From Visualization to Legal Design: A Collaborative and Creative Process

PRESENTED BY GERLINDE BERGER-WALLISER AND THOMAS D. BARTON

(BASED ON AN ARTICLE CO-AUTHORED BY THE PRESENTERS, AND HELENA HAAPIO)
I. Introduction: A Brief History of Legal Visualization

A. Our Focus:

1. Knowledge visualization rather than data visualization
2. Utility more than advocacy
B. Our Context:

1. the use of images in *business documents and statutes*;

2. the *process* of visualization development, rather than the *product*, the image itself; and

3. images *in conjunction with words*, rather than isolation—in “hybrid” documents.
II. Preventive/Proactive Law as a Bridge to Legal Design

A. What is Preventive/Proactive Law ("PPL")?

B. What is Legal Design?

C. How does Legal Design complement and expand ideas of "visualization"?
Outline

III. A Framework for Legal Design

A. Work toward simplified language

B. Adapt the document to audiences with multiple needs

C. Support legal functions through the optimal mix of language and graphics

D. Find the right images.

IV. Conclusion
Visualization: Knowledge

- The digital revolution has prompted a strong, and accelerating, interest in “Visualization” of both data and knowledge.

- Our application to Contracts is in the realm of knowledge visualization, using images, photos, icons, diagrams, charts, or videos to enhance or supplant printed language.

*all images copied under Creative Commons license*
Visualization: Advocacy

Visualization can aid advocacy by adding emotional impact to an argument or request.

Such power, however, is often met with caution inside a highly rational legal tradition.

- Even inside formal adversarial settings, however, visualization may helpfully aid the portrayal of injuries; may illustrate physical environments; the severity of injury; or may demonstrate the sequence of events.
Visualization: Utility

In examining the use of visualization to simplify *contracts*, however, we focus more on utility rather than advocacy.

That is because the basic function of contracts is not to persuade, but instead to facilitate economic transactions and business relationships.
Visualization: “Product”

Hence we focus on contracts and other business documents, in two connected ways:

1. The “product,” which is the language and images as a vehicle for communication:
   - Is the contract clear to all who will participate in the transaction?
   - Is the contract effective by being complete and well organized?
2. the “process” by which the contract is created, communicated, and implemented:

- Does it advance the immediate transaction?
- Does it contribute to the effective governance of the companies that are party to the contract?
- Does it help to build relationships between the contracting parties?
We also assume that contracts will continue to rely upon words.

But documents can usefully be *hybrids*, containing images to supplement meaning.
II. Preventive/Proactive Law ("PPL")

- The methods and values of Preventive and Proactive Law ("PPL") reach back to the founding of the preventive law movement in the 1950’s.

- The term “Proactive Law” emerged in the 1990’s in Finland, and was quickly adopted in Europe, to stress positive goals and outcomes in legal transactions as well as to avoid problems.
## II. PPL

<table>
<thead>
<tr>
<th>Focus away from</th>
<th>Focus toward</th>
</tr>
</thead>
<tbody>
<tr>
<td>● the past</td>
<td>● the future</td>
</tr>
<tr>
<td>● minimizing cost</td>
<td>● eliminating causes</td>
</tr>
<tr>
<td>● winning in court</td>
<td>● preventing litigation</td>
</tr>
<tr>
<td>● lawyers as fighters</td>
<td>● lawyers as advisors, planners and problem-solvers</td>
</tr>
</tbody>
</table>

## II. PPL

<table>
<thead>
<tr>
<th>Focus not just on</th>
<th>Focus also on</th>
</tr>
</thead>
<tbody>
<tr>
<td>• rules, legal tools: helping the parties to comply with the rules</td>
<td>• goals, managerial tools: enabling the parties to reach their objectives</td>
</tr>
<tr>
<td>• minimizing risks, problems, disputes, losses</td>
<td>• maximizing opportunities, desired outcomes, benefits</td>
</tr>
<tr>
<td>• preventing causes of failure and negative effects</td>
<td>• promoting drivers of success and positive effects</td>
</tr>
<tr>
<td>• lawyers as advisors, practicing preventive law; the law office as a preventive law laboratory</td>
<td>• lawyers as designers and coaches, working with clients as part of cross-professional teams</td>
</tr>
</tbody>
</table>

Source: Helena Haapio: Next Generation Contracts 2013, p. 41
When PPL thinking and methods are applied to visualization, two goals are paramount:

- make legal information *intellectually accessible* to its intended users; and

- *functional toward meeting their needs* as well as those of the legal system.
II. PPL

Where these goals are met, contracts can:

- become stronger generators of value rather than of higher transaction costs;
- facilitate better communication within and between organizations;
- help businesses reach their goals; and
- offer possibilities for innovation.
III. What is Legal Design?

