Analyzing the Various Approaches of Plain Language Laws

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Plain language laws, designed to ensure that consumers can understand and use the personal business contracts they sign, have recently become an important new kind of regulatory legislation. Seven states have passed laws to control the comprehensibility of consumer contracts; fifteen states have similar legislation pending. These plain language laws range from a simple statement of a general principle to extensive and explicit requirements. Although plain language laws have been in effect for over seven years, no comprehensive evaluation of their effectiveness has yet been done. We propose an evaluation of the plain language laws to determine the characteristics of language and design associated with greatest ease of use, and the design strategies of companies and designers which produce the most usable and comprehensible contracts. This analysis would enable us to identify the best model for plain language legislation. Such an evaluation of plain language laws would require two phases: an analysis of contracts and consumers' ability to use them, and an analysis of the design process which led to the contracts that are easiest to use.

State and Federal governments enact substantial amounts of regulatory legislation to aid consumers or to correct apparent injustices for consumers. Much of this legislation — automobile safety regulations, for example, and environmental protection legislation — has produced real benefits. Unfortunately, however, there is a drawback to all regulatory legislation: it is expensive. The legislature spends time and effort to draft the laws. Industry similarly must spend time and effort to comply. This expense means that policy makers need to weigh carefully the costs and the benefits of legislation before they adopt it. When it is in place, policy makers need to review it to ensure that it is operating effectively, that it helps the consumer and does not unnecessarily penalize industry.

Recently plain language laws have become an important new kind of regulatory legislation. These laws were designed to put consumers on a more equal footing with industry when they sign personal business contracts. Traditionally, contracts put consumers at a disadvantage because such contracts were often filled with lengthy, complex sentences and unfamiliar terms which the consumers could not understand. Moreover, some of these contracts were written in small print with no index or headings to help the reader find information. Consumers, therefore, sought legal remedies through their legislatures.

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Simplifying consumer contracts benefits the consumer by enabling him or her to identify the rights, obligations, and remedies that the contract provides. Furthermore, simplification also benefits industry by increasing competition in the marketplace and increasing consumer trust and goodwill toward business and industry (PCCC 1983).

The Federal Impetus

Plain language legislation grew out of the consumer movement which began in the 1960s. As consumers grew increasingly skeptical of government and big business, they began to demand contracts that they could read and understand (Clive and Russo 1981: 208). The so-called plain language movement grew in the 1970s and gained national attention in March 1978 when President Carter issued Executive Order 12044, designed "to make Federal regulations clearer, less burdensome, and more cost effective" (Carter a 1978: 561). It required that any regulation issued by Executive Agencies must be "as simple and clear as possible, written in plain English, and understandable to those who must comply with it" (Carter b 1978: 558). In his "Statement on Executive Order 12044" President Carter compared the orginal and a revised version of a regulation governing CB radio owners to provide an example of the kind of change the order was designed to bring about. The original read: ". . . applications, amendments thereto, and related statements shall be personally signed by the applicant, if the applicant is an individual." The revised version simply said: "If you are an individual, you must sign your own application personally" (Carter a 1978, 562). The two provisions mean the same thing, but the second is unquestionably clearer to most people.

There were two very visible responses to that order. First, the Internal Revenue Service extensively revised the income tax form 1040A to make it easier to use and understand. Second, the National Institute of Education contracted with the American Institutes for Research, the Document Design Center of Carnegie-Mellon University, and Siegel and Gale to provide assistance to government and industry in revising and developing plain language documents; to develop a university curriculum which provides instruction in the principles of document design for the user; and to conduct research in the area of plain language document preparation. Under this contract, a document design workshop for industry and government employees was developed, extensive assistance and consultation in the design of documents was provided to industry and government, and an undergraduate course and a graduate program were developed.[1]

There does not appear to have been a widespread response, however, to the Carter executive order, probably for a variety of reasons. First, neither the order itself nor the statement that the President issued with it set out any criteria for judging whether a document was written in "plain English." Statements in the order about the language to be used in government documents were very general. For example, Carter wrote that Executive Order 12044 "will direct that regulations be written in plain English. Government regulations are usually written by experts for experts. Your clear mandate will

be to translate regulations into language a small businessman — who must be his own expert — can understand (Carter a 1979: 561)."

