to transfer balances to this Account from other accounts or loans with us or any of our related companies. If you request a balance transfer but do not have enough available credit, we may transfer only a part of the requested amount.

Cash Advances: You may use your card to get cash from automatic teller machines or from banks that accept the card, or by using cash advance checks we may provide. Also, we will treat as cash advances any balance transfer checks made payable to cash, you or other payees we disclose to you. All the following uses of your Account will be treated as "cash advances": purchasing travelers checks, foreign currency, money orders, wire transfers or similar cash-like transactions; purchasing lottery tickets, casino gaming chips, race track wagers or similar betting transactions; and making a payment using a third party service.

Types of Checks/Refusal to Pay Checks: Each balance transfer check or cash advance check you write is your request for funds. We may also call them a check or an access check. The check must be signed by the person whose name is printed on it. When we receive an access check for payment, we may review your Account to decide whether to pay that check. We have the right not to pay a check for any reason, including but not limited to the following examples:

- We or one of our related companies is the payee on the check.
- The check is post-dated. If a post-dated check is paid, resulting in another check being returned or not paid, we are not responsible.
- You have used the check after the date specified on it.
- You are in default or would be if we paid the check.

Overdraft Advances: You may link this Account to cover overdrafts on a checking account with one of our related banks. The terms of this Agreement and your checking account agreement will apply.

Promotions: We may make special offers for you to use your Account. If we do, we will tell you how those offers will work and how long they will last. Any special offer is subject to the terms of this Agreement, unless we explain otherwise in the offer.

Refusal to Authorize Transactions: We may decline any transaction on your Account for any of the following reasons:

- operational matters,
- your Account is in default,
- suspected fraudulent or unlawful activity, or
- any other reason we choose.

We are not responsible for any losses if a transaction on your Account is declined for any reason, either by us or a third party.

Page 1 of 5

How did we conduct our testing?

We sent a survey to more than 400 people (using various list serves) and received 242 responses for a rate of 60%. The following are the demographics and the responses to several questions. We asked readers to answer a series of questions based on their reading of the original agreement. These questions were focused both on content (What is the answer?) and navigation (Where did you find the answer?).

How did we redesign the document?

Based on the survey results, we redesigned the agreement. The final document was 12 pages, but would have been printed 4 pages to one 8.5 x 11 paper.

	#	#9 What Rate?	#10 What Fees?	#11 Applies To?	#12 Which Balance?	#13 Where in Document?	#14 What happens?	% answered correctly
All respondents	242	27.2	22.0	15.8	38.3	32.9	26.1	27
ESL respondents	18	15.4	23.1	23.1	15.4	23.1	15.4	19
Industry respondents	137	30.6	21.3	14.7	44.9	37.1	26.5	29
Non-industry respondents	105	20.5	22.9	17.3	30.8	28.2	25.6	24
Doctorate	16	58.3	41.7	33.3	60.0	40.0	20.0	21
Bachelors	114	28.4	25.3	15.6	29.7	33.3	28.4	28
HS Diploma	23	13.3	13.3	0.0	40.0	20.0	21.4	18

What would we do differently?

I don't think we would have done anything differently in terms of our collaboration nor the make-up of our team. I do think, however, that there was more work to be done. Had we time, we would have

1. Tested the redesign
2. Spent more time converting the text to plain language
3. Found out from an attorney what information is absolutely required for a credit card agreement in the U.S.

CARDMEMBER AGREEMENT

Content

1) Here are Interest Rates and Fees for Using Your Credit Card

1.1) You can use your card in three ways: to make purchases, to transfer balances from other cards, and to take cash

1.2) If you do not make your payments on time, your interest rate will increase

1.3) You also have certain fees to pay based on the way you use your card

Overview) **FEES, PENALTIES, INTEREST RATES & CHARGED,**

Cost of...	First 6 Billing Circles	Afterwards Payments on time within 21 days	Afterwards Late payments (based on 3.25% Prime Rate)
Using for			
... Purchase	0	0	7.24% to 19.24% (min $1.50)
... Balance Transfers		3% (min $5.00)	7.24% to 19.24% (min $1.50)
... Cash Advances		3% (min $10.00)	19.24% to 23.24% (min $1.50)
... Foreign Transactions		3%	
Penalties	0	0	$15.00 if balance is less than $100 $29.00 more than $100 $39.00 more than $249
Over-the-credit-limit Returned Payment or Returned Check		$39.00	
Minimum Payment		2% minus $10.00	
Penalty APR		Maximum 29.99% if you * don't pay your Minimum payment * spend more than your credit line allows * make a payment to us that returns unpaid	

Communicating contracts: when text alone is not enough

Helena Haapio

International Contract Counsel
Lexpert Ltd
Finland

Contracts are not made primarily for legal purposes; they are made to help the parties involved get the results they want. Once the contract is made, people in the field need to know what they are expected to do and refrain from doing. User guidance is needed. This article explores emerging ways in which visualization can be used to communicate contractual information to those who need to know, so as to bring clarity to complexity in today's business deals and relationships.

The challenge: many different functions and players

For a young lawyer just out of law school, the goal of contract drafting may seem to be the 'perfect' contract: one that is legally binding, enforceable, and unambiguous, and one that provides solutions for all possible contingencies. In contrast, the 'real world' requires a different approach.

For business, the contract itself is not the goal; *successful implementation* is.[1] The core of a contract is the *performance* the parties expect, not risk and contingencies. Contracts do not make things happen—*people* do. After negotiating and signing, the parties must follow their contract. The people in charge of contract implementation are seldom lawyers. Yet many lawyers tend to draft contracts as if they were drafting for the courts and other lawyers. In reality, while some contracts may need to work as evidence in court, most contracts don't.

When an organization wants to procure—or sell—complex solutions, it needs to understand and articulate what it needs—or what it can provide—and at what price. This may sound simple, but quite often, it is not. Where many people and functions are involved, the needs, expectations, and requirements are not always clear. Also, there may be different and conflicting needs and interests.

Today's commercial contracts can be viewed through the analogy of a jigsaw puzzle. With a complex project in mind, Figure 1 shows a contract as a puzzle of 1) technical and contextual, 2) performance and delivery, 3) business and financial, and 4) legal and risk management related parts, with 5) project and contract management as the center piece.[2]

Figure 1. the contract puzzle

Such contracts are seldom crafted by one person. Rather, they are put together by a team. Interaction and cross-communication are required, as each stakeholder only has a fragmented understanding of the issues involved.[3] If correctly assembled, the pieces of the puzzle form a complete, synchronized picture. Ideally, the final solution will meet the customer's requirements while the project will satisfy the supplier's needs regarding profitability and risk management.

The legal part is only one piece of the puzzle. 'Perfect' contracts are not just legally solid; they also meet the commercial needs and interests of the parties. On top of that, writing the clearest possible contract is not always enough. Even if the contract is as clear as it can be, major issues can arise from a disconnection between the pre-contract process and the post-contract implementation and management.

One reason for this is that people are reluctant to read contracts. Not many managers have

formal training in *how* to read contracts or *why* they should do so.[4] Yet many people are *expected* to read contracts and work with them—often people who were not involved at the pre-contract stage. They need to know what they are required to do, where, when, and how. On the sales-side, the operational team may not only need to implement the supply contract but also pass on to subcontractors the applicable terms (and risks) of that contract. Things get even more complicated when dealing under global umbrella agreements—framework agreements made between group parent companies designed to be implemented at local level in several countries, all with their own law, language, and other requirements.

Communicating contracts and securing a seamless transition between the different teams can be a major challenge. Complex contracts and conventional text-only guidance are seldom optimal for this purpose. If contracts are expected to translate into successful performance, why do authors limit themselves to text only? Do they really believe that text is always read and understood by those who are expected to comply? Or that *knowledge communicated* automatically translates into *knowledge received*?

Overcoming the challenges: fostering communication and clarity through visualization

Visualizations—graphic representations such as maps, flowcharts, decision trees and timelines—are used in many areas to help organize thoughts, reduce complexity, and enhance understanding. Images can help convey data, information, and knowledge more easily, clearly, and quickly. Visualization can also play a role as a persuasion tool in various settings, from the courtroom[5] to the board room to the classroom. Some pioneers have already asked the question: Why use just text, black on white, to convey contract-related information?

Clarity in communication requires clarity of thought. To achieve desired results, the results should be made clear early on. If they are not clear, how can they be shared, articulated, or achieved? The path to *results* begins from clarity of thought and expression and, then, ideally, flows as follows:[6]

Clarity → Understanding → Fast decisions → Action → Results

Experience shows that graphic organizers, charts, and other visuals can indeed help in creating clearer contracts and in communicating their contents. At the early pre-contract stages, mapping and other visualization methods can help clarify and articulate the various stakeholders' goals; recognize, align, and manage expectations; and translate shared expectations and promises into commercially and legally sound contracts. Once made, contracts need to be accessible and comprehensible for the operational teams on both sides. When a new team takes over, visualizing the core message of the contract can play an important role in successful communication and coordination. Visual guidance can also be used to provide instructions on how to proceed when a risk materializes or a disturbance occurs. This can save valuable time both in contract management and in conflict situations.

