

HELSINGIN YLIOPISTO

Bridging Law and Design:

Ensuring GDPR's Aim of Transparency and User-Centricity in Privacy Policies
through Legal Design

Faculty of Law
Master's Degree

Author: Mia Ihamuotila

Supervisor:
Associate Professor of Jurisprudence Visa A.J. Kurki

31.1.2024
Helsinki, Finland

Faculty: Faculty of Law

Program: Master's Degree

Field of Study: Legal Theory

Author: Mia Ihamuotila

Title of the Thesis: Bridging Law and Design: Ensuring GDPR's Aim of Transparency and User-Centricity in Privacy Policies through Legal Design

Type of Work: Master's Thesis

Month and Year: January 2024

Number of Pages: 5-17 + 88

Keywords: GDPR; data protection; privacy policy; user-centricity; transparency; plain language; Legal Design; human-centered design; design thinking; empirical study

Supervisor: Visa A.J. Kurki

Storage Location: Library of the University of Helsinki

Summary: This master's thesis offers a thorough exploration of the integration of legal design in shaping privacy policies to meet the GDPR's requirements for transparency and user-centricity. The thesis begins with a critical review of the prevailing legal practices in drafting privacy documents, highlighting their complexity and inaccessibility, which often result in a failure to achieve the transparency and informed consent aspired by the GDPR, particularly in the context of its Articles 5 and 12. The research merges theoretical insights with practical applications, centering on an empirical case study that applies legal design principles to design a law firm's privacy policy. This case study serves as a concrete example of how legal design methods can transform privacy policies into more understandable and user-centric formats, thereby fulfilling the GDPR's goals. The study not only highlights the benefits of legal design in enhancing the clarity and accessibility of legal documents but also emphasizes its role in ensuring that consent is genuinely informed, as mandated by the GDPR. Building upon these insights, the thesis advocates for a transformative change in legal education and practice, emphasizing the need for legal professionals to adopt an empathetic, inclusive, and user-focused approach in creating legal documentation.

Table of Contents

1	Introduction	18
1.1	Background	18
1.2	Research Questions and the Limits of the Research	20
1.2.1	Research Questions	21
1.2.2	Hypotheses for the Research Questions	21
1.2.3	Limits of This Research	22
1.3	Disposition of This Research	23
1.3.1	Theoretical Framework	23
1.3.2	Legal Framework	23
1.3.3	Empirical Framework	24
1.3.4	Analytical Framework	24
1.3.5	Final Remarks	25
1.4	Methodological Pluralism	25
1.4.1	Interdisciplinary Approach	25
1.4.2	Legal Theory	26
1.4.3	Legal Dogmatic	27
1.4.4	Empirical Methods	28
1.5	Terminology: Law + Design = Legal Design	29
1.6	Previous Research and Where this Research is Situated	31
2	Theoretical Framework: How to Approach Legal Design?	36
2.1	Legal Design: A Continuum of Critical Legal Studies	36
2.1.1	Legal Design: Demystifying Legalese	38
2.2	Legal Design: A Connector Between Normative and Social Elements of Law	42
2.2.1	Integrating Law's Sociality into Legal Design	42
2.2.2	Heidegger's Hammer and Legal Design: Law is Broken	44
3	Legal Framework: How to Approach the GDPR?	47
3.1	The Big Picture and the Aim of the GDPR: Empowering Citizens	47
3.2	Article 5(1)(a): Principles of Lawfulness, Fairness and Transparency	49
3.2.1	Lawful Processing: The Significance of an Informed Consent	50
3.2.2	Transparency and Fairness: Fundamental Human Rights	51
3.3	Article 12(1): User-Centric Requirements of Transparency	52
3.3.1	Defining Transparency: Easiness to Understand and Use of Clear and Plain Language	

3.3.2	Guidelines on Transparency: Avoiding Information Overload	56
3.3.3	Guidelines on Clear and Plain Language: Initiatives in the EU and US	59
3.4	Why Care About User-Centricity in Data Protection?	62
4	Empirical Framework: How to Approach Privacy Policies?	66
4.1	Empirical Case Study: Designing Castrén & Snellman’s Privacy Policy	66
4.1.1	Study Design	67
4.1.2	Test Group and the Controlled Variables	68
4.1.3	Method of Analysis	69
4.1.4	Comparative Approach	70
4.1.5	Iterative Process: Human-Centred Design Applied as a Methodology	70
4.1.6	Design Method: Privacy Design Pattern Library	72
4.1.7	Transformation: The Privacy Policy Before and After	74
5	Analytical Framework: How to Create User-Centric and Transparent Privacy Policies?	78
5.1	Findings: Empirical Study at Castrén & Snellman Ltd.	78
5.1.1	Overview of the Original Privacy Policy and Comparison of Experiences	78
5.1.2	Comparative Analysis between the Original and Designed Privacy Policy	80
5.1.3	Designed Privacy Policy’s Results from the Control Group: Laypeople’s Experience	84
5.1.4	The Overall Impact of Specific Design Methods Used: All Groups	86
5.2	Evolution Through Four Lenses: Towards Fairer and More Transparent Privacy Policies	89
5.2.1	Lawyer’s Mindset–The Psychological Evolution	90
5.2.2	Language by Information Design–The Linguistic Evolution	93
5.2.3	Aesthetics by Information Design–The Visual and Interactive Evolution	95
5.2.4	Artificial Intelligence–The Technological Evolution	98
6	Final Remarks	101

List of Figures

Figure 1: Screenshots of the Original Privacy Policy: Before Transformation.

Figure 2: Screenshots of the Designed Privacy Policy: After Transformation.

Figure 3: Bar Chart. Comparative Analysis of Average Ratings for the Original Privacy Policy between Legal Professionals and Laypeople.

Figure 4: Bar Chart. Trend of Average Ratings Across Aspects for Original and Designed Policies

Figure 5: Bar Chart. Average Ratings by Laypeople for Key Attributes of the Designed Privacy Policy.

Reference List

Legal Sources

- 'Article 8, Charter of the Fundamental Rights of the European Union' [2012] OJ C326&02.
- Digital Markets Act (2022/1925)
- Digital Single Market Directive (2019/790)
- Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (ePrivacy Directive).
- EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1.
- General Data Protection Regulation 2016/679, Recital 1.
- General Data Protection Regulation 2016/679, Recital 39.
- General Data Protection Regulation 2016/679, Recital 40.
- General Data Protection Regulation 2016/679, Recital 61.
- Public Law 111–274, 'Plain Writing Act of 2010', 124 STAT. 2861 (2010)
- Privacy and Electronic Communications Directive (2002/58/EC)
- Unfair Commercial Practices Directive (2005/29)

Official Sources

- Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679'.
- 'Consent under GDPR' (GDPR Info) <https://gdpr-info.eu/issues/consent/>.
- European Commission, 'Are There Any Specific Safeguards for Data About Children?' https://commission.europa.eu/law/law-topic/data-protection/reform/rules-business-and-organisations/legal-grounds-processing-data/are-there-any-specific-safeguards-data-about-children_en.

- European Commission, 'Clear Writing for Europe' (European Commission)
https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/translation/clear-writing-europe_en.
- European Commission, 'Data Controller and Data Processor Guide for SMEs'
https://edpb.europa.eu/sme-data-protection-guide/data-controller-data-processor_en.
- European Commission, 'Privacy Statement' (InvestEU Portal)
https://ec.europa.eu/investeuportal/desktop/en/Privacy_Statement.html.
- European Commission, 'Press Release' (20 July 2020)
https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1163.
- European Commission, Directorate-General for Translation, Field, Z., How to write clearly, Publications Office of the European Union, 2015,
<https://data.europa.eu/doi/10.2782/022405>.
- European Data Protection Board, 'Administrative Fine Imposed on Psychotherapy Centre Vastaamo for Data Protection Violations' (European Data Protection Board, 2022) https://edpb.europa.eu/news/national-news/2022/administrative-fine-imposed-psychotherapy-centre-vastaamo-data-protection_en.
- European Data Protection Board, 'Data Controller and Data Processor Guide for SMEs' https://edpb.europa.eu/sme-data-protection-guide/data-controller-data-processor_en.
- European Data Protection Board, 'Data Protection Officer (DPO)'
https://edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en.
- European Data Protection Supervisor, 'Data Protection'
https://edps.europa.eu/data-protection/data-protection_en.
- European Data Protection Supervisor, 'Data Protection Officer (DPO)'
https://edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en.
- European Data Protection Supervisor, 'Privacy Statement'
https://edps.europa.eu/data-protection/data-protection_en.

'General Data Protection Regulation (GDPR) Summary' (EUR-Lex)

<https://eur-lex.europa.eu/EN/legal-content/summary/general-data-protection-regulation-gdpr.html>.

Office of the Data Protection Ombudsman, 'Administrative Fine Imposed on Psychotherapy Centre Vastaamo for Data Protection Violations' (Tietosuoja, 2021) <https://tietosuoja.fi/en/-/administrative-fine-imposed-on-psychotherapy-centre-vastaamo-for-data-protection-violations>.

Literature

Bawden, D and Robinson, L, 'Information Overload: An Overview' in *Oxford Encyclopedia of Political Decision Making* (Oxford University Press 2020).

Bradford, A, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press, USA 2020).

Compagnucci Corrales, M, and others, *Legal Design: Integrating Business, Design and Legal Thinking with Technology* (Edward Elgar Publishing 2021).

Curran, J, 'Rethinking Internet History' in *Misunderstanding the Internet* (2012)

Clark, K, *Human Centered Design: Human Interaction and Collaborative Innovation* (Springer Berlin 2011)

Dilthey, W, *Introduction to the Human Sciences* vol 1 (Princeton University Press 1989).

Einstein, A, *On the Method of Theoretical Physics* (1 Philos Sci 163 1934)

Einstein Papers Project, <https://einsteinpapers.press.princeton.edu/> (Princeton University Press).

Eliot, T S, *The Rock* (1934).

Freud, S, *Introduction to Psychoanalysis* (McClelland & Stewart 1917).

Goodrich, P, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997).

Gross, B, *The Managing Organizations: The Administrative Struggle* vol 2 (1964) 856ff.

Haapio, H and Passera, S, 'Contracts as Interfaces: Exploring Visual Representation Patterns in Contract Design' in MJ Katz, RA Dolin & M Bommarito (eds) *Legal*

- Informatics* (Cambridge University Press, forthcoming) (published ahead of print as part of a doctoral dissertation, 2016)
- Hagan, M, *Law by Design* (2017) <https://lawbydesign.co/>.
- Heidegger, M, *Sein und Zeit* (trans Max Knight, University of California Press and Franz Deuticke 1960).
- Heidegger, M, *Discourse on Thinking* (trans John M Anderson and Hans Freund, Harper & Row 1966)
- Heidegger, M, 'Die Frage nach der Technik' in *Vorträge und Aufsätze* (1954).
- Kamara, I and others. Research Handbook on EU Data Protection Law. (Northampton, MA: Edward Elgar Publishing, 2022.)
- Kelsen, H, *Reine Rechtslehre* (trans Max Knight, University of California Press and Franz Deuticke 1960).
- Lear, J, *Freud* (1st edn, Routledge 2015).
- Manderson, D, *Songs without Music: Aesthetic Dimensions of Law and Justice* (University of California Press 2000)
- Nieminen K, and Lähteenmäki N, *Empiirinen Oikeustutkimus* (Gaudeamus 2021).
- Northwood, C, *The Full Stack Developer: Your Essential Guide to the Everyday Skills Expected of a Modern Full Stack Web Developer* (Apress 2018).
- Pettersson, R, *Information Design* (John Benjamins Publishing Company 2002)
- Plato, *The Republic* (trans Grube GMA) (Hackett Publishing Company 1992) bk VII.
- Rautiainen, P and others, *Oikeus ja sen Tutkiminen* (Vastapaino 2023).
- Sherwin, R, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (3rd edn, Routledge 2011)
- Susskind, R and Susskind, D, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (1st edn, Oxford University Press 2016).
- Toffler, A, *Future Shock* (Random House 1970).
- Tuori, K, 'Sociality' in *Properties of Law: Modern Law and After* (Cambridge University Press 2021)
- Waller, R and others, 'Layered Contracts: Both Legally Functional and Human-Friendly' in Jacob K, Schindler D, Strathausen R and Walzl B (eds), *Liquid*

Legal – Humanization and the Law: Law for Professionals (Springer, Cham 2022).

