LEGAL DESIGN IN ACTION: FROM TEXT-ONLY GUIDEBOOKS TO DIGITAL, VISUAL PLAYBOOKS

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Abstract: *In recent years, legal departments and law firms around the world have been busy developing legal guidance for business people to follow. Legal compliance handbooks and policy manuals vary in coverage and title, but many have one thing in common: the guidance remains unread. People prefer to ask the lawyers instead, or ignore the legal aspects of their doings. Legal Design promises to change things for the better. This paper presents the playbook genre as a possible solution to help convey complex messages, clarify tasks, share tools, drive compliance, and prevent unnecessary legal problems.*

1. The Challenge of Communicating Complex Legal Information

The challenge is familiar from many contexts: how to translate complex legal information into simple-to-follow, actionable, motivating instructions for the people who are impacted or are expected to comply. Even if the information is provided in the plainest language possible, if people do not read it, how can they be expected to know the contents or comply?

Legal information appears in many different contexts and forms. Contracts are the most commonplace, but perhaps the worst offender: they have often been accused to be written «*by* lawyers *for* lawyers».[1] In recent years, on several continents, researchers and practitioners have started to explore new ways of making and representing contracts.[2] Apart from contracts, new genres and designs have been presented in privacy communication[3] and other contexts where complex legal information should be more accessible and actionable.[4]

In communicating legal information and guidance for business people, a tension exists among legal-friendly, business-friendly, and user-friendly approaches.[5] A balance needs to be found between functionality and precision, and between precision and ease of use. In our previous work, we have sought to find those balances by bringing a *proactive approach* and *design thinking* into the world of contracting and law,[6] exploring various

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[1]   *See, e.g.,* BERGER-WALLISER/BIRD/HAAPIO 2011 (emphasis added).

[2]   *See, generally,* BERGER-WALLISER/BIRD/HAAPIO 2011; PLEWE/DE ROOY 2016; KEATING/BAASCH ANDERSEN 2016; HAAPIO 2013; CONBOY 2014; HAAPIO/BARTON 2017; PASSERA 2017; BARTON/BERGER-WALLISER/HAAPIO 2016; HAAPIO/DE ROOY/BARTON 2018; *see also* Contract Design Pattern Library at http://www.legaltechdesign.com/communication-design/legal-design-pattern-libraries/contracts/ (all websites last accessed on 19 December 2018).

[3]   *See, generally,* HAAPIO/HAGAN/ PALMIRANI/ROSSI 2018; *see also* Privacy Design Pattern Library at http://www.legaltechdesign.com/communication-design/legal-design-pattern-libraries/privacy-design-pattern-library; Greater Than Experience/Data Transparency Lab 2018.

[4]   Margaret Hagan, the Director of the Legal Design Lab at Stanford Law School, has collected different models to present complex legal information, *see* Examples of Legal Communication Designs at http://www.legaltechdesign.com/communication-design and, *generally*, HAGAN (n.d.); s*ee also* Legal Design Pattern Libraries at http://www.legaltechdesign.com/communication-design/legal-design-pattern-libraries.

[5]   In the context of contracts and contracting guidance, *see, e.g.,* HAAPIO/BARTON 2017; PASSERA 2017.

[6]   *See, generally,* BERGER-WALLISER/BARTON/HAAPIO 2017; HAAPIO/BARTON 2017.

information design approaches.[7] Examples of these initiatives have been presented at previous IRIS events and in the related proceedings.[8]

This paper introduces Legal Design to respond to the challenge of communicating complex legal information. It proposes a new mindset, shifting lawyers from being *unconscious* designers – creating contracts, notices, policies, and manuals in conventional ways – to *conscious* designers, with a focus on the users and the need for more useful and usable guidance and more creative and ambitious ideas.[9] With this new mindset, it becomes natural to look for new tools to present legal products and information in more engaging and actionable ways. *Playbooks* offer an especially promising new option to be added to lawyers' genres of communication.

2. Legal Design: An Emerging Way to Respond to the Challenge

Legal Design is an umbrella term for merging forward-looking legal thinking with design thinking. It is an interdisciplinary approach to apply human-centered design to prevent or solve legal problems. It prioritizes the point of view of «users» of the law – not only lawyers and judges, but also citizens, consumers, and businesses. Its point of departure is that the people who use legal information, documents, services, and policies are not being served well by current designs.[10]

One of the very first known users of the concept Legal Design is Colette R. Brunschwig, whose doctoral dissertation in 2001 had the concept as its subtitle: Visualisierung von Rechtsnormen – Legal Design.[11] The concept was later used by Stefania Passera in the context of Legal Design Jam events, a by-product of her doctoral dissertation.[12] The first Legal Design Jam event was organized in 2013 at the University of Aegean, followed by one at Stanford and another in San Francisco, hosted by Margaret Hagan. At these events, the goal was for lawyers, designers, policy-makers, and students to work together to transform complex legal information – in the latter two events, the Wikimedia Trademark Policy.[13]

The concept gained more popularity, especially in social media, with the Legal Design Summit in Helsinki in 2016 and 2017.[14] The Legal Design Alliance (LeDA) was launched in 2018, with the Legal Design Manifesto at its core,[15] at the *Legal Design Geek* event in London[16]. Seeking to build a bridge between practitioners and scholars working in this emerging field, LeDA organized the workshop *Legal Design as Academic Discipline*[17] in connection with the JURIX Conference in Groningen in December 2018.