In addition to contract documents, forms, terms, and *content*, visualization can be used to illustrate the bid-contract-delivery *process*, along with the *contract lifecycle*. The estimated risk exposure and aggregate liability can be visualized using charts with colors. The various parties in a supply chain or network can be visualized also. This can help, for instance, in passing on requirements and terms, *back-to-back.* One area of interest for lawyers is visualizing the interplay of the contract with the law, making the underlying legal rules and principles visible for non-lawyers.

The suggestion here is not that visuals should *replace* text in contracts—rather, it is suggested that visuals be used to *clarify, simplify, and supplement* text so that contracts become more user-friendly for the people who are expected to implement and manage them. In this way, the parties will reach their business goals and avoid legal trouble.

Visualizing contractual and legal information: early experiments

In Central Europe, visualising legal information has developed into a research field in its own right. One of the pioneers, Colette R. Brunschwig, wrote her doctoral thesis *Visualisierung von Rechtsnormen—Legal Design,*

as early as in 2001, focusing on the formation of contracts under the Swiss Code of Obligations. Later, the use of visualizations has been explored in other areas, including the legal rules applicable in a battle-of-the-forms situation.[7] Other examples include the Visual Contract Index and other tools developed by Susanne Hoogwater (see Susanne's article on page 11).

An excellent example is the work of the Street Vendor Project carried out by Candy Chang, a designer, urban planner, and artist, in collaboration with the Center for Urban Pedagogy in New York. Having noted that the "rulebook [of legal code] is intimidating and hard to understand by anyone, let alone someone whose first language isn't English", they prepared a visual Street Vendor Guide called "Vendor Power!" that makes city regulations and rights accessible and understandable. Figures 2A ("Before") and 2B ("After")[8] illustrate the difference between text and visual guidance.

"Before..."

New York City Administrative Code -

Title 20
Consumer Affairs

§ 20–465 **Restrictions on the placement of vehicles, pushcarts and stands; vending in certain areas prohibited.** a. No general vendor shall engage in any vending business on any sidewalk unless such sidewalk has at least a twelve-foot wide clear pedestrian path to be measured from the boundary of any private property to any obstructions in or on the sidewalk, or if there are no obstructions, to the curb. In no event shall any pushcart or stand be placed on any part of a sidewalk other than that which abuts the curb.

b. No general vendor shall occupy more than eight linear feet of public space parallel to the curb in the operation of a vending business and, in addition, no general vendor operating any vending business on any sidewalk shall occupy more than three linear feet to be measured from the curb toward the property line.

c. No vending vehicle, pushcart, stand, goods or any other item related to the operation of a vending business shall touch, lean against or be affixed permanently or temporarily to any building or structure including, but not limited to lamp posts, parking meters, mail boxes, traffic signal stanchions, fire hydrants, tree boxes, benches, bus shelters, refuse baskets or traffic barriers.

d. No vending pushcart, stand or goods shall be located against display windows of fixed location businesses, nor shall they be within twenty feet from an entranceway to any building, store, theatre, movie house, sports arena or other place of public assembly.

e. No general vendor shall vend within any bus stop or taxi stand, or within ten feet of any driveway, any subway entrance or exit, or any corner. For purposes of this subdivision, ten feet from any corner shall be measured from a point where the property line on the nearest intersecting block face, when extended, meets the curb.

f. Each general vendor who vends from a pushcart or stand in the roadway shall obey all traffic and parking laws, rules and regulations as now exist or as may be promulgated, but in no case shall a general vendor vend so as to restrict the continued maintenance of a clear passageway for vehicles.

g. (1) No general vendor shall vend on any street which is in a C4, C5, or C6 zoning district, or in the area bounded on the east by Second Avenue, on the south by Thirtieth Street, on the west by Ninth Avenue and Columbus Avenue and on the north by Sixty-fifth Street, except that as chairperson of the street vendor review panel established pursuant to section 20–465.1 of this subchapter, the commissioner of the department of small business services or his or her designee may receive applications from any person, group, organization or other entity to permit general vendors on any street within said area or said zones, or to prohibit general vendors on any other street. Such applications shall be considered by the street vendor review panel in accordance with the procedures enumerated in section 20–465.1 of this subchapter.

(2) No general vendor shall vend on any street which is in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street.

(3) Upon issuance of a new general vendor license or a renewal of an existing license, the commissioner shall provide a copy of subchapter twenty-seven of chapter two of this title and of the rules of the city of New York implementing such subchapter to such new or renewal

Figure 2A: Typical page from New York City Administrative Code.

"After..."

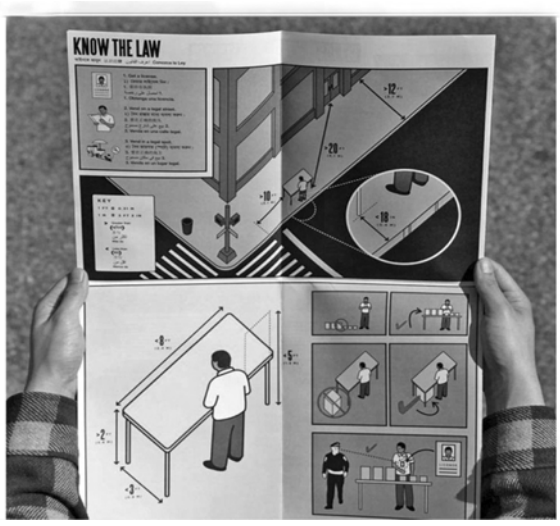


Figure 2B: Street Vendor Guide. Accessible City Regulations. Courtesy of Candy Chang.

A noteworthy example of using visuals to guide the use and interpretation of complex contracts comes from the UK in the NEC family of contracts. This family consists of several contracts designed for procuring a diverse range of works, services, and supply and their associated guidance notes and flow charts. The latter two are not part of the contract documents but assist in their understanding.

Not all tools need to be high-tech or sophisticated. Let's use task allocation as an example: it is an important area that needs to be captured and articulated in a contract. If it is unclear, major problems can follow. The 'hand tool' shown in Figure 2 lists the trivial-sounding but crucial questions that must be answered when creating, reviewing or passing on contractual responsibilities and remedies: Who shall do what? Where will they do it? When will it be done or completed, and how? Finally, what happens if changes occur or something prevents it from being done or completed in the way expected? Often, it is also worthwhile to ask who bears the risk and cost of doing things. Much more sophisticated tools and checklists exist, yet few are as easy to remember and carry around.

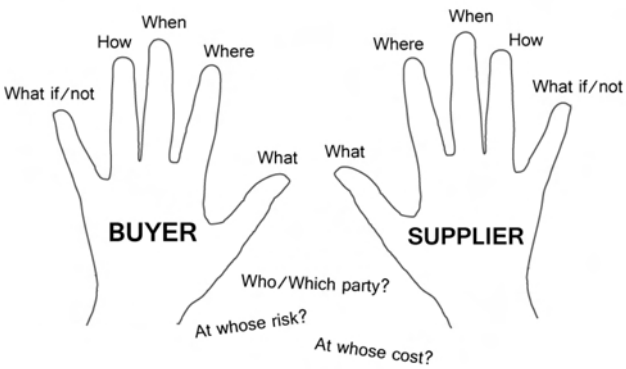


Figure 2. Hand Tool for Better Contracts

Today, most companies' contracts are text-only, black and white, with no pictures, graphs or charts. This is also true about most corporate manuals and guidance related to contracts. Visualization makes it possible to add clarity to the contracting process and documents. Why not describe the parties' areas of responsibility and interaction in infographs or images using existing design tools and methods? Why not provide visual guidance about the contract's work scope specifications, service levels, duration and termination provisions, and so on, for easier

understanding and communication across borders and professions? Tremendous opportunities for improvement exist!

After seeing how appealing visuals are for the intended audience, it is surprising that we do not see more of them. Skepticism certainly exists, and visualization has its limits. It cannot clarify everything, and it is not without cost. Like text, visualizations can confuse the reader. For example, if the text of the contract contradicts with the visual representation of it, the visualization can create additional trouble.[9] Despite the limitations, the opportunities offered by visualization are too many and too important to be overlooked.

helena.haapio@lexpert.com

Endnotes

1 Ertel, Danny, Getting Past Yes: Negotiating as if Implementation Mattered. *Harvard Business Review*, November, pp 60-68 (2004).

2 Haapio, Helena, Innovative Contracting, in Haapio, Helena (Ed.), *A Proactive Approach to Contracting and Law*. International Association for Contract and Commercial Management & Turku University of Applied Sciences, Turku, pp 105-152 (2008), 123-125, and Siedel, George & Haapio, Helena, *Proactive Law for Managers: A Hidden Source of Competitive Advantage*. Gower Publishing, Farnham (2011), p 121-123.

3 Eppler, Martin J., *Knowledge Communication Problems between Experts and Managers. An Analysis of Knowledge Transfer in Decision Processes*. University of Lugano, Faculty of Communication Sciences, Institute for Corporate Communication. Available at http://doc.rero.ch/lm.php?url=1000,42,6,20051020101029-UL/1_wpca0401.pdf, 31.1.2011 (2004), with references.