Second, as a former regulation writer explained, the people who write government regulations do not recognize that they speak and write a special language that is foreign to the average citizen: "Those of us who live and work in Washington have our own patois, our own sort of bureaucratic cant. It is easy to use, and we use it every day. Some of us even love it. This is fine, I guess, as long as the only people with whom we attempt to communicate speak governmentese as fluently as do we. Bureaucrats, however, tend quickly to forget that 99% of the people don't speak governmentese . . ." (Jones 1980).

Third, the executive order covered only the regulations written by Executive Agencies — the Environmental Protection Agency, for example, and the various Federal departments such as Education and Transportation. It had no effect on regulations written by independent agencies like the Federal Trade Commission, the Federal Communication Commission, or the Occupational Safety and Health Administration. That meant that the order governed only a small portion of the regulations "a small businessman" — or any other citizen — has to deal with.

Fourth, President Carter's executive order did not have much time to have any effect on the Federal bureaucracy because three years after it was issued it was revoked by Section 10 of President Reagan's Executive Order 12291, issued in February 1981 (Reagan 1981: 130). Federal support for research into applications of plain English dwindled, as did interest in many government agencies in the use of plain English.

Finally, of course, President Carter's executive order had no impact on communication in business and industry — on such documents, for example, as warranties that came with mechanical items, patient package inserts that came with drugs, instruction manuals that came with unassembled toys or computers, or loan contracts from banks and lending companies. President Carter's interest in plain language and his remarks about it (some of them reported in the newspapers) did evoke some interest in the business community. A number of businesses, most notably Citibank, recognized the need for plain language contracts and the possible advertising advantages such consumer-oriented actions could have.

In the Reagan Administration, Secretary of Commerce Malcolm Baldridge has been active in trying to persuade businessmen of the cost effectiveness of plain English. He arranged for a meeting at the Department of Commerce to consider the usefulness of plain English in business and ways in which it could be promoted. He explained: "As far as the business community is concerned, the best way to discourage bad habits is to emphasize the profits that can result from simple language. The plain English programs of your companies prove this. Your well-written contracts, warranties, forms, insurance policies, and information brochures are helping you to serve customers better and improve productivity" (Baldridge 1983: 1).

Out of that meeting came the Plain English Forum, an organization of business people, academics, and other research people interested in promoting

plain English in business. The U. S. Department of Commerce has also published, through the U. S. Government Printing Office, *How Plain English Works for Business,* twelve case studies which "describe how some business organizations have scored successes by simplifying consumer documents [like] warranties, credit contracts, insurance policies, and product information booklets" (Office of Consumer Affairs 1984).

State Laws

The greatest influence of the plain English movement, however, has been on the development of state legislation to regulate the clarity of consumer contracts. Twenty-eight states have passed legislation to control the readability and, therefore, the usability of life, property and casualty, and health insurance contracts. This legislation has focused primarily on controlling the word length and sentence length in the contracts, key variables in all readability formulas. Seven states — New York, Minnesota, Hawaii, West Virginia, New Jersey, Maine, and Connecticut — have passed legislation aimed at controlling the comprehensibility of consumer contracts. Another fifteen states have comprehensive legislation pending.

The plain language legislation in all these states has a common objective: to ensure that citizens in the state are able to understand the rights, obligations, and restrictions in any consumer contract they enter into. The only way, of course, to ensure that a contract is understandable is to test consumers' ability to understand and use it. States have been reluctant, however, to require such user-testing, since testing all revised documents this way would be both expensive and time-consuming. Instead, the legislators have searched for ways of specifying the characteristics of a document which will reflect ease of use and understanding.

There have been two primary issues in the attempt to legislate plain language criteria. First and most obviously, documents which meet the criteria must be easy to understand and use. That is, the criteria specified for evaluating documents must be a good substitute for testing of the document by actual users. Second, to encourage compliance by industry, the criteria must not impose an undue or unnecessary burden on developers of documents. The response to these requirements, and hence the nature of the plain language laws, has been very different in the seven states. Furthermore, the range and diversity of requirements will probably increase when others of the fifteen states with pending plain language legislation pass such legislation.

The 1978 New York law, the first plain language law, represents one extreme in plain language law drafting. It simply states that any contract it covers must be "written in a clear and coherent manner using words with common and everyday meanings, [and] appropriately divided and captioned by its various sections" (New York General Obligations 1978).

Thus "plain language" is defined only in general terms referring to vocabulary, writing style, and headings. The law, which provides no objective standards, thus reflects a view that plain language standards cannot be dictated. Producing a plain language document is a matter of orientation, of placing

oneself in the position of the intended reader. The particular characteristics of the plain language document will depend on the particular document and the particular designer — many "plain language" designs are possible. Many who hold this point of view believe that legislating objective criteria may result in compliance with the letter of the law, (i.e., the criteria), but may not result in compliance with the spirit of the law (i.e., usable documents).