Legal Design takes an interdisciplinary and proactive approach to law, covering not only legal information and documents, but also legal products, services, practices, processes, systems, and tools.[18] These can include bots, apps, and various other solutions, and lead to redesigned privacy notices, consent procedures, and terms of service, for example. The different branches of Legal Design have been depicted in the following pyramid figure by Margaret Hagan, one of the founders of LeDA:

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[7] Haapio 2013; Haapio/Plewe/de Rooy 2016 and 2017; Plewe/de Rooy 2016.

[8] *See, e.g.,* Passera/Haapio/Curtotti 2014 and the IRIS conference papers mentioned in the previous footnotes.

[9] Similarly Hagan (n.d.), Introduction.

[10] Legal Design Alliance (n.d.).

[11] Brunschwig 2001.

[12] *See* http://legaldesignjam.com; Passera 2017.

[13] *See* Hagan 2013; Forsström/Haapio/Passera 2017.

[14] *See* https://www.legaldesignsummit.com.

[15] Legal Design Alliance (n.d.).

[16] *See* https://www.legalgeek.co/legaldesign.

[17] *See* http://gdprbydesign.cirsfid.unibo.it/legaldesign-workshop; Hagan 2018.

[18] Legal Design Alliance (n.d.); Hagan (n.d.).
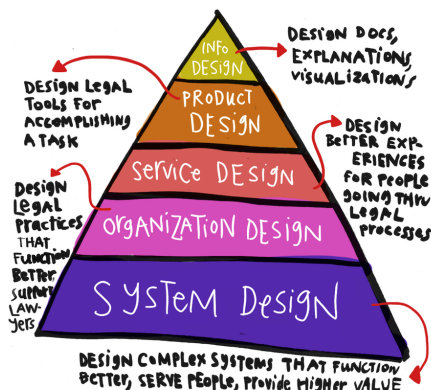
Figure 1: The Many Different Branches of Legal Design[19] © Margaret Hagan. Used with permission.

In this paper, the focus is on the top of the pyramid in Figure 1, namely the design of legal products, in general, and legal information, in particular. Legal information design is about organizing and displaying information in a way that maximizes its clarity and understandability for the intended users.

With the help of Legal Design, it becomes natural to move from text-only guidance to supplementing text with visualizations – for example, flowcharts, maps, timelines, or explanatory diagrams. In the context of legal manuals and guides, visualization can help create functional, useful, and usable instructions with step-by-step guidance. It can help people to think, communicate, make assumptions visible, and secure understanding across disciplines. The goal is not just to create images – the goal is to create understanding.

Examples of corporate compliance and contracting guidance available on the Internet seem to rely heavily on conventional text-only communication.[20] They look and feel like legal documents. This paper posits that they could benefit greatly from Legal Design and the *playbook* approach.

3. The Genre of Playbooks: A Promising Way for Lawyers to Engage Reluctant Readers

Playbooks are not new. Team sports players have had playbooks for a long time, and so have film and theater actors. In football, for example, a dictionary definition of a playbook is «a notebook containing descriptions of all the plays and strategies used by a team, often accompanied by diagrams, issued to players for them to study and memorize before the season begins»[21]. Playbooks have recently made their way to several business book titles, too. As the name «playbook» indicates, the genre seeks to distance itself from conventional paper guidebooks and even e-books, introducing a different way to communicate the contents in an engaging way that resonates with the intended audience.

In recent years, playbooks have started to appear in a number of contexts, varying from business strategy and marketing to public sector innovation, supply chain management, and product or service design. In business, the playbooks often contain business process workflows aimed at ensuring a consistent response to situations

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[19] Hagan (n.d.), Section 1.

[20] *See, e.g.,* examples listed in Miller 2018 and the following Section.

[21] Dictionary.com (n.d.). In the context of theater, the same source defines a playbook as «the script of a play, used by the actors as an acting text» and «a book containing the scripts of one or more plays».

commonly encountered during the operation of the business.[22] In the public sector, playbooks have emerged as a means to guide action within innovation initiatives and digital services transformations.[23] In many fields, both in the private and in the public sector, playbooks have become part of everyday vocabulary. Today, a Google search for «strategy playbook» brings more than 30,000 results.