4 Berger-Walliser, Gerlinde & Haapio, Helena, *Promoting Business Success through Proactive Contracting and Visualization.* Academy of Legal Studies in Business Conference 2010 Proceedings. Available at http://alsb.roundtablelive.org/Resources/Documents/NP%202010%20Berger-Walliser_Haapio.pdf, 31.1.2011 (2010), with references.

5 Feigenson, Neal & Spiesel, Christina, *Law on Display. The Digital Transformation of Legal Persuasion and Judgment*. New York University Press, New York, NY (2009).

6 Eppler, Martin "Why care about Clarity? Because it leads to results" in *How to be CLEAR in Complex Corporate Communication.* Open lecture at Aalto University Business School on 24 January 2011, citing Xplane, Inc.

7 Wolfram Demonstrations Project—Visualizing Legal Rules: Battle of the Forms, http://demonstrations.wolfram.com/VisualizingLegalRulesBattleOfTheForms/. This visual demonstration is contributed by Seth J. Chandler.

8 Candy Chang, Street Vendor Guide. Accessible city regulations, http://candychang.com/street-vendor-guide.

9 Berger-Walliser, Gerlinde, Bird, Robert C. & Haapio Helena, Promoting Business Success through Contract Visualization. *The Journal for Business, Law and Ethics* , Vol. 17, Winter, pp. 55–75 (2011), with references.

Master of Laws and Master of Quality, **Helena Haapio** *helps her clients become more successful by applying a* proactive approach*; one that helps them achieve better business results and avoid legal trouble. Before establishing Lexpert, Helena served as corporate In-house Counsel. Nominated Finland's "Export Educator of the Year", she regularly conducts training workshops in various parts of the world. She is an author and editor and acts as arbitrator in contract disputes. Through visualization, her goal is to fundamentally change the way contracts are perceived and taught, allowing businesses to co-create new value and innovate in areas often neglected.*

Contributing to the journal

Clarity often focuses on a specific theme (like conferences or drafting or standards), but we also publish articles on a variety of other plain language topics. Please submit your articles to the editor in chief for consideration.

Would you like to be a guest editor? Our guest editors gather articles, work with the authors, make layout decisions, and edit and proofread a single issue. If you would like to guest edit an issue of the *Clarity* journal, send an email to the editor in chief.

Finally, if you have ideas about improving the journal, the editor would like to hear from you, as well. Our editor in chief is Professor Julie Clement, with the Thomas M. Cooley Law School. Email her at clementj@cooley.edu.

Prescriptive laws make bad election design

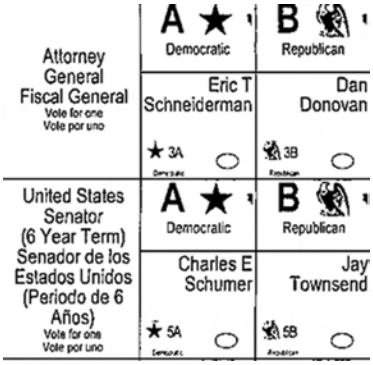
Whitney Quesenbery

Principal Consultant
WQusability.com and Usability in Civic Life
USA

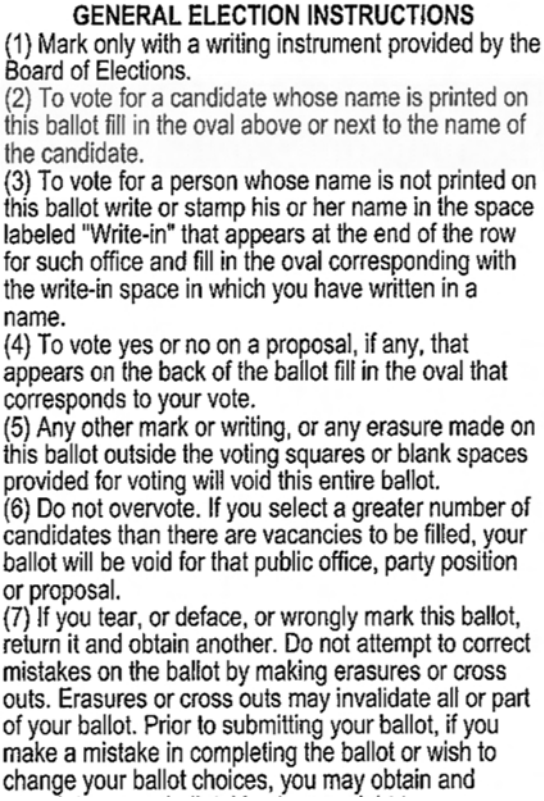
Elections resist change. Even when officials, advocates, and politicians all agree, it is still difficult to make changes to ballot design: many elements of ballot design and instructions are often written into law.

In the United States, most of these laws were written for older voting systems or ballot scanners and even older printing technology. These laws lock election officials into bad design requirements, such as the use of all-capitals or specific font sizes, that can make ballots harder to read and use.

Many states include the instructions for voting in the statute, where they cannot be changed easily. In one absurd case, the New York City ballots in the 2010 elections were printed with instructions that were just plain wrong. The illustration below shows three of the contests on the ballot, for Comptroller, Attorney General, and United States Senator. Voters indicate their choice by filling in the oval *under* the candidate's name. But the legally-mandated instructions say, "To vote for a candidate whose name is printed on this ballot fill in the oval *above or next to* the name of the candidate." The only good news is that these instructions are in tiny type, on the back of the ballot. It's likely (and lucky) that no one actually read them.



(Figure 1: NYC Ballot Closeup)



GENERAL ELECTION INSTRUCTIONS

(1) Mark only with a writing instrument provided by the Board of Elections.
(2) To vote for a candidate whose name is printed on this ballot fill in the oval above or next to the name of the candidate.
(3) To vote for a person whose name is not printed on this ballot write or stamp his or her name in the space labeled "Write-in" that appears at the end of the row for such office and fill in the oval corresponding with the write-in space in which you have written in a name.
(4) To vote yes or no on a proposal, if any, that appears on the back of the ballot fill in the oval that corresponds to your vote.
(5) Any other mark or writing, or any erasure made on this ballot outside the voting squares or blank spaces provided for voting will void this entire ballot.
(6) Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office, party position or proposal.
(7) If you tear, or deface, or wrongly mark this ballot, return it and obtain another. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and

(Figure 2: NYC Ballot Instructions)

Even if a state does decide to improve the situation, changes are handled like a typical process of writing a new law, through reviews of "markups." With its focus on the words of the law, this process makes it almost impossible to check the legal requirements against a well-designed ballot or clearly written instructions.

One election in 2008, for Senator from Minnesota between Al Franken and Norm Coleman was decided only after a lengthy recount and legal battle that lasted over 8 months. One of the biggest controversies centered on absentee ballots and deciding which of them were even eligible to be counted. A shockingly high number were disqualified because the "envelope" (with the voter's identification and signature and witness signature) was not completed correctly. In other words, citizens who had gone out of their way to receive and return a ballot did not have their votes counted.

After the election was over, Minnesota decided to revise the instructions for absentee ballots to try to reduce the number of ballots which are disqualified. The Brennan Center asked the Usability in Civic Life project to review the draft changes to the election law. What we received was a typical markup.

Subp. 2. **Instructions for registered voters.**

INSTRUCTIONS FOR ABSENTEE VOTERS

Step 1. You must have a witness to vote by absentee ballot. Your witness may be anyone who is registered to vote in Minnesota including your spouse or another relative, ~~or they may be~~ a notary public or a person with the authority to administer oaths.

Step 2. Show your witness the unmarked ballot~~(s)~~.

Step 3. Mark your votes in private according to the instructions on the ballot~~(s)~~. ~~Mark your ballot(s) in private. If you have a disability or are otherwise unable to mark the ballot(s), you may ask your witness to assist you.~~ Make sure you do not vote for more candidates than allowed for any office, since this will prevent your votes for that office from being counted. If you make an error ~~when marking your ballot, you may~~ request a new ballot ~~from the election official from whom you received your ballot~~. If you cannot request a new ballot, either completely erase any errors or draw a line through the name of the candidate(s) for whom you mistakenly voted and remark your ballot for your preferred candidate(s). Do not ~~put any identifying marks~~ write your name or an identification number anywhere on the ballot.

Figure 2 – MN Markup

We said that just fixing the language was not enough—that the design and presentation of the instructions is critical to the usability of the materials. Beth Fraser, the project leader from the Minnesota Office of the Secretary of State, agreed to work with us. That started a 3-month volunteer project to redesign (and test) the absentee ballot instructions and return envelope forms.

One problem is that the "simple" act of voting is really very complicated. In Minnesota, there are three types of absentee voting (depending on whether the voter is in the US or temporarily overseas) and at least two different styles of envelopes.

The work itself proceeded like many plain language projects, in rounds of editing and review as we tried out different ways to organize the steps of the process into clear and usable instructions. Starting from the old version and the draft rule, we re-organized the steps into logical voter-focused groups, untangled sentences, cut extra words, and created illustrations for each step.

Here's how the instructions evolved. These clips are from the most complicated type of absentee ballot, in which voters update their voter registration *and* vote. Step 1 is to complete the registration form before voting.

Step 2. Show your witness the unmarked ballot(s).

