An introduction to legal design

by Marie Potel-Saville, Founder & CEO of *Amurabi*

Practice notes | **Maintained** | International

This note provides an introduction to legal design. It explains what legal design is, why it matters to in-house lawyers and what the results of good legal design look like.

Scope of this note

This note explains what legal design is and why it matters to in-house lawyers. It outlines where to begin the legal design process, the building blocks of legal design and what good legal design looks like. The note also considers how long the legal design process takes and what the results of good legal design look like.

What is legal design?

> "Legal design is one of those things which makes so much sense it's incredible to think it's a relatively new kid on the LawTech block."

(*Legal Design, like, WTF dude?, Legal Geek*)

Legal design has become a buzzword and talks, events and conferences on legal design are flourishing, but beyond the hype, what is legal design and could it be of any use for in-house lawyers? Etymologically, "diseno" means both purpose and drawing. From the founders of the Bauhaus, who were trying to solve day-to-day issues through functional aesthetics, to Steve Jobs, for whom "design is not how it looks, it's how it works", design has always been a problem-solving innovation method, focusing on usage and function.

According to the architect Louis Sullivan's famous axiom "form follows function" and therefore the purpose of an object should be the starting point for its design. If you ask a designer to design a chair, they won't start until they know exactly what use is intended and by whom. They are also likely to question why you need a chair in the first place and not a sofa, an armchair, a stool or something to rest your back while you're standing.

Applying that user-centric mindset to law means that, before drafting a contract, a memo or any legal document, lawyers should consider who will apply the contract, what for and how. They should identify:

• **Users.** Users need to be able to understand the legal document; not just lawyers and judges.

• **Purpose.** The legal document needs to be actionable. As a GC, I saw many contracts that were thoroughly negotiated for months and, once signed, ended up in a database with no one ever looking at them again. How could that create value?

- **Usage.** Usage means caring about user experience (UX). What's the user journey and how satisfying (or frustrating) is it?

In a nutshell, legal design is a user-centric, multidisciplinary innovation method that combines legal expertise with design to create intelligible, actionable and engaging legal documents, thereby generating a satisfying legal UX.

Why legal design is needed now

Businesses need to make decisions faster than ever before, which widens the gap between business needs and traditional legal tools. As a GC covering EMEA, I was responsible for over 20 brands requiring key cloud agreements or influencer contracts in a matter of weeks, if not days, to keep pace with an increasingly digitised business. The traditional 50-page authoritative contract templates that usually involved six months of back and forth were simply unacceptable. The need for new legal tools, adapted not just to the pace but also to the digital mindset of users, was obvious.

Customer satisfaction levels in the legal industry are notoriously poor and there is a disconnect between the needs of businesses and the documents produced by lawyers. In-house legal teams are equally frustrated when they try to get business people to engage with Legal. Today the inaccessibility and unintelligibility of law is no longer acceptable as key regulations impose higher standards on the clarity and accessibility of law.

For example, the EU's General Data Protection Regulation (*(EU) 2016/679*) (GDPR) sets out a higher standard of clarity and accessibility for information relating to personal data processing, in line with the fundamental principle of transparency, which is closely related to the principles of fairness and lawfulness. All information relating to personal data now needs to be communicated in a "concise, transparent, intelligible and easily accessible form, using clear and plain language." (*Article 12, GDPR*).

The Working Party 29 makes clear in its Guidelines on Consent under the GDPR that the:

> "message should be easily understandable for the average person and not only for lawyers. Controllers cannot use long privacy policies that are difficult to understand or statements full of legal jargon. Consent must be clear and distinguishable from other matters and provided in an intelligible and easily accessible form."

(*Article 3.3.2, GDPR*).

The French data protection authority went one step further and included the design of privacy policies as a top priority in 2018. Its innovation laboratory LINC recently published a study on design, *The Form of Choices*, which called for design to become one of the compliance criteria with GDPR.

The Insurance Distribution Directive (*(EU) 2016/97*) also imposes a simple, standardised insurance product information document, which provides clear information on non-life insurance products, so that consumers can make more informed decisions. Basically, this is information and graphic design imposed at EU level to the benefit of consumers. EU consumer law has also imposed plain and intelligible language for decades.

Finally, judges require concise and clear documents. For example, the Practice Rules of the EU General Court set out a maximum number of pages for written pleadings (as little as ten pages for intellectual property cases).

Several judges in Europe and the US openly "do not read" anything longer than 20 pages and even grant legal fees reimbursement in a way that's conversely proportionate to the length of written submissions.