Playbooks have made their way to the corporate legal world through corporate functional needs, for example mergers and acquisitions[24] and corporate compliance and contracting guidance.[25] A contracting playbook can be used to enable people, non-lawyers or lawyers, to make choices and understand what to do at the different stages of the lifecycle of a contract, with little or no training or oversight from the legal department. It can contain tools and templates that help people do what they are expected to do. A contract playbook can cover many types of contracts or be tailored to just one contract type. It can provide access to standard templates and preferred clauses and texts, including acceptable fallback provisions and recommended processes for obtaining approval for signing. It can document processes and workflows, identify key stakeholders and their authority to sign, and state related escalation and approval requirements. In this way, it can be used to guide the drafting, negotiation, and review of contracts, explain regulatory requirements or internal policies, and help identify and control contract and legal risk. Seeing the process view, the workflow, and everyone's tasks makes it easier for people to comply and understand why it is important.

Despite their growing use in practice, playbooks have so far gained little attention in research.[26] One of the reasons may be that not many playbooks are available on the Internet. Among even those examples, it is obvious that playbooks, too, can suffer from lack of good design, with the resulting reluctance of people to read them. Many seem to be heavily text-based, with occasional tables full of small print.[27]

The emerging Legal Design Pattern Libraries[28] provide one possible way to change things for the better. Visual design patterns can be relied on to organize and display information in a way that maximizes clarity and understandability. Adding examples, plain language translations, audio, or video, and digitizing the outcome – merging Legal Tech with Legal Design – can facilitate better guidance: people can then find the information they need, understand what they find, and use what they find to meet their needs.

Different playbooks, toolkits, and patterns can be pitched at different levels of expertise, and serve different purposes: some might be for problem-solving, others for sense-making. There is no one-size-fits all solution. In future, Legal Design Pattern Libraries could serve as repositories and links to other good playbook patterns, helping people find inspiration and examples. Developing a Legal Design Pattern Language and a related Library Navigator to help users search and find suitable patterns is part of the research and development agenda of LeDA.[29]

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[22] For a general introduction to the playbook methodology, *see* HUMBERT/MASTICE 2015; for samples of a project management playbook and tools, *see* https://www.demandmetric.com/content/project-management-playbook; s*ee also* https://en.wikipedia.org/wiki/Playbook.

[23] For samples of playbooks in the public innovation space, *see* https://oecd-opsi.org/?s=playbook*; see also* https://oecd-opsi.org/have-we-reached-peak-toolkit/; Digital Services Playbook, https://playbook.cio.gov/, stating the reasons of having a playbook: «[t]oday, too many of our digital services projects do not work well, are delivered late, or are over budget. To increase the success rate of these projects, the U.S. Government needs a new approach. We created a playbook of 13 key ‹plays› drawn from successful practices from the private sector and government that, if followed together, will help government build effective digital services.»

[24] *See* Midaxo M&A playbooks available at https://www.midaxo.com/playbooks.

[25] *See* MILLER 2018; LAURITSEN 2016, 2018(a) and 2018(b).

[26] Sterling Miller's and Marc Lauritsen's work on contract playbooks provides a rare exception. *See* footnote above.

[27] *See* Sample Agreement Playbook shown and sample playbook listed under Resources in MILLER 2018. More user-friendly examples include the Beamex Contract Playbook, *see* BEAMEX (n.d.).

[28] *See* links to the Contract Design Pattern Library, Privacy Design Pattern Library, and Legal Communication Library in footnotes 2–4; *see also* ROSSI et al. 2019.

[29] Ongoing work around creating a Pattern Language for Legal Design has been reported in ROSSI et al. 2019.

The time has come to move from static text-only guidebooks to visual, engaging playbooks. Whether paper-based or digital, these can pave the way for legal guidance that people will actually want to read and use. New labeling and fresh design can change perceptions and awaken interest among people who are otherwise reluctant to read anything that resembles legal writing.

4. What the Future Will Hold

If someone is reluctant to read a document, labeling it as «legal information» or «a compliance manual» is not going to help. Naming it «a playbook» instead might. A new name may initiate a new way of approaching and presenting legal information, with a focus on what the users prefer and removing what currently prevents them from reading. Even though significant, labeling is just a small first step, with many other issues to tackle. This paper argues that Legal Design and the emerging work around legal design patterns can make it easier to engage those issues. In the process, lawyers can transform from being *unconscious* designers to *conscious* designers.

Playbooks offer a promising new option for lawyers' genres of communication. Apart from the contexts addressed here, playbooks hold potential in legal education, innovation initiatives, digital services transformations, and wherever trusting relationships are important.[30] Existing technology can help transform static, text-only pdf or MS Word guidebooks to interactive and collaborative playbooks that help generate more accessible, understandable, useful, and usable legal products. In their digital form, interactive playbooks can be integrated with new decision support technology, document automation and assembly tools, machine learning, and AI/augmented drafting services,[31] offering these the opportunity to develop into true game-changers, for the benefit of lawyers and clients alike.

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[30] Greater Than Experience/Data Transparency Lab 2018.
[31] *See* Lauritsen 2018(a) and 2018(b); for augmented drafting services, *see also* Hricic/Morgan/Williams 2018.

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