Step 3. Mark your votes according to the instructions on the ballot(s). Mark your ballot(s) in private. If you have a disability or are otherwise unable to mark the ballot(s), you may ask your witness to assist you. Make sure you do not vote for more candidates than allowed for any office, since this will prevent your votes for that office from being counted. If you make an error when marking your ballot, you may request a new ballot from the election official from whom you received your ballot. If you cannot request a new ballot, completely erase any errors and remark your ballot. Do not put any identifying marks on the ballot.

MN-Draft1.tif

In Minnesota, someone must witness the voting. They check the blank ballot and then observe (from a distance) as the voter marks it and places it in the envelope.

The original instructions included a long paragraph that included information about how to vote.

❷ Mark your ballot

Show your witness the unmarked ballot

Mark your votes in private.

- Follow the instructions on the ballot.
- Do not vote for more candidates than allowed for any office. If you do, your votes for that office will not be counted.
- Do not write your name or an identification number anywhere on the ballot.
- If you make a mistake, ask for a new ballot. If you cannot ask for a new ballot:
  - Completely erase the mistake, or
  - Draw a line through the name of the candidate where you made the mistake and then mark your ballot for the candidate you prefer.

MN-Draft2.tif

Our first step was to untangle the text. We kept the basic organization of the instructions, but broke it into bullet points and simplified the language.

❷ Vote!

- **Show your witness the unmarked ballot**
- **Mark your votes in private,** following the instructions on the ballot
- **Don't accidentally invalidate your ballot**

  Do not vote for more candidates than allowed for any office.

  Do not write your name or an ID number anywhere on the ballot.

  Correct a mistake the right way.
  - If you make a mistake, ask for a new ballot.
  - If you cannot ask for a new ballot, completely erase the mistake, *or*

    Draw a line through the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer.

MN—Draft3.tif

As we continued to revise, we added emphasis, made the instructions more specific and removed text that was duplicated on the ballot itself.

A team of volunteers and official staff did a usability test of this version, and found that it was still too complicated.

❷ **Vote!**

- **Show your witness the unmarked ballot**
- **Mark your votes in private,** following the instructions on the ballot
- Don't accidentally invalidate your ballot

  Do not write your name or an ID number anywhere on the ballot.

  See the other side of this sheet for how to correct a mistake

MN-Draft4.tif

For the second usability test, the text was simplified further. Instructions for correcting a mistake were moved to the back of the paper.

This worked better, but there was still some legal language ("invalidate your ballot").

❷ **Vote!**

- **Show your witness your ballot, then mark your votes in private.**
- Follow the instructions on the ballot.
- Do not write your name or an ID number anywhere on the ballot.
- Do not vote for more candidates than allowed. *If you do, your votes for that office will not count.*

See the other side if you make a mistake on your ballot.

MN-Draft5.tif

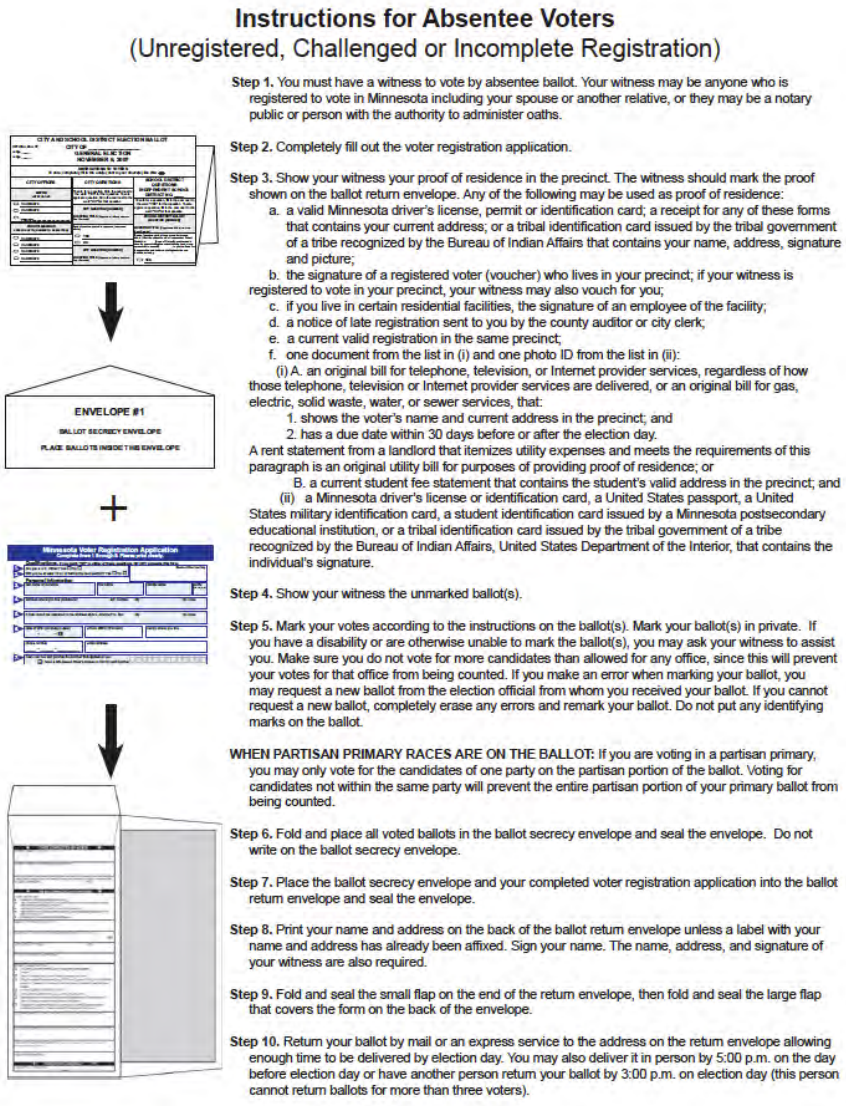
The final version simplified the bullets into a single list and re-organized the first sentence for clarity about voting privacy.

After the legal and public review, some information we had left off (like the warning not to vote for too many candidates) was restored.

The person who deserves the most credit for the success of this project is Beth Fraser. She took on the challenge of working with a group of volunteers located both in Minneapolis (Minnesota) and around the country. She also managed the process of reviewing our drafts for legal accuracy and to ensure that they supported the election process. But most of all, she and her colleagues learned about usability, and ran the second usability test on their own.

Credits: Many people worked on this project.

- Office of the Minnesota Secretary of State: Beth Fraser, Andy Lokken, Michele McNulty, Gary Poser;



Instructions for Absentee Voters
(Unregistered, Challenged or Incomplete Registration)

Step 1. You must have a witness to vote by absentee ballot. Your witness may be anyone who is registered to vote in Minnesota including your spouse or another relative, or they may be a notary public or person with the authority to administer oaths.

Step 2. Completely fill out the voter registration application.

Step 3. Show your witness your proof of residence in the precinct. The witness should mark the proof shown on the ballot return envelope. Any of the following may be used as proof of residence:

a. a valid Minnesota driver's license, permit or identification card; a receipt for any of these forms that contains your current address; or a tribal identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs that contains your name, address, signature and picture;

b. the signature of a registered voter (voucher) who lives in your precinct; if your witness is registered to vote in your precinct, your witness may also vouch for you;

c. if you live in certain residential facilities, the signature of an employee of the facility;

d. a notice of late registration sent to you by the county auditor or city clerk;

e. a current valid registration in the same precinct;

f. one document from the list in (i) and one photo ID from the list in (ii):

(i) A. an original bill for telephone, television, or Internet provider services, regardless of how those telephone, television or Internet provider services are delivered, or an original bill for gas, electric, solid waste, water, or sewer services, that:

1. shows the voter's name and current address in the precinct; and
2. has a due date within 30 days before or after the election day.

A rent statement from a landlord that itemizes utility expenses and meets the requirements of this paragraph is an original utility bill for purposes of providing proof of residence; or

B. a current student fee statement that contains the student's valid address in the precinct; and

(ii) a Minnesota driver's license or identification card, a United States passport, a United States military identification card, a student identification card issued by a Minnesota postsecondary educational institution, or a tribal identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the individual's signature.

Step 4. Show your witness the unmarked ballot(s).

Step 5. Mark your votes according to the instructions on the ballot(s). Mark your ballot(s) in private. If you have a disability or are otherwise unable to mark the ballot(s), you may ask your witness to assist you. Make sure you do not vote for more candidates than allowed for any office, since this will prevent your votes for that office from being counted. If you make an error when marking your ballot, you may request a new ballot from the election official from whom you received your ballot. If you cannot request a new ballot, completely erase any errors and remark your ballot. Do not put any identifying marks on the ballot.

WHEN PARTISAN PRIMARY RACES ARE ON THE BALLOT: If you are voting in a partisan primary, you may only vote for the candidates of one party on the partisan portion of the ballot. Voting for candidates not within the same party will prevent the entire partisan portion of your primary ballot from being counted.