The Connecticut law represents the other extreme. This plain language law, the most directive of the seven such laws, provides specific requirements for the length of words and sentences, the type size, the use of headings, acceptable terminology, and organization. It requires that the average number of words per paragraph be less then 75, the average number of words per sentence less than 22, and the average number of syllables per word less than 1.55. The law also requires that each section be captioned in at least ten-point type, that the body of the text be written in at least eight-point type, and that there be margins of at least one-half inch on all borders of the page. The law reflects the view that "plain language" can be defined objectively and that any document will be comprehensible if it meets specific requirements and the designer makes a good-faith effort to write a clearer contract. This legislation thus presumes that compliance with the intent of the law is easier to achieve if it specifies objective, measurable criteria.

Of the five other states that have passed plain language legislation, four — Minnesota, Maine, Hawaii, and West Virginia — have adopted the wording of the New York law verbatim. Minnesota and Maine have supplemented their laws with an optional review of revised documents by the state attorney general. Thus, in these two states, in contrast to the New York law, an official assessment of compliance can be made without litigation. New Jersey uses the general principle contained in New York's law, but adds a list of some of the features the attorney general may consider in reviewing a document.

The need for evaluation

Although there have been plain language laws for over seven years and although laws are being considered in an increasing number of states, there has never been a comprehensive evaluation of the effectiveness of such legislation. Since the goal of plain-language legislation is to ensure that a citizen who enters into a consumer contract can readily determine what his or her rights and obligations are, the type of legislation which best meets those goals should be determined. (By "readily determine" we mean that the individual can read through the contract, pointing to and describing the rights and responsibilities that are essential in the agreement.) Thus policy makers need the answers to such questions as:

1. In general, has the plain language legislation actually aided the consumer? Are "simplified" contracts easier to use and understand? The answer will provide empirical evidence to help evaluate the criteria in the various plain language laws.

2. What characteristics of style and design provide the greatest ease of use and comprehension? That is, what features of language and of layout and design distinguish contracts that are easy to use from those that are difficult to use? The answer will provide guidance to writers and document designers as well as to evaluators of documents.[2]
3. What characterizes the document design strategies of the companies which produce the most usable and comprehensible contracts? What design strategies or organizational strategies distinguish the superb performers, from ordinary designers? The answer will give us a better understanding of the document design process, will provide guidance to document designers, and may help legislators develop effective and meaningful plain language laws.
4. What is the best model for plain language legislation? That is, what legislative requirements result in documents that are easy to use and understand with the least cost to industry? The answer will provide guidance to government policy makers.

These questions require some further discussion. One way of answering the first question would be to analyze the extent to which companies have attempted to comply with the laws in states with plain language legislation. That analysis would seek to answer two questions: "What percentage of companies within a state has attempted to meet the standards of that state's plain language laws?"; and "Does that proportion vary significantly from state to state?" That strategy, however, may not be appropriate for assessing this legislation for two reasons. First, it would require the difficult, perhaps impossible, task of identifying every version of each type of contract in each of the states so that the contracts analyzed would represent a true cross-section of those in use. Second, it ignores the more pressing question of whether or not the revised contracts are actually easier to read. Unless the answer to that question is "yes," the degree of compliance is unimportant.

Questions 2 and 4 also require some discussion. It might seem that once the characteristics of documents that are easiest to use have been identified, legislators could simply make those characteristics the criteria in their plain language laws. The assumption there is that document designers need objective standards to guide their simplification efforts. Indeed there is some evidence that even well-intentioned writers need specific guidelines to follow, in part because revisers are often so familiar with the material in the contract that they find it difficult to anticipate the problems that consumers may have. Even if writers can recognize certain problems, they may need guidelines to solve them.

The West Virginia plain language law itself is a good example of this difficulty. The law is designed to promote clear language but is itself hard to understand. It reads in part:

> A violation of the provisions of this section shall not render any agreement void or voidable: Provided, that if a consumer at the time of entering into a consumer transaction or anytime thereafter, requests of the other party

thereto that the agreement evidencing the consumer transaction be changed or written in a manner to conform with this section, and that request is refused, then a consumer shall have a cause of action to require a consumer agreement not in conformity with the provisions of this section to be reformed (West Virginia 1981).

