



# Shaping the law to restore its function?

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This document is the result of 18 months of research as part of my Master's degree "Innovation by Design", but also of more than 15 years of legal practice, first as a private practice lawyer, then as General Counsel and finally as the founder of the legal innovation by design agency, [www.amurabi.eu](http://www.amurabi.eu).



I would be pleased if the thoughts and projects presented here could be useful for the readers. Please feel free to use this content! And respect the copyright: no copying and pasting without mentioning the source!

**«The purpose of design is to improve or at least maintain the world's livability.»**

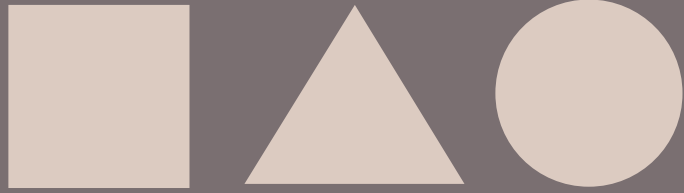
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Alain Findelli

**«Dean Jean Carbonnier said, "Lawyers are active pessimists looking for solutions to make life in society tolerable." Those who followed his teaching remember that he had the unique capacity of making the driest legal text come to life.»**

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Denis Salas



# Introduction

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Le Barbier, Jean-Jacques-François  
(said the Elder), circa 1789, Musée Carnavalet.

I was called to studying law because of its democratic dimension. My favourite classes at university were Danièle Lochak's civil rights, that were full of practical cases and therefore of human stories, such as identity controls based on racial profiling, or manu militari deportation to the border. Her lectures in the smoky amphitheatre of University Paris X, in Nanterre, shaped a world where the knowledge of the law and above all its practical application resolved inequalities and injustice. Law as a source of solutions for public interest.

In real life, the ultra-technical nature of the practice of law in Magic Circle law firms kept me away from public interest, while the ineffectiveness of the law in business - misunderstood, disliked when not consciously ignored – often deprived me from real solutions.

My initial intention was to explore whether, how and to what extent, designing law could restore the place law deserves within organisations: a tool for steering strategy, and steering democracy through compliance.

## Designing the law to make it a tool for steering strategy within companies

Because of risk management, technical nature (actual or assumed, or even overplayed by a greedy market) and legislative inflation, the paradox of law in corporations is striking: it's a so-called support function that more often creates constraints than solutions.

The General Counsel is still that person that business teams love to hate, or at least to get around. His position on the Board is most often an obligation, the reality of its influence on strategic decisions depends entirely on his diplomatic capacity, his ability to seduce or to take part in power-play - at the risk of diluting or circumventing the legal message.

When leaders are faced with the most sensitive questions - i.e. to take the risk or not - it is not uncommon for the actual question to evaporate. In favour of the status quo.

Yet the law is a powerful tool for corporate strategy. Competition law structures the way markets are organised: facilitating market entry to new players, setting limits dominant companies' behavior, to the size and the

composition of conglomerates.

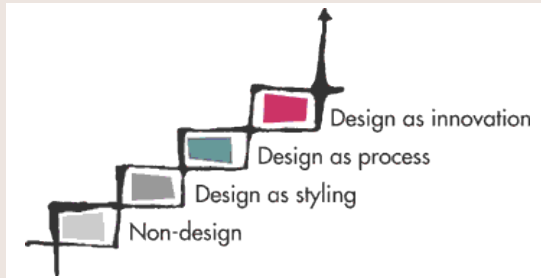
Company law structures corporate governance, and from now on, right up to the "company purpose", labour law has a direct influence on the fate of individuals who undertake business.

*But only if it is fully understood, then applied and ideally adopted.*

## What can design do to address the strategic dimension of the law?

Combining design and purpose, reconciling form and substance, making complexity accessible, revealing the invisible. In any case it's a search for meaning.

I initially wanted to explore the 4 levels of the design scale to measure the impact that level 4 might have on the effective place of the law within decision-making corporate bodies.



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## Designing the law to make it a tool for general interest within companies: compliance, ethics and CSR

Compliance is the set of rules that companies must comply with, subject to criminal or administrative sanctions, a mille-feuille that is often tackled internally using a purely risk-based approach. This form of fear marketing is often counterproductive and can easily lead to a "tick the box" approach.

For example, a company adopts a number of processes, a code of conduct of 30 or 40 pages, the "tone from the top" is given, online compliance training courses are set up, which must be completed by a fixed date, otherwise they will appear in red in employees' inbox, backed up by corporate threats<sup>1</sup>... And the training ends up being duly completed... by the dedicated personal assistants of the managers concerned. Some listed groups thus benefit from armies of assistants super-well trained in compliance – except they're not the ones making decisions.

*And come what may in the field.*

1. "If you do not complete the online compliance training by XX, your N+1 will be informed, then 3 days later your N+2 will be informed."



6<sup>ème</sup> Cahiers Innovation & Prospective © CNIL

2. Alain Findelli

Therefore, we are back to the status quo again, combined with a particularly unsatisfactory user experience.

Consequently, I wanted to explore the attention that design pays to the user and its ability to "go back to the roots of the project"<sup>2</sup> to assess the benefits in terms of adoption of compliance messages.

The re-appropriation of the law as a source of solutions by corporate actors through design also led me to want to explore how design could give back control to citizens over their own rights, to help them become the subjects of the law within society again, fully understanding their rights and above all the ways to exercise them on a daily basis. I thought that this impact on society at large was as an additional, but separate, subject.

My participation to a round table organized by the CNIL and its innovation and prospective laboratory (LINC) on January 17, 2019 on the occasion of the publication by the LINC of the 6th Cahiers Innovation & Prospective led me to consider the interaction between the way companies practice law, and the gap between the law and citizens.

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3. Nudge is a technique to encourage individuals or a targeted population to change their behaviour or make certain choices without being under duress or obligation and does not imply any sanctions.

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4. Célia Hodent explained that Amsterdam Airport was unable to keep the gents' toilets clean enough, despite all sorts of signs and messages asking users not to splash the rim of the bowl (sic). A designer then had the idea of placing a fake fly inside the bowl. The ledges remained immaculate, the gentlemen seemed to be having a great time aiming at the fly. That's how the manipulation of users' propensity to play helps to keep public spaces clean!

I was part of a panel with Célia Hodent, a cognitive psychologist who worked on the creation of the globally successful video game Fortnite, Hubert Guillaud, journalist and editor-in-chief of InternetActu within the FING, Karl Pinault, co-founder of the association Designers Éthiques and Corinne Moreau, head of the "Strategy, Design & User Experience", at Backstory,. We were discussing "Shaping choices in the digital world": or how interface design can positively or negatively impact the more or less informed way in which we give our consent (to the processing of our personal data). We addressed the following topics: in a negative way, the cognitive biases that can be manipulated in a more or less conscious way by UX designers to create increasingly addictive interfaces; on the positive side, the "nudge"<sup>3</sup> - or how we all are being manipulated "for our own good": the car alarm that goes on when we unfasten our seatbelt while the car is still running, to "the fly's story" in the gent's restroom at Amsterdam airport<sup>4</sup>.





*“ I Agree ”* Crédit Dima Yarovsky— Article *“Is user consent the biggest farce on the internet? GDPR to the rescue”*

Then, a question was raised in the audience: “Is there a weariness, a renunciation by users to give their informed consent when these contracts are clearly not designed to be read, nor to be negotiated? »

In other words, after decades of blindly ticked boxes and imposed T&C’s, the battle might be lost already, and there’s nothing design could do about it.

I was already aware of a Deloitte study in 2017, that found that 91% of U.S. consumers accept without reading the terms and conditions of use of the applications, online services, and streaming services they use (the percentage of blind signatures increases to 97% in the 18-34 age group).

On the spot, I answered that, precisely, blind consent is not inevitable and that designing contracts and consent forms can help everyone to reappropriate their own thinking on what “consent” really means.

*But that remained to be evidenced..*

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

Elizabeth Warren, former Professor of Law Harvard Law School  
<http://www.pbs.org/shows/501/credit-traps.html>

Even if that were the case, I kept asking myself that same question in the weeks that followed: have decades of illegible contracts, which we have all accepted in our daily lives, alienated from the law the citizens that we all are? Has the “small print” of our insurance contract, internet subscriptions and other banking contracts played a part in the mistrust expressed today by citizens towards the law? Worse, could the size 8 font be an accomplice in the assassination of the social contract?<sup>5</sup>

But if the non-design of contracts is partly responsible for the gap that has grown between the law and citizens, is there any form of design that could overcome this mistrust and reconcile users with the law?

**In other words, could the form of the norm restore its function?**

I like the music of this sentence and I don't want to replace the word “norm” with "law" or "contract", but I'll limit the discussion here to the norm as it is defined in practice once it is enacted: **can shaping the law help restore its function?**

5. Because if from now on in the collective consciousness the law is useless, we could stone, break, burn...

I will also exclude from my field of study the creation of the norm, for lack of time. It would have been interesting to consider the creation of the law and the contribution of design to the legislative process. Some specialists in logistics (i.e. the method of creation of the norm: laws, decrees, ordinances) are interested in the quality of the laws<sup>6</sup>, but not yet really in its design.

The initiatives of ESNCI in the context of the ENSCI-ENA Chair deserve to be analysed, as well as those of Etalab, Liberté Living Lab, the work of Max Mollon and of Vraiment Vraiment for the website servicepublic. fr, as well as the plain legal language obligations imposed by some jurisdictions...

But I have to make some choices. I'll focus on the last step of the legal chain, i.e. when the norm has already been enacted.

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6. [http://www.justice.gouv.fr/art\\_pix/manuel\\_cqfd\\_fr\\_20170831.pdf](http://www.justice.gouv.fr/art_pix/manuel_cqfd_fr_20170831.pdf)

## Make people understand, reveal, reconnect.

Can the design of contracts limit blind consent and restore the meaning and function of consent (I), can the design of compliance within companies contribute to ensure its effective function (II)? Can the design of fundamental legal texts, such as the Universal Declaration of Human Rights, close the gap between the law and citizens (III)?

Depending on the stages of maturity of organizations and individuals in relation to design, I want to explore the different approaches in design, based on the result that may be achieved: **make people understand, reveal, reconnect.**



## **I. Can the design of contracts limit blind consent and restore the meaning and function of acceptance?**

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- a.** A contract, what for ? 19
- b.** The phenomenon of blind consent 37
- c.** Graphic design and experience design to the rescue: approaches and results 43



## **II. Can the design of compliance help to ensure its actual function, or even reveal its latent value?**

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- a.** The zero-sum game of the majority of compliance programmes 67
- b.** Thinking compliance as a designer: exploring identity, (re) thinking usage 70
- c.** Inducing use: affordance, nudge? Revealing value: ornament ? 81



## **III. Can the design of fundamental legal texts, such as the Universal Declaration of Human Rights, reduce the gap between the law and its citizens?**

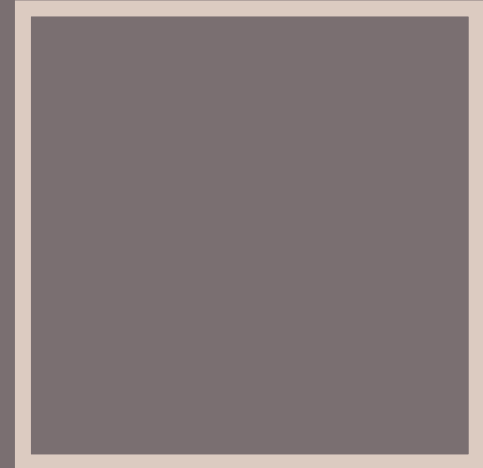
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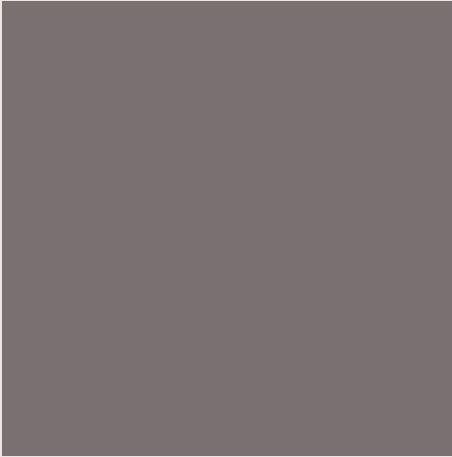
- a.** The citizens who are the most in need of access to the law are those who benefit less from it. 87
- b.** Can designing the law help restoring its place in the City ? 94
- c.** The work of the experimental studio of the ENSCI "*no one is supposed to ignore the law*" 99



# **I. Can the design of contracts limit blind consent and restore the meaning and function of acceptance?**

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## a. A contract, what for?