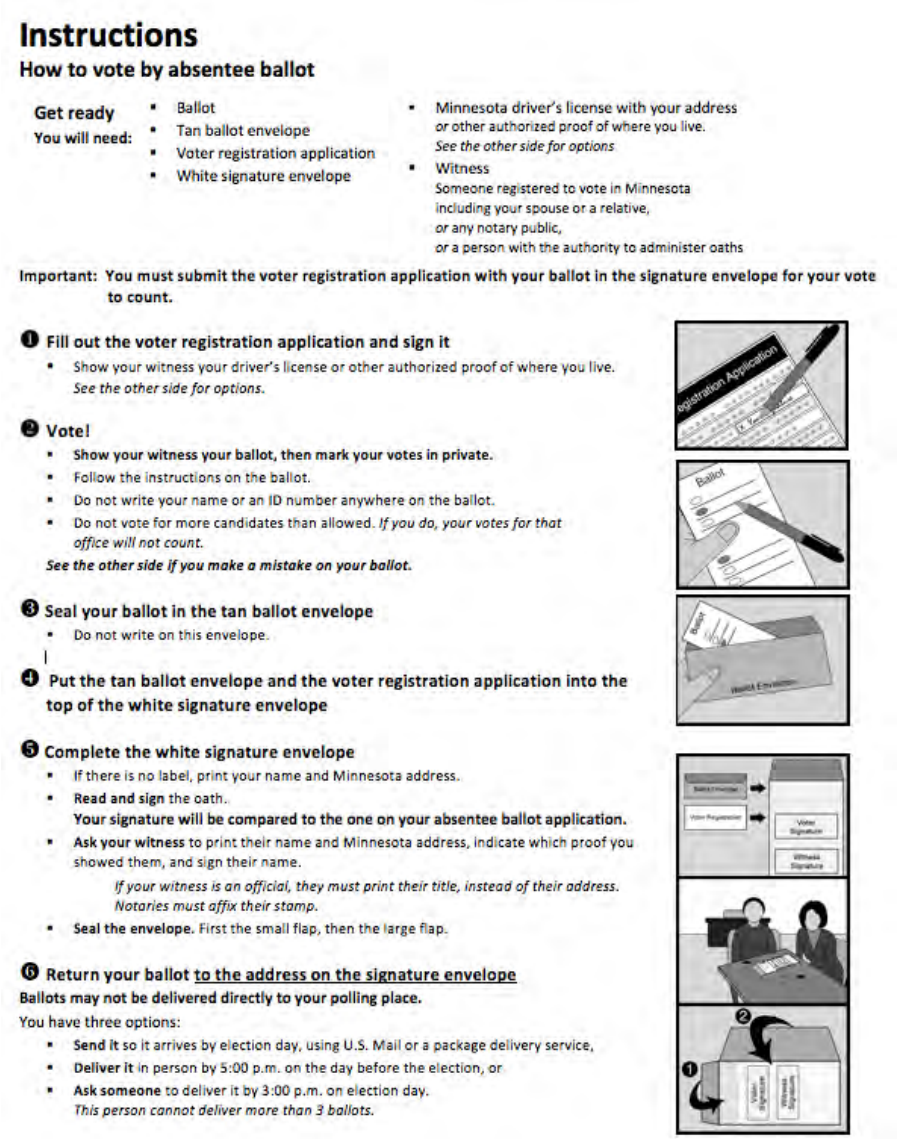
Step 6. Fold and place all voted ballots in the ballot secrecy envelope and seal the envelope. Do not write on the ballot secrecy envelope.

Step 7. Place the ballot secrecy envelope and your completed voter registration application into the ballot return envelope and seal the envelope.

Step 8. Print your name and address on the back of the ballot return envelope unless a label with your name and address has already been affixed. Sign your name. The name, address, and signature of your witness are also required.

Step 9. Fold and seal the small flap on the end of the return envelope, then fold and seal the large flap that covers the form on the back of the envelope.

Step 10. Return your ballot by mail or an express service to the address on the return envelope allowing enough time to be delivered by election day. You may also deliver it in person by 5:00 p.m. on the day before election day or have another person return your ballot by 3:00 p.m. on election day (this person cannot return ballots for more than three voters).



Instructions

How to vote by absentee ballot

Get ready
You will need:

- Ballot
- Tan ballot envelope
- Voter registration application
- White signature envelope
- Minnesota driver's license with your address
  or other authorized proof of where you live.
  See the other side for options
- Witness
  Someone registered to vote in Minnesota
  including your spouse or a relative,
  or any notary public,
  or a person with the authority to administer oaths

Important: You must submit the voter registration application with your ballot in the signature envelope for your vote to count.

❶ Fill out the voter registration application and sign it

- Show your witness your driver's license or other authorized proof of where you live.
  See the other side for options.

❷ Vote!

- **Show your witness your ballot, then mark your votes in private.**
- Follow the instructions on the ballot.
- Do not write your name or an ID number anywhere on the ballot.
- Do not vote for more candidates than allowed. *If you do, your votes for that office will not count.*

See the other side if you make a mistake on your ballot.

❸ Seal your ballot in the tan ballot envelope

- Do not write on this envelope.

❹ Put the tan ballot envelope and the voter registration application into the top of the white signature envelope

❺ Complete the white signature envelope

- If there is no label, print your name and Minnesota address.
- **Read and sign** the oath.
  Your signature will be compared to the one on your absentee ballot application.
- **Ask your witness** to print their name and Minnesota address, indicate which proof you showed them, and sign their name.
  If your witness is an official, they must print their title, instead of their address. Notaries must affix their stamp.
- **Seal the envelope.** First the small flap, then the large flap.

❻ Return your ballot to the address on the signature envelope

Ballots may not be delivered directly to your polling place.

You have three options:

- **Send it** so it arrives by election day, using U.S. Mail or a package delivery service,
- **Deliver it** in person by 5:00 p.m. on the day before the election, or
- **Ask someone** to deliver it by 3:00 p.m. on election day.
  This person cannot deliver more than 3 ballots.

- UPA Usability in Civic Life: Whitney Quesenbery, Dana Chisnell, Josie Scott, Caroline Jarrett, Sarah Swierenga
- Center for Plain Language: Dana Botka, Ginny Redish
- Usability testing: David Rosen, Josh Carroll, Suzanne Currie, John Dusek, Gretchen Enger
- Illustrations: Christina Syniewski

More reading:

Ballot Design Affects Your Vote—Center for Plain Language, November 10, 2010

http://centerforplainlanguage.org/blog/government/ballot-instructions/

Better Ballots by Lawrence Norden, David Kimball, Whitney Quesenbery and Margaret Chen. The Brennan Center, July 2008
http://www.brennancenter.org/content/resource/better_ballots/

Ballot Usability and Accessibilty blog—http://ballotusability.blogspot.com/

whitneyq@wqusability.com

Whitney Quesenbery *is a user experience researcher and usability expert with a passion for clear communication. She works with companies from The Open University to the National Cancer Institute. She has served on two US advisory committees: the U.S. Access Board updating accessibility regulations and the Elections Assistance Commission creating requirements for voting systems.*

She and Kevin Brooks recently published Storytelling for User Experience: Crafting Stories for Better Design. Whitney is a Fellow of the Society for Technical Communication and past president of Usability Professionals' Association.

SIMPLEGIS and clear legal language in Portugal

João Tiago Silveira

Secretary of State
Presidency of the Council of Ministers
Portugal

Four years ago plain language was an unknown concept in Portugal. There was, however, an increasing demand for simplification in the relationship between the State and citizens. In response to this, the government set up a program called SIMPLEX which tackled everything from bureaucracy to the law. The timing of introducing plain language to Portugal couldn't have been better. And after plenty of campaigning and in-depth discussions, the Government, through Presidency of the Council of Ministers, took the first, brave and exciting steps of commissioning plain language summaries of decree-laws. It has been a rewarding challenge but there is still a long way to go. Here, Secretary of State João Tiago Silveira gives his perspective on the role of plain language in these government initiatives. —Ed

1. The SIMPLEGIS programme

a) SIMPLEGIS' goals and methodology

The SIMPLEGIS programme was launched by the Portuguese Government in May 2010, within the wider framework of SIMPLEX, a governmental initiative aiming to make the everyday life of citizens and businesses easier by cutting red tape, reducing compliance costs and using information and communication technology (ICT) to deliver better public services.

Focusing on the fields of law making and better regulation, SIMPLEGIS sets out three main goals: (*i)* to simplify legislation by having fewer laws, (*ii)* to make laws more accessible for citizens and businesses, and (*iii)* to improve law enforcement.

Simplifying legislation by having fewer laws is an ambitious target for SIMPLEGIS. For example, by the end of 2010 it set out to (*i)*repeal at least 300 obsolete decree-laws (*decretos-leis*) and implementing-decrees (*decretos regulamentares*), (*ii)* have the number of acts repealed exceed the volume of new enactments, and (*iii)* avoid errors that might require correction by means of amending statements (*declarações de rectificação*), ensuring a success rate (i.e., flawless legislative acts) of at least 95%, so that people and businesses trust the legislation that is published in the Official Gazette (*Diário da República*). Furthermore, a goal for "ZERO delay" ontransposing EU directives has been setfor mid 2011.