Scientific Research

- Anderson, J and Manovich, L, 'Transparency Requirements and Privacy: The Intersection of the GDPR and the Right to Privacy' (AI & Society, 2018.)
- Ande, R and others, 'Internet of Things: Evolution and Technologies from a Security Perspective' (2020) 54 *Sustainable Cities and Society* 101728.
- Ajevski, M and others, 'ChatGPT and the Future of Legal Education and Practice' (2023) 57(3) *The Law Teacher*.
- Ben-Shahar, O and Schneider, C, 'The Failure of Mandated Disclosure' (2011) 159 *University of Pennsylvania Law Review*.
- Benöhr, I, 'The United Nations Guidelines for Consumer Protection: Legal Implications and New Frontiers' (2020) 43(1) *Journal of Consumer Policy*.
- Birch, K, Cochrane, DT, and Ward, C, 'Data as Asset? The Measurement, Governance, and Valuation of Digital Personal Data by Big Tech' (2021) 8(1) *Big Data & Society*.
- Bondarciuc, S, 'Design Thinking: Understanding Usefulness from Tech Company Employees' (BS thesis, University of Twente 2022).
- Buchanan, J and Kock, N, 'Information Overload: A Decision Making Perspective' in *Multiple Criteria Decision Making in the New Millennium: Proceedings of the Fifteenth International Conference on Multiple Criteria Decision Making (MCDM) Ankara, Turkey, July 10–14, 2000* (Springer Berlin Heidelberg, 2001).
- Bösch, C and others, 'Tales from the Dark Side: Privacy Dark Strategies and Privacy Dark Patterns' (2016) *Proceedings on Privacy Enhancing Technologies*.
- Campbell, A and Glass, KC, 'The Legal Status of Clinical and Ethics Policies, Codes, and Guidelines in Medical Practice and Research' (2000) 46 *McGill LJ* 473.
- Carr, SD et al, 'The Influence of Design Thinking in Business: Some Preliminary Observations' (2010) 21(3) *Design Management Review*.

- Cerbone, D, 'Composition and Constitution: Heidegger's Hammer' (1999) 27(2) Philosophical Topics.
- Chinkin, CM, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) International & Comparative Law Quarterly.
- Cockburn, A, 'Iterative and Incremental Development: A Brief History' (2006) ACM.
- Dembrow, B, 'Investing in Human Futures: How Big Tech and Social Media Giants Abuse Privacy and Manipulate Consumerism' (2021) 30 U Miami Bus L Rev 324.
- Desai, BC, 'Privacy in the Age of Information (and Algorithms)' Proceedings of the 23rd International Database Applications & Engineering Symposium (2019).
- De Filippi, P and Hassan, S, 'Blockchain Technology as a Regulatory Technology: From Code is Law to Law is Code' First Monday Vol 21, N. 12, special issue on 'Reclaiming the Internet with distributed architectures' (2016).
- De Hert, P and Gutwirth, S, 'Privacy, Data Protection and Law Enforcement. Opacity of the Individual and Transparency of Power' in Privacy and the Criminal Law (2006).
- Ermakova, T and others, 'Readability of Privacy Policies of Healthcare Websites' Wirtschaftsinformatik Proceedings 2015.
- Finn, R and Daly, A, 'The Role of Information Design in Legal Decision-Making' (Journal of Law and Information Science, 2020.)
- Gerl, A and Meier, B, 'The Layered Privacy Language Art. 12 – 14 GDPR Extension – Privacy Enhancing User Interfaces' (2019) 43(12) Datenschutz und Datensicherheit – Dud.
- Glen, R et al, 'Teaching Design Thinking in Business Schools' (2015) 13(2) The International Journal of Management Education.
- Gray, CM and others, 'What Kind of Work Do “Asshole Designers” Create? Describing Properties of Ethical Concern on Reddit' in Proceedings of the 2020 ACM Designing Interactive Systems Conference (Eindhoven, Netherlands) (DIS '20) (Association for Computing Machinery, New York, NY, USA, 2020).

- Gunst, S and De Ville, F, 'The Brussels Effect: How the GDPR Conquered Silicon Valley' (2021) 26(3) European Foreign Affairs Review.
- Haapio, H and others, 'Legal Design Patterns for Privacy' in Erich Schweighofer et al (eds), Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS 2018 (Editions Weblaw, Bern 2018)
- Haapio, H, 'Lawyers as Designers, Engineers and Innovators: Better Legal Documents through Information Design and Visualization' Transparency, Proceedings of the 17th International Legal Informatics Symposium IRIS (2014).
- Hagan, M, 'A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' Indiana Journal of Law and Social Equality: Vol. 6 : Iss. 2, Article 2 (2018).
- Hagan, M, 'Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System' (2020) 36(3) Design Issues 3-15.
- Harry Brignull, 'Dark Patterns: Deception vs. Honesty in UI Design' (A List Apart, 1 November 2011)
- James, J and others, 'User-Centered Design: A Defensible Framework' (Interacting with Computers, 2003).
- Joo, H, 'A Study on Understanding of UI and UX, and Understanding of Design According to User Interface Change' (2017) 12 International Journal of Applied Engineering Research.
- Keith, MJ and others, 'Optimizing Privacy Policy Videos to Mitigate the Privacy Policy Paradox' (2018).
- Lederer, S and others, 'Personal Privacy Through Understanding and Action: Five Pitfalls for Designers' Pers Ubiquit Comput 8, 440–454 (2004).
- Liedtka, J, 'Why Design Thinking Works' (2018) 96(5) Harvard Business Review.
- Likert, R, 'A Technique for the Measurement of Attitudes' (1932) 140 Archives of Psychology.
- Mathur, A and others, 'Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites' Proc. ACM Hum.-Comput. Interact. 3, CSCW, Article 81 (2019).

- Mathur, A and others, 'What Makes a Dark Pattern... Dark? Design Attributes, Normative Considerations, and Measurement Methods' in Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems (2021)
- McDermott, Y, 'Conceptualising the Right to Data Protection in an Era of Big Data' (2017) 4(1) Big Data & Society 2053951716686994.
- McDonald, AM and Faith Cranor, L, 'The Cost of Reading Privacy Policies' (2008) I/S: A Journal of Law and Policy for the Information Society, '2008 Privacy Year in Review' issue.
- Mitchell, J.A, 'Whiteboard and Black-Letter: Visual Communication in Commercial Contracts' (2018) 20(4) University of Pennsylvania Journal of Business Law 826.
- Noonan, N, 'Creative Mutation: A Prescriptive Approach to the Use of ChatGPT and Large Language Models in Lawyering' (2023).
- Nousiainen, K, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in Economics and Society, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023)
- Obar, JA and Oeldorf-Hirsch, A, 'The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services' (2020) 23(1) Information, Communication & Society.
- Patton, J, 'Understanding User-Centricity' (2007) 24(6) IEEE Software
- Palmirani, M, and others, 'A Methodological Framework to Design a Machine-readable Privacy Icon Set' in Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS (2018).
- Palmirani, M and others, 'Legal Ontology for Modelling GDPR Concepts and Norms' in Legal Knowledge and Information Systems. JURIX 2018: The Thirty-first Annual Conference (Vol. 313, p. 91) (IOS Press, 2018).
- Perlman, A, 'The Implications of ChatGPT for Legal Services and Society' (2022)
- Potel-Saville, M and Talbourdet, E, '10. Empowering Children to Understand and Exercise Their Personal Data Rights' Legal Design Perspectives: Theoretical and Practical Insights from the Field (2021).

- Potel-Saville, M and Da Rocha, M, 'From Dark Patterns to Fair Patterns? Usable Taxonomy to Contribute Solving the Issue with Countermeasures' (Decision-Making 4)
- Rizvi, S, 'Unveiling the Data Privacy Secrets: A Deep Dive into Tech Giants' Policies and Practices' Unique Endeavor in Business & Social Sciences 1.1 (2022).
- Rossi, A, and others, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019).
- Shaffer, GC and Pollack, MA, 'Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance' (2009) 94 Minn L Rev 706.
- Shropshire, J and others, 'Towards a Consensus Definition of Full-Stack Development' (2018).
- Tang, J and others, 'Defining Privacy: How Users Interpret Technical Terms in Privacy Policies' (2021) Proceedings on Privacy Enhancing Technologies 2021.3.
- Turilli, M and Floridi, L, 'The Ethics of Information Transparency' (2009) 11 Ethics Inf Technol.
- Wang, J and others, 'The Evolution of the Internet of Things (IoT) Over the Past 20 Years' (2021) 155 Computers & Industrial Engineering 107174.
- Xiao, X and Tao, Y, 'Personalized Privacy Preservation' in Proceedings of the 2006 ACM SIGMOD International Conference on Management of Data (2006).
- Zacharias, FC, 'The Images of Lawyers' (2007) 20 Geo J Legal Ethics 73.

Websites, articles and others

Amurabi, 'Agence Legal Design'

<https://amurabi.eu/en/agence-legal-design/>.

Artificial Lawyer, 'Law Isn't Code And That's a Good Thing' (Artificial Lawyer, 27 September 2021) <https://www.artificiallawyer.com/2021/09/27/law-isnt-code-and-thats-a-good-thing/>. (Accessed 10 January 2024)

Cambridge Dictionary, s.v. 'end-user'

<https://dictionary.cambridge.org/dictionary/english/end-user>. (Accessed 30 January 2024)

Cambridge Dictionary, s.v. 'iteration'

<https://dictionary.cambridge.org/dictionary/english/iteration>. (Accessed 30 January 2024)

Cambridge Dictionary, s.v. 'legalese'

<https://dictionary.cambridge.org/us/dictionary/english/legalese>. (Accessed 30 January 2024)

Cambridge Dictionary, s.v. 'user-centred'

<https://dictionary.cambridge.org/dictionary/english/user-centred>. (Accessed 30 January 2024)

Deceptive Design

<https://www.deceptive.design/> (Accessed 30 January 2024)

Dottir Attorneys, 'Heidegger's Hammer and Legal Design' (Medium, 25 April 2017)

<https://medium.com/@dottirlaw/heideggers-hammer-and-legal-design-82e66fee9512> (Accessed 30 January 2024)

'Equipment (Zeug)' in Cambridge Heidegger Lexicon

<https://www.cambridge.org/core/books/abs/cambridge-heidegger-lexicon/equipment-zeug/5FEA7A891A3B761B4BFCBBA550908BF1>. (Accessed 30 January 2024)

Figma, 'What is Figma?'

<https://help.figma.com/hc/en-us/articles/14563969806359-What-is-Figma>. (Accessed 30 January 2024)

Hagan, M, 'Personal Website'

<https://www.margarethagan.com/about/publications/>. (Accessed 30 January 2024)

Haapio, H (Lexpert), 'More About Helena Haapio'

https://www.lexpert.com/our_team/more-about-helena_haapio/. (Accessed 30 January 2024)

IDEO, 'History of Design Thinking'

<https://designthinking.ideo.com/history>. (Accessed 30 January 2024)

Illingworth, S, 'ChatGPT: Students Could Use AI to Cheat, But It's a Chance to Rethink Assessment Altogether' (The Conversation, 19 January 2023).

<https://theconversation.com/chatgpt-students-could-useai-to-cheat-but-its-a-chance-to-rethink-assessment-altogether-198019> (Accessed 17 January 2024)

Lawrence, L, 'Code is law: On liberty in cyberspace' (harvardmagazine.com 2000)

<https://www.harvardmagazine.com/2000/01/code-is-law-html> (Accessed 30.1.2024)

Manderson, D (Australian National University), 'Dr Desmond Manderson -

Researchers' <https://researchers.anu.edu.au/researchers/manderson-dra>. (Accessed 30 January 2024)

Nousiainen, KL (Hanken's Portal), 'Katri Liisa Nousiainen'

<https://harisportal.hanken.fi/en/persons/katri-liisa-nousiainen>. (Accessed 30 January 2024)

Office of the Data Protection Ombudsman of Finland, 'Inform Data Subjects about Processing' <https://tietosuoja.fi/en/inform-data-subjects-about-processing>.