1. Stoffel-Munck P., Malaurie P., Aynès L., Law of Obligations, Sept. 2018

2. Laurent AYNES - Professor at the University of Paris I, Panthéon-Sorbonne Cahiers du conseil constitutionnel n° 17 (dossier: law and contract) - March 2005

3. According to Olivier Williamson (Nobel Prize 2009), agents have limited cognitive abilities. When the environment is complex, they cannot consider all possible events and perfectly calculate the consequences of their decisions.

4. Consequence of limited rationality.

**For lawyers,** a contract is an *"agreement of wills intended to give rise to, modify, transfer or extinguish obligations"*<sup>1</sup>

Performing a service, selling a good, paying a debt...

The "contract is the law of the parties", *"a fundamental rule of social organization that flows through time like through space: most foreign legal systems state this rule, though sometimes in a different way."*<sup>2</sup>

**The economical theory, on the other hand,** is interested in its rationality. Contracts are hybrid forms of regulation between the market and a company. According to Olivier Williamson they are part of "transaction costs" when two economic players exchange goods or services. According to him, contracts are tools made necessary by (i) the limited rationality of economic players<sup>3</sup> and (ii) the opportunism of these agents<sup>4</sup>. As the contract cannot anticipate all possible alternatives, a player may be tempted to adopt an opportunistic behaviour to further his or her own interests at the expense of those of others.

**Sociology provides broader answers to the question of the function of contracts with respect to users.**

Max Weber devoted a significant part of his *Sociology of Law* – to the study of the evolution of the theory of contracts. He distinguished between the **status-contract** of the pre-modern times and the **function-contract** resulting from economic exchanges.

The **status contract** is a contract of fraternalization, that totally modifies the social situation/position of the contracting parties: for example, the contract of vassalage in feudal times.

Conversely, the **function contract** only relates to the supply or exchange of services or goods, without modifying the status of the parties. According to Weber, the function contract is a "formal legal construction of exchange": **this is the form that the law has constructed to enable, guarantee and perpetuate economic exchanges.**

Max Weber identifies three levels of reality of contracts:

- 1 Economic exchange: the parties need an instrument to give a specific legal value to their exchange, referring to the actual law of the contract;
- 2 The second level contains the rules that regulate trade;
- 3 The third level is the one containing the "legal thoughts" which "treats the contract as a concept and establishes its logical links with the other concepts of a given legal system"<sup>5</sup>.

Weber's analysis focuses on legal thinking: according to him, this is where the connection between the evolution of economic exchanges and the transformation of contract law is most clearly identified.

However, Weber considers that due to the "historical phenomena of professionalization, formal rationalization and nationalization of legal regulation", there is a **very clear separation between the facts and the law, and between the social and the legal fields**. For Weber, contract law has been built up independently by the "specific group of professional lawyers", so that the contract would be a **"pure question of law"**.

5. Weber Max, Sociology of Law, Introduction and translation by Jacques Gros-Claude, PUF, ed. 2013.



## But what do companies do with contracts?

Jean-Guy Belley, Professor of Law at Mc Gill University, had the "*curiosity*" to study "*living law*" and in 1996 devoted a very comprehensive study to Alcan's supply contracts<sup>6</sup>.

Even though the study is quite old, it is quite rare/unique for academics to be interested in the practice of law within companies. Moreover, the socio-legal typology of contracts he drew up at the time remains largely relevant.

Belley identifies **5 main types of contracts** within Alcan.

- **The legal contract:** these are contracts for which the company has an authorisation, approval, verification or authentication process to be followed by buyers and managers in charge. These are "contracts of a non-standard nature" in terms of their purpose ("large-scale projects" ; "construction contracts"; "technology contracts"), their financial importance, the real estate rights they involve ("financial lease"; "universal lease") or by their extension in time ("lease agreement"; "service agreement"; "annual agreement"; "purchase agreement").

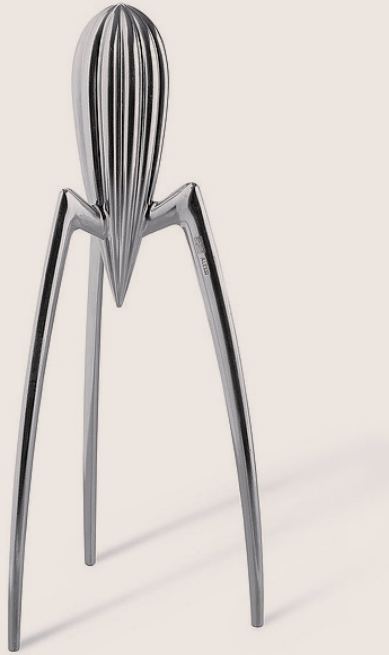
6. Jean-Guy Bellay, "Max Weber and the theory of contract law", *Law and Society*, 1988 9 pp. 281-300

Clearly, **the legal contract serves a useful purpose as a "insurance policy" in the event of a dispute:** compliance with the legal framework prevails over all other considerations. Its function is defensive.

Interestingly, Belley also identifies a "*rationality in value*" of the legal contract: it is a form of external communication, of public relations by which the company "*expresses its adherence to and its support for a political body whose fundamental values it shares.*". According to Belley, this rationality in value **justifies the costs of harmonisation with the state legal system**, even if it turns out that **calling legal guarantees and litigation are rare in practice in economic exchanges.**

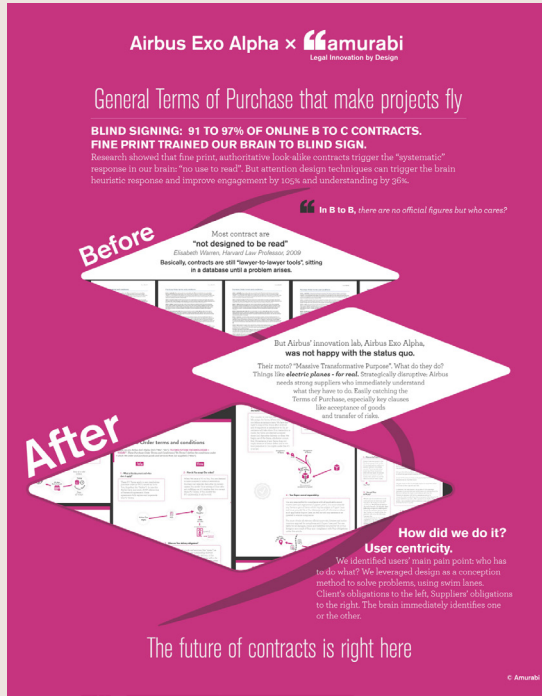
**In other words, even though contracts are unlikely to end up before a judge in practice, their "super-compliance" with the legal system remains relevant in terms of public relations.**





Presse-citron © Philippe Starck

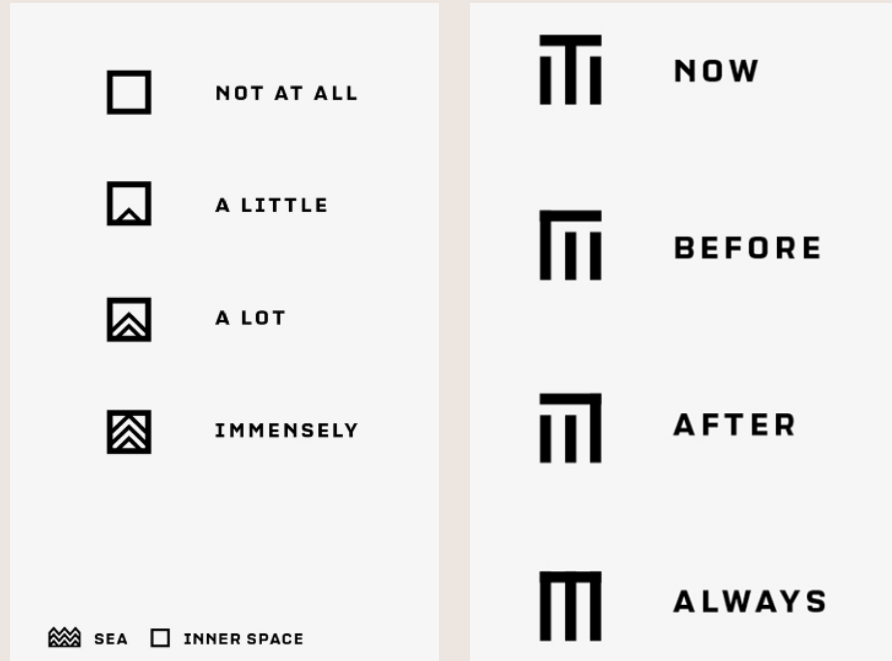
If we continue the analysis from a designer's point of view, the function of a legal contract is to convey a message, and its main user is not a judge but the company's clients, investors and economic partners. A parallel could be drawn with Starck's lemon squeezer, which does not work as a lemon squeezer (the legs are too high, it slips when you squeeze it...), but which is a perfectly successful "excuse for conversation".



Poster for the exhibition Paris Design Week 2019, [link](#)  
© amurabi

To ensure this message-function, a designer's approach could be based on the principles of composition, text placement, cut-outs, visuals, typography, focal point, hierarchy...

A designer's approach could be based on a new type of formal language:



*Speechless*  
©Mai Anne Benedic,  
Somehow

I. The design of contracts

We will see below what forms designers have given to contracts or legal documents, and the results.

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7. Cognitive scientist who has focused his work on the mechanisms of cognition, emotion, action, memory, and perception, which sought to apply the principles of cognitive psychology to the field of everyday life and design. Don Norman, Author of *"The Design of Everyday Things"* in 1988, and first "User Experience Expert" at Apple in 1993.

■ **The bureaucratic contract:** this is a contract that must first and foremost comply with the company's internal policy. Typically, the purchase order. Here, organizational legality, i.e. compliance with the "internal legality" of the company, takes precedence over contractual normativity or harmonization with the state legal order. With a touch of humour, Belley observes that "the constraints imposed by the management system (of bureaucratic contracts) on exchange remind that (...) **the needs to be satisfied are those of the organization and not of its representatives.**"

Anyone who has read the T&Cs, purchase orders and other general terms and conditions of use knows that these documents are not designed for their readers.

In the eyes of a designer, thus, the function of the bureaucratic contract should be to fit in as well as possible into the company's processes, but to do so, the **users of the contract should be taken into account:** buyers, office staff, clients...

**Don Norman's approach - a "user-centred" design would find application here:** the contract design would be based on the needs and interests of the user, focusing on the production of easily usable and understandable content.

In particular, **affordance** - the ability of an object or system to suggest its use, its function in an intuitive way for the user - would be especially useful.

If a good designer must always, when confronting the user with an artifact, "*make sure that the user is able to determine what to do and to say what is going on*"<sup>8</sup>, making "*instructions for use*" useless, a designed contract would not only be easily understandable but would also allow its users (non-lawyers) to apply it on their own in practice. Several examples are given below.

■ **Standard contract:** this is a contract in which the strategic objectives of the organization and the norms derived from them prevail over the parties' project or the rationality of a given exchange (e.g., supply contract to maximize the purchasing power of the company, or a subcontracting contract).

Belley observes that the standard contract involves the transit of rules from the company's head office to each of its subsidiaries, and from international production sites to the local level.

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8. Norman, 2002, p.188.

This is a classic case that remains totally relevant: the legal department of the head office issues standard contracts that are particularly protective of the company's interests (notably in terms of guarantees, liability), necessarily unbalanced, even authoritarian, which are intended to be applied by all subsidiaries worldwide and to take precedence over specific situations.

A recent example? The clauses that I call "read this if you dare" contained in the contract of the head office of one of the companies I worked at, entirely in capital letters, hostile and full of jargon<sup>9</sup> :

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0.1. MUTUAL WARRANTIES. EACH PARTY REPRESENTS AND WARRANTS TO THE OTHER THAT: (A) IT HAS ALL RIGHT, POWER, AND AUTHORITY NECESSARY TO ENTER INTO THE AGREEMENT, PERFORM ITS OBLIGATIONS HEREUNDER AND GRANT THE RIGHTS IT GRANTS TO THE OTHER PARTY HEREUNDER; AND (B) ITS PERFORMANCE OF THE AGREEMENT, AND THE OTHER PARTY'S EXERCISE OF ITS RIGHTS UNDER THE AGREEMENT, WILL NOT CONFLICT WITH OR RESULT IN A BREACH OR VIOLATION OF ANY OF THE TERMS OR PROVISIONS OR CONSTITUTE A DEFAULT UNDER ANY AGREEMENT BY WHICH IT IS BOUND OR ANY APPLICABLE LAW, RULE OR REGULATION.