No doubt the drafters intended the law to be as clear as possible, but they still had trouble producing a law that the average citizen could understand. Similarly, experts rewriting contracts and other documents may not know how to make the documents readable unless they have some clear guidelines to follow.

There are, however, two main drawbacks to precise standards. The first is that they are inflexible and cannot be adapted to suit different conditions. For example, when consumers are dealing with contracts they use often, they may be better able to understand longer sentences or paragraphs than when they are reading unfamiliar contracts. Strict numerical guidelines do not allow courts or document designers to take such factors into account.

The second drawback is that the criteria, while associated with consumers' ease of use, may not guarantee clear writing. Concentrating simply on satisfying the criteria may lead document designers to disregard, or even distort, the meaning of the text. Readability tests, which form the basis of these criteria, were designed to assess texts, not to guide writers in writing them. Thus document designers need to aim at presenting their meaning clearly as they write, and apply the readability formulas or other objective criteria only afterwards.

Recent research in the Navy confirms this opinion. Duffy and Kablance (1982) found that documents that had been revised in good faith, but only to satisfy a readability criterion, were no easier for people to use than the unrevised documents (See also Duffy 1985; and Duffy, Smith, and Post, in preparation).

In sum, then, legislators may not be able to ensure that contracts are easy to use by simply giving document designers specific standards to meet. Therefore, identifying the characteristics of good contracts, the goal of question 2, and developing a model for effective legislation, the goal of question 4, need to be addressed separately. Any evaluation, therefore, will require two phases: first, an analysis of contracts and consumers' ability to use them; and second, an analysis of the design process which led to the contracts that are easiest to use.

Analysis of contracts and consumers' ability to use them

Types of contracts. The first phase might focus on three classes of consumer contracts: consumer installment credit, health insurance, and bank loans. We suggest these three kinds of contracts because: they are ones which almost all adults in our society enter into at some time; the restrictions and conditions in the contracts may have very serious implications for the consumer; the contracts vary considerably in complexity and length; and there are significant differences in the conditions and restrictions within each type of contract

which makes comparison shopping worthwhile. In addition, the three types of contracts represent three very different kinds of business: the small intrastate business involved in installment contracts; the large, but primarily intrastate, banking business; and the large, primarily interstate insurance company.

States. The comparison among states with plain language laws is especially important. Currently plain language laws range from a simple statement of a general principle, like the New York law, to extensive and explicit requirements, like the Connecticut law. Three of the states (Minnesota, Maine, and New Jersey) provide for optional administrative review of the contracts by the state attorney general. Thus, in those states, in contrast to New York, an official assessment of compliance can be made without litigation. This procedure is designed to minimize risks for businesses by letting them know whether or not contracts meet plain language standards before the contracts go into circulation. The differences in the laws will need to be addressed, therefore, by comparing contracts from states that represent the range of approaches to drafting plain language laws. We would suggest New York, Minnesota, New Jersey, and Connecticut.

Socioeconomic status and education. At least two groups of consumers should be used in testing comprehension: consumers from the lower economic levels who do not have a high school diploma, and consumers from the lower-middle economic level who have a high school diploma and perhaps some college education. The former group — the poor and poorly educated — are the primary intended beneficiaries of plain language legislation. They are least able to deal with the complexity of legal documents and the ones for whom the consequences of a broken contract are the greatest. Unfortunately, research on the functional literacy skills of many members of this group suggest that many documents cannot be adequately simplified for the average member of this group to understand them. For example, nationwide testing of the functional literacy skills (the ability to accomplish the ordinary reading requirements of life) showed that members of this socioeconomic group had difficulty answering questions using even basic consumer information like train schedules, information from health agencies, and directions for locating community resources (Carver 1974). Ultimately, therefore, some combination of literacy instruction for this group as well as legislation requiring document simplification may be necessary before plain language legislation will prove useful to disadvantaged consumers, the group most in need of such help.

Comprehension. To test consumers' comprehension of contracts, consumers should be asked to read the contracts and then locate and interpret specific information in them. The questions should follow the presentation of short scenarios (short cases) and should represent the kind of information consumers usually need to know about a contract. Experts from consumer affairs and legal services should help generate a set of scenarios for each type of contract. Evaluators should assess both the accuracy of the responses and the time required to arrive at an answer.