OpenAI, 'About'

<https://openai.com/about>. (Accessed 30 January 2024)

Passera, S, 'Personal Website'

<https://stefaniapassera.com/about/>. (Accessed 30 January 2024)

Palmirani, M (University of Bologna), 'Monica Palmirani - Publications'

<https://www.unibo.it/sitoweb/monica.palmirani/publications?page=2>. (Accessed 30 January 2024)

Rossi, A (University of Luxembourg), 'Arianna Rossi'

https://wwwfr.uni.lu/snt/people/arianna_rossi. (Accessed 30 January 2024)

Sherwin, RK (New York Law School), 'Richard K Sherwin'

<https://www.nyls.edu/faculty/richard-k-sherwin/>. (Accessed 30 January 2024)

Goodrich, P (Cardozo School of Law), 'Peter Goodrich'

<https://cardozo.yu.edu/directory/peter-goodrich>. (Accessed 30 January 2024)

Case Law

1150/161/2021 Psykoterapiakeskus Vastaamo Oy (Office of the Data Protection Ombudsman, 7 February 2021).

Case C-487/21 F.F. v Österreichische Datenschutzbehörde (Court of Justice of the European Union, First Chamber, 4 May 2023).

Case C-154/21 RW v Österreichische Post AG (Court of Justice of the European Union, First Chamber, 12 January 2023).

Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems (Court of Justice of the European Union, 16 July 2020).

1 Introduction

“Legal Design, in its core, is a *movement* to make the legal system work better for *people*.”¹

1.1 Background

“What is said is at least as important as *how* it is said.”²

The complexity of legal texts presents a formidable challenge in our society, particularly for laypeople. This complexity not only obscures understanding but also impedes access to justice and compliance with the law. As legal scholars like Pauli Rautiainen from the University of Helsinki have noted, the inaccessibility of legal materials is a widespread issue³ and several studies⁴ show that the majority of citizens find legal documents, ranging from privacy policies to contracts, to be daunting and difficult to comprehend.

This challenge is not just a linguistic one; it is deeply rooted in the conservative approaches to legal education and practice. These approaches often prioritize a "lawyer-to-lawyer" communication style, which is heavily laden with *legalese*⁵, legal jargon, and complex structures. The question arises: why is the consideration of a broader audience, the *end-user*⁶, not a fundamental aspect of legal training? Why is

¹ Marcelo Compagnucci Corrales, Helena Haapio, Margaret Hagan and Michael Doherty, *Legal Design: Integrating Business, Design and Legal Thinking with Technology* (Edward Elgar Publishing 2021) 63.

² Pauli Rautiainen, Aura Kostianen, Visa Kurki, Niko Soininen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 48–49.

³ Ibid.

⁴ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019). See Helena Haapio, Margaret Hagan, Monica Palmirani, and Arianna Rossi, 'Legal Design Patterns for Privacy' in Erich Schweighofer et al (eds), *Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS 2018* (Editions Weblaw, Bern 2018) 445-450.

⁵ Note: *Legalese*: “language used by lawyers and in legal documents that is difficult for ordinary people to understand”, Cambridge Dictionary, s.v. 'legalese' <https://dictionary.cambridge.org/us/dictionary/english/legalese>.

⁶ Note: *end-user*: “the person or organization that uses something rather than an organization that trades in it”, Cambridge Dictionary, s.v. 'end-user'

there a gap in teaching law students about audience awareness and *user-centric*⁷ approaches?

*Legal design*⁸ emerges as a promising solution to this challenge. It advocates for a shift towards user-centric legal communication, emphasizing clarity, accessibility, and engagement with the end-user—the people who interact with legal documents in their everyday lives. In this context, the end-user is not necessarily a legal expert but a layperson trying to navigate the often-convoluted world of legal information.

The advent of the data-driven economy, particularly the implementation of the General Data Protection Regulation (GDPR) of the European Union (EU)⁹, has brought these issues to the forefront. The GDPR, with its focus on the rights of the *data subject*¹⁰ and transparency, underscores the need for clear communication in legal documents, such as *privacy statements*, also called privacy policies¹¹. However, many organizations, in their rush to comply with the GDPR, have continued to use dense legal language and presentation of information, thus failing to make their privacy policies genuinely

<https://dictionary.cambridge.org/dictionary/english/end-user>. See Bruna Ferreira and others, 'Investigating Problem Definition and End-User Involvement in Agile Projects that Use Lean Inceptions' in Proceedings of the XX Brazilian Symposium on Software Quality (2021).

⁷ Note: *user-centred*: “used to describe products, systems, etc. whose design is based on the ways that people will use them and what they will do with them”, Cambridge Dictionary, s.v. 'user-centred' <https://dictionary.cambridge.org/dictionary/english/user-centred>.

⁸ Note: *legal design*: “application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying”, 'Legal Design' (Law By Design) <https://lawbydesign.co/legal-design/>.

⁹ EU General Data Protection Regulation (GDPR), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119/1.

¹⁰ Note: *data subject*: “the identified or identifiable living individual who is the subject of the personal data”. Note: *personal data*: “information relating to an identified or identifiable living person”, University of Cambridge, 'GDPR Definitions' https://www.information-compliance.admin.cam.ac.uk/files/gdpr_definitions.pdf.

¹¹ Note: *privacy statement*: “privacy statement explains the reason for the processing, the way we collect, handle and ensure protection of all personal data provided, how that information is used and what rights you may exercise in relation to your data (the right to access, rectify, block etc.)”, European Commission, 'Privacy Statement' (InvestEU Portal) https://ec.europa.eu/investeuportal/desktop/en/Privacy_Statement.html.

accessible to the general public¹² and hindering data subjects' *informed consent*¹³ in the term's literal sense. This situation highlights a broader problem in the legal field—the disconnect between legal drafting and the real-world needs of those it serves.

In this thesis, I argue that by embracing legal design and human-centred approaches, we can bridge this gap. The application of *design thinking*¹⁴ to legal documents can significantly enhance user understanding and engagement. My research aims to demonstrate how a user-centric approach in legal drafting, particularly in the realm of privacy policies, not only aligns with GDPR's transparency requirements but also fosters a more inclusive and accessible legal environment.

To substantiate these claims, I present an empirical quantitative case study conducted by the author (chapter 4 and 5), contrasting traditional and legal designed privacy policies, involving a diverse group of participants including both legal professionals and laypeople. This empirical approach provides a comprehensive understanding of the effectiveness of user-centric design in privacy policies and its impact on diverse audiences.

1.2 Research Questions and the Limits of the Research

The following sections present the research questions of this thesis, the hypotheses and the scope of this research.

¹² Jenny Tang, Hannah Shoemaker, Ada Lerner, and Eleanor Birrell, 'Defining Privacy: How Users Interpret Technical Terms in Privacy Policies' (2021) Proceedings on Privacy Enhancing Technologies 2021.3. See Aleecia M. McDonald and Lorrie Faith Cranor, 'The Cost of Reading Privacy Policies' (2008) I/S: A Journal of Law and Policy for the Information Society, '2008 Privacy Year in Review' issue.

¹³ Note: *informed consent*, "Article 4(11): 'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her", University of Cambridge, 'GDPR Definitions' https://www.information-compliance.admin.cam.ac.uk/files/gdpr_definitions.pdf.

¹⁴ On the history of design thinking see <https://designthinking.ideo.com/history>.

1.2.1 Research Questions

Having information about data processing available to the users is required by the GDPR and the most common format of complying with that obligation is to provide a privacy policy. However, there exists a prevailing consensus, supported by various studies, that privacy policies are often overly intricate and bewildering for the laypeople.¹⁵ Building upon this general sentiment and the micro-level case study conducted within this thesis, the primary objective is to investigate whether additional regulatory measures and guidelines pertaining to user-centricity should be incorporated into the GDPR. The two folded focus of this inquiry is delineated through a sequence of two interrelated questions:

1. Privacy Policy Effectiveness: Considering both empirical findings in this research, previous research, and the prevalent state of privacy policies, to what extent are the requirements outlined in Article 12(1) of the GDPR currently met? How effective is Article 12(1) in achieving its objective of prioritizing user-centricity in data subject notifications?
2. Legal Design's Potential: If the stipulated requirements are found to be inadequately addressed in the GDPR, can legal design offer viable methodologies for engendering genuine transparency and user-centricity within the framework of data protection law?

1.2.2 Hypotheses for the Research Questions

In the context of contemporary data protection regulations, particularly within the framework of Article 12 of the GDPR, the following hypotheses are formulated:

1. Privacy Policy Effectiveness: Considering empirical findings, existing scholarly research and the prevalent state of privacy policies, it is hypothesized that the requirements outlined in Article 12(1) of the GDPR are inadequately met in

¹⁵ Jenny Tang, Hannah Shoemaker, Ada Lerner, and Eleanor Birrell, 'Defining Privacy: How Users Interpret Technical Terms in Privacy Policies' (2021) Proceedings on Privacy Enhancing Technologies 2021.3.

current privacy policies. Furthermore, it is hypothesized that Article 12(1) is less effective in achieving its primary objective of prioritizing user-centricity in data subject notifications, which is expected to have a notable impact on how legal practitioners interpret this provision.

2. Legal Design's Potential: If the stipulated requirements in Article 12(1) are indeed inadequately addressed, it is hypothesized that legal design methodologies can offer practical and viable means to rectify these deficiencies. Legal design is believed to achieve this by implementing *iterative*¹⁶ projects and employing human-centered design principles, ultimately leading to the transformation of existing privacy policies into more user-centric and transparent iterations. These methodologies are expected to introduce innovative tools and strategies that challenge conventional legal approaches, facilitating enhanced comprehension and informed consent for data subjects.

1.2.3 Limits of This Research

This thesis exclusively centres on data protection law, intentionally excluding all other legal domains, although legal design has demonstrated applicability across various legal fields.¹⁷ The primary focus of this research is on data subjects, often referred in this thesis to as the end-users, users or the audience, within the context of data protection law. The central entities responsible for privacy management are the *data controllers*¹⁸, as they bear the responsibility for the content found in their privacy policies.

¹⁶ Note: *iteration*: “the process of doing something again and again, usually to improve it, or one of the times you do it”, Cambridge Dictionary, s.v. 'iteration'.

<https://dictionary.cambridge.org/dictionary/english/iteration>.

¹⁷ See Margaret Hagan, 'A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' (2018) 6(2) Indiana Journal of Law and Social Equality; Marcelo Compagnucci Corrales, Helena Haapio, Margaret Hagan and Michael Doherty, *Legal Design: Integrating Business, Design and Legal Thinking with Technology* (Edward Elgar Publishing 2021); Robert Waller, Stefania Passera and Helena Haapio, 'Layered Contracts: Both Legally Functional and Human-Friendly' in Jacob K, Schindler D, Strathausen R and Waltl B (eds), *Liquid Legal – Humanization and the Law: Law for Professionals* (Springer, Cham 2022).

¹⁸ Note: *data controller*,” the organisation (or person) which decides the purposes for which personal

Specifically, this thesis places emphasis on Article 12(1) of the GDPR, which is intricately linked with Article 5, Article 4(11) and Article 7 of the GDPR. Consequently, the scope of this study is confined to an examination of privacy policies, with the remainder of the GDPR remaining beyond its purview.

1.3 Disposition of This Research

This section is an overview of the disposition of this research, outlining the key segments and their respective focuses. This encompasses the four frameworks; theoretical, legal, empirical and analytical, culminating in the final remarks. Each section contributes uniquely to the exploration of legal design's role in data protection law and the compliance of privacy policies with GDPR requirements.

1.3.1 Theoretical Framework

The theoretical part aims to establish a robust foundation for this thesis by conceptualizing legal design. The primary objective here are twofold. Firstly, it seeks to embed legal design as an integral component within the realm of legal scholarly, ensuring its permanence. Secondly, while delving into pure legal theory and philosophy, this section not only elucidates the various approaches within legal theory applied in this study but also endeavours to bridge the gap between existing legal theories, notably critical legal studies, and the realm of legal design.