0.2. SERVICE PROVIDER WARRANTIES. SERVICE PROVIDER REPRESENTS, WARRANTS AND COVENANTS TO CUSTOMER AND EACH OF ITS AFFILIATES ON THE EFFECTIVE DATE AND ON THE EXECUTION DATE OF EACH SOW THAT: (A) SERVICE PROVIDER IS THE SOLE AND EXCLUSIVE OWNER OF THE ENTIRE

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THE DELIVERABLES SHALL BE FREE FROM ANY DEFECTS FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF ACCEPTANCE OF EACH DELIVERABLE BY CUSTOMER; AND (G) THE DELIVERABLES, THIRD PARTY MATERIALS AND SERVICE PROVIDER MATERIALS WILL BE VIRUS-FREE AND WILL NOT INCLUDE ANY TROJAN HORSES, TRAP DOORS, LOCK OUTS, INTERRUPT MECHANISMS OR SIMILAR DISABLING SOFTWARE OR CODE THAT DOES OR CAN DISABLE, DAMAGE, CORRUPT, INTERFERE WITH OR DELETE ANY ELEMENT OF SOFTWARE, DATA, COMPUTER OR ELECTRONIC RECORDS OR FILES OF CUSTOMER, INCLUDING ANY SUCH CODE THAT ALLOWS SERVICE PROVIDER OR ANY THIRD PARTY TO ACCESS OR TO PERFORM ANY UNAUTHORIZED OPERATIONS ON CUSTOMER'S OR ITS AFFILIATES' COMPUTER SYSTEMS WITHOUT CUSTOMER'S PRIOR AUTHORIZATION IN EACH INSTANCE.

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**Are you still with me?**

Of course, you haven't read.

These standard contracts would therefore be exclusively the business of lawyers. But according to Belley, these contracts reflect the company's strategic objectives - yet as they stand, they are not understood by the company's agents that are outside the legal profession.

**What would be a designer's point of view?**

The function of these contracts is not only to convey a message but to reveal their latent value, to ensure a posture. Hatschuel's work on "Parure ("ornament") & Pointe"<sup>10</sup> sheds a striking light: placing ornament on an object "*transforms the object and illuminates it*". At the same time, the intrinsic value of the object thus adorned is revealed: the ornament makes visible its latent value.

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10. Armand Hatschuel, "*Quelle analytique de la conception? Parure et pointe en design*", in "*Le Design, essai sur des théories et des pratiques*", Flamand, 2006.



The ornament makes an "extension of the object", that has new "appreciative attributes", but the object retains its identity. A red oven may become a luxury item, but it's still an oven.



I. The design of contracts

Armand Hatschuel,  
"What design analytics?  
Sets and design tips "



O-re gami, Regenesi, © Matali Crasset

The “pointe”, on the other hand, “disrupts” the very identity of the object, which is transformed. Its function changes.

The project for Regenesi plays with the essentials: *starting from a leaf and moving from the second dimension to the third dimension by generating origami shapes that become sometimes a tray, a cup, a basket. By changing slightly the shape, the form offers another function.*

Does placing an ornament on a standard contract (or legal document) reveal its latent value? We will try to answer this question with the examples analysed in Part II.

Belley identifies two other forms of contracts, the “**community contract**”, which refers to the existence of a of a commitment to a community as a whole and defines a general economic exchange project<sup>11</sup>, and “**the moral contract**” which is part of the normativity of a particular relationship established over the years between two individuals or two organizations.<sup>12</sup> Due to time constraints, and to the extent that they are less frequent, they are not discussed here.

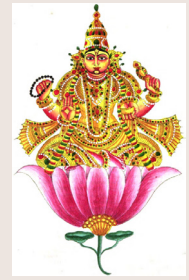
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11. Example: in exchange for the water and human resources that the region provides to the company and to compensate for damages done to the environment caused by its operations, Alcan has an obligation to provide the regional community with major economic benefits from its operations.

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12. This type of contract encourages the emergence of a consensual vision of the objectives and constraints of the exchange to be achieved. It generates expectations and obligations that are more often felt or taken for granted than formally expressed.

# Some examples of the forms given to contracts throughout history



## Dharna

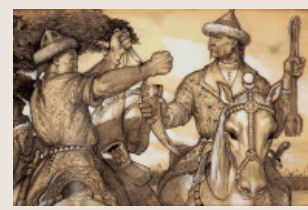
Dharna is a hindu usage allowed under the ancient codes of Manou and Brihaspati, whereby a creditor who wants to receive his payment from a rebellious debtor sits on the threshold of the debtor's house and fasts there until he's collected his debt, even until death.

Durkheim interprets the dharna as a magical, pre-legal anticipation of restitutionary law. A form of spell cast on the rebellious debtor, in lieu of modern enforcement remedies.

-753

## Roman Stipulation

The stipulation serves to make conventions binding by a verbal questioning of the promitesne?) a satisfactory (spondeo or promitto). This is a formula that provides contracts with legal sanctions, if the formulas are used. For Durkheim, in the Roman law, the sacredness of the stated formula for contractual wills irrevocable are renounced, invoking divine contract, thus guaranteeing to him, the irrevocability of the contract goes through their declaration creates function.



## Blood covenant

The "blood pact", observed by ethnologists during adoption or alliance ceremonies between groups in clan societies. The adopter and the adoptee each make a prick or an incision and suck each other's blood.

Durkheim considers that the blood covenant constitutes a first emergence of contractual relationships, going beyond personal status and aiming at modifying this status.



ke the most diverse  
rbal ceremony consisting  
e creditor (spondesne? or  
response by the debtor  
is a legal formalism  
the guarantee of legal  
e correctly stated.  
stipulation, it is the  
mula that makes  
e and punishable if they  
ine power as a party to the  
its respect. According  
the will of co-contractors  
on. In other words, form



## A parchment in 1346

The contract of the City of Rouffach,  
with Jean BEHEM, master builder of the  
Notre Dame church.  
[https://obermundat.org/  
topographie/136-un-parchemin-de-  
1346-le-contrat-de-la-ville-de-rouffach-  
avec-jean-behen-maitre-d-uvre-de-l-  
eglise-notre-dame](https://obermundat.org/topographie/136-un-parchemin-de-1346-le-contrat-de-la-ville-de-rouffach-avec-jean-behen-maitre-d-uvre-de-l-eglise-notre-dame)

0

257

1346

2019



## Papyrus bearing a list of payments

a corn order on the front and a contract  
on the back. Greco-Roman period,  
Roman period, AD 257 - 259



## Juro

Plateform

## b. The phenomenon of small print and blind consent

What is the main problem with contracts today?  
They are not read by humans.

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

Elizabeth Warren on credit traps

When Elizabeth Warren<sup>13</sup> made this statement in 2009, she denounced in particular the "hidden and catchy clauses" in credit card contracts, which 50 million American households subscribed at that time. She stated that, according to the Wall Street Journal, a typical credit card contract in the 1980s was one and a half pages long. It indicated the interest rate, what happened if you were late with your payments and that was about it. In 2009, the same basic contract was 31 pages long. According to Elizabeth Warren, the additional 29 and a half pages are used to hide unfair clauses, which amount to allowing the banks to change rates whenever they want, however they want.

13. At the time, a Harvard law professor, elected Senator for Massachusetts in 2013 now running for the Democratic nomination.

More recently, many authors have focused on the "fine print" that is particularly common in B-to-C contracts. For example, a [2014 study](#) analysed the online behaviour of 48,154 monthly visitors of 90 online software sales sites: only 0.2 per cent of Internet users accessed the licence agreement (which governs the rights of the software user) and among those who accessed it, very few read it.

In 2017, a [Deloitte study in the United States](#) indicated that 91% of consumers accept the terms and conditions of use without reading them before downloading applications, registering at a WiFi hotspot, accepting updates and using online services such as streaming video. In the 18-34 age group, the blind consent rate is 97%.

An [experiment carried out by Europol](#) had already revealed the obvious, by inserting a clause in the general conditions of use of a WiFi HotSpot according to which, in exchange for free access to Wi-Fi, Internet users would agree to "give away their first-born child for eternity" to the service provider. Six people gave their consent.<sup>14</sup>

---

14. When people connected to the hotspot, the terms and conditions they were asked to sign up to included a "Herod clause" promising free Wi-Fi but only if "the recipient agreed to assign their first born child to us for the duration of eternity". Six people signed up.

A very recent study by the Behavioral Insights Team, commissioned by the UK government to test and define good practice for online terms and conditions, reviewed existing multi-disciplinary research on engaging with and understanding terms and conditions.

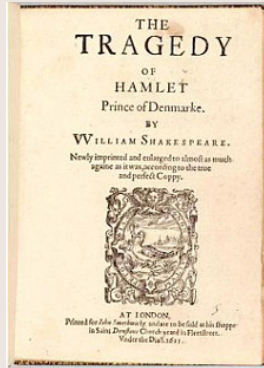
While "self-reported" reading rates vary from one study to another (from 1% to 65% of Internet users according to Elshout et al. in 2016), the rates observed are all very low (less than 1%).<sup>15</sup>

A rational response, according to the OECD in a study on improving online disclosures through behavioural sciences (including economics, psychology, neuroscience and marketing), given the effort and time required to read very long and dense terms and conditions.

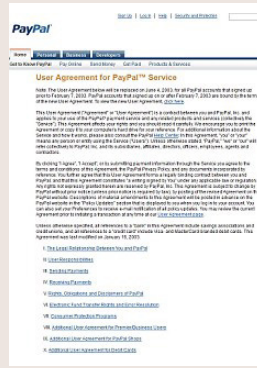
Two Canegie Mellon researchers calculated in 2012 that it would take 76 business days to read all the privacy policies that Internet users accept in a year. And in 2017, The Glass Room exhibition had the general terms and conditions of sale for the Kindle (Amazon) read out loud: it took nine hours without stopping.

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15. Bakos, Yannis, Florencia Marotta-Wurgler, and David R. Trossen. 2014. "Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts." *The Journal of Legal Studies* 43 (1): 1- 35. Bakos and Trossen have analysed the behaviour of 90,000 households in the United States in relation to software licence agreements for software purchased online: 1 or 2 out of 1000 opens the contract..



Hamlet, Shakespeare



Paypal terms of service

## Paypal's terms and conditions are longer than Hamlet.

As if it were necessary, researchers have measured the readability of general conditions: those of energy suppliers were analysed in 2013 on the basis of the Simple Measure of Gobbledygook (SMOG) and were "far beyond what an educated adult could understand".

An earlier study had found that privacy policies required 13 years of education to be understood, but that even university students did not understand them.

A New York Times editorial asked:

*"why would anyone read terms and conditions over which they have no influence. It's not as if Internet users can call Mark Zuckerberg to negotiate their own privacy policies. The button 'I accept' should have been renamed a long time ago. 'Me? I don't care!'".*

What are the consequences?

According to the New York Times, blind consent is the reason why Facebook has been able to pay Internet users



- including children under the age of 13- to download applications that track almost all their activities and use of their mobile phones.

As we have seen, **in B to C**, consumers do not make informed choices. Beyond the obvious implications in terms of the protection of personal data<sup>16</sup> (and the consequences in relation to consumer law, which is largely dependent on compulsory information at European level), The OECD sees this as posing a risk to the actual operation of the market:

If liberalism is considered to generate the best benefits for consumers, it is subject to a certain number of conditions: that markets are fully competitive, that there are no market failures, that market players act in their best interests, that there are no outsiders and... **that there is a "full and complete information"**.

The OECD considers that if this is not the case, regulation is required.

---

16. Personal data disclosed without really wanting to, but also, from a strict legal point of view, invalid consent to data processing if he is not "informed".

In **B to B**, the measurement of the reading rate would not be necessarily relevant: that's what in-house lawyers are there for. Rather, the question is whether business teams who are supposed to apply or use the general conditions, once they have been validated by the lawyers, understand these documents.

I have not identified any studies on this subject; my hypothesis is that no one has ever bothered (or dared?) to look for precise figures.

In my experience both as a private practice and in-house lawyer, and now in my agency, there are many negative consequences:

- Non-conformity of deliveries
- Penalties for late payment
- Increased negotiation time and costs

In both cases, the information **that is supposed to be provided does not fulfil its function**. The General terms and conditions are a "zero-sum game": those who produce them do not conceive them to be read by their users, and those who accept them and are supposed to apply them do not read them, so they do not apply them.

## c. Graphic design and experiential design to the rescue: which paths? What results?

---

Designers have long been striving to make complexity accessible. For example, in the field of quantum physics, a partnership between the ENSCI-Les Ateliers, the University Paris-Sud and the CNRS, with the support of the Diagonale Paris-Saclay and the Société Française de Physique enabled design students to show a "different face" of quantum, its laws and its behaviour, to make them accessible to the greatest number of people.

According to the project leaders, quantum has been a source of inspiration for "imagining new objects and uses, and even other ways of working."

Design then serves as a mediation to make the complexity of the world acceptable. Simple, never simplistic.