To make laws more accessible for citizens and businesses, SIMPLEGIS has already adopted the initiative to publish decree-laws and implementing-decrees in the Portuguese Official Gazette (*Diário da República*) alongside summaries describing their contents in clear and plain language, both in Portuguese and English. These summaries have been available since 13 October at www.dre.pt. In addition, the following measures will be adopted during the second semester of 2011: (*i)* to make available on-line consolidated versions of relevant pieces of legislation that avoid dispersion and reflect the text that is in force at a particular moment; (*ii)* to improve access to laws, by publishing very specific acts on other websites instead of the *Official Gazette*; and (*iii)* to grant access to legislation in a way that is quicker, easier, and cheaper, by creating a new web portal devoted to legal and legislative information.

Lastly, the main initiatives SIMPLEGIS will carry out to improve law enforcement will be(*i)* to elaborate,by the end of 2011, ten "instruction manuals" regarding particular decree-laws and implementing-decrees, in order to convey the necessary information on their correct application to those who deal with such regulation; and (*ii)* to have better evaluation of laws, with new *ex ante* and *ex post* evaluation models.

For its conception and implementation, SIMPLEGIS involves a wide range of entities

from trade unions to professional associations and chambers of commerce. It is therefore not solely a government project.

b) SIMPLEGIS results

SIMPLEGIS has been a great success. All the initiatives created for the program are currently underway, and positive results can already be highlighted.

Five results achieved during 2010 are particularly noteworthy.

1 - Reducing the number of laws.

Not only have more than 300 obsolete legislative acts been repealed during 2010 but also the number of new decree-laws enacted by the Government during the same year was the lowest in the last 10 years. To avoid unnecessary law making, decree-laws were approved solely when necessary and after thoughtful consideration of the regulatory needs.

2 - Flawless legislative acts.

Legislation with no need for correction by means of an amending statement was above 95%—a new record in the last decade.

3 - Transposition of EU Directives.

The recent "Internal Market Scoreboard no. 22", issued by the European Commission with reference to November 2010, highlighted the positive results achieved by Portugal in the transposition of internal market legislation and included a description of the measures adopted under the SIMPLEGIS programme as one of the Member States' "success stories".

4 - Improved access to laws published in the Portuguese Official Gazette.

The Council of Ministers approved legislation determining that very specific and niche-orientated actswill no longer be published in the Portuguese Official Gazette but on other websites instead. As such, since January 2011, the following acts ceased to be published in the Official Gazette: (i) ministerial orders concerning hunting are now published on the website of the National Forests Authority (Ministry of Agriculture), (ii) ministerial orders concerning forest intervention reserves are now also made available on the National Forests Authority (Ministry of Agriculture) website, and (iii) ministerial orders concerning postage stamps are now published on the "CTT—Correios de Portugal" website. From July 2011 onwards, a digital version of the maps included in the land management plans will be made available on the Portuguese Directorate General of Planning and Urban Development website.

5 - Plain language summaries.

"Resumos" of governmental legislation are now published online in Portuguese and English.

2. SIMPLEGIS and clear language

This article is about the crucial role plain language played in accomplishing one of SIMPLEGIS' goals: to make laws more accessible for citizens and businesses.

To start, we will look at the different roles for plain language in two different perspectives of legal communication: (*i)* in the perspective of legal drafting itself and (*ii)* in the perspective of explaining legal rules to citizens and businesses.

Starting with the perspective of legal drafting , plain language can only act within a limited and restricted space.

Indeed, law drafting is a complex task that is duty-bound to produce an accurate result.

Legal terms have, as a general rule, very precise meanings, which usually arise from the studies of scholars, academic debates or the labor of jurisprudence. As such, legal terms exist within specific contexts and have specific values attributed by the legal system which cannot be ignored while drafting a piece of legislation.

However, these very specific meanings of legal terms often do not correspond to concepts that citizens and businesses can easily apprehend, as they involve a level of technical knowledge and legal expertise that society as a whole does not have.

A good example is the term "*farmers*". It seems simple, but it cannot be used as such in a legal context. Instead, it is legally defined with reference to NACE's classification (Statistical Classification of Economic Activities in the European Community) and the activity's description. (This appears in the English version of the summary of Decree-Law no. 107/2010, of the 13th October, available at www.dre.pt.)

This situation inevitably creates tension between the accuracy demanded by legal

drafting and the clear language demanded by citizens and businesses in their everyday lives.

And to ease this tension, plain and clear language can only go as far as the limits imposed by legal accuracy, as once this is lost, the correction of law could be at risk.

In other words (clearer and simpler words), the use of plain language in legal drafting is bound not to harm legal accuracy and, in many cases, this means it cannot go as far as it could towards clarity and simplicity.

On the other hand, plain language can play a much more active role in providing explanations for citizens and businesses in helping them understand the legal rules applicable in their daily lives.

This is why since 13th October 2010, all decree-laws and implementing decrees approved by the Portuguese Government have published on www.dre.ptalong with summaries describing their contents in a clear and plain language, both in Portuguese and English. These summaries, aspublicly and expressly stated, are not legally binding and do not supersede what is published in the Portuguese Official Gazette.

This innovative action is the first of its kind to be adopted among EU Member States and has resulted in important benefits for citizens and businesses.

First, the summaries are made public in the national Official Gazette, alongside the legislation they concern. This means that the explanation about the new rules is publicized on the same website and at the same time as the legislation itself, providing citizens and businesses with an immediate tool to understand its significance.

Second, the summaries are provided both in Portuguese and English, which provides foreign individuals and companies a greater knowledge of Portuguese laws and the rules that apply in Portugal. Clear language is therefore used as a tool to stimulate foreign investment in our country and in favor of economic development.

Third, this new service, alongside other SIMPLEGIS initiatives, allows citizens and businesses easier access to the rules applicable to their lives and activities, which represents an estimated saving of 200 M/year, considering direct costs.

Fourth, access to plain language summaries is totally free of charge, allowing everyone to benefit from this measure.

Up until now, more than one hundred summaries have been made public in the website of the Portuguese Official Gazette.

And what must be pointed out as a final thought is that this is an expandable initiative that can be applied in other domains of legal communication.

Indeed, only governmental decree-laws and implementing decrees are currently the subject of plain language summaries, but this is an action that can be extended to other types of legal rules, including administrative orders and second-level legislation. There is an enormous space to be explored, which shows us how far we can go in using plain language to explain public policies.

João Tiago Silveira *is the former Portuguese State Secretary for the Presidential Council of Ministers. Previously, from 2005 to 2009, he held the office of State Secretary for Justice. In both positions, he led ground breaking simplification initiatives, which had a tremendous impact on the way citizens and businesses interact with the State. The initiatives include: Empresa Na Hora—a one stop shop for setting up companies; Registo comercial online e biligue—a simplified registration service for companies; Registo de marcas—Brand registration service; and Casa Pronta—one-stop-shop for all the processes required for buying a house.*

João Tiago Silveira teaches law at the University of Lisbon.

Information about medicines: legal and visual arguments

Karel van der Waarde

Consultant and Researcher
Avans University
Holland

Karel van der Waarde is one of the world's top experts in medicine information design. So it we were very pleased to have him present at the conference. In this article Karel outlines the factors that shape and limit the information that gets printed on your medicine leaflets. I have to admit, during the conference I didn't stop to read about the side effects of the tranquilisers I was taking. However, according to Karel, the user's environment needs to be taken into consideration when designing the information. So hopefully future Clarity conference organisers will be better informed. —Ed

[This text is based on a presentation given at the Clarity2010 conference in Lisbon, Portugal on October 14th, 2010.]

Summary

Information about medicines in Europe appears on the cardboard boxes in which medicines are sold, the inner packaging (blisterpack, bottle, tube) and the package leaflet. The development of this information is based on premises that are thought to be correct, but that never have been questioned or verified. This article mentions six of these 'assumptions'. Although each of these can be understood from a logical and historical perspective, their combination has not lead to information about medicines that is easily understood and can be safely used. The consequence is that many medicines are not optimally used, which results in increased costs, errors and casualties. By showing these assumptions, and attempting to formulate some alternatives, it might be possible to accelerate the development of suitable, relevant and attractive information about medicines.

Introduction: some questions

The provision of information about medicines to patients is a fascinating area. Not only because so many different professions are involved, but also from a 'communication perspective'. Medicines are used in different circumstances such as at home, in hospitals and in elderly care facilities. The form (tablet, injectable, infusable), duration (short term, chronic), and potency (from placebo to DNA-modification), to name but a few characteristics, all vary. Medicines can be bought 'over-the-counter' or through an elaborate system of doctors and pharmacists. And despite of all these differences, the visual information only comes in one single format: a cardboard outer box, an inner packaging and a highly standardised package insert.

This standardisation raises many questions about the communicational value of the information. How is it possible that one of the most affluent branches of industry develop information for one of the most important groups of products that is so poorly suited for its purpose? And, if the development of medicines takes many years and involves substantial research efforts, why does the information that accompanies these medicines receive so little attention?

Different value systems?

One of the fundamental reasons for this is that there are three conflicting value-systems involved in the development. There is the 'legal system' with its European Directives, national legislation and guidelines. These make it obligatory to provide detailed information with every medicine. They are also used as a basis to check and approve information. This is done by the European Medicines Agency (EMA). A second value system is the 'commercial system' – medicine sales. The finances involved in the development of information are very carefully considered by the pharma-

ceutical industry, mainly because the initial development and every subsequent change involves substantial costs. Changing one package frequently means a change in 23 different languages and a new approval process. The third value system is the 'health system' which is concerned with the physical well-being of individual patients. This is where patients are treated by doctors and pharmacists. The criteria that these three systems use to evaluate the quality of visual information vary substantially and show little overlap. The answers to questions like 'Is it according to the laws?', 'Is it cost-effective?, and 'Does it make a patient feel better and improve their situation?' are often at odds with each other.