Document characteristics. Evaluators should analyze the characteristics of each of the contracts they examine. There are two reasons for this analysis: first, to determine which contracts meet the legal requirements in each of the states; and second, to determine which characteristics of language and visual design best distinguish contracts that are easy to understand from those that are difficult to understand. Some of the characteristics that should be considered, for example, are: the use of unfamiliar terms; the average number of syllables per word; the average number of words presented; the organization of information, including the use of headings; the use of examples; typeface and layout. Every contract in the sample should be rigorously evaluated according to all the guidelines given in the various plain language laws, including all the objective criteria given in the New Jersey and Connecticut laws, and by other features identified as important in the research literature on document design.

In addition, evaluators should obtain holistic scores for each of the contracts. (The Minnesota, Maine, and New Jersey laws provide for optional review of contracts by the attorney general). Such a review provides a holistic assessment of the contract, i.e., a rating of the contract's overall comprehensibility. Raters will be asked to give two holistic scores for each contract, one for the style (language and content), and another for the visual design.

In states which provide for a review, the attorney general could use either plain language experts to make the holistic judgment or simply use available personnel. To reflect these two different conditions, two different panels should make the holistic evaluations: a panel of experts in plain language and consumer affairs; and a group of college freshmen. Each panel should be given instructions on rating taken from the Minnesota law and provided with a range of sample documents. The rating scale should range from "very comprehensible" to "very difficult to comprehend," with the midpoint representing "legal acceptability" in the judgment of the panel.

The evaluators should then analyze all the assessments of the contracts (the holistic judgments and the scores according to the objective criteria), along with the results from the comprehension testing, using multi-dimensional scaling techniques to determine what features of the documents best characterize the most comprehensible contracts. The scores of each contract should then be aggregated as necessary to score the contract as complying or not complying with each of the plain language laws. Finally the evaluators should determine whether the contracts that meet the standards of a particular state were more comprehensible by actual consumer-testing than contracts below the standards.

Document samples. Only documents which have been revised to meet the plain language requirements should be sampled, perhaps 15 contracts of each type (installment, bank, and insurance), from each of the four states, for a total of 180 contracts.

Consumer sample. The entire sample of consumers can come from one geographic area since there is no need to match people to the states from which contracts were obtained. Demographics of the area should be used to identify

geographic locales having the two socioeconomic groups of interest (see Socioeconomic status and education, above). A sample of 500 or more should provide useful results.

Analysis of design strategy for exemplary contracts

It may well be that the critical factor in the design of comprehensible contracts rests in the expertise of the document designer and the approach to the design task rather than in any characteristics of the contract. We would in fact predict this to be the case (see, for example, Duffy 1981; and Duffy, Curran, and Sass 1983). Thus we see the analysis of the design process as a critical component of the project: what do good designers have in common that distinguishes them from less skillful designers?

Identifying approximately five of the most comprehensible contracts of each contract type and conducting preliminary interviews with the designers of these contrcts would be a useful first step in answering that question, as would conducting interviews with designers in several groups who developed contracts which received low scores in the comprehension testing. The interviews should determine first how the groups are managed and then how the groups are organized, the qualifications and duties of the members of the groups, the procedures they follow, etc.

A next step should be an analysis of the "problem-solving strategies" (Flower and Hayes 1977) of individual designers, that is, the way designers conceive of their task in writing a contract and the steps they take to carry out their intentions. Designing a contract is basically a problem-solving task, figuring out how to present particular information to the consumer. In analyzing the designers' problem-solving strategies, the researchers should pay particular attention to how designers formulate the problem, how that formulation changes as the task progresses, what constraints or obstacles the designers perceive, and what strategies they use to respond to these constraints. The best way to determine such matters is to ask the designers to think aloud while performing the design task. These "think aloud" protocols should be recorded, transcribed, and then analyzed to identify the problem-solving behavior. This protocol approach is widely used in the analysis of other problem solving behavior like composing a text or solving engineering problems and has been found to be a rich source of data for understanding that behavior (see, for example, Hayes and Flower 1980; Ericsson and Simon 1984).

Such analyses should provide the bases for organizing the document-design process and for training designers in how to approach document design.

1. For the undergraduate course, see Dixie Goswami, Janice R. Redish, Daniel B. Felker, and Alan Seigel, *Writing in the Professions,* Washington, D.C.: American Institutes of Research, with Seigel and Gale (1981). Two graduate programs are available at Carnegie-Mellon University: Master of Arts in Professional Writing, and Ph.D. in Rhetoric.

2. The term "document design" is awkward, but it has been adopted widely to include both the verbal and visual aspects of documents.

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