1.3.2 Legal Framework

This section exclusively delves into the realm of legal dogma, serving as the legal framework for this research. It accomplishes this by engaging in an in-depth discussion of the GDPR's legal regulations under scrutiny. Within this context, this section thoroughly examines the legal requirements governing privacy policies as outlined in the GDPR. The objective is to subject Article 12(1) to scrutiny, assessing whether its interpretation serves a meaningful purpose. It aims to determine whether this article

data are processed”, University of Cambridge, 'GDPR Definitions' https://www.information-compliance.admin.cam.ac.uk/files/gdpr_definitions.pdf.

is being adhered to in a manner that not only ensures fairness and transparency but is also consistently upheld by legal practitioners.

1.3.3 Empirical Framework

This section provides a small-scale empirical case study, employing a combination of quantitative empirical research and human-centred design methodologies. Within this section, a detailed account is provided of an iterative project involving the design of a privacy policy for Castrén & Snellman Ltd., a Finnish law firm.

The case study centres on reconstructing a privacy notice using legal design principles and implementing human-centred design methodology. The empirical segment involves questionnaires directed at a test group consisting of various end-users, comparing their experiences between the original and redesigned privacy notices through a comparative analysis.

The primary objective of this case study is to illustrate the pivotal role played by legal design, with a specific focus on enhancing comprehensibility and transparency, in achieving compliance with the legal mandates of Article 12 of the GDPR. By improving the accessibility of the privacy policy to its intended audience, this case study aims to underscore the value that legal design brings to the forefront.

1.3.4 Analytical Framework

The analytical framework evaluates the findings of the case study in conjunction with existing solutions within the realms of legal design and privacy. This chapter is intended to unify the theoretical framework established at the outset of this research with the practical case study. This unification is supported by quantitative results, creating a comprehensive synthesis of the study. Lastly, this section explores the evolution of privacy policies through four distinct lenses: psychological, linguistic, visual-interactive, and technological advancements. Each subsection examines how these diverse aspects contribute to creating fairer and more transparent privacy policies, ultimately addressing the fundamental question of why privacy matters in today's digital landscape.

1.3.5 Final Remarks

The final chapter summarizes the findings, highlighting the role of legal design in enhancing GDPR compliance by making privacy policies user centric. It addresses the research questions, emphasizing the limitations of current privacy policy practices under GDPR and the transformative potential of legal design. The chapter also advocates for a shift in legal education and practice towards a more empathetic and inclusive legal system.

1.4 Methodological Pluralism

The following sections introduce the methodologies employed in this research. Within interdisciplinary research, diverse viewpoints from various disciplines offer insights through conventional theoretical and methodological perspectives. Effective research incorporates diverse approaches, viewpoints, data, and methodologies, embracing methodological pluralism.¹⁹ This thesis exemplifies such methodological pluralism by combining legal dogmatics with the interdisciplinary methodologies discussed hereunder.

1.4.1 Interdisciplinary Approach

Rautiainen et. al. emphasize that legal research involves the systematic organization of the legal order and the interdisciplinary study of law, which facilitates interaction between law and other scientific disciplines.²⁰ However, until the middle of the 20th century, justice was still seen mainly as a static, cross-cutting phenomenon, detached from its social context. Nowadays legal scholars try to capture the dynamic nature of law, such as its mutability and contextuality. This has led to increased necessity of interdisciplinary research, which has called for theory-building that is detached from the individual field of law and from the solely internal perspective of legal theory.²¹

¹⁹ Pauli Rautiainen, Aura Kostianen, Visa Kurki, Niko Soinen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 20.

²⁰ *Ibid* 29.

²¹ *Ibid* 11–13.

Therefore, existing law is increasingly interpreted in its social, ethical, economic, historical, and environmental context, entering an evolving dialogue in human sciences.²² In this research, I employ an interdisciplinary approach that unites law, design, and technology. This approach bridges the gap between legal concepts and their social context through design, thereby drawing the field of law closer to the realms of human sciences. This involves adopting language and techniques rooted in these three fields, effectively amalgamating them to challenge the conservative mindset of a lawyer and ushering in a more "designer-oriented" perspective.

Legal design focuses on interdisciplinary approaches and human sciences²³, which becomes evident through the later application of human-centred design in the case study in chapter 4 and 5. This holds particular significance for the previously posed research questions, as rectifying the lack of user-centricity in real-world privacy policies necessitates legal experts to incorporate a thorough understanding of human sciences into the process of policy development. This integration of human sciences within the practice of law, specifically within data protection law, is explored extensively throughout this research.

The rationale behind this is the core focus of law: the *people*. People and their behaviour and knowledge guide human sciences.²⁴ Therefore, it seems to be obvious that human sciences should be a significant part of both legal theory and practice.

1.4.2 Legal Theory

Legal research encompasses not only interpretative methodologies, such as legal dogmatics as described in the following section 1.4.3, but also extends into legal theory and philosophy. This research topic aligns within the realm of normative legal philosophy.

²² Ibid 11–13.

²³ Marcelo Corrales Compagnucci, Helena Haapio, Margaret Hagan, and Michael Doherty, *Legal Design: Integrating Business, Design and Legal Thinking with Technology* (Edward Elgar Publishing 2021); Margaret Hagan, 'Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System' (2020) 36(3) *Design Issues* 3–15.

²⁴ See Wilhelm Dilthey, *Introduction to the Human Sciences* vol 1 (Princeton University Press 1989).

At the core of normative legal philosophy is the fundamental inquiry into "what form a legal system should take", focusing on its structure rather than merely analysing concepts and their interrelations. It intersects closely with moral philosophy, delving into ethical considerations of right and wrong, as well as with social philosophy, which explores the foundations of society.²⁵ Moral philosophy is also closely linked to the research questions in this thesis. This connection arises from the potential for organizations handling individuals' data to exploit data subjects' limited comprehension of privacy policies while seemingly obtaining their informed consent for processing their personal data.

Within data protection law, legal design also aligns with research seeking to shape future legal systems, known as *de lege ferenda* research, where the objective is to propose suggestions for the development of the legal system.²⁶ Legal design's recommendations seek to improve GDPR regulation by making privacy policies more user-centred, transparent, and comprehensible. These recommendations emphasize the use of human-centred design methods to prioritize the needs of the end-users.

1.4.3 Legal Dogmatic

In addition to legal theoretical methodologies, this research employs legal dogmatics to review the Article 5(1)(a) and Article 12(1) in the GDPR. Legal dogmatism is an approach used in legal research to analyse and interpret legal texts and principles. It focuses on the systematic and logical interpretation of laws, statutes, regulations, and judicial decisions. The goal of this methodology is to uncover and understand the meaning and implications of legal rules and doctrines.²⁷ In this research, my legal dogmatic objectives are twofold: first, to delve into and comprehend the significance and consequences of what appear to be user-centric provisions in Article 5 and 12 of

²⁵ Pauli Rautiainen, Aura Kostiaainen, Visa Kurki, Niko Soinen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 100–103.

²⁶ *Ibid.*

²⁷ *Ibid.*

the GDPR, and second, to subsequently question the way they are interpreted and what the interpretation results in.

1.4.4 Empirical Methods

Empirical legal research can be divided into two main types: descriptive and explanatory. Descriptive research provides an accurate overview of a phenomenon by answering "what" and "how" questions. However, it requires a basic understanding of the important elements within that phenomenon, as it cannot cover every detail. It relies on thorough and reliable data. Explanatory research, on the other hand, goes beyond the "what" and "how" to explore "why" questions, as it often builds on the foundation laid by descriptive research.²⁸

This thesis' empirical study predominantly assumes a descriptive approach. It aims to answer the "what" question:

What issues exist in the current state of privacy policies?

... while also addressing the "how" question:

How to overcome the current information fatigue and move towards user-centricity?

Kati Nieminen et. al. highlights the limited use of empirical methods in Finland. They advocate for an increase in research reliant on empirical methods, suggesting it could introduce an opportunity for interdisciplinary empirical research to aid various aspects within the legal system.²⁹ Based on this argued need of empirical research on the legal field, this research will provide a valuable insight that strives to prove a point through an actual case study in data protection law.

²⁸ Ibid 239–240.

²⁹ Kati Nieminen and Noora Lähteenmäki (eds), *Empiirinen Oikeustutkimus* (Gaudeamus 2021).

Rautiainen et al. highlight the compatibility of empirical methods in legal research, especially when the focus is on people's real access to justice and rights.³⁰ As legal design prioritizes user-centric approaches, evaluating these experiences through empirical methods becomes vital. Therefore, obtaining insights via questionnaires completed by 55 end-users, both legal professionals and laypeople, regarding their grasp of legal language and user experience has been considered valuable. The utilization of quantitative empirical research will offer substantial data on individuals' perceptions of a privacy policy's understandability and transparency.

Fundamentally, the improvement of the user-experience lies at the core of legal design. To enhance user experience, understanding the pain points behind dysfunctional legal products or services is crucial. Therefore, conducting empirical research becomes imperative in academical research on legal design to maintain credibility and academic value within the field of law.

1.5 Terminology: Law + Design = Legal Design

Research can often combine in a new way a previously studied phenomenon³¹ (design-thinking) to approaches previously used elsewhere. This could be, for example, the application of other disciplinary methods in a new way in a legal context³² (data protection law). In terms of legal design, law is approached by design -thinking that has been researched plenty on other fields³³—but this is where design meets law.

As this research follows an interdisciplinary approach to law, it's important to note that various terms originate from disciplines other than law. Among these are design-related terms not commonly found in legal contexts. Therefore, I define pertinent

³⁰ Pauli Rautiainen, Aura Kostiaainen, Visa Kurki, Niko Soininen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 45.

³¹ Ibid 29.

³² Ibid 29.

³³ See Sean D Carr and others, 'The Influence of Design Thinking in Business: Some Preliminary Observations' (2010) 21(3) *Design Management Review* 58-63; Roy Glen and others, 'Teaching Design Thinking in Business Schools' (2015) 13(2) *The International Journal of Management Education* 182-192; S Bondarciuc, *Design Thinking: Understanding Usefulness from Tech Company Employees* (BS thesis, University of Twente 2022); Jeanne Liedtka, 'Why Design Thinking Works' (2018) 96(5) *Harvard Business Review* 72-79.

terms as they become relevant throughout this research. However, it's essential to initially define "legal design" as a term that combines principles from both law and design, introducing a fresh approach to an otherwise traditionally rigid, conservative, legal landscape. Margaret Hagan in her e-book *Law by Design* defines legal design as “the application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying”.³⁴ Utilizing an array of design disciplines—such as user experience and interface (UX/UI) design, and information design—legal design creates visually engaging, user-centric, and efficient legal resources and services, enhancing user experience when interacting with law³⁵, in this case, data protection law.

In the context of this thesis, the term “*conservatism*” is employed to describe the conventional approach to law and legal drafting, characterized by a preference for gradual, cautious reforms and a deep-rooted adherence to established methods. This approach often manifests in the legal field as a reliance on complex, jargon-heavy language. Additionally, it usually appears as resistance to radical changes in legal documentation and communication styles.³⁶ However, this thesis advocates for a paradigm shift inspired by design thinking and innovation, challenging these traditional norms.

In a socio-philosophical context, conservatism views society as a complex system, best understood not through abstract, overarching principles, but rather through careful, incremental changes. Excessive or rapid modifications are believed to disrupt the delicate equilibrium of established interrelationships within society.³⁷ Seen as scepticism towards change, conservatism can be perceived as an inherent disposition among many individuals³⁸, in this case, legal practitioners. Historically, as a Western ideological movement, conservatism emerged as a response to the French Revolution

³⁴ Margaret Hagan, *Law by Design* (2017) <https://lawbydesign.co/>.

³⁵ Marcelo Compagnucci Corrales and others, *Legal Design: Integrating Business, Design and Legal Thinking with Technology* (Edward Elgar Publishing, 2021) 63.

³⁶ Pauli Rautiainen, Aura Kostiainen, Visa Kurki, Niko Soinen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 45.

³⁷ *Ibid* 45.

³⁸ *Ibid* 45.

in the 18th century.³⁹ In this thesis, the aim is to leave behind conservatism that hinders positive evolution of the legal landscape. After all, it is an approach that is centuries old.