Design as a remedy to the impenetrability of the law and as a solution for the accessibility of legal concepts has been used for about ten years, first in New York by Candy Chang in a pro bono project in favour of street vendors, and then theorized by several academics including the "legal design guru", Margaret Hagan, author of Law by Design and creator of the Legal Design Lab at Stanford, and pioneers such as Helena Haapio, at Vaasa University and Stefania Passera, designer and researcher at Aalborg University.

Together or separately, these 3 academics have explored ways in which design can help navigate the law, clarify contracts, create a common language for user-centric contracts.

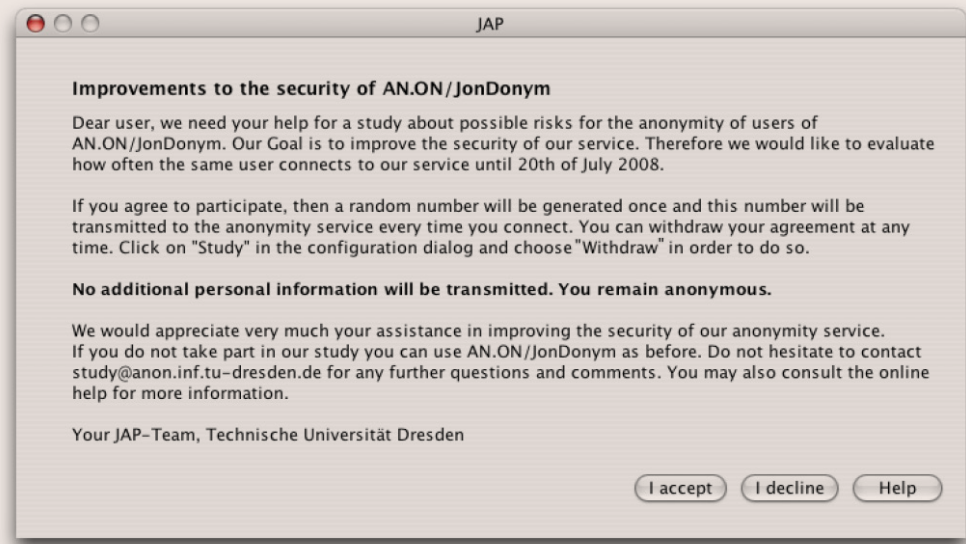
By applying to contracts the principle of pattern libraries used by designers but also software engineers, they have developed several libraries that encourage lawyers to get away from copy and paste contract models and their proven misdeeds to innovate when it comes to the form of contracts.

This thesis is not intended to be a catalogue of all contract design initiatives: **we are specifically interested in practical and quantified initiatives that limit blind consent. What design techniques may encourage the user to read a contract, in particular the general terms and conditions?**

## Four studies caught my attention.

### 1<sup>st</sup> study

*"Have we been trained to accept?"<sup>17</sup>* In 2010, two researchers from the universities of Berkeley and Dresden tested on more than 80,000 real Internet users the effects on their consent of variations on the shape of a dialogue box:



17. "Trained to accept ? A field experiment on consent dialogs". Rainer Böhme, Stephan Köpsell <http://citeseerx.ist.psu.edu/viewdoc>

During a real security update of a service of online anonymity, Böhme and Köpsell tested 3 variations :

- on the title of the dialog box (neutral: "Update"/ polite request for help: "Help us improve the security")
- on the button title:  
I accept-I decline/I participate-I do not participate
- on the button checked by default: I Agree/I disagree/No default button

They used the "dual process" theory according to which individuals would make decisions either systematically (unconscious and fast) or in a reasoned way (deliberate and slow). The use of one or the other system depends on the type of decision, the level of commitment of the individual, his or her personality, but also on contextual elements.

The variations, which constitute these contextual elements, were chosen by Böhme and Köpsell to stimulate either systematic or reasoned responses.

For example, the "polite request for help" variant on the title was designed to be radically different from the software license agreements ("EULA") that Internet users are used to seeing and accepting, to stimulate the reasoned response. The user sees a message that he does not expect for this type of content, which should prompt him to investigate.

## What are the results?

**The stimulation of the systematic response ("update", "I Agree/refuse", the "I Agree" button checked by default) increases consent by 26%.**

**More than 50% of Internet users consented in less than 8 seconds, which is not enough to read the content.**

On the other hand, the stimulation of the reasoned response has the effect of lowering consent by 1.9% (variation on the title of the dialog box) and 5.7% (variation on the default button).

The authors conclude that even those Internet users that are concerned with the protection of their personal data, are very used to accept standard EULA-type contracts, which leads them to accept anything that superficially resembles

an EULA: we would all have been "trained to accept."

Unfortunately, my intuition is confirmed: decades of contracts in incomprehensible small print have "taught our brain not to read": i.e. every time our brain identifies content that looks like a contract, it sends the automatic response: check/sign without reading.

But Böhme and Köpsell point out that **as soon as there are contextual elements that differ from what is commonly believed first** (*"this is an incomprehensible contract, I accept it without reading"*), **some of the users reflect and give their true opinion.**

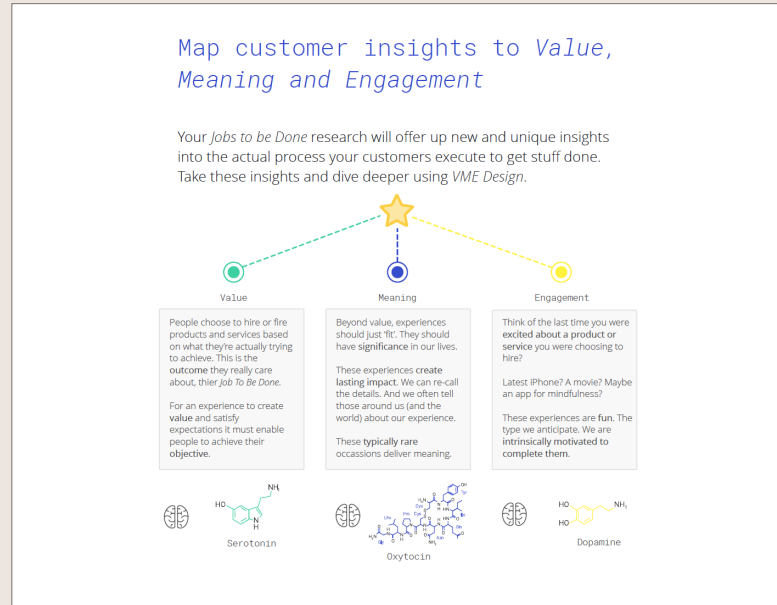
**In other words, this study demonstrates that it is possible to address the problem of blind consent at least in part through design techniques: the form of "contextual elements" that determine our responses, systematic or reflective...**

**But how?**



The Australian research, design and strategic consultancy agency Greater Than Experience has tested and developed a "trust by design" toolkit, which is applied in particular to general terms and conditions in the financial services sector and in relation to the protection of personal data.

The agency advocates 3 pillars of user understanding:  
**value, meaning, and commitment.**





Their box contains 8 tools for designing legal information:  
The 1<sup>st</sup> tool follows a "classic" approach of questioning the identity of the company (see Part 2, point b), focusing on its values as a driver for action.

The 2<sup>nd</sup> and 3<sup>rd</sup> tools apply equally classic principles of information structuring and layout of contracts. In our view, tools 4 and 7 go hand by hand: contextualizing information and gathering information on possible choices and the consequences of such choices.


This is one of the reasons we created this prototype<sup>18</sup> of a privacy policy in November 2019 for consumer products, where the user can exercise real choices because the consequences of his choices are clearly specified (this need to control and ability to understand the consequences of choices was also clearly shown in the user workshop conducted in September 2019 with about fifteen participants).

The tool 5 Greater Than X (visualizing tangible progress) can be seen as both a breadcrumb trail and a form of completion bar (a technique widely used in UX and in video games)



prototype Btoc privacy policy, December 2019 © amurabi

18. This prototype was tested at a second workshop on December 13th, the iteration is in progress. It should be online in the spring of 2020.



je décide,

DE CE QUE SOMFY

PEUT FAIRE AVEC MES DONNÉES

UTILISER TOUTES MES DONNÉES

JE VEUX DÉCIDER DANS LE DÉTAIL

EN UN COUP D'OEIL

POUR GÉRER MA RELATION CONTRACTUELLE

COMMENT JE DÉCIDE? Je suis libre de ne pas transmettre de données à caractère personnel. Dans ce cas, cela empêchera SOMFY de fournir les services demandés.

POUR RÉPONDRE À MES DEMANDES ET PLAINTES

COMMENT JE DÉCIDE? Je suis libre de ne pas transmettre de données à caractère personnel. Dans ce cas, cela empêchera SOMFY de répondre à mes demandes et plaintes.

POUR ANALYSER MES AVIS SUR LES PRODUITS ET SERVICES PARCE QUE SOMFY VEUT TOUJOURS MIEUX FAIRE !

COMMENT JE DÉCIDE? Je suis libre de refuser, ça n'aura pas d'impact sur ma relation contractuelle avec SOMFY, mais je ne participerai pas à l'amélioration continue des produits que j'aime bien.

POUR RÉALISER DES STATISTIQUES ET AMÉLIORER LES PRODUITS ET SERVICES SOMFY

COMMENT JE DÉCIDE? Je suis libre de refuser, ça n'aura pas d'impact sur ma relation contractuelle avec SOMFY, mais je ne participerai pas à l'amélioration continue des produits que j'aime bien.

POUR M'ENVOYER DES INFORMATIONS ET CONSEILS PERSONNALISÉS SUR DES PRODUITS ET SERVICES SOMFY QUI POURRAIENT M'INTÉRESSER

COMMENT JE DÉCIDE? Je suis libre de refuser, ça n'aura pas d'impact sur ma relation contractuelle avec SOMFY, mais je n'aurai pas de conseils personnalisés, ni d'information en avant-première.

☒

☒

☐

☒

☒

1<sup>er</sup> prototype de charte de confidentialité BtoC, décembre 2019 © amurabi

I. The design of contracts

52

■ ▲ ○ Can the form of the standard restore its function?



© Greater than Experience

Two tools in particular stand out:

- Delaying the desired action: these tools are the "desirable frictions" mentioned by the CNIL in its aforementioned Cahiers d'Innovation n° 6/ tool number 6, mentioned above, which allow the user to get out of the "illusion" of an experience where everything would be ultra easy and simple "without thinking". Precisely, a friction, a waiting time before making/carrying out an action could generate the slower but more conscious "reasoned response" identified by Böhme and Köpsell, above.

- Provide the user with a receipt of the agreement that he has concluded, summarizing in simple terms the essential information, and which he can review at any time.

Interestingly, the European Commission is increasing the obligation to "summarize in one page" the main terms of certain standard contracts, according to a predetermined format that can be likened to the "receipt" mentioned by Greater Than X (except that the summary is pre-contractual, precisely to allow consumers to compare different policies).

Xxxxx Insurance
Insurance Product Information Document
Company: <Name> Insurance Company
Product: <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

What is this type of insurance?
[Description of Insurance]

What is insured?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx

What is not insured?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx

Are there any restrictions on cover?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx

Where am I covered?

- Xxxxxx

What are my obligations?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx

When and how do I pay?
Xxxxxx

When does the cover start and end?
Xxxxxx

How do I cancel the contract?
Xxxxxx

Commission européenne, IPID Contract Summary Compulsory Template

This has already been the case since the so-called IPID Directive (Directive 2016/97 on Insurance Distribution, 20 January 2016), for certain insurance contracts that

I. The design of contracts

54

Can the form of the standard restore its function?

[Service name]	[Provider/provider logo]
	[Contact]
<b>Contract summary</b>	
<ul style="list-style-type: none"> <li>• This contract summary provides the main elements of this service offer as required by EU law<sup>1</sup>.</li> <li>• It helps to make a comparison between service offers.</li> <li>• Complete information about the service is provided in other documents.</li> </ul>	
<b>Services and equipment</b>	
[...]	
<b>Speeds of the internet service and remedies</b>	
[...]	
<b>Price</b>	
[...]	
<b>Duration, renewal and termination</b>	
[...]	
<b>Features for end-users with disabilities</b>	
[...]	
<b>Other relevant information</b>	
[...]	
<hr/> <small><sup>1</sup>Article 102(3) of Directive (EU) 2018/1872 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (EECC) (L 321, 17.12.2018, p. 36).</small>	
2	

Source: [Annexe du Règlement d'Application](#)

each company must summarize in the following format

The Commission has just applied the same logic to B to C contracts of Internet providers and telephone operators, by adopting on 17 December 2019 an [Implementing Regulation](#) establishing a model contract summary, which will be compulsory from 21 December 2020.