Six assumptions

For the development of information, all three systems need to be taken into account. The regulatory framework and the legal arguments provide the starting point. Without this legal system, it is unlikely that pharmaceutical industries would supply adequate information with all their medicines or provide a balanced description of risks and benefits to patients. Furthermore, patients simply have a 'right to be informed' about the products they use and that will affect their well-being. It is still surprising that the first European law was introduced less than 20 years ago in 1992 (92/27/EEC).

This regulatory framework seems to be based on at least six assumptions.

Assumption 1: Regulate the pharmaceutical industry

Although visual information about medicines is provided by different people in different situations, only two artifacts are regulated: the packaging and labeling. Other information sources, such as the internet or telephone helplines, are not yet considered. This is not a plea to regulate all information about medicines, but I just want to demonstrate that the regulations only cover a small area. Much of the information that patients can get about medicines is not regulated at all.

Assumption 2: Focus on the package leaflet

Of all the visual information that is supplied, the focus is only on a single artifact: the package leaflet. There are other information sources available such as the internet, comparing different boxes, labels and leaflets, informal advice from family and friends and the professional advice of doctors, pharmacists, telephone help lines and so on. Most of this is ignored because the main focus is on the package leaflet, but the influence of the other information sources is not considered when developing the leaflet. This frequently leads to conflicting details and poorly coordinated visual design.

Assumption 3: One template is enough

The basis for the text of a package leaflet is a single template. This template must be used for all medicines. Although there are new developments currently taking place (April 2011), it is still essential to base a package leaflet on this template. This template is applied to all medicines, regardless of situation, illness, strength, duration, or patient characteristics and, unfortunately, one size does not fit all. One example is the warning to keep 'Medicines out of the sight and reach of children.' Having this on medicines that are only used in hospitals (infusions, anesthesia), just takes the expensive attention of hospital pharmacists away.

Assumption 4: Writing, designing and testing are rule bound

The development process reduces the activities of writing, designing and testing to standardised steps in which any additional suggestions are discouraged. The writing of the text is reduced to 'filling in the template and checking the terminology'. Visual design is reduced to 'try to get as much text into the smallest possible dimensions' and testing is just 'to make a leaflet pass the required level'. The real results of a usability test - suggestions by patients to improve a leaflet - are frequently ignored. Changes are not considered to be necessary when the minimal requirements are met. This process does not make optimal use of the abilities of professional writers, designers and testers.

Assumption 5: Ignore practical use

The ways in which patients find information about medicines frequently comes from different sources. Normal activities like eating habits, sleeping habits, work and a family-life need to be used as a basis to provide information.

Assumption 6: Focus on 'finding' and 'understanding'

European legislation makes it obligatory to test package leaflets. However, this test only looks at two criteria: 'can people find information in a package leaflet?' and 'Once people found it, can they understand it?' In order to test the real value of information, more appropriate criteria need to be used to detect how information is actually interpreted and used.

These six assumptions show that the regulatory framework has a fairly narrow communication perspective. Based on an analysis of the regulatory framework (Waarde, 2010), the financial implications, and extensive user testing, it is clear that these assumptions must be questioned before any suggestions for development can be made. However, the assumptions also directly indicate a way forward that would still fit into the current legislation. If the assumptions could be reconsidered, they might be formulated as follows:

Assumption 1. Consider all stakeholders.

Not only the pharmaceutical industry, but all stakeholders who provide information about medicines to patients must be incorporated in the development of information. Furthermore, both the process and the results need to be evaluated.

Assumption 2. Look at information on all artifacts.

Patients rarely look at just the package leaflet. The box, the pharmacist's label, the inner packaging and, in some cases, the additional information sheets pharmacists provide contain a lot more information. Additional support can be gained from the internet. This combination of information sources must be used as a basis.

Assumption 3. Make it possible to differentiate.

One of the major objections against the use of a single template is that it is not possible to diversify the information to suit particular audiences. The consequence is that some template information is not appropriate. I'm not sure if it is possible to develop a suitable series of templates, or if it would be more beneficial to leave it open. In both cases, the industry must provide the 'performance record' of the information they provide with medicines.

Assumption 4. Look at best practices.

It is essential to forge a cooperation between medical writers, information designers and usability testers to develop suitable information. These are not simply 'checklist-professions' that follow rigid procedures, but each can add to the communication value of information about medicines if they are given the opportunity to do so.

Assumption 5. Start with the user activities.

If information needs to 'enable people to act appropriately', then it is necessary to study the 'acting' and figure out what patients really do. It is likely that people use medicines in different situations and that these situations have an influence on how information is read and applied. These observational studies and contextual inquiries are not available yet.

Assumption 6. Only apply criteria that can be measured before and after.

The criteria that are used to test the quality of information must be based on the actions that people need to perform. At the moment, the tests only focus on 'finding information' and 'understanding it'. Other factors, such as applying instructions in specific situations, or relating information from multiple packs, labels and leaflets must be considered and evaluated too.

Final note

The discussion about these six assumptions will continue for the foreseeable future. A recent 'call for comments' asked for feedback on a guideline over-the-counter packaging's information design. However, the packaging is based on the same assumptions (Working group, 2011). A lot needs to be changed before real progress can be made.

However, it is likely that the reformulation of the six assumptions will contain mistakes and problems similar to those in the current versions. Without addressing these, it is difficult to consider situations that need to be improved. It requires a lot of adaptability and flexibility of all stakeholders but I'm sure that the end result will be worth it.

Readability tests are essential to improve the quality of patient information leaflets. However, the current regulatory framework makes several assumptions about this form of testing. These assumptions need to be made explicit and verified.

References

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2. Karel van der Waarde, 2010. 'Visual communication for medicines: malignant assumptions and benign design?' Visible Language 44.1. pp 40-69
3. Working Group on Quality Review of Documents (QRD). 2011. 'Draft Quality Review of Documents recommendations on pack design and labelling for centrally authorised non-prescription human medicinal products'. Downloadable from: www.ema.europa.eu

Dr Karel van der Waarde
studied communication design in Eindhoven, Leicester and Reading. In 1995, he started a design - research consultancy in Belgium specializing in developing and testing visual information. The main focus is on information about medicines for patients, prescribing doctors and pharmacists on paper and screen. The aim is to supply people with information that enables them to act appropriately. Since 2006, he became professor in Visual Rhetoric at Avans University, Breda (The Netherlands). He is a life-Fellow of the Communications Research Institute (Australia), a board member of International Institute for Information Design (IIID, Austria) and editorial board member of five academic journals.

Book Review
Plain Language for Lawyers, 4th ed

Julie Clement

Clarity editor in chief

I'm ashamed to admit that I did not read the previous editions of Michèle Asprey's Plain Language for Lawyers. I simply used her book from time to time as a reference. What a mistake. In a word, this book is delightful. "An odd adjective," you might say. But from the beginning to the end of the 4th edition of Plain English for Lawyers, Michèle practices what she preaches, and this book truly is a pleasure to read. The style itself is like a comfortable shoe . . . a well-worn pair of jeans . . . perhaps not a page-turner, as you might hope to find in a novel, but far superior to most educational writing.

"But what about the content?" you might ask. The content is what you would expect from an international expert on plain language (generally) and plain *legal* language (specifically). Michèle walks her reader through plain language, step by step. She starts by explaining what the book is about, what plain language is, why we should use plain language, and what's happening with plain language around the world. *Clarity* readers don't need much of this background, and Michèle immediately tells her reader to use the book in the way that works best—jump around; avoid the footnotes if you'd like . . . whatever works for the *reader*, not the *writer*. Michèle's writing is persuasive, in a subtle and friendly way. Newcomers to plain language will likely find themselves nodding in agreement. The 4th edition—like previous editions—has a straightforward, *plain* style that makes it an excellent resource for lawyers and non lawyers, and for plain-language veterans and novices.

The book continues, working from general ("Fundamentals") to more specific information. Each of the 18 chapters is short, logically organized, and focused on a single topic. Non lawyers need not read about "the principles of

legal interpretation," but if they do, they'll probably understand it. Plain Language for Lawyers has a nice balance of background and practical, hands-on advice. It's one thing to tell people to write in plain language. It's another to give them the tools to do so, and this book does both.

Although Plain Language for Lawyers has been a highly praised resource for nearly 20 years, the 4th edition—completely revised and updated—has some significant improvements. First, cases, legislation, and other references have been updated to 2009, including references to the significant progress that has been made in plain language around the globe. Second, the chapters on electronic communication have been completely updated, including content on email, the internet, and website design. Third, the content on document design has been updated to include up-to-date research on typography and the distinctions between print and online communication. Other chapters have been expanded, as well, including the plain-language vocabulary listed in Chapter 13. And these are just a few of the many updates that make the 4th edition even more relevant than earlier editions.