Where to begin the legal design process

Most lawyers are aware that there is room for improvement in the way that they express and deliver their legal advice or draft contracts, but they don't know where to start to make a change. Typically, they would like to press a button and "make contracts look pretty". Well, let's be clear, that's not legal design. The image below identifies four levels of design within the Design Ladder:
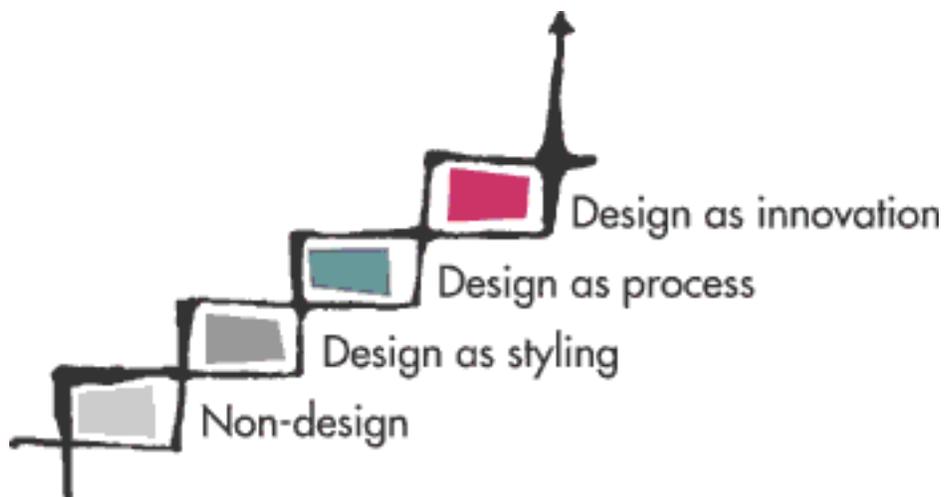
Today most legal documents fit into the first category: no design. Graphic design is the first step, with user-centric innovation by design the goal. The key to avoiding limiting legal design to "good looking documents" is mindset. Start each project as if it were a clean slate, without any preconceived ideas of solutions. More important than an open mind to novelty is the ability to "embrace ambiguity" by not pre-defining a solution or a format from the outset, and instead allowing fresh, different ideas to be generated through the legal design process. This may feel uncomfortable for lawyers who are taught to seek tested, if not bullet-proof, solutions from the outset. However, avoiding pre-defining the end-result is the key to designing a solution that will resonate with users.

In practice, do not look for "an infographics on anti-corruption" but rather ask yourself what your business teams require to engage with, understand and apply these anti-corruption rules. The result could be:

- Story-telling, which is not visual at all.

- Motion graphic design, which is basically animated graphics videos.

- A handy print-out for when they're traveling in remote areas with no wi-fi.

Building blocks of legal design

Human-centred

Being human or user-centric simply means putting yourself in the shoes of the users and seeing the legal documents or services from their perspective. It requires an ability to empathise with users, and to understand their needs, constraints, expectations and frustrations. It also requires an ability to co-create with the users. This means going further than listening, and instead inviting the users to participate in the creation and development of the documents that they will use; without diluting the required legal standards. Co-creation is an extremely powerful tool to ensure adoption and although it may feel counterintuitive to lawyers, who have been taught to provide "perfect", ready-made answers, there is simply no better way to ensure customer relevance than to involve them in the process of creating what they will apply.

Diversity of thought

There is no legal design without designers. Both legal and non-legal professionals must be involved from the outset and work together to create solutions. It's not about involving the designers at the end to "fix the layout." Research shows that the best outcomes come from interdisciplinary teams with different experiences, expertise and ideas (see *Three ways companies can make co-creation pay off, McKinsey & Company, December 2014*). Companies with in-house design teams could leverage this resource, as designers are usually curious by nature and would probably welcome the opportunity to explore law as a new territory of design. Even inviting a designer in residence within Legal for a couple of months could be valuable.

Iteration

After ethnographic research (a qualitative method where researchers observe or interact with a study's participants in their real-life environment) and an initial workshop with the users, legal designers develop a first prototype. A prototype is not meant to be perfect, but a good-enough starting point to test a few usage scenarios. This testing will be done during a "validation workshop" with the same users and will focus on two or three usage scenarios. For example, various combinations of plain language and visualisation to improve and speed up contract negotiation. Based on what worked and what did not, the prototype will be refined and then finalised.

What does good legal design look like?

As each project will be different, there is no legal design template. For example, the final product or service could be a:
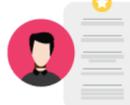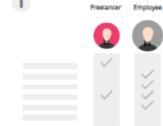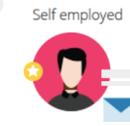
- Redesigned contract that users will want to read.