We were able to test different scenarios of use of the prototype of the privacy policy implementing some of the above-mentioned tools during a user workshop on December 13, 2019, and the following findings emerged:

	Older version	New Release (Prototype)
<b>Reading</b> (methodology: observation focus group in situation, in front of the home page)	"I don't read"	There was some discussion during the workshop about the proposed effects on the home page, which diverted participants from answering the question "do you read?"
<b>Understanding</b> (methodology: specific questions asked to the focus group)	4 correct answers	7 correct answers, i.e. 75% increase in understanding
<b>Speed of understanding</b> (methodology: exercise of drafting a request for rectification of personal data)	4mn	2mn : time divided by 2



### 3<sup>rd</sup> study



Credits © Rossana Ducato

In 2018 Rossana Ducato, a researcher at the Catholic University of Louvain, developed an awareness by design application that aimed at engaging and, above all, give back control to users over the risks, rights and obligations contained in the general conditions and privacy policies.

The application (i) checks the general terms and conditions and privacy charters to alert the user in case of abusive or unenforceable clauses and (ii) gives a "legal quality" score to the documents analyzed.

To conduct this experiment, 80 general conditions and confidentiality charters were analysed (B to C platforms and "sharing economy": *Uber, Blabacar, Cambio, Zipcar, AirBnB, Onmyway...*).

The analysis was carried out by Rossana in a manual way: she identified the main clauses, those clauses that could be considered unfair or obscure, and reformulated them in clear legal language. Then 3 focus groups were created. According to Rossana Ducato, one of the difficulties encountered was finding the right level of language: simpler, but not "too simple", as this confused users who thought it was "no longer law."

An example of reformulation: the term "data controller" has been replaced by *"the person in charge of the processing of data"*.

In the next few months there are plans to carry out the final tests with 2 focus groups, one will have the initial versions, the other one will have the application and each group will have to answer the same questions about the content. The correctness and timeliness of their responses will be measured.

#### 4<sup>th</sup> study

Most recently, the Behavioral Insights Team Study was commissioned by the British government to test and define good practice for general conditions and to provide accurate data on the impact of 18 design techniques on (i) "engagement" (defined by BIT as opening OR reading) and (ii) understanding the online terms and conditions.

After a review of research on this subject over the last 10 years, BIT has tested them individually on groups of participants ranging from 300 to 600 people, the groups being equivalent in terms of gender, age, education, income and location.

Their "online lab" test method was simple: they showed each group a different version of the design of the general conditions, where each version used one of the identified techniques, and asked all groups the same set of questions. The degree to which the document was read was measured by clicks or scroll.

Here are the results, published on July 18, 2019:

	Effective techniques	Techniques with mixed evidence	Techniques with little or no supportive evidence	
+ 36%	3.1 Display key terms as frequently asked questions	5.1 Present key points in a summary table	6.1 Make summaries expandable, allowing customers to click each summary point for more information	Understanding
+ 34%	3.2 Use icons to illustrate key terms	5.2 Add examples and icons to your full terms	6.2 Add emoji symbols to your terms	
+ 26%	3.3 Show customers your terms within a scrollable text box instead of requiring a click to view them	5.3 Shorten your full terms	6.3 Allow customers to make choices related to your policies while reading them	
+ 9%	3.4 Provide information in short chunks at the right time	5.4 Use simpler language	Opening	
+ 24%	3.5 Use illustrations and comics	5.5 Use a visual slider to explain fees		
(not tested by BIT% based on other research)				Opening
+ 105%	4.1 Tell customers howlong it will take to read your policy			
+ 41%	4.2 Tell customers when it is their last chance to read information before they make a decision			

© Behavioral Insights Team, percentages added to this visual

According to this study, simply informing Internet users how long it will take them to read the document increases readability by 105%, and simply expressing the main clauses in the form of questions increases understanding by 36%.

Improving consumer understanding of contracted terms and privacy policies

9

### 3.1 Display key terms as frequently asked questions

Use a question-and-answer format to present what you consider to be key terms. Our tests results showed that this improved understanding by 36 per cent.

**How to do this**  
Choose the most important or unusual points from your terms or policy, write them as questions with simple answers. For example, if your return policy causes confusion, rewrite the key points as questions.

**PROVEN EFFECTIVE**  
We found that this technique increased customer understanding.

Example 3.1 Display key terms as frequently asked questions

1 SHOPPING

2 PAYMENT

3 CONFIRMATION

**Payment method**

☒ Pay by card

Name

On account or card

Card number

Expiry date  Year

CVC is

How can I return items? You can return an item by sending it back by post or by bringing it into a store.

Do I have to pay the return postage? Yes.

How long do I have to return the item? 30 days from delivery.

Anything else? Items bought via a digital wallet cannot be returned back to your digital wallet account in store. Instead, you will be issued store credit or offered an exchange.

☐ I agree with these terms and conditions

**Your items**

GREY S-SHIRT LARGE x1

Price £6.00

Subtotal £6.00

Delivery charge £2.99

Total to pay £8.99

**BILLING ADDRESS**

- Same as shipping address

Mr A. Smith

10 Ship Lane

Applesbury

Leicester

LE1 1GJ

Improving consumer understanding of contracted terms and privacy policies

**Evidence**  
We compared two webpages: one with no summary, and one containing a summary of key terms written as questions and answers. Adding a summary of key terms in a question-and-answer format to a webpage increased customers' understanding of the terms by 36%.

**Evidence 3.1 Display key terms as frequently asked questions**

**COMPREHENSION LEVELS UP 36%**

Customer understanding

**42%**

Check-out page with link to terms and conditions

Customer understanding

**58%**

Summary of key terms, written as frequently asked questions

The study is also intended as a guide of good design practice from the point of view of consumer understanding and provides the designs used for testing.

It should be noted that at most, with each of these techniques taken individually, the rate of understanding of Internet users is only 58%, and the opening rate of the general terms and conditions is only 34%. Poor scores that do not address the lack of "perfect and complete information" raised by the OECD.

It would have been interesting to also test a combination of effective techniques (question-titles plus illustration of key clauses, plus text available in scrolling, plus provision of small doses of relevant information at the right time, plus reading time indicated at the outset) compared to the basic design, to measure the rate of maximum comprehension thanks to this combination - which is what legal design is partly about.

On the other hand, techniques that are considered neutral or ineffective deserve special attention.

■ The presentation of key terms in a summary increases the understanding of these terms by 7% but decreases the understanding of the other terms by the same amount (point 5.1)! This is one of the challenges of legal design and the reason why this young discipline requires experienced legal professionals, capable of finely dosing what can be summarized without the risk of weakening the understanding of other important terms, and by developing other design techniques to promote a sufficient understanding of standard terms ;

■ Shortening the document from 1400 to 700 words did not increase comprehension (point 5.3), nor did the use of simpler language (point 5.4). But the study does not indicate how they shortened the text or simplified the language. They note that "*when the terms are complex*", shorter texts do not help. In other words, BIT has not tested "plain legal language", which is precisely a technique that makes it possible to express complex legal concepts in a brief and understandable manner;

Improving consumer understanding of contextual terms and privacy policies 91

### 5.5 Use a visual slider to explain fees

Interactive sliders can help customers understand the choices they can make. Sliders are especially helpful when there are a range of financial consequences as a result of customers' choices.

**How to do this**  
Use sliders to show the effects of decisions. Examples include:

- cancellation charges that change depending on when customers cancel<sup>41</sup>
- debt repayment schedules that change based on payment choices
- insurance premiums that vary based on the excess chosen by customers

**MIXED EVIDENCE**  
Although sliders improve comprehension in some contexts, the evidence is mixed.

**Example 5.5 Use a visual slider to explain fees**

Use the slider below to work out how much you will pay if you cancel:

Days until check-in

15 days

Three to two weeks before check-in:  
100% refund on all fees<sup>42</sup>

\*If you have made non-refundable travel that you cannot change during the same time period, we will not refund the service fee if you cancel ahead of time. This is to challenge the practice of booking multiple rooms and then cancelling all but one of them.

Use the slider below to work out how much you will pay if you cancel:

Days until check-in

6 days

Three to two weeks before check-in:  
100% refund on cleaning fee, no refund on accommodation fees or service fee

© Behavioral insights Team

■ The inclusion of a slider on fees did not improve understanding (point 5.5). The design of the slider is questionable (below), and it would have been interesting to vary the forms of visual representation of the time/cost ratio, by iterating, to measure comprehension.

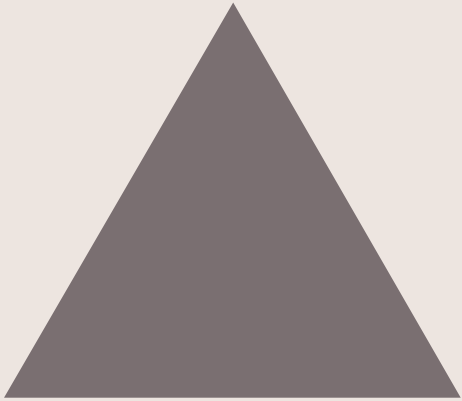
In any case, the BIT study provides for the 1<sup>st</sup> time accurate, tested and quantified data from a variety of design techniques on consumer understanding and engagement, which are extremely valuable for designers, lawyers and companies.



**II. Designing compliance to ensure its efficiency, and even reveal its latent value?**









© Margaret Hagan Legal Design Summit 2019

**2.6 trillion 5% of world**  
**GDP \$1 trillion**

Compliance can be defined in a basic way as the set of rules that companies must respect in their activity, subject to criminal or administrative sanctions: anti-corruption, anti-money laundering, anti-financing of terrorism, protection of personal data, competition law, labour law, embargoes, international sanctions...

White-collar workers don't wake up in the morning wondering "what could I possibly do today to bribe someone today?"

Yet that is precisely what happens.

According to the World Economic Forum, corruption alone accounted for \$2.6 trillion in 2018, or 5 per cent of global GDP. For its part, the World Bank states that 1 trillion dollars in bribes are paid each year around the world.

How are companies reacting ?

## a. The zero-sum game of the majority of compliance programmes

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Legislative inflation, technical nature of the rules, and fear marketing in what has become a thriving industry (the global compliance market is estimated to be worth nearly \$22 billion in 2018, and is projected to reach nearly **\$58 billion by 2026**) led to compliance being perceived primarily as a burden by economic actors.

Constraints include costs, push and control techniques (mandatory training, codes of conduct, audits, etc.), but also prevention techniques.

**Coercion, rather than adoption, then generates a game where everyone loses:**

▲ a typical multinational corporation spends millions of dollars each year on its compliance program, usually with very limited effectiveness. The former compliance expert at the Department Of Justice ("DOJ") in the United States, has identified that compliance programs failed mainly due to their structural ineffectiveness.<sup>1</sup>

1. Hui Chen et Eugene Soltes, Why compliance programs fail and how to fix them, Harvard Business Review, March-April 2018.

Hui Chen affirms that most compliance programs are "mindless, box-checking documents". "Mere Window-dressing" whose unit of measurement, according to her, makes no sense. She explains that most companies measure the effectiveness of their program by the number of training sessions delivered, and the number of employees who have completed a particular program online.

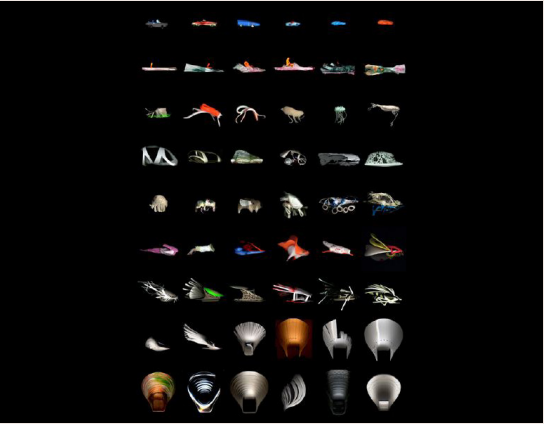
For example, in a 2012 bribery case, Morgan Stanley argued that one of its employees had completed **7 anti-corruption trainings** and received **35 alerts concerning the prohibition to bribe a public official**. Precisely the illicit behavior he had engaged in.

▲ Company employees consider that they waste their time and energy attending these trainings, and trying to understand and comply with this 100-pages policies, pointing out the contradictory injunctions that flourish in large companies.

▲ Lawyers often lose credibility, and face increased frustration, in enforcing internal codes of conduct that are designed in such a way as to suggest a "tick-the-box" approach.

To summarize, these authors argue that companies spend substantial amounts of money to create documents that are supposed to be sophisticated compliance programs, which end up being nothing more than "empty shells".

# b. Thinking compliance as a designer: exploring identity and (re) thinking usage



© Sylvain Rieu-Piquet

I was able to test the following methodology in 3 separate European-wide compliance projects in 2019.

## 1. Exploring Identity

Exploring identity is a designer's approach. For example, Sylvain Rieu-Piquet explored the identity of the electric car, observing that the imagination is "mutating" from a classic representation of power and speed to environmental and societal values that transform the very representation of the car.