Although legal design might seem novel, it essentially involves applying design thinking to the realm of law—a practice that many other fields have long embraced. The principles and methodologies of design thinking are well-established across various disciplines, such as business and computer science.⁴⁰ Yet the legal domain has been slower to adopt them. However, implementing design thinking in law is not an optional luxury; it's a *crucial evolution* that enhances the functionality and effectiveness of the legal system.

1.6 Previous Research and Where this Research is Situated

This section provides a concise overview of prior relevant research, offering valuable context within the scope of this thesis and the literature employed.

It is imperative to acknowledge the substantial influence of Critical Legal Studies (CLS) on this thesis. Within this thesis, legal design, particularly in privacy policies and data protection laws, is viewed as a continuum of the critical perspectives pioneered by CLS. This thesis builds upon the foundational work of authors within this field, such as Peter Goodrich⁴¹, Desmond Manderson⁴², and Richard Scherwin⁴³, whose insights into the power of visualization and the complexity of legal language have been crucial for this thesis. Their contributions have helped shape the application of legal design principles in this research, particularly in enhancing the transparency, accessibility, and user-centricity of legal documents like privacy policies. By situating this thesis within the

³⁹ Ibid 45.

⁴⁰ Bruna Ferreira and others, 'Investigating Problem Definition and End-User Involvement in Agile Projects that Use Lean Inceptions' in Proceedings of the XX Brazilian Symposium on Software Quality (2021).

⁴¹ 'Peter Goodrich' (Cardozo School of Law) <https://cardozo.yu.edu/directory/peter-goodrich> accessed 30 January 2024.

⁴² 'Dr Desmond Manderson - Researchers' (Australian National University) <https://researchers.anu.edu.au/researchers/manderson-dra> accessed 30 January 2024.

⁴³ 'Richard K Sherwin' (New York Law School) <https://www.nyls.edu/faculty/richard-k-sherwin/> accessed 30 January 2024.

context of CLS, it aims to extend and apply these critical insights to the practical realm of legal design, offering tangible solutions to the challenges posed by complex legal frameworks such as the GDPR.

Several prominent figures consistently emerge in academic research on legal design and its various approaches. Highlighting the forerunners in the field of legal design whose work has been the focal point of my research, is crucial. Examining their backgrounds highlights the interdisciplinary nature of legal design, emphasizing the need for collaborative efforts and a comprehensive interdisciplinary understanding within the realm of law.

Legal design was introduced by Hagan in 2013-2014, focusing on innovating law systems to serve people better.⁴⁴ Helena Haapio, a Finnish forerunner, also began her legal design journey in 2013, with a focus on contract design and the competitive advantage it offers.⁴⁵ She co-created the Contract Design Pattern Library with Stefania Passera, who has been pioneering legal design for over a decade, particularly in contract visualization.⁴⁶ Furthermore, Monica Palmirani has been researching legal transparency and privacy through legal design, concentrating on iconography for compliance with the GDPR.⁴⁷ Arianna Rossi's research intersects law, computer science, design, and digital ethics⁴⁸, and is therefore substantially relevant within this research. Additionally, Marcelo Corrales Compagnucci explores legal design for privacy improvement using machine-readable privacy icons and GDPR-related issues.⁴⁹

⁴⁴ Margaret Hagan, 'Personal Website' <https://www.margarethagan.com/about/publications/> accessed 30 January 2024.

⁴⁵ Helena Haapio (Lexpert), 'More About Helena Haapio' https://www.lexpert.com/our_team/more-about-helena_haapio/ accessed 30 January 2024.

⁴⁶ Stefania Passera, 'Personal Website' <https://stefaniapassera.com/about/> accessed 30 January 2024.

⁴⁷ University of Bologna, 'Monica Palmirani - Publications' <https://www.unibo.it/sitoweb/monica.palmirani/publications?page=2> accessed 30 January 2024.

⁴⁸ University of Luxembourg, 'Arianna Rossi' https://wwwfr.uni.lu/snt/people/arianna_rossi accessed 30 January 2024.

⁴⁹ University of Copenhagen, 'Marcelo Corrales Compagnucci' [https://jura.ku.dk/english/staff/research/?pure=en%2Fpersons%2Fmarcelo-corrales-compagnucci\(979af57e-b54d-455c-bb6e-8bece3619083\).html](https://jura.ku.dk/english/staff/research/?pure=en%2Fpersons%2Fmarcelo-corrales-compagnucci(979af57e-b54d-455c-bb6e-8bece3619083).html) accessed 30 January 2024.

These leading figures in the field of legal design have collaboratively developed *legal design patterns*⁵⁰ that serve as a prominent foundation for this thesis. As explained in the work by Rossi, Ducato, Haapio, Passera, and Palmirani, legal design patterns are central tools in legal design. They contribute to the development of a legal design pattern language, which facilitates the documentation and sharing of good practices across disciplines, leading to more actionable pattern libraries.⁵¹

A study conducted by Haapio, Hagan, Palmirani, and Rossi revealed a notable scarcity of visual methods in privacy notices. Their findings indicated that only 9% of the examined sites incorporated any form of visuals. Additionally, a significant 76% of these sites did not use colour, and merely 37% offered page jumps for facilitating quick navigation. Furthermore, only 37% of the sites featured a summary table, which is a crucial element of layered disclosure. As this subject has been discussed and researched, the situation might have gotten slightly better, but not tremendously. Therefore, there has been suggestions for more standardization and an actionable pattern library.⁵²

Additionally, Marie Potelle-Saville has shed light on privacy issues by highlighting manipulative digital practices known as *dark patterns* or *deceptive design*⁵³. As the founder of Amurabi Agency, Potel-Saville's work in legal design extends into various domains, including the advancement of privacy policy design.⁵⁴ Finally, the most

⁵⁰ Note: *legal design patterns*: "conceptual frameworks or entities that describe solutions to recurring legal problems, with the aim of making contracts, disclosures, and policies more accessible to users and easier to prepare", Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019).

⁵¹ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019), 1.

⁵² Helena Haapio, Margaret Hagan, Monica Palmirani, and Arianna Rossi, 'Legal Design Patterns for Privacy' in Erich Schweighofer et al (eds), *Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS 2018* (Editions Weblaw, Bern 2018) 445-450.

⁵³ Note: *dark patterns*: "tricks used in websites and apps that make you do things that you didn't mean to, like buying or signing up for something", 'Deceptive Design' <https://www.deceptive.design/> accessed 30 January 2024.

⁵⁴ Amurabi, 'Agence Legal Design' <https://amurabi.eu/en/agence-legal-design/> accessed 30 January 2024.

recent study on the field was the doctoral dissertation of Finnish lawyer Katri Nousiainen. Her study measures widely the impact and value of legal design in commercial contracting within the law and economics framework.⁵⁵ These researchers and their efforts play a crucial role for this thesis.

The exploration of legal design and its potential benefits is relatively nascent, and the research community engaged in this field remains relatively small, based on the author's own observations while doing research. Scholars predominantly collaborate on collective studies and publications, exemplifying a commendable spirit of collaboration aimed at fostering a more comprehensible legal system. Based on observations of this research, a notable common thread among this research is the emphasis on practicality and empirical methods. Concrete recommendations often take the form of tables and design patterns, frequently accompanied by visual representations. The research exhibits a systematic approach while also incorporating critical analysis. This thesis aligns with the tradition of emphasizing practicality of the previous research since it delves into how Article 12(1) translates into user-centric privacy policies, using empirical methods.

In terms of case law, there is a lack of precedent concerning Article 12(1) of the GDPR and its relationship with user-centricity has been relatively unexplored by the European Commission and the Court of Justice of the European Union (CJEU).⁵⁶ Consequently, I incorporate findings from diverse fields of study to support this research and this thesis builds upon prior CSL scholarship, research on data protection, and legal design studies, focusing on user-centricity and transparency within GDPR Article 12(1).

In summary, this thesis bridges the gap between legal theory and practice, exploring whether legal design can find permanence in legal academia and enhance the

⁵⁵ 'Katri Liisa Nousiainen' (Hanken's Portal) <https://harisportal.hanken.fi/en/persons/katri-liisa-nousiainen> accessed 30 January 2024.

⁵⁶ See preliminary rulings in connection with Article 12: Case C-154/21 RW v Österreichische Post AG (Court of Justice of the European Union, First Chamber, 12 January 2023); Case C-487/21 F.F. v Österreichische Datenschutzbehörde (Court of Justice of the European Union, First Chamber, 4 May 2023).

comprehension of privacy policies. It contributes valuable insights to data protection law and promotes a more user-centric legal environment in alignment with the previous research in hand.

2 Theoretical Framework: How to Approach Legal Design?

“Everything should be made as *simple* as possible, but not simpler.”

– Albert Einstein 1934⁵⁷

This chapter lays the foundation for exploring legal design as a method for user-centricity and transparency and establishes a theoretical framework for this research. This theoretical exploration serves as a vital bridge to the subsequent practical sections, enhancing our understanding of the research as a whole. The overarching goal in the first section is to present legal design as an evolutionary continuum of Critical Legal Studies (CLS), highlighting the striking parallels between these two domains. This alignment is intended to breathe new life into CLS by offering fresh perspectives to the legal academia. In addition, the first section discusses dark patterns and deceptive design⁵⁸, as well as the cryptic aspect of legal language. The second section of this chapter explores the potential of legal design within the legal sphere, drawing from theoretical insights provided by Kaarlo Tuori and Martin Heidegger.

2.1 Legal Design: A Continuum of Critical Legal Studies

The argument of this section is that the emergence of legal design, particularly in the context of privacy policies and data protection laws, represents a natural progression from the critical perspectives offered by CLS. Critical Legal Theory (CLT), being a part of a wider tradition of CLS, critiques the actual reality that the “pretty words” of law tries to create.⁵⁹ According to the indeterminacy thesis, central to this school, the content of the legal system is not precisely determined, but legislation always leaves room for manoeuvre by the interpreter. This results to unfair execution of law, making

⁵⁷ Albert Einstein, 'On the Method of Theoretical Physics' (1934) 1 *Philos Sci* 163. See 'Einstein Papers Project' (Princeton University Press) <https://einsteinpapers.press.princeton.edu/>.

⁵⁸ Harry Brignull, 'Dark Patterns: Deception vs. Honesty in UI Design' (A List Apart, 1 November 2011) <https://alistapart.com/article/dark-patterns-deception-vs.-honesty-in-ui-design/>. See 'Deceptive Design' <https://www.deceptive.design/>.

⁵⁹ Pauli Rautiainen, Aura Kostiaainen, Visa Kurki, Niko Soinen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 61–62.

the legal system in fact a playing field for power struggles.⁶⁰ In this context, the approach of legal design aligns well, as CLT aims to elucidate and uncover such aspects and systems of justice. It often intersects with social justice research as it seeks to shed light on prevailing power imbalances.⁶¹

Consequently, CLT is employed in this study to unearth the deficiencies within the current state of data protection law. Through legal design, I emphasize the evident playing field of such power imbalances, where tech giants collect individuals' personal data without the data subjects being fully aware of what they are seemingly consenting to or how to exercise their rights as a data subject.⁶² This alignment is especially pertinent given the complexities and ambiguities in data protection legislation and the presentation of privacy policies. CLT, with its emphasis on the indeterminacy thesis, has long exposed the flexibility and interpretive nature of legal language, as well as the power dynamics it can obscure.⁶³ By legal design, I seek to extend this critique by offering more transparent, accessible, and user-focused approaches to legal documentation, particularly in areas as crucial and complex as data protection.

This thesis argues that legal design, in fact, harmonizes with CLT, and intriguing parallels can be drawn between the two. Notably, Goodrich's extensive scholarly work spans topics related to law's interpretation, psychology and psychoanalysis, history, rhetoric, institutions, visuality, and aesthetics.⁶⁴ Additionally, the perspectives of Manderson⁶⁵ and Scherwin⁶⁶ on the power of visualization are valuable references. The

⁶⁰ Ibid 61–62.

⁶¹ Ibid) 61–62.

⁶² See Samreen Rizvi, 'Unveiling the Data Privacy Secrets: A Deep Dive into Tech Giants' Policies and Practices' (2022) 1(1) *Unique Endeavor in Business & Social Sciences* 29-35; Brett Dembrow, 'Investing in Human Futures: How Big Tech and Social Media Giants Abuse Privacy and Manipulate Consumerism' (2021) 30 *U Miami Bus L Rev* 324; Bipin C Desai, 'Privacy in the Age of Information (and Algorithms)' in *Proceedings of the 23rd International Database Applications & Engineering Symposium* (2019).