- PPL-guided legal design builds on the work of:
  - Information designers like Rob Waller and Stefania Passera;
  - Legal designers like Colette Brunschwig and Margaret Hagan;
  - Plus contracts and legal thinkers like Helena Haapio and Tobias Mahler
III. What is Legal Design?

“Design =
- the way something has been made;
- the way the parts of something (such as a building, machine, book, etc.) are formed and arranged;
- for a particular use, effect, etc.” (MERRIAM-WEBSTER ONLINE DICTIONARY)

Note the emphasis on the process, rather than the product.
III. What is Legal Design?

- Legal Design:
  - evolution in the analysis of visualization,
  - process by which visualization is created becomes as important as the image itself
  - intended to make legal communication easier, more user-friendly and more effective,
  - transform positively the significance and value of regulations, and traditionally word-heavy legal applications like contracts or governance documents
IV. Framework for Legal Design

- Work towards simplified language
- Adapt to audiences with multiple needs
- Support legal functions through optimal mix of language and graphics
- Choose effective, efficient, and attractive images

Preliminary: observe user needs
IV. Framework for Legal Design

- Preliminary Step:
  - Observe the client’s environment and needs
  - Spend time with the users of a good or service
IV. Framework for Legal Design

- **Step 1:** Work toward simplified language

- **Example:** UK Good Law Initiative
IV. Framework for Legal Design

• Step 2: Adapt to Audiences with Multiple Needs

• Example 1:
  • Layering

Creative Commons Licensing Agreements
(Image released under a Creative Commons Attribution 4.0 International license (CC BY 4.0))
IV. Framework for Legal Design

- **Step 2: Adapt to Audiences with Multiple Needs**

- **Example 2:**

- **Graphic Organizers**

Swimlanes depicting parties' obligations in a public procurement contract. © 2013 Aalto University / Kuntaliitto ry. Design: Stefania Passera.
IV. Framework for Legal Design

- Step 3: Support Legal Function Through Optimal Mix Of Language And Graphics

- Example 1: The Stop Sign

Vienna Convention road sign B2a.svg, WIKIMEDIA COMMONS
IV. Framework for Legal Design

Step 3: Support Legal Function Through Optimal Mix Of Language And Graphics

EXAMPLE 2:

Stefania Passera’s Images to Accompany Contract Language (© Aalto University, Stefania Passera, 2012)
IV. Framework for Legal Design

- Step 4: Choose Effective, Efficient, and Attractive Images
  - Example:
  - New York City Street Vendor Regulations
    - (used with permission of CUP)
V. Conclusions

Emerging technologies have made visualized legal design accessible to almost any lawyer or business person.

These new tools should be developed to enhance the making and functioning of contracts.

That is our aim for legal design.
V. Conclusions

Legal design combines PPL—a mentality and set of values about how law should function—with principles of information design.

The result are contracts that are not simply new in format—more beautiful or eye-catching, although they certainly will also be that. Visualized contracts will also function consistently with PPL and business goals.
V. Conclusions

Hence, contracts employing legal design will be:

- well planned;
- financially and legally sound;
- strongly and broadly used;
- easily implemented;
- facilitate business goals; and
- help build lasting commercial relationships.
Basic Copyright Notice & Disclaimer

© 2016 This presentation is copyright protected. All rights reserved. You may download or print out a hard copy for your private or internal use. You are not permitted to create any modifications or derivatives of this presentation without the prior written permission of the copyright owner.

This presentation is for information purposes only and contains non-binding indications. Any opinions or views expressed are of the author and do not necessarily represent those of Swiss Re. Swiss Re makes no warranties or representations as to the accuracy, comprehensiveness, timeliness or suitability of this presentation for a particular purpose. Anyone shall at its own risk interpret and employ this presentation without relying on it in isolation. In no event will Swiss Re be liable for any loss or damages of any kind, including any direct, indirect or consequential damages, arising out of or in connection with the use of this presentation.