- A code of conduct that business people will want to apply.

- A lean and user-friendly legal process to automate high-volume, low-value contracts.

For example, the end product could be the fairly classic "do's & don'ts" for business people, revisited in a user-centric and graphic way. The example below was developed to help business teams that use freelancers to improve their awareness of the risk factors under employment law.

(c) Dot. SAS

There is no limit to the form that it could take (for example, it could be a print-out or in a digital format or video). Legal design also delivers value beyond the new document itself. The legal design process enables companies to gather valuable feedback on the preferences of their customers or internal teams, which in turn may help them develop new products or services. In each case, it helps create a new dynamic between Legal and its internal clients. Legal design is particularly well-received by legal departments themselves, specifically millennials who seek purpose and are interested in co-creation. For further information, see *Article, Practical tips for managing millennials*.

How long does legal design take?

There is no such thing as "instant legal design" due to the multidisciplinary and iterative approach that is required. In our experience, legal design projects take between six weeks for simple concepts (such as an NDA) and four to five months for more complex projects (such as a compliance project or the design of platform). Any timeline will depend heavily on the availability of the users. Although it may take time to identify users for the initial workshop, once they have understood the benefits of the approach, you will not be short of volunteers for subsequent sessions. Although the timelines will depend on each project, the following steps are usually involved.

Initial work session

An initial work session with Legal will aim to precisely identify users and KPIs and define what success will look like. Although the legal design approach implies that the end result cannot be predicted at the outset, it is possible and actually advisable to agree on KPIs upfront. For example, these could focus on:

- A reduction in negotiation time.

- An increase in signature speed and rate.

- A reduction in the number of complaints or questions to customer services.

- An increase in user engagement, understanding and implementation.

User journey workshop

A user journey workshop is typically a three-hour session with representative users of the document or service that needs to be redesigned. Identifying the right users is key, as is ensuring diversity within those teams, for example, in terms of:

- Seniority.

- Role.

- Age.

There should be no less than six and a maximum of 12 participants in the workshop to ensure a good dynamic during the session. On this basis, no more than two facilitators will be needed. A good user workshop will require between one to two weeks of preparation, and needs to be precisely timed to maintain high levels of energy and attention.

First prototype

A first prototype of the document or service will be created based on the insights gathered during the initial workshop and other ethnographic research. Depending on the scope of the project, a prototype is usually developed in three to eight weeks. The aim is to produce a concept that enables various usage scenarios of the new document or service to be tested.

Validation workshop

The prototype will be tested during the validation workshop. Preparing the validation workshop usually takes around one week. Invite the same users who participated in the initial workshop for another two to three-hour session. Testing should really mean testing. For example, if you are designing a platform to provide an interface between Legal and its internal clients:

- Keep the prototype as a mock-up of each screen (there's no need to develop the interface at that stage).

- Let the users play with the user journey.

- Provide different options for the menu bar and the buttons.

- Let the users manipulate the prototype (this could be in digital format or a print out with stickers) and place the buttons where it feels natural to them.

- Test a scenario. For example, if you want the users to behave in a certain way after reading a document, create three different calls to action and see which works the best.
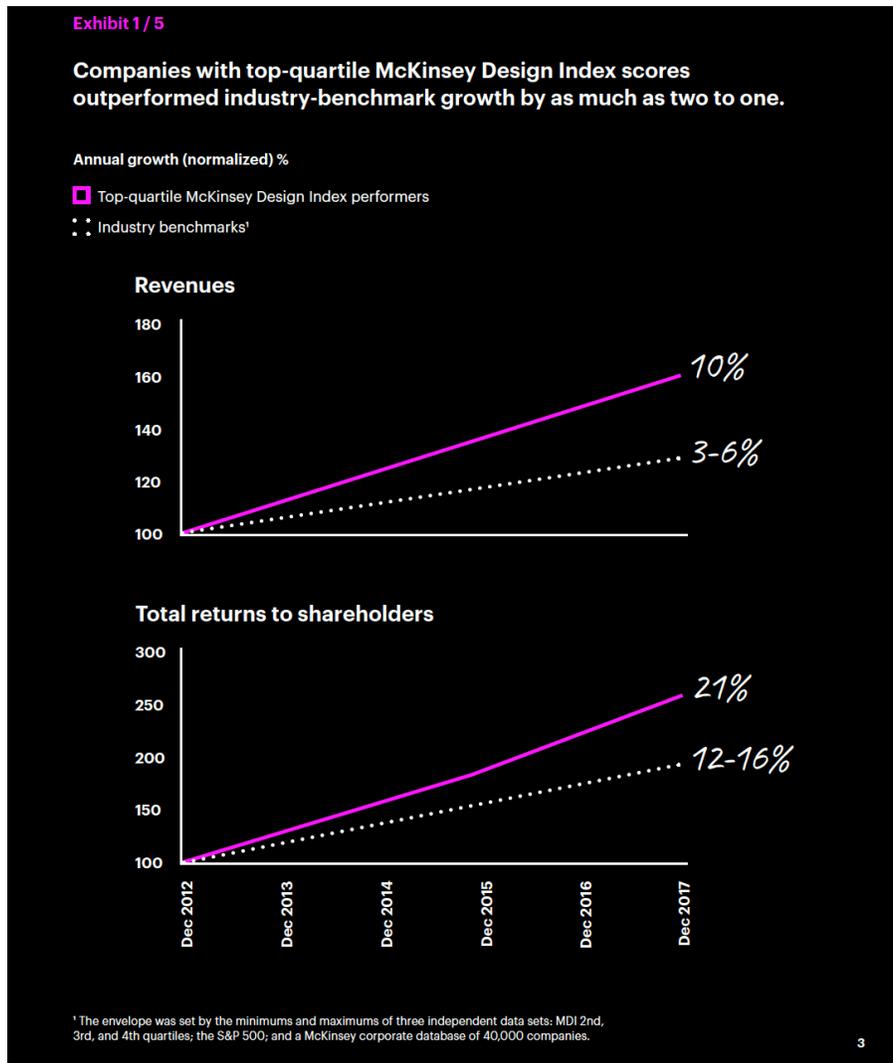
Final design