⁶³ Pauli Rautiainen, Aura Kostiaainen, Visa Kurki, Niko Soinen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 61–62.

⁶⁴ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997)

⁶⁵ Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice* (University of California Press 2000).

⁶⁶ Richard K Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (Routledge 2011).

contributions of scholars like Goodrich, Manderson, and Sherwin become particularly relevant in the analytical framework of this research, which posits that legal design may offer a solution to the absence of user-centred and transparent privacy policies with adequate visualization. Their work on the power of visualization and the intricacy of legal language lays a theoretical groundwork that is highly applicable to the challenges of conveying data protection. Their insights help frame legal design as a means to demystify legalese and make privacy policies more comprehensible and meaningful to the end-user.

In conclusion, by applying legal design principles to privacy policies and data protection, we can build upon the critical insights of CLS, more specifically, of CLT, to develop legal documents, such as privacy policies, that are not only legally sound but also genuinely accessible to the public. This approach aligns perfectly with the need for clarity and transparency in an area where individuals' rights and personal data are at stake.

2.1.1 Legal Design: Demystifying Legalese

“*Alien* written form of law”

Peter Goodrich⁶⁷

Goodrich, providing insights from a psychoanalytical stance, views the law as an "alien written form,"⁶⁸ a perspective that aligns with legal design's critique of conservative legal writing in privacy policies.⁶⁹ This "alien way," as Goodrich puts it, can be seen as a tool for obscuring the exercise of authority and power, presenting law as a distant and complex entity, veiled behind the impersonal and often impenetrable language of legal documents.⁷⁰ This analysis conforms with legal design's aim to demystify legal

⁶⁷ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

⁶⁸ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

⁶⁹ Helena Haapio, Margaret Hagan, Monica Palmirani, and Arianna Rossi, 'Legal Design Patterns for Privacy' in Erich Schweighofer et al (eds), *Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS 2018* (Editions Weblaw, Bern 2018) 445-450.

⁷⁰ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

jargon and make it more accessible and transparent to the general public, in this case, to demystify privacy policies.

Psychoanalysis, as pioneered by Sigmund Freud, delves into uncovering the unconscious and the obscured messages beyond conscious awareness. It perceives text as a symptom or code, necessitating analytical techniques for decryption.⁷¹ This perspective provides legal theory with an alternative method of interpreting legal texts, aiming to unveil what is hidden or suppressed in the law's ambiguous or indirect language.⁷² Such obscurity in legal language can be exploited by unscrupulous data controllers, using it to their advantage against individuals who may not grasp the implications of what is being communicated. Consequently, individuals might inadvertently concede their data or agree to unfavourable terms, highlighting the need for clearer legal language to safeguard the rights and understanding of data subjects.

According to the psychoanalytical perspective, the subject of law is buried in a morass of texts and scriptural rules. This complexity mirrors the key issue in data protection law, the *information overload* or *information fatigue*⁷³, a concept akin to Harry Brignull's definition of dark patterns.⁷⁴ These patterns, originally in 2010 described as deceptive website or app features leading users to unintended actions, are now broadly recognized as misleading interfaces that tricks the user, or deceptive design.⁷⁵ Various

⁷¹ Sigmund Freud, *Introduction to Psychoanalysis* (McClelland & Stewart 1917); Jonathan Lear, *Freud* (1st edn, Routledge 2015).

⁷² Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

⁷³ Note: *information overload*: "Information overload occurs when the amount of input to a system exceeds its processing capacity. Decision makers have fairly limited cognitive processing capacity. Consequently, when information overload occurs, it is likely that a reduction in decision quality will occur", Bertram M Gross, *The Managing Organizations: The Administrative Struggle* vol 2 (1964) 856ff. See Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679' (2016) 7; David Bawden and Lyn Robinson, 'Information Overload: An Overview' in *Oxford Encyclopedia of Political Decision Making* (Oxford University Press 2020).

⁷⁴ Harry Brignull, 'Dark Patterns: Deception vs. Honesty in UI Design' (A List Apart, 1 November 2011) <https://alistapart.com/article/dark-patterns-deception-vs.-honesty-in-ui-design/>. See 'Deceptive Design' <https://www.deceptive.design/>.

⁷⁵ Arunesh Mathur, Mihir Kshirsagar, and Jonathan Mayer, 'What Makes a Dark Pattern... Dark? Design Attributes, Normative Considerations, and Measurement Methods' in *Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems* (2021) 2.

scholars have characterized such designs with terms like “misleading”⁷⁶ interfaces and some use even stronger characteristics for this kind of design, such as “coercing, steering, deceiving”⁷⁷ or even “obnoxious” or “deceitful”⁷⁸. This reflects the growing concern over the manipulative potential in design, especially pertinent in the legal context. Potel-Saville have made significant efforts in identifying these dark patterns and have brought these imbalances to light through the methods of legal design.⁷⁹ Thankfully, various forms of deceptive practices are also prohibited in both the EU⁸⁰ and US⁸¹, contingent upon their specific nature and the circumstances of their application. However, this does not necessarily imply a complete alignment between legal regulations and the practical realities.

The concept that "law is code, and code is law" draws a parallel to Freud's interpretation of text, suggesting a deeper, encoded meaning within legal language. This idea, initially introduced by Lawrence Lessig as "code is law"⁸² in the early 2000s, evolved with De Filippi and Hassan's expansion to "law is code"⁸³ years later. Lessig's

⁷⁶ Christoph Bösch, Benjamin Erb, Frank Kargl, Henning Kopp, and Stefan Pfattheicher, 'Tales from the Dark Side: Privacy Dark Strategies and Privacy Dark Patterns' in Proceedings on Privacy Enhancing Technologies 2016 2.

⁷⁷ Arunesh Mathur, Gunes Acar, Michael J Friedman, Elena Lucherini, Jonathan Mayer, Marshini Chetty, and Arvind Narayanan, 'Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites' Proc. ACM Hum. -Comput. Interact. 3, CSCW, Article 81 (2019).

⁷⁸ Colin M Gray, Shruthi Sai Chivukula, and Ahreum Lee, 'What Kind of Work Do “Asshole Designers” Create? Describing Properties of Ethical Concern on Reddit' in Proceedings of the 2020 ACM Designing Interactive Systems Conference (Eindhoven, Netherlands) (DIS '20) (Association for Computing Machinery, New York, NY, USA 2020).

⁷⁹ Marie Potel-Saville and Mathilde Da Rocha, 'From Dark Patterns to Fair Patterns? Usable Taxonomy to Contribute Solving the Issue with Countermeasures' (Decision-Making 4) 11. See Marie Potel-Saville and Elisabeth Talbourdet, '10. Empowering Children to Understand and Exercise Their Personal Data Rights' in *Legal Design Perspectives: Theoretical and Practical Insights from the Field* (2021) 253; Amurabi, 'Agence Legal Design' <https://amurabi.eu/en/agence-legal-design/>.

⁸⁰ In addition to the GDPR, the Digital Markets Act (2022/1925), the Digital Single Market Directive (2019/790), the Unfair Commercial Practices Directive (2005/29) and Privacy and Electronic Communications Directive (2002/58/EC), all aim to help to ensure a fairer internet for users.

⁸¹ In the USA, the Federal Trade Commission Act, Restore Online Shoppers' Confidence Act, and CAN-SPAM are major federal laws that pack a punch

⁸² Lessig, Lawrence, 'Code is law: On liberty in cyberspace' (harvaedmagazine.com 2000) <https://www.harvardmagazine.com/2000/01/code-is-law-html>. Accessed 30.1.2024.

⁸³ De Filippi, Primavera and Hassan, Samari, 'Blockchain Technology as a Regulatory Technology: From Code is Law to Law is Code' First Monday Vol 21, N. 12, special issue on 'Reclaiming the Internet with distributed architectures' (2016). See 'Law Isn't Code And That's a Good Thing' (Artificial Lawyer, 27 September 2021) <https://www.artificiallawyer.com/2021/09/27/law-isnt-code-and-thats-a-good-thing/>. Accessed 30.1.2024.

concept implies that code (as in software) holds the power of law in the digital realm.⁸⁴ De Filippi and Hassan's interpretation, in turn, sees law as a form of code itself.⁸⁵ This analogy likens legal text to the code used in software development, with back-end developers (akin to conservative lawyers) focusing on the code itself, and front-end developers (akin to legal designers) prioritizing user experience and presentation. A person who can do both, is a full-stack developer.⁸⁶ Therefore, the need for "full-stack lawyers" who can navigate both the intricate legal code and the user-centric aspect of legal presentation is argued as essential for the future.

Traditionally, lawyers have focused predominantly on the intricate, often arcane aspects of law, what Goodrich refers to as the "alien written form of law" with its "masked and repressed hidden messages".⁸⁷ This perspective underscores a gap in the legal profession: the need for 'front-end lawyers' who can translate complex legalese into a user-centric format. Legal education has generally eschewed creative applications of law⁸⁸, but this is precisely where legal design becomes crucial. It plays a transformative role by converting legalese into graphical, comprehensible formats in privacy policies, thereby reshaping the broader culture of law itself.

In conclusion, the insights from psychoanalytical perspectives and the concept of "law is code" shed light on the intricate nature of legal language in data protection. Legal design's crucial role in demystifying legal text, enhancing transparency, safeguarding individuals' rights, and countering dark patterns becomes therefore evident.

⁸⁴ Lessig, Lawrence, 'Code is law: On liberty in cyberspace' (harvardmagazine.com 2000) <https://www.harvardmagazine.com/2000/01/code-is-law-html>.

⁸⁵ De Filippi, Primavera and Hassan, Samari, 'Blockchain Technology as a Regulatory Technology: From Code is Law to Law is Code' First Monday Vol 21, N. 12, special issue on 'Reclaiming the Internet with distributed architectures' (2016).

⁸⁶ Jordan Shropshire, Jeffrey P Landry and Steven S Presley, 'Towards a Consensus Definition of Full-Stack Development' (2018). See Chris Northwood, *The Full Stack Developer: Your Essential Guide to the Everyday Skills Expected of a Modern Full Stack Web Developer* (Apress 2018).

⁸⁷ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

⁸⁸ *Ibid.*

2.2 Legal Design: A Connector Between Normative and Social Elements of Law

In the domain of legal theory and philosophy, the integration of legal design is a transformative approach that transcends the conservative boundaries, as discussed in section 1.5. This section explores the potential of legal design within the legal sphere, drawing insights from Kaarlo Tuori and Martin Heidegger. It delves into how legal design can navigate the complex interplay between normative and social elements, serving as a transformative force in legal scholarship and practice. Through Tuori's critiques of Hans Kelsen's Pure Theory of Law⁸⁹ and Heidegger's insights into the essence of equipments⁹⁰, the aim is to uncover the dynamic and evolving nature of legal design as it addresses the complexities of legal language and systems in the modern era.

2.2.1 Integrating Law's Sociality into Legal Design

Law, as elucidated in the works of Tuori, transcends mere normative legal order; it is deeply intertwined with sociolegal practices and specialized legal undertakings. The modern state law, characterized by differentiation and abstraction of legal norms, necessitates a nuanced understanding of its inherent sociality.⁹¹ Legal design, often focusing on improving the clarity and accessibility of legal documents and services, can benefit significantly from embracing a relational approach that considers law's social aspect.

In the academic realm, legal scholarship traditionally approaches law predominantly as a normative legal order. However, the relational approach advocated by Tuori, urges a broader perspective.⁹² I argue that legal design, while emphasizing the enhancement

⁸⁹ Hans Kelsen, *Reine Rechtslehre* (trans Max Knight, University of California Press and Franz Deuticke 1960); Kaarlo Tuori, 'Sociality' in *Properties of Law: Modern Law and After* (Cambridge University Press 2021) 47–124.

⁹⁰ David R. Cerbone, 'Composition and Constitution: Heidegger's Hammer' (1999) 27(2) *Philosophical Topics* 309–329.

⁹¹ Kaarlo Tuori, 'Sociality' in *Properties of Law: Modern Law and After* (Cambridge University Press 2021) 47–124.