No book review is complete without some constructive criticism, so I have a few suggestions for future editions. I would like to see Plain Language for Lawyers move even more toward being an international work. While the 4th edition has more international references, it still reads as a somewhat Australian reference that considers other readers, rather than as a book written for an international audience. The other suggestion depends on the intended audience. The title suggests that the audience is lawyers. But some parts seem to have been written for the layman. As a lawyer reading a book called Plain Language for Lawyers, it seemed odd, for example, to be told what lawyers do. Presumably, we know what we do. On the other hand, Michèle states, "I have written this book for an audience that ranges from the reader with a casual interest in plain language, right through to law students and lawyers who are interested in the fine print." The title, then, might interfere with this book effectively reaching that wider audience.

Criticism aside, I'd like to note a few random things that I especially liked. In Chapter 5, Michèle instructs lawyers to "consider your reader." We all know this, right? She then explains that lawyers tend to write documents with an eye toward disputes—how will courts interpret this document *later*, when there's disagreement over what was intended. But legal documents are more than dispute-resolution tools. They need to be usable throughout their intended life, and Michèle provides good advice for achieving this balance.

I also appreciated reading that step one is to *think* about a document. Too often, we skip the "thinking" stage and jump right into planning. It was helpful to see this included as an important first step to drafting a document.

Finally, I especially enjoyed Chapter 7, "Words." In that chapter, Michèle breaks legal language into various categories, including technical terms, terms of art, legal buzzwords, colourful language, and several others. Rather than treating legal language as a single category and calling it "legalese," Michèle shows us the sometimes subtle differences between *types* of legal language. She provides examples of each, guidance on whether and when they should be used, and further guidance on how to best avoid them (*if* avoidance is the goal).

These are just a few of the things that made this book a delight to read. If I haven't already made it clear, Plain Language for Lawyers belongs in your library. Better still, it belongs on your desk.

Conference News

Clarity Breakfast in London

Tuesday 6 December

Clarity in property transactions: the Clearlet project

At last—a Clarity breakfast focusing on documents affecting land! Keith Hutcheson, a solicitor in Nabarro's commercial property team, and Clive Ashcroft, Head of Legal Services for Land Securities, will tell us about their innovative work in developing short, customer-focused, plain English leases, hailed in the Estates Gazette as "peace terms to end war with retailers". The City Remembrancer's office is again supporting plain English in London by hosting this meeting.

8:00 City Marketing Suite open for breakfast

8:30 Introduce ourselves

8:35 Presentation by Keith Hutcheson and Clive Ashcroft on the Clearlet project:

- Why we did it
- How we did it
- Reactions within Nabarro and Land Securities
- Reactions from other parties
- Measuring the results
- Lessons learned
- It doesn't end here . . .

8:55 Questions and discussion:

- Experience of other plain language initiatives in land law.
- Where could plain English make the next big difference to property transactions?
- What would make it easier to use plain language in property transactions?

9:25 Wind up

9:30 Those who must get to work can get away: others can stay to talk (and view the Roman amphitheatre) until 9:45.

Location: City Marketing Suite at the Guildhall

How to find it: entrance G on the map at http://tinyurl.com/27vlkjh.

To reserve a place: Please email daphne.perry@clarifynow.co.uk.

There is no charge to attend. Non-members are welcome to try one meeting before they join Clarity at

> http://www.clarity-international.net/join.html, but Clarity members have priority when booking.

I look forward to seeing you there.

Daphne Perry
UK Representative for Clarity

Modernization of the Spanish legal discourse

On Nov. 16–17, 2011, the University of Barcelona, Barcelona, Spain, will hold a conference on the "Modernization of the Spanish legal discourse". Two faculties, Law and Linguistics, will make presentations on judicial clarity, both in oral communications and legal writing, and hold practical sessions. For more information, consult the various sites in Spanish.

Member News

From Neil James:

Some high-level support is beginning to emerge in Australia for a plain language program within the Commonwealth Government.

In March, the new Commonwealth Ombudsman asked the Foundation to brief his leadership team about plain language and what is happening in various parts of the world.

He's now given a speech diagnosing poor communication as a chief cause of the complaints he receives, and arguing for a plain language program as the first part of a 5 point plan for reforming government.

You can read the speech at: http://www.ombudsman.gov.au/files/6_September_2011_Why_do_good_policy_ideas_turn_into_porridge.pdf

It was reported in the Canberra Times at: http://www.canberratimes.com.au/news/local/news/general/bureaucrats-language-on-notice/2283247.aspx

In November, the Ombudsman is holding a national conference on government. The program is not published yet, but it will include a workshop on plain language. You can follow the details at: http://www.ombudsman.gov.au/pages/about-us/events/national-conference-2011/

Secondly, at the recent national editors conference, a motion was supported that the Institute of Professional Editors (the national accreditation body for editors in Australia) work with the Plain English Foundation to lobby the Commonwealth over plain language. If anyone else in Australia would like to get involved with this push, please get in touch with me.

As a famous Australian poem opens: 'There was movement at the station'.

From Nicole Fernbach:

November 17 and 18, 2011, the Université de Lyons—Jean Moulin, France, will hold an international conference on the simplification of legal language. Among the presenters are two Clarity members from Canada. Two themes will be developed : Words and concepts and The accessibility of legal discourse.

Visit the French Website: http://www.ltt.auf.org/article.php3?id_article=385

Registration is free at http://fdv.univ-lyon3.fr/GREJA/

Message from the President

Our conference: National Press Club, Washington DC, 2012

I am delighted to confirm that Clarity's fifth international conference will be held from 21-23 May 2012 at the National Press Club, a unique venue in Washington DC, see http://www.press.org

Clarity will co-host the conference with:

- the Center for Plain Language, see www.centerforplainlanguage.org and
- Scribes—The American Society of Legal Writers, see www.scribes.org

The Dinner—a national event

The conference dinner will be on the evening of May 22 at the National Press Club at 7 pm with a reception at 6 pm. In addition to the dinner speaker, the Center for Plain Language will present its annual ClearMark awards during the dinner.

The ClearMark Awards—now in their third year—celebrate some of the best documents in the United States, and poke some gentle fun at some of the worst.

The Clarity Band

The Clarity Band—our editor, Julie Clement, and her husband, Rush Clement—will perform after the dinner. If the dancing at our conference in Lisbon, Portugal is anything to go by, then the Clarity Band is reason alone to be at the conference and dinner.

Conference focus

The conference will focus on learning from, and encouraging, activity responding to the US *Plain Writing Act*. You can read about the Act at http://tinyurl.com/2cda6ga

We have already confirmed some outstanding, high-profile plenary speakers. A draft program is now in the works and will be available soon. There will be something good for everyone.

Timing and dates

The conference will be held as follows:

- welcome reception on the evening of Monday 21 May;
- conference sessions, all day Tuesday 22 May;
- ClearMark Awards dinner on the evening of Tuesday 22 May; and
- conference session, all day Wednesday 23 May.

Hotel

We have arranged discounted rooms at The Capital Hilton Hotel.

The hotel is just:

- 2 blocks from the White House; and
- 5 or so blocks from the conference venue, the National Press Club, see http://www.press.org/

To get the hotel discount, you need:

- to reserve a room by April 20
- to provide the group name = Clarity Conference
- to provide the group code = NPS

You can do that:

- online at http://tinyurl.com/6zycyhk
- by phone on 1-800-HILTONS.

Early bird discount—conference fee

The conference fees (in US$) are:

- for government employees and members of Clarity, the Center, or Scribes, $450, but if you book before March 1, the fee is only $400; and
- for others, $500, but if you book before March 1, the fee is only $450.

The Center for Plain Language Awards Dinner fee

The fees for the dinner are:

- member of: Clarity, the Center for Plain Language, Scribes $120
- government employee $120
- non-member $145

Register online for the conference

You can register online for the conference at www.natalieshear.com/clarity/

Join online

You can join:

- Clarity online at http://www.clarity-international.net/join.html.
  You receive the *Clarity* journal twice a year—and you save through the conference discount
- the Center for Plain Language at http://centerforplainlanguage.org/join/membership/
- Scribes—The American Society of Legal Writers at http://www.scribes.org/invitation-membership-scribes

Next steps

You might like:

- to book for the conference at www.natalieshear.com/clarity/
- to pencil the dates in your diary now
- to join the Clarity Facebook page at http://tinyurl.com/6efo277
- to scan, or copy, this message and send it to anyone you think might be interested, please do
- to blog, tweet, Facebook (and anything else of that nature!) to tell people about the conference, again please do
- to email Christopher Balmford on christopher.balmford@cleardocs.com to find out about conference sponsorship opportunities.

Remember the early bird discount for the conference and at the hotel.

Kind regards

Candice Burt
President of Clarity

Join us in Washington, DC!

Register at www.natalieshear.com/clarity
To stay in touch go to www.facebook.com/clarity.international

Conference dinner includes:
The Center for Plain Language's ClearMark Awards 2012
presentation at the National Press Club, Washington, DC, on Tuesday, May 22.

To receive a preferential hotel booking rate
at the Capital Hilton Hotel, mention promotional code: NPS

clarity2012 | Washington, DC
National Press Club 21-23 May 2012

Co-hosts:
Center for Plain Language
Scribes