Unbox Compliance" project for the Belgian Chamber of Commerce and Industry, © amurabi  
[Link](#)

I had the opportunity to explore the "identity of compliance" in a project for the International Chamber of Commerce of Belgium: "Unbox compliance".

The starting point was the strong ambition of Mathieu Maes, the Secretary General of the Belgian ICC: to create a compliance awareness document that could have an impact on SMEs, which do not have an internal compliance officer and generally feel relatively unconcerned.

It was therefore necessary to depart from the language, and the traditional administrative, even authoritarian, appearance of compliance documents to make "the law" resonate with medium-sized companies.

Mathieu Maes completely changed the original wording of the document. He dugged into the very essence of compliance and its fundamental purpose, by asking a simple question: what do regulators really want to achieve with the different laws on anti-corruption, anti-money laundering, anti-terrorist financing? And, more importantly: what do companies really need to know in order to do the right thing?





Do your best to honor the contracts. Stick to what is the most efficient for both the customer's and the company's needs. Favor solutions that are reliable over time. Care for your company's reputation, and for your own. Work with companies that you trust. Keep marketing adapted to its target groups. Don't give a hand to criminal gangs. Reject social exploitation. Respect the planet.

Secondly, digging into the very essence of compliance consisted in turning abstract and impersonal rules into practical and concrete cases, significant to SMEs, in plain language and in line with their usual business environment.

←

Digging into the very essence of compliance also necessarily means to look at the underlying motivations for the behaviors that compliance tries to prevent.

**Criminologists consider that the key to white-collar crime lies in "verbalizations".**

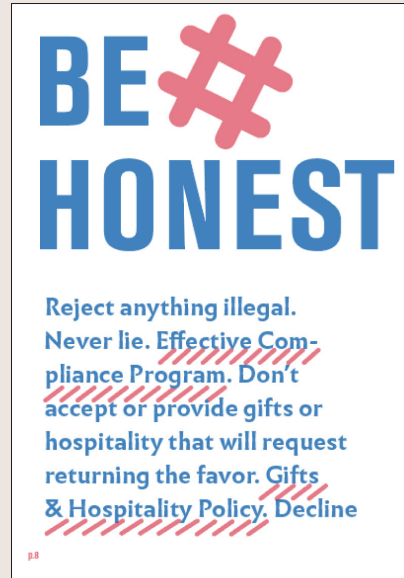
These are statements that people use to convince themselves that the unlawful behavior they are about to engage in is actually permissible.<sup>2</sup>

It is therefore critical that compliance programs are designed in such a way as to shortcut verbalizations and, according to criminologists, activate the internal "ethical monitor" of each individual.

2. see especially Todd Haugh, [The trouble with compliance programs](#), MIT Sloan Management Review, Septembre 2017



Unbox Compliance&quot; project for the Belgian Chamber of Commerce and Industry, © amurabi [Link](#)



**"Be Good, Be Honest, Be Safe"** are simple but strong principles, illustrated by practical situations and tools ([online version](#)).

Using these strong but simple principles enables to convey basic messages. *"Don't accept gifts that involve giving back"*: no technical terms, no jargon. This makes verbalization more difficult.

## 2. (Re) thinking use

The major challenge for compliance programs is the lack of use by its intended audience: the heavy, technical, even bossy content often makes them useless. As they are not read, they remain unimplemented.

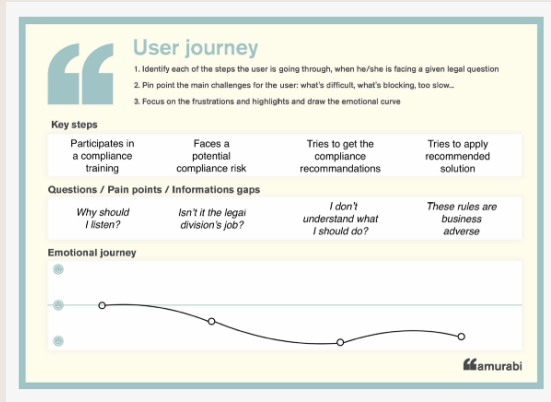
**Don Norman's "user-centric" approach to design<sup>3</sup>** is particularly useful here: the design of a compliance program should be built around the needs and interests of its users, with an emphasis on producing content that is easily used and understood.

Who are the users? What are the key steps for users, what are their information gaps, questions, difficulties, frustrations, needs?

We have also identified these user journeys in another project, which involved the design of an EMEA anti-corruption code of conduct, during a series of workshops, attended by about 20 operational people that represented the teams that were most exposed to these issues.

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3. "The Design of Everyday Things", MIT Press, 2013.



© amurabi

Unfortunately, we cannot disclose all the results for confidentiality reasons, but one of the key steps was "how am I involved? "(classic difficulty of engagement), but more importantly "how do I know what is the right behavior to adopt in practice"?

To address this we created the concept of the "Trust Compass". For each legal topic covered, the page starts with a question, a user "verbatim" from the user journey workshop.

These verbatims enable self-identification, and thus the beginning of ownership and adoption.



Then, the “Trust Compass” allows the user to know precisely what behavior he has to adopt, in clear terms that perfectly reflect the situations experienced by the users (this again from the user journey workshop)

### How do I know when a business situation slips into corruption?

Corruption means “giving or accepting money or anything of value to persuade someone to do something, often in breach of his/her duties”

In essence, this means: the key to understand corruption is the “quid pro quo”, i.e. whether the money or the “thing of value” is given / accepted in exchange for something else, usually a breach of rules or processes.

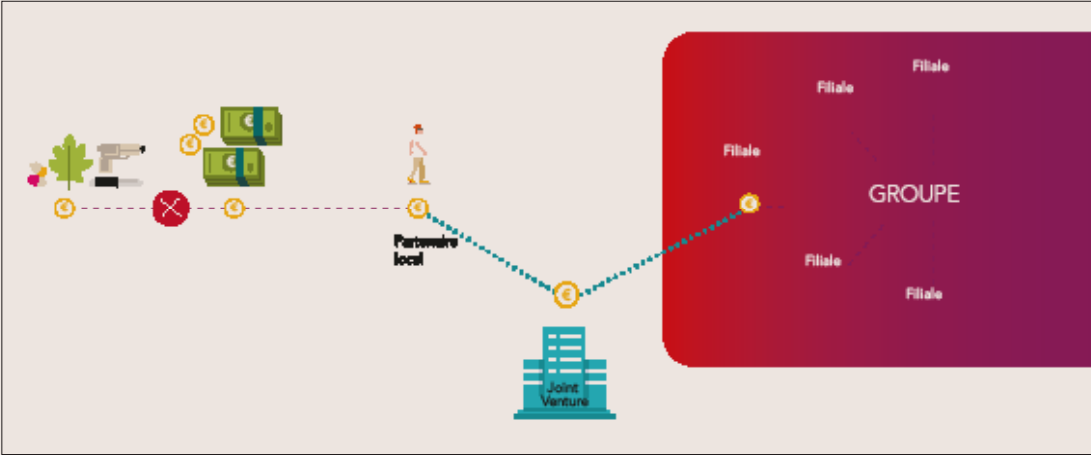
For example, offering an internship to the relative of a public official in exchange for the breach of an official process.

For certain relatively technical or complex topics, a “translator” is added: a section that explains the rules and makes them perfectly accessible.

**Trust Compass Translator:** the key to knowing whether G&H are appropriate or not is the value and whether they’re aimed at getting something in return. A real gift, in your personal life, is “for free”: you don’t expect any benefit in return, you’re not trying to influence the person. It’s the same in the professional context: it’s meant to be nice and polite, not to influence.

In another project, aimed at ensuring reading and the understanding and full application of a "letter of engagement" sent by a holding company to hundreds of its subsidiaries, the creation of a user journey revealed quite unexpected difficulties of understanding.

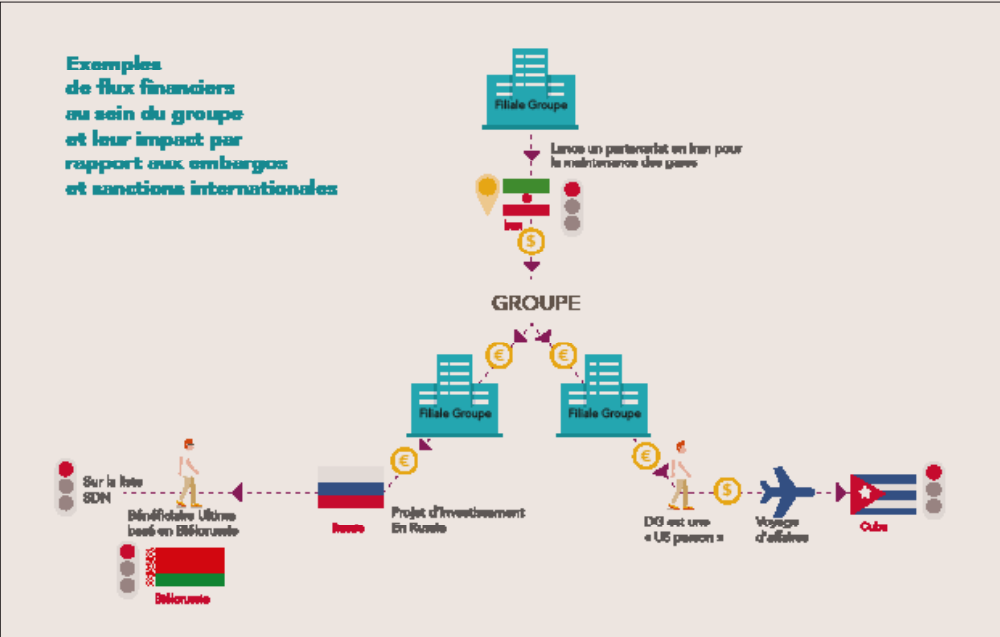
For example, during the user workshop, it emerged that subsidiary managers and finance directors did not necessarily see the connection between financial flows outside and within the group, and the legal risks associated with international sanctions and embargoes



Redesign of commitment letter © amurabi

Thinking in terms of usage consisted, in this large decentralized group, in creating "the journey of a euro"

The idea was to visualize the path the money might take before arriving at one of the group's subsidiaries, and the implications this could have in terms of embargoes and international sanctions.



This "journey" consists of very concrete situations: a partnership in Iran, an investment project in Russia in an entity whose ultimate beneficiary is Belarus, a business trip to Cuba by a US Director...

User centricity is not new, in fact, the United Nations official practical Guide on anti-Bribery ethics and compliance programmes for companies (UNODC, 2013) advocates for a user-centric and collaborative approach. Provide trainings that focuses on "employee needs" and on "practical examples, tips and tools, as a way to make these programs relevant from a practical point of view".

The United Nations advocates for *"a participatory approach in the implementation and continuous improvement of the programme, thereby creating a sense of ownership among stakeholders. This method leads to awareness and acceptance of the anti-corruption programme."*



## c. Inducing usage: affordance, nudge? Revealing the value: ornament ?

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4. See Shelley Chaiken, Yaacov Trope, Dual Process Theories in Social Psychology, The Guilford Press, 1999 et D. Kahneman., *Thinking, Fast and Slow*, New York: Farrar, Straus and Giroux, 2011, 20–24. et D. Kahneman, *Maps of Bounded Rationality: Psychology for Behavioral Economics*, *American Economic Review* 93, n°5, Décembre 2003,

As we have seen in Part I, neuroscience sheds some light on this debate: according to the "dual process" theory, our brain functions in two different ways. The "automatic" mode, which is unconscious and fast, or the "reasoned" mode, which is deliberate and slow.

The use of one or the other system depends on the type of decision, the level of commitment of the individual, his or her personality but also on background elements.

**How to ensure that a compliance document (i) is used and (ii) generates reasoned thinking?**

In an attempt to address this question, I applied affordance and nudge techniques.

In order to promote the appropriation of the compliance awareness document of the ICC of Belgium, we have created an object that triggers an interaction between the document and its users:

The redesigned document is a leaflet that can only be read with the help of a red filter that the user must apply in front of each page to discover more information.

Without the filter, the user sees only parts of the text that contained engaging values. By using the filter, the user discovers more information and practical explanations  
The interaction that is hereby created is the starting point for a dynamic between the user and the rules.

The shape of the object triggers its manipulation.  
*A first step towards use.*

The filter is thus also a kind of ornament that reveals the value of compliance :



Unbox Compliance" project for the Belgian Chamber of Commerce and Industry,  
[Link](#) ©amurabi

At the prototype test workshop (May 2019 in Brussels), the level of engagement of the new document was more than 111% compared to the previous document. It should be noted, however, that given the sensitivity of this topic, the test workshop was conducted with compliance officers, whose job is to enforce compliance in the company (not "ordinary" users). They considered that the new version was likely to help them generate more than twice as much reading and interest during the compliance training they delivered in their respective companies.