⁹² *Ibid* 47–124.

of normativity through improved design, also recognizes and incorporates law's sociality. Much like doctrinal legal scholarship, legal design fulfills a specialized role in this thesis in the context of privacy policies and data protection laws. The challenge lies, however, in balancing normative emphasis with an awareness of law's social dimensions.

Tuori underscores the importance of acknowledging external societal influences on law and the reciprocal relationship between law and society.⁹³ This strengthens the argument of this thesis that legal design, in its pursuit of clarity and user-centricity, is intertwined with the broader sociolegal context. In Tuori's social framework of sociality, it explores how societal influences, whether from politics, economy, or morals, interact with legal norms through internal mechanisms, and strives to course correct law towards human-centricity.⁹⁴ By understanding these channels, legal design can effectively mediate external and conventional influences, translating them into user-centric legal language.

Tuori further emphasizes how the social function of law is outlined through the concept of dual citizenship of legal scholarship, functioning both as scholarly research and a legal practice. This concept refers to the fact that legal theory is, on the one hand, a scientific practice guided by the criteria and rules of science and, at the same time, a practice of legal life that participates in the *renewal and shaping of its own object of study, the legal order*.⁹⁵ Legal design can explore external relationships not only from a scholarly standpoint but also from a participant's position within the legal system. This participant-focused exploration allows legal designers to navigate the complex interplay between law and society, recognizing that societal influences are not merely external but intricately woven into the fabric of legal practices. Legal design serves as a tool to reform and improve the legal system and its accessibility, here specifically, concerning data rights and individuals' comprehension of them.

⁹³ Ibid 47–124.

⁹⁴ See Margaret Hagan, 'Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System' (2020) 36(3) Design Issues 3-15.

⁹⁵ Kaarlo Tuori, 'Sociality' in *Properties of Law: Modern Law and After* (Cambridge University Press 2021) 47–124.

Lastly, Tuori provides detailed critique of Hans Kelsen's Pure Theory of Law, focusing on the challenges and inconsistencies within his conceptual framework. The critique delves into the issue of efficacy as a condition for legal validity, highlighting Kelsen's struggle to reconcile the separation of the normative "Ought" and the empirical "Is" with the dependence of legal norms on social practices.⁹⁶ Tuori suggests that Kelsen's Pure Theory falls short in addressing the social dimensions of law, particularly in its origins, efficacy, and coercive aspects, and encounters difficulties in accounting for the interplay between normative and social elements in the realm of law.⁹⁷ In contrast to Kelsen's Pure Theory, legal design offers a contemporary perspective on legal scholarship. While Tuori critiques Kelsen's challenges in addressing the social dimensions of law, legal design emerges as a field that actively integrates normative and social elements within the legal framework. I argue that legal design, with its focus on enhancing the effectiveness of legal communication and systems, provides a practical approach to overcoming the limitations identified in Kelsen's conceptual framework. This dynamic field aligns with the evolving needs of legal academia, promoting a forward-thinking and solution-oriented mindset in addressing the complexities of legal language and systems.

2.2.2 Heidegger's Hammer and Legal Design: Law is Broken

In the perspective of Martin Heidegger, a prominent German philosopher, every equipment or piece of *equipment*⁹⁸ possesses an inherent relational attribute: for instance, we utilize pens for writing and legal documents to convey crucial information. These tools blend into our activities seamlessly when functioning properly.⁹⁹ Heidegger exemplifies this concept using a hammer. In our daily tasks, we employ it

⁹⁶ Hans Kelsen, *Reine Rechtslehre* (trans Max Knight, University of California Press and Franz Deuticke 1960).

⁹⁷ Kaarlo Tuori, 'Sociality' in *Properties of Law: Modern Law and After* (Cambridge University Press 2021) 47–124.

⁹⁸Note: *equipment*: "entities that we encounter in immediate, everyday coping", Equipment (Zeug)' in *Cambridge Heidegger Lexicon* <https://www.cambridge.org/core/books/abs/cambridge-heidegger-lexicon/equipment-zeug/5FEA7A891A3B761B4BFCBBA550908BF1>.

⁹⁹ Martin Heidegger, *Sein und Zeit* (trans John Macquarrie and Edward Robinson, SCM Press 1962); trans Joan Stambaugh (State University of New York Press 1996); Harper Perennial Modern Thought 2008.

almost instinctively, whether for driving nails into surfaces or breaking objects. This unreflective use is a key aspect of his theory.¹⁰⁰

Heidegger proposes that the true essence of such tools becomes apparent only when they malfunction. A tool in perfect working order integrates into our activities unnoticed. However, a malfunction, like a broken hammer, disrupts this seamless interaction. It is in these moments of dysfunction that the tool's presence becomes evident and prompts reflection.¹⁰¹ We are then compelled to consider the tool's adequacy and purpose: Should the hammer be fixed or replaced? Would a larger hammer or even a nail gun be more effective? It also leads to broader existential inquiries about the nature and purpose of the activity itself, such as questioning the reason behind hammering nails in the first place. Such questions could be asked concerning current legal documents because law... is *broken*.

The contemporary legal landscape is undergoing a profound metamorphosis, driven by rapid advancements in digitalization, emerging technologies, and evolving client demands. Yet, despite these changes, legal documents remain remarkably unchanged from their appearance three decades ago. Richard Susskind and Daniel Susskind, in their seminal work “The Future of the Professions,” highlight the minimal evolution in lawyers' work practices since the era of Charles Dickens.¹⁰²

In cultural terms, law functions as a meme—a concept, practice, or stylistic element disseminated among individuals within a society. Legal practitioners often replicate standardized clauses, reuse contractual provisions, and rely heavily on automated formatting. Rarely do lawyers embark on the task of drafting a document from scratch, contemplating the real needs of the subjects of law, people. This reliance on

¹⁰⁰ Ibid; David R. Cerbone, 'Composition and Constitution: Heidegger's Hammer' (1999) 27(2) *Philosophical Topics* 309-329.

¹⁰¹ David R. Cerbone, 'Composition and Constitution: Heidegger's Hammer' (1999) 27(2) *Philosophical Topics* 309-329.

¹⁰² Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (1st edn, Oxford University Press 2016).

conservative contract forms and language is a pragmatic choice, offering time and resource efficiency.¹⁰³

Jay A. Mitchell refers to this phenomenon as "*stickiness*," noting:

"Utilizing familiar documents circumvents potential queries or doubts. Traditional forms, even if not optimally designed, endure because they symbolically represent seriousness and legality as social artifacts. Their appearance and texture inherently convey legality."¹⁰⁴

While standardization in legal documents can indeed lower costs and lend legal certainty to contract enforcement or interpretation, there is a growing concern. Lawyers frequently employ these standard forms or reused clauses (akin to "*hammering*") without thorough consideration of their clients' or end-users' specific needs.

Questions arise: Are the legal documents, such as privacy policies, *tailored* optimally for the subject of law? Does it effectively communicate the intended information? Moreover, does the end-user even engage with the content, in this case, privacy policies?

¹⁰³ Dottir Attorneys, 'Heidegger's Hammer and Legal Design' (Medium, 25 April 2017) <https://medium.com/@dottirlaw/heideggers-hammer-and-legal-design-82e66fee9512>. See Fred C Zacharias, 'The Images of Lawyers' (2007) 20 Geo J Legal Ethics 73; Helena Haapio, 'Lawyers as Designers, Engineers and Innovators: Better Legal Documents through Information Design and Visualization' in Transparency: *Proceedings of the 17th International Legal Informatics Symposium IRIS* (2014).

¹⁰⁴ Jay A. Mitchell, 'Whiteboard and Black-Letter: Visual Communication in Commercial Contracts' (2018) 20(4) University of Pennsylvania Journal of Business Law 826.

3 Legal Framework: How to Approach the GDPR?

Within this chapter, the legal groundwork for this research is laid out, focusing on the legal underpinnings. It begins by exploring the overarching goals of the GDPR, emphasizing its commitment to empowering citizens through enhanced data privacy and protection. The chapter critically examines key GDPR articles, including Articles 5(1)(a) and 12(1), which are central to understanding the principles of lawfulness, fairness, transparency, and user-centricity in data processing. Through an in-depth analysis, this chapter seeks to unravel how these principles are currently interpreted and applied in practice, especially in the context of privacy policies.

The chapter sets the stage for a comprehensive understanding of how GDPR, a pivotal piece of legislation, shapes the landscape of data protection and the pressing need for its principles to be effectively implemented in practice. Furthermore, it explores Clear Writing for Europe initiatives and guidelines within the EU¹⁰⁵, comparing them to the Plain Writing Act in the United States (US)¹⁰⁶. The aim is to evaluate their effectiveness and impact on achieving GDPR's objectives. Finally, the chapter ends with addressing the question 'Why Care About User-centricity in Data Protection?', pointing out factors that have been considered crucial in the context of this thesis.

3.1 The Big Picture and the Aim of the GDPR: Empowering Citizens

Data processing encompasses the collection, storage, utilization, and sharing of personal data, governed by a set of laws and regulations.¹⁰⁷ The key regulation pertinent to this research is the earlier presented GDPR, where personal data is defined as any information that can identify an individual.¹⁰⁸ The primary objective of data protection is to guarantee the handling of personal data in a manner that upholds

¹⁰⁵ European Commission, 'Clear Writing for Europe' (European Commission) https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/translation/clear-writing-europe_en.

¹⁰⁶ Public Law 111–274, 'Plain Writing Act of 2010', 124 STAT. 2861 (2010)

¹⁰⁷ General Data Protection Regulation 2016/679, art 4(2).

¹⁰⁸ General Data Protection Regulation 2016/679, art 4(1).

privacy and security while granting individuals control over their own personal data.¹⁰⁹ The GDPR entered into force in 2018 and is designed to standardise data privacy laws across the EU, aiming to protect and *empower* all EU citizens' data privacy and redefine the way organisations approach to data privacy.¹¹⁰

Article 5 is the cornerstone of the leading principles of the GDPR compliant data processing, where 1(a) in the Article stipulates about lawfulness, fairness, and transparency.¹¹¹ Lawfulness means that there must be a legal basis for each processing of personal information.¹¹² One alternative for a legal basis is consent from a data subject, as already mentioned earlier. If the processing is based on consent, there are further requirements laid down by the GDPR. According to the Article 4(11), a consent is “any freely given, specific, *informed* and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”.¹¹³ Furthermore, Article 7 provides four conditions in regard to the consent given, including requirements regarding *clear* and *plain language*¹¹⁴, which is one of the key elements under this review.

The data controller must inform the data subject about the processing, which is also a requirement set out in the GDPR. Only such informing makes it possible for the data subject to give an informed consent, as described. Articles 13 and 14 set out the rules about the specific information to be provided when personal data are collected regardless of whether they are collected from the data subject itself or from other sources.¹¹⁵

¹⁰⁹ Irene Kamara, Eleni Kosta, and Ronald Leenes. Research Handbook on EU Data Protection Law. (Northampton, MA: Edward Elgar Publishing, 2022.) pp. 50-55. See 'General Data Protection Regulation (GDPR) Summary' (EUR-Lex) <https://eur-lex.europa.eu/EN/legal-content/summary/general-data-protection-regulation-gdpr.html>.

¹¹⁰ European Commission, 'Press Release' (20 July 2020) https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1163.

¹¹¹ General Data Protection Regulation 2016/679, art 5.

¹¹² General Data Protection Regulation 2016/679, Recital 40.

¹¹³ General Data Protection Regulation 2016/679, art 4(11).

¹¹⁴ General Data Protection Regulation 2016/679, art 7.

¹¹⁵ General Data Protection Regulation 2016/679, art 13 and 14.

Therefore, these articles answer the question:

What information must be informed?

The notion of personal privacy encompasses the individual's ability to impact the privacy aspects of the processing.¹¹⁶ Therefore, data subjects must be notified, usually through privacy policies, about the processing of their personal data in an appropriate manner *at the time of collection*, and therefore, *before* any processing takes place.¹¹⁷

However, the requirements do not stop there. Article 12, that is the main focus of this research and is under review in the section 3.3, requires the information provided to the data subject, to be presented in a certain manner, including in *clear and plain language* as well as in a *transparent* way, providing the answer to the second question:

How the information must be informed?