The prototype is refined and finalised based on the new insights gained during the validation workshop to create a final design.

Results of good legal design

Based on my experience as a GC, there are several different results that can be expected when legal design is applied in an in-house context. For example:

- Digital native, fit-for-business contracts.

- Time and cost reductions.

- Seamless adoption of legal advice.

- Legal is revealed as a trustworthy facilitator.

- Legal teams feel empowered, which helps with team motivation and retention.

More generally, numerous studies have revealed tangible benefits, in terms of increased profits and market value, for truly "design centric" organisations. For example, an October 2018 McKinsey Quarterly study, *The business value of design*, tracked the design practices of 300 publicly listed companies over a five-year period in multiple countries and industries. McKinsey analysed four themes of good design that form the basis of the McKinsey Design Index, which rates companies on their design expertise and how that correlates with the company's financial performance. The findings are quite striking: the best design performers increased their revenues and shareholders returns at nearly twice the rate of their industry counterparts.

Exhibit 1 / 5

Companies with top-quartile McKinsey Design Index scores outperformed industry-benchmark growth by as much as two to one.

Annual growth (normalized) %

■ Top-quartile McKinsey Design Index performers

⋮ Industry benchmarks[1]

Revenues

10%

3–6%

Total returns to shareholders

21%

12–16%

Dec 2012 Dec 2013 Dec 2014 Dec 2015 Dec 2016 Dec 2017

[1] The envelope was set by the minimums and maximums of three independent data sets: MDI 2nd, 3rd, and 4th quartiles; the S&P 500; and a McKinsey corporate database of 40,000 companies.

3

Another interesting finding was that the results held true in all three of the industries McKinsey analysed:

- Medical technology.

- Consumer goods.

- Retail banking.

According to the study, "this suggest that good design matters whether your company focuses on physical goods, digital products, services or some combination of these." McKinsey considers that the potential for design-driven growth is enormous in both product and service-based sectors:

> "The good news is that there are more opportunities than ever to pursue user-centric, analytically informed design today. Customers can feed opinions back to companies (and to each other) in real time, allowing design to be measured by customers themselves."

(*McKinsey Quarterly, The business value of design (October 2018)*).

Buzzword or here to stay?

While applying design thinking to law may be relatively new, leveraging the designers' mindset in other service areas has been successful for decades. From 2005 to 2015, corporations using design thinking as a core strategy have outperformed Standard & Poor 500 index by 211% (see *2015 dmi: Design Value Index Results and Commentary*). Beyond numbers, the digital revolution has generated a groundswell of opinion where transparency, clarity and accessibility of any type of content or information is considered key. This wave has already transformed most economic sectors and the legal ecosystem is next. Why should UX stop when legal issues start?

Marie Potel-Saville is the Founder & CEO of Amurabi. She was previously VP Legal EMEA at Estée Lauder Companies Europe after three years as legal manager Europe at Chanel. As a private practice lawyer, she worked for about 12 years at Freshfields, Allen & Overy and Creel, Garcia-Cuellar, Aiza y Enriquez in London, Brussels, Paris and Mexico City.

END OF DOCUMENT