The question of measuring "revealed value" is obviously a delicate one. For reasons of confidentiality, clients who have entrusted my agency with their compliance programmes do not wish to make any indicators public.

I can only quote a few reactions on social networks, where it has been possible to publish certain content.

ICC BELGIUM x amurabi

Legal Innovation by Design

\$2.6 trillion

5% of the global GDP

global cost of corruption in 2018

World Economic Forum

\$1 trillion bribes paid every year

YET,

compliance is often perceived by companies as a mere

constraint in an over-regulated world, often

buried under

box-checking / meaningless / heavy processes.

Effectively Raising Compliance Awareness

Unbox COMPLIANCE

BE\* GOOD

AB OUT

WHY

How ?

BE GOOD Compliance

BE HONEST helps

BE SAFE everyone

© amurabi

## ICC BELGIUM

Design of a web (desktop and responsive) and print-out compliance advocacy content

# nos clients disent

Mathieu Maes • 2e  
Executive Director

4 mois ...

It's a real pleasure working together. Marie and her team are very inspiring people to reach that extra mile that makes the difference for the community that is served by my organisation.

[Voir la traduction](#)

© amurabi

© amurabi

**III. Can the design of fundamental legal texts, such as the Universal Declaration of Human Rights, close the gap between the law and citizens?**

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## a. The citizens who need the most access to law are those who benefit the least from it

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Something I've learned from my probono activities over the past 15 years: citizens who need the most access to law are those who benefit the least from it. In addition, I have noticed during the legal clinics I participate to at the [AFPAD](#) association, that women who are victims of violence or inequality feel almost systematically "alone", although there are many supporting tools and structures.

After the #MeToo movement, how to help women to better access their rights and fully exercise them in their daily life?

This question led me to create a content or an object, based on the rights applicable to women and to girls, derived from the Universal Declaration of Human Rights. This object was meant to help them to fully understand their rights and above all to use them on a daily basis. It was meant to be something they can take everywhere with them (in the street, at work...), so that they no longer feel powerless, and upon which they can rely on to defend their rights now and in the longer term.

For this pro bono project, which started in July 2018, I was lucky to work with the designer [Geoffrey Dorne](#). Our collaboration has then expanded to other pro bono and regular projects at Amurabi



We used women's rights from the Universal Declaration of Human Rights as "raw material" for the interviews - visual © amurabi & Geoffrey Dorne

(currently for the association Respect Zone, we're designing an application to help users faced with cyberviolence to better exercise their rights)

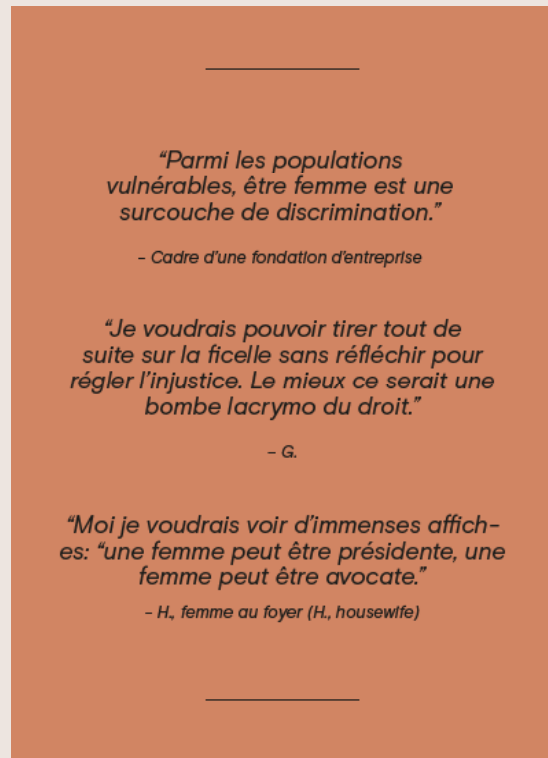
## What was the process?

### ● "State of the art" research and existing resources

There are many structures, resources and associations that are strongly committed to women's rights. We therefore started this project by going to meet them and building on what already existed: the AFPAD (Association for Training, Prevention and Access to the law), the Information Centres on Women's and Family Rights (CIDFF), the House of Women, Emergency Rights, the Hubertine Auclair Centre, the CHANEL Foundation... That was far from being an extensive list, but that's what was within our reach in a limited time!

Many associations and organisations responded to the call and supported the project, either by identifying beneficiaries from these organisations who agreed to be interviewed, or by answering our questions directly, or by putting us in contact with other entities.





Selected excerpts from the interviews. © Geoffrey Dorne & amurabi

● **Meet the Women**

With Geoffrey Dorne, we conducted about fifteen individual interviews with women beneficiaries of support, from 14 to 75 years in France and Spain (whose anonymity we guaranteed) and with professionals of social action for women.

Without reproducing here the entire interview guide, one of the questions asked was that of the "magic wand": "If you could change anything, do anything regardless of the budget or whether it is possible, what would you do to empower women to fully exercise their rights on a daily basis? »

● **Ideation**

We analysed all the data collected during our research and interviews to identify more precisely the problem we needed to address: *"women do not feel sufficiently independent or equal to men, we are going to create an object that will allow them to become fully aware of and exercise their independence immediately".*

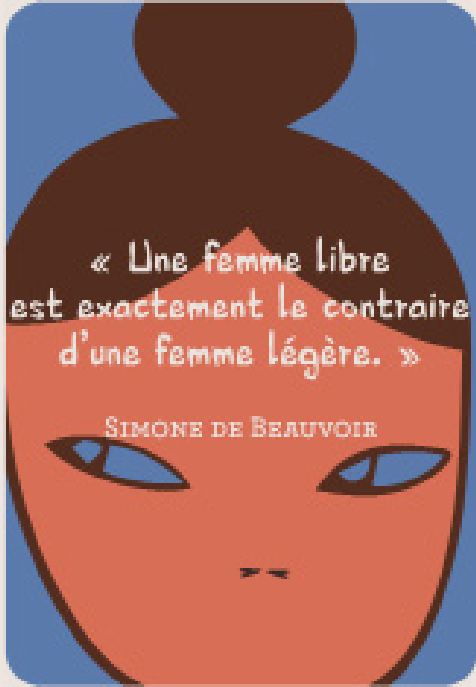


© Geoffrey Dorne & amurabi

Then, it was time for the ideation phase! At this stage, the objective was to identify many possible solutions, without any limits, in a short period of time. Some of our ideas were similar, some were not. After several rounds of brainstorming, we identified 10 potential solutions:

- **"Radio Equality":** an audio podcast containing quotes from inspiring women, strong speeches, and movie lines...
- **"Beautiful and strong":** a compact with a mirror with the inscription "look how strong you are, you have the same rights as men!) with emergency numbers inside it.
- **"Tear-gas canister of the law":** a box where you can push the button to get first aid information (emergency numbers, reception centres...)
- **"Law on me":** a brooch consisting of a Arduino Lilypad that automatically calls emergency numbers, associations or contacts of relatives that the user has entered.
- **"My Rights, My Cards in Hand":** A deck of cards including cards to keep (what rights, how), cards to share (inspiring women quotes, "the first" female presidents, astronauts...), cards to show in case of problems ("you don't have the right to")

- **"The Law Hits the Poster":** Inspiring Quotes from the main principles of the UDHR displayed in large format in the metro, in the streets, in supermarkets, etc.
- **"Plan A":** a foldable map that fits in a pocket or a handbag to help you find your way in terms of equal rights (principles, associations, tools...)
- **"Equality scarf":** scarf printed with historical facts, quotes and actions to be taken (first step possible)
- **"My Legal Capital":** A portfolio that can be unfolded containing a credit card, the "you're strong" mirror, emergency numbers, quotes, inspiring women's photos, and photos of close friends
- **"Stamped Equal":** Motivational Stamps with inspirational quotes to stamp at home, on your arm, on clothes, on someone else...



My rights, my cards in hand  
© Geoffrey Dorne & amurabi

## The result?

It was hard to choose! We compared the impact of these solutions on the basis of three main criteria - give confidence, enable action, right away – and their feasibility (time and cost).

On this basis, four ideas emerged: Radio Egalité, My rights, my cards in hand, Plan A and My Legal Capital.

In the end, "My rights, my cards in hand" seemed to us to be the most complete project and the most action-oriented, both now and in the medium term.

My rights, my cards in hand  
© Geoffrey Dorne & amurabi

Here's the reality.



III. The design of the founding legal texts

## b. Designing law to restore its central place in the “City”?



© Studio Philippe Apeloig, David Paquin, Simon Bouchard, SNCF

On the occasion of the 70th anniversary of the Universal Declaration of Human Rights, adopted in Paris by the United Nations General Assembly on 10 December 1948, SNCF Gares and Connexion, in partnership with Human Rights Watch, Amnesty International and the Lilian Thuram Foundation, decided to show the 10 million daily station visitors in France this fundamental text of "heritage of peace and rights".

Based on the observation that railway stations are a "public space that welcomes everyone", and therefore attract an incredibly diverse flow of visitors, this project consisted in bringing to citizens the 30 articles of the UDHR, typified by globally acclaimed typograph Philippe Apeloig.

According to Patrick Ropert, CEO of SNCF Gares & Connexion at the time, this project "has nothing incidental", at a time when the values carried by this text seem constantly challenged. This project was primarily intended as a useful and necessary reminder to the 10 million citizens who use the network's stations on a daily basis, whether they are French citizens, European citizens or citizens of the world; students, working people or tourists. **A way for the civil society to re-appropriate the Declaration and its values.**



III. The design of the founding legal texts

© Studio Philippe Apeloig, David Paquin, Simon Bouchard, SNCF



Although there has not been a study of the impact, the micro-sidewalks carried out by the SNCF shed light on the relationship between citizens and this “great fundamental text”. When asked “what is it”, the following answers were given:

- *"I don't know...*
- *It's a kind of foundation, something that should be revisited ...*
- *It's a great thing because everyone, now, always, must respect it (...)*
- *It's just a big word ...*
- *It is a fundamental text which, unfortunately, today has little legal value in France (...)*
- *A founding text which made it possible to lay the foundations of democracy (...)*
- *A fundamental text that everyone should know about (...)*
- *A fundamental text, to which all companies should normally adapt (...)*
- *Wow, big question. I think that's the wake-up call of humanity for the freedom of others (...)*
- *I can't quite see what it is ...*
- *These are the fundamental rights of individuals. It has been signed by a great number of countries (...)*
- *First, it's something very important, fundamental, it manages human rights and the protection of the weakest in the world (...)*
- *It is a principle of a certain number of rights that everybody should actually have (...)*
- *It's all the rights you have when you're a human being ...*
- *It defends the rights of the man, of all men on this earth..."*



While the date or place of signature is generally unknown, the essence of the UDHR is part of a common knowledge basis.

However, a survey conducted on the same date indicates that 79% of French people believe that human rights have declined or stalled since 1948. [Link](#)

83% of respondents have heard of the UDHR, but less than one-third say they know exactly what it is about. 56% have not read the Declaration, but 67% would like to "read it or reread it".

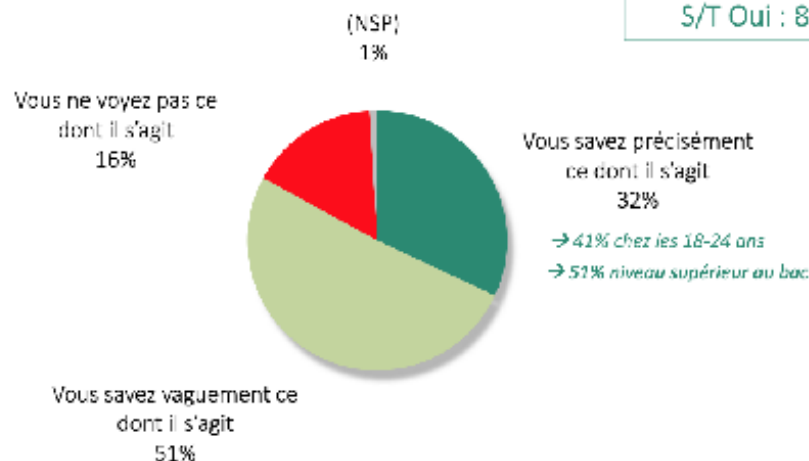
Precisely, on the subject of reading and "vague or precise" knowledge, it would have been interesting to compare the commitment and understanding of the raw text in relation to the one typed by Philippe Apeloig.

A research to measure the impact of different projects is currently being carried out by scholars such as Arianna Rossi (University of Bologna and Leuven), Rossana Ducato (Leuven) and Katri Nousiainen (Visiting researcher Berkeley, Hanken School of Economics).

## Déclaration universelle des droits de l'homme : un texte connu mais rarement de manière précise



Avez vous déjà entendu parler de la Déclaration universelle des droits de l'homme de 1948 ?



## c. Work of the experimental studio of the ENSCI "no one is supposed to ignore the law."

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Since October 2018, the Ena - Ensci Chair, Ensci and the Open Law association have been partners in an "Experimental study", "no one is supposed to ignore the law." Led by Joachim Savin and Apolline Le Gall, this studio explore the use of design to legal documents, its relationship with citizens and legal professionals.

This studio's starting point is that although the law is everywhere in our society, it is hardly perceived, read or understood.

*"From the Tables of the Law of Moses, to the law publication websites (service-public.fr, legifrance.fr, le Journal Officiel, online since 2004), to the heralds shouting the law with their trumpets, or the wall newspapers of the deputy Pierre-Antoine Antonelle, elected first Mayor of Arles in 1790, how can we make the law known and understood by everyone? "* This is the program that the study set up for its 8 students over a period of about 6 months.

I was able to attend the interim rendering of the Studio in November 2018. Each of the 8 projects tackles, from different angles, the gap between the law and its citizens :

Objet-lien Juliette Printems
La zone blanche Marion Humez
Le parcours d'une plainte Anne-Cécile Cochet
Le piratage c'est du vol ? Alexis Juif
Un statut juridique pour les marteaux ? Noémie Chataigner
Comparative democracies Marie-Lorraine Chiriapol
L'iceberg juridique Élise Goutagny
Les justes *r Victor Ecrement
Notice me Anaïs Bourcier
<b>STUDIO EXPÉRIMENTAL.</b>
Nul n'est censé ignorer la loi.

© Studio expérimental ENSCI

restorative justice, legal personality of robots, the "legal iceberg" of rape, learning about democratic culture, how to file a complaint, medical abuse...

On a personal note, the legal iceberg impressed me by the accuracy of its form, which has perfectly captured the legal mechanics (the text defining rape is very short - 30 words - however, each word, or even each comma, refers to other articles, to case law that must be understood in the light of parliamentary considerations...) and by the rigour of the research method.

*Comparative Democracies* interested me for its potential to engage, thanks to its digital format, high school students and future voters. It is an audience that is both demanding and "zapping" according to my experience of citizenship education training delivered to students in 4<sup>e</sup> and 3<sup>e</sup> grade

Marie-Lorraine Chiriapol defines her project as follows:

*"If digital technology transforms our experience of democracy in its processes, it can also become a tool for understanding it. »*


*Comparative democracies* is a pedagogical platform about democracy for high school students, future citizens and voters.

The idea is to make legal data more understandable by visualizing it, and to stimulate the user's curiosity using human-machine interaction to develop his knowledge.


One of the strengths of this project seems to lie in the tools developed to enable everyone to appropriate the concepts: "choose who can be a voter" - while smoothly and lightly inserting precise contextual information :

### CHOISIS QUI PEUT ÊTRE ÉLECTEUR

Choisis le niveau d'éducation des électeurs :




études et carrière  
indifférentes



études et carrière  
spécialisées

suivant



Faire preuve de certaines capacités intellectuelles ou être détenteur de certains diplômes peut également être un critère de sélection. On appelle cela le suffrage capacitaire.

Il a par exemple été utilisé aux États-unis pour écarter les personnes qui ne savaient ni lire ni écrire. Cela visait à empêcher les populations noires et descendantes d'esclaves de voter.

# télécharger le kit

## comparative democracies

Poursuis l'aventure et réalise ton propre schéma démocratique. Découpe les encadrés et n'hésite pas à les compléter afin de dessiner ton propre schéma.

Kit\*

pouvoir législatif	citoyens
pouvoir exécutif	parlement
pouvoir judiciaire	chambre
chef du gouvernement	membres du gouvernement
gouvernement	chef d'État

élit	propose des lois	possède la force armée
nomme	applique les lois	juge le respect des lois
vote	rédige les lois	voite les lois

majorité simple	nombre	scrutin proportionnel	scrutin pluriominoire
scrutin majoritaire	scrutin uninominal	scrutin obligatoire	double
scrutin secret	majorité absolue		

1/2

## comparative democracies

Poursuis l'aventure et réalise ton propre schéma démocratique. Découpe les encadrés et n'hésite pas à les compléter afin de dessiner ton propre schéma.

Kit\*

+	x	>	>	→	→
+	x	>	>	→	→


2/2

The purpose of the studio was the exploration, not the measurement of a possible impact of these student projects.

This being said, the studio has clearly attracted vocations among designers. In November 2019, Marie-Lorraine Chiriapol became one of the first "legal designers" working in a legal department in France. Ubisoft created this position, as well as a developer position dedicated to the legal department, under the leadership of Cécile Russeil, legal director, and Geoffrey Delcroix, senior innovation manager, with a strong ambition: to produce mainly "legally designed" contracts and processes within a year or so.



# Conclusion









© Grand Palais

When I first started writing this professional thesis 18 months ago, I hoped I could explore the creation of objects and experiences that could reduce the gap between the law and citizens.

On the occasion of the "Artists & Robots" exhibition at the Grand Palais in the spring of 2018, I experienced Raquel Kogan's "digital darkroom" (Reflexão #2, 2005), an interactive installation where a game of projection, mirrors and custom software projects a binary suite on visitors' skin.

After a selfie, I wondered if this vaguely human form covered with green zeros and 1 on a black background was my "digital self". A few months later, I discovered Philippe Apeloig's sublime work on the UDHR, and it made me want to project Article 1, "All human beings are born free and equal in dignity and rights" in a similar darkroom. What would happen if these words were projected on our skin, on our body? Would this make us "more equal", more able to act on a daily basis, more aware of our rights? What would we do when we get out of this space? For ourselves? For the others?

In the same spirit, I wanted to create and have designers creating objects representing this essential text (Article 1 of the UDHR). Equality, what form does it take? Is it soft, round, does it sting, can we put it in our pocket, does it blow up in our face?

But over the last 18 months, I have also created an agency of legal innovation by design (Amurabi), delivered about fifteen projects, including design of contracts, compliance programs, processes and legal interfaces for groups such as Google, Airbus, Renault, EDF, Shiseido, Moët Hennessy, Geodis, CGI, Servier, Orange, Somfy..., created jobs, designed and produced two exhibitions during the Paris Design Week, participated in the Legal Design Summit in Helsinki, and wrote about ten articles, "learned" the life of an entrepreneur and designed the first set of pleadings in a major litigation case filed in December 2019 by two prominent American law firms before a French court.

So these questions have remained questions. For now.

The generosity, talent and commitment of the designers I've had the pleasure of working with made me want to give them a chance to speak, by way of conclusion. Indeed, I think that designers should take up the subject of the accessibility of the law, beyond the projects I can carry out with a team that remains relatively small. This is therefore a call to all designers who would like to push forward the actionability of the law.

## Why are Legal Design projects interesting to you in relation to your practice?

**Mai Anne Benedic** — *I've been fascinated for a while now by the idea of "ontological design" - that is, the impact of design on the being. Everything we form, forms us back. Because it is always meaningful, design acts on culture and paradigms. It also allows to say what is not said without making it heavier, by speaking to the senses and to the intuition. For me, this transformative power of design is particularly evident in legal design, which strives to make complexity accessible to the service of human beings. I'm convinced it has an important role to play in this time of accelerated change.*

**Geoffrey Dorne** — *Legal Design projects are in line with user-centric design, focusing on the users practices and understanding through graphic design, and modern*

conclusion

*challenges. These aspects bring a new light to my work and open new perspectives.*

**Juliette Nier** — *Law is a new and unusual field for me. I see these new collaborations as a tool for better integrating design into our society, making it more practical and concrete in our daily lives. Also, I have the impression that there is a real demand, a real "formal" need to think about texts and other legal supports.*

**Alexandra Ponzio-Rossignol** — *Legal design allows us to return to the very essence of graphic design, which is to imagine, think and create a communication object accessible to all. It is not a question of doing something aesthetic but to give meaning to complex legal documents, it is a real challenge! I have to refocus my work on the substance by using the form each time.*

conclusion

**Looking back at the projects you have worked on, what is your definition of Legal Design ?**

**MA.B** — *For me, design consists of thinking about the relationship between substance and form - by continuity, or by contrast. From these marriages and shifts, meaning is born. In the legal field, legal design seeks the best tone, the one that will convey the message in the clearest and most engaging possible way, in order to allow its appropriation.*

*Successful legal design means easier communication in a field that today often inspires mistrust. And ultimately, a right that better fulfils its function within the City.*

**G.D** — *In a clumsy way, I would say “Legal Design is an approach to law with and through design to deliver a more sincere, honest and clear content”.*

**J.N** — *At the moment I can only describe it in a very simple way: Use design to make legal documents more accessible and understandable.*

**A.P-R** — *For me, Legal Design is using graphic design to make the law accessible and understandable.*

**Law is a complex matter, often dry and full of jargon. How do you deal with this complexity in your work and what design methods do you use to make it accessible to users?**

**MA.B** — *Complexity is my daily life. love to order it, to give it a shape, distilling it to extract its essence. The denser and more sensitive a material is, the more fundamental the role of design is: that's what makes legal design so stimulating for me, especially in litigation. Concretely, I like to combine an analytical and theoretical approach through the written word, with a sensitive approach where intuition prevails. Observing one's feelings about creation by gradually adjusting is a good way to achieve accuracy. You have to be*

*touched yourself to be able to touch others.*

**G.D** — *I surround myself with professionals so that they can create a framework of understanding for me, transfer part of their knowledge to me in a pedagogical way, and keep the other part that escapes me to create a bond of great trust.*

**J.N** — *Law seems to me to be a very logical, very articulate and very structured discipline. Through form, colour and typography, which are my daily tools, the challenge of legal design, is to make this structure, this logic and these links emerge in a formal way: to make them transpire so that the user feels at first glance this "logic" of the law.*

**A.P-R** — *I'm never alone, I work with legal professionals to understand the articulation of the document, to grasp the meaning in order to be able to find THE right graphic solution. Then I just have to make the links between the meaning and the visual aspect using shapes, colours, typographies...*

## Does Designing the Law give you an opportunity to solve problems, technical design difficulties you don't usually face?

Author's note: Mai Anne refers to the design of the conclusions we made in December, a first in a French court. The challenge was to visualize complex facts and the whole document imperceptibly.

**MA.B** — Yes. *I have recently been asked to create, with a tool that I don't use frequently, a design that has to perform its function in mute. I am a fan of arid and functional "Swiss" design, but I had to go further to make the intervention imperceptible. It is a very interesting balance to find, which requires abandoning certain reflexes and brings us closer to the user - who then takes over the document. The primary function of design is expressed more clearly: successful design is above all an impression of fluidity. The eyes are slipping. Work becomes invisible to give way to the obvious.*

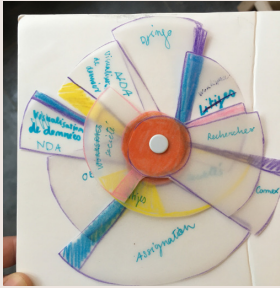
**G.D** — Yes. *A way for me to put into practice graphic design in its pure logic, in its elegance, in its relation to typographic requirements. In short, to make a design that makes sense, that is based on meaning and not on arbitrary aesthetics.*

**A.P-R** — *We live in a world of images, it is therefore fundamental to take the time to do a lot of preparatory work of understanding to bring meaning and not the aesthetic aspect.*



**J.N** — *Because the content is often more dense and more Complex than a text for a leaflet or a poster, it is necessary to develop more preparatory work. (sketches, models)*

Author's note: For example, in a project to support the digital transformation of the Orange Legal Department, we created a rather complex geometrical shape, representing each of the 10 new digital legal tools. To find the right balance of proportions while conveying the desired messages, Juliette has developed 3D models to test the positioning of the different departments.



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conclusion

**What would be the legal text, or the legal subject you'd dream of designing?**

**MA.B** — *I'm sensitive to collapsology and the search of new civilizational narratives. The challenges we face today require both individual and collective resilience, making it essential to redefine the rules of living together. A manifesto for the protection of the living?*

**G.D** — *The future constitution?*

**J.N** — *For its volume (also to be able to imagine the object): the civil code*

**A.P-R** — *The Code of Hammurabi*

**If law was an object, what would it be ?**

**MA.B** — *A totem pole. As Larousse defines it: The term "animals or plants are considered to be the ancestors and/or protectors of a community or an individual".*

**G.D** — *A one-page, in A4 format. It gives a standard frame but still leaves way for ownership.*

**J.N** — *A kind of a Rubik's cube, a very "square" object that moves in all directions.*

**A.P-R** — *A puzzle, very complicated at first, but with patience it becomes more clear and you end up understanding it.*

conclusion

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