A relevant argument of this thesis, is that both the organisations' data processing and the EU case law, are overly focused on the "what" question, whereas the "how" question stays in the shadows. Remember, "what is said is at least as important as how it is said"¹¹⁸.

The GDPR allows data subjects to hold specific rights, including access, correction, and deletion of their data.¹¹⁹ However, one might question: how can individuals influence the processing and use their rights, if the informing of the data processing itself is presented to laypeople in coded language, aka., *legalese*?

3.2 Article 5(1)(a): Principles of Lawfulness, Fairness and Transparency

As said, Article 5(1)(a) of the GDPR outlines the principle of "lawfulness, *fairness*, and *transparency*". The article, therefore, emphasizes that personal data must be

¹¹⁶ Xiaokui Xiao and Yufei Tao, 'Personalized Privacy Preservation' in Proceedings of the 2006 ACM SIGMOD International Conference on Management of Data (2006).

¹¹⁷ General Data Protection Regulation 2016/679, Recital 61.

¹¹⁸ Pauli Rautiainen, Aura Kostainen, Visa Kurki, Niko Soininen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 48–49.

¹¹⁹ General Data Protection Regulation 2016/679, art 15-21.

processed in a legal, ethical, and transparent manner. It requires that data processing activities have a lawful basis, such as a consent or legitimate interest, and are conducted in a way that respects data subject's rights.¹²⁰

3.2.1 Lawful Processing: The Significance of an Informed Consent

Consent, stipulated in Article 6(1)(a), is one of the approved legal bases for data processing under the GDPR; however, it may not always be necessary or appropriate, particularly when processing data aligns with contractual, legal, or legitimate interests.¹²¹ As discussed, where the legal basis for the processing is, however, data subject's consent, the GDPR offers clear requirements regarding the consent for data processing—it must be considered "informed".¹²² The GDPR therefore requires organizations to obtain the consent from data subjects before collecting, storing, using, or sharing their personal data, and to take appropriate measures to protect the security and privacy of that information from thereon. Typically, elements like clear and plain language, free will, specific purpose, ability to withdraw and documentation should be present in the consent that complies with the GDPR.¹²³ Consent is required especially if there is such a legal requirement based on a national law or other EU regulation, such as ePrivacy Directive (2002/58/EC) regarding cookies¹²⁴, or when personal data is considered *sensitive* or *special category personal data*¹²⁵, as stipulated in Article 9 of the GDPR. This consent is considered valid and informed, when the individual has been provided with *clear* and specific information about the purposes, scope, and

¹²⁰ General Data Protection Regulation 2016/679, art 5(1).

¹²¹ General Data Protection Regulation 2016/679, art 6.

¹²² General Data Protection Regulation 2016/679, art 4(11).

¹²³ See 'Consent under GDPR' (GDPR Info) <https://gdpr-info.eu/issues/consent/>. Irene Kamara, Eleni Kosta, and Ronald Leenes. Research Handbook on EU Data Protection Law. (Northampton, MA: Edward Elgar Publishing, 2022.) pp. 50–55.

¹²⁴ See for example explicit consent requirements for cookies in Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (ePrivacy Directive) art 5(3).

¹²⁵ Note: *special category personal data*, "personal data which is more sensitive in nature", University of Cambridge, 'GDPR Definitions' https://www.information-compliance.admin.cam.ac.uk/files/gdpr_definitions.pdf. General Data Protection Regulation 2016/679, art 9.

implications of the data processing, allowing them to make a knowledgeable decision, commonly through privacy notices.¹²⁶

To conclude, the query persists: Can data subjects *de facto* provide an informed consent for a specific, understood, purpose, when the initial condition, clear and plain language, is not met due to the deficiency of design?

3.2.2 Transparency and Fairness: Fundamental Human Rights

It has become clear that transparency and fairness serve as fundamental aspects enshrined in Article 5(1)(a) of the GDPR. Here, I argue that they are inherently interconnected; one cannot exist without the other. According to the GDPR, the data controller is mandated to consistently exhibit the transparent processing of personal data concerning the data subject.¹²⁷ This principle aligns with the idea of fairness articulated in Article 8 of the Charter of Fundamental Rights of the European Union, underlining the strong link between transparency and human rights in the context of data protection.¹²⁸

In the context of data protection, human rights are at the core of privacy concerns. The GDPR's emphasis on transparency and fairness aligns with the broader scope of human rights, ensuring individuals have the autonomy to control their data and make informed choices about its usage.¹²⁹ Upholding transparency in data processing not only reflects privacy rights but also aligns with broader ethical and legal principles that safeguard individuals' rights and dignity in the digital realm.¹³⁰

In their insightful analysis, De Hert and Gutwirth delineate the contrasting functions of privacy and data protection rights. They articulate how privacy acts as a 'tool of

¹²⁶ 'Consent under GDPR' (GDPR Info) <https://gdpr-info.eu/issues/consent/>.

¹²⁷ Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679'.

¹²⁸ Charter of the Fundamental Rights of the European Union (2012) OJ C326/02, art 8. See General Data Protection Regulation 2016/679, Recital 1.

¹²⁹ European Data Protection Supervisor, 'Data Protection' https://edps.europa.eu/data-protection/data-protection_en; Yvonne McDermott, 'Conceptualising the Right to Data Protection in an Era of Big Data' (2017) 4(1) *Big Data & Society* 2053951716686994.

¹³⁰ Yvonne McDermott, 'Conceptualising the Right to Data Protection in an Era of Big Data' (2017) 4(1) *Big Data & Society* 2053951716686994.

opacity,' establishing boundaries against power overreach, while data protection serves as a 'tool of transparency,' ensuring clear and accountable handling of personal data.¹³¹ Referring to the earlier discussed Heidegger's hammer, however, the tool, the equipment, the data protection law—is broken.

Transparency is crucial as it empowers data subjects to make informed choices about sharing their personal data and its subsequent utilization. This attribute contributes to fostering trust between individuals and organizations, promoting accountability, and transparent data handling practices.¹³² These themes will be further explored in connection with Article 12 hereunder, delving into the aspects of transparency even more profoundly.

3.3 Article 12(1): User-Centric Requirements of Transparency

According to the Article 12(1) of the GDPR, answering to the question “how the information must be informed”:

“the controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in *a concise, transparent, intelligible and easily accessible form, using clear and plain language*, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means.”¹³³

In its core, it is all about *engendering trust* in the processing of individual's data by *enabling them to understand* those processes.¹³⁴ Here, I aim to emphasize that only by understanding those processes, can an individual challenge them. Only by truly understanding the privacy policy in question, can an individual give an informed consent in the word's literal meaning and can exercise their rights. Only by

¹³¹ Paul De Hert and Serge Gutwirth, 'Privacy, Data Protection and Law Enforcement. Opacity of the Individual and Transparency of Power' in *Privacy and the Criminal Law* (2006) 61-104.

¹³² Janna Anderson and Lev Manovich, *Transparency Requirements and Privacy: The Intersection of the GDPR and the Right to Privacy* (AI & Society, 2018.)

¹³³ General Data Protection Regulation 2016/679, art 6.

¹³⁴ Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679'.

transparency and user-centricity, can an individual *trust* the processing of their personal data.

This section delves deeper into the concept of transparency, highlighting its user-centric approach stated in the recital 39 of the GDPR¹³⁵, rather than a strictly legalistic one, as detailed in various GDPR articles with specific requirements for data controllers and processors.

3.3.1 Defining Transparency: Easiness to Understand and Use of Clear and Plain Language

It is particularly important to understand the actual aim of the Article 12, in order to follow this rule purposefully. As described, the aim is not only to help the data subjects to understand the purpose of data processing, what data is being processed and where it might end up going, but also to engender *trust*. However, I argue that this aim is not fulfilled due to the evident lack of understanding that the data subjects suffer from. Nousiainen's research shows that legal design can benefit legal field for more comprehensible contracts of higher quality, revealing how this increased comprehension of contracts brings forth innovation for sustainability, signalling *trust*, image and *transparency*.¹³⁶

Article 12 provides that transparency applies before or at the start of the data processing cycle, throughout the whole processing period and at a specific point while processing is ongoing.¹³⁷ The practical requirements are outlined in the articles, but the quality, accessibility and comprehensibility of the information must not be diminished. Although transparency is not defined in the GDPR itself, recital 39 of the GDPR provides the following:

¹³⁵ General Data Protection Regulation 2016/679, Recital 39.

¹³⁶ Katri Nousiainen, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in *Economics and Society*, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023) 14.

¹³⁷ Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679'.

“The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and *easy to understand*, and that *clear and plain language* be used.”¹³⁸

I acknowledge that the official guidelines on transparency acknowledging GDPR’s user-centricity is a significant nod towards a design-oriented perspective in privacy policies. However, the practical realization of this user-centricity, beyond mere theoretical acknowledgment, remains a critical question.

The GDPR’s emphasis on transparency includes not only the clarity but also the presentation of information. Notably, Article 12(7) advocates for the use of privacy icons to provide "an easily visible, intelligible and clearly legible overview of the intended processing."¹³⁹ This has inspired practitioners and researchers in recent years to explore innovative methods for presenting and communicating privacy information. These methods include for example layered notices¹⁴⁰, privacy icons¹⁴¹, nutrition labels, dashboards, and the use of videos and animations¹⁴².¹⁴³ Explorations in gamification have also been undertaken, where users engage with the terms through quizzes or character-based narratives.¹⁴⁴ Special approaches are particularly efficient and important when the data subject is a child, which is also explicitly recognised by Article 12(1).¹⁴⁵

¹³⁸ General Data Protection Regulation 2016/679, recital 39.

¹³⁹ General Data Protection Regulation 2016/679, art 12(7).

¹⁴⁰ See Armin Gerl and Bianca Meier, 'The Layered Privacy Language Art. 12 – 14 GDPR Extension – Privacy Enhancing User Interfaces' (2019) 43(12) *Datenschutz und Datensicherheit – Dud* 747-752, 311-312.

¹⁴¹ See Monica Palmirani, Arianna Rossi, Michele Martoni, and Margaret Hagan, 'A Methodological Framework to Design a Machine-readable Privacy Icon Set' in *Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS (2018)* 1-2.

¹⁴² See Mark J Keith and others, 'Optimizing Privacy Policy Videos to Mitigate the Privacy Policy Paradox' (2018).

¹⁴³ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (*JUSLetter IT*, 21 February 2019).

¹⁴⁴ Monica Palmirani, Arianna Rossi, Michele Martoni, and Margaret Hagan, 'A Methodological Framework to Design a Machine-readable Privacy Icon Set' in *Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS (2018)* 1-3.

¹⁴⁵ General Data Protection Regulation 2016/679, art 12(1).

While the use of visualizations, such as icons in privacy policies according to the GDPR¹⁴⁶, holds significant potential, its efficacy is not without challenges. Another study by the legal design scholars highlights the possibility of misinterpretation, as icons may inadequately convey complex or abstract concepts, leading to a risk that they are not universally understood. Therefore, misunderstood visual elements can fundamentally impede rather than aid the comprehension of data practices.¹⁴⁷ To address this, the study suggests a standardized approach for icons, validated through a methodical process involving legal requirement analysis, computational ontology, participatory and design-driven methods, and empirical evaluation. Such standardization could reduce the costs of creating new legal visuals for individual companies, supporting automation and decreasing associated coding, transmission, retrieval, and decoding expenses.¹⁴⁸ However, I argue that the feasibility and effectiveness of complete standardization, a lengthy and gradual process, warrant critical examination. This raises questions about whether guidelines and recommendations might suffice, or if privacy policy drafters would adhere to them without mandatory enforcement. This is linked to the questions discussed further in section 3.3.3.

As the research questions of this thesis highlight, the mandated transparency in privacy policies is often not implemented in a meaningful way that genuinely considers the policy's understandability. Several factors contribute to this shortfall, including the ambiguous nature of transparency as defined in the GDPR. Matteo Turilli and Luciano Floridi identify multiple challenges in defining transparency, including subjectivity, contextuality, evolving standards, balancing interests and technical limitations.¹⁴⁹

In summary, while defining transparency poses several challenges due to these aspects, its clear definition remains crucial. It is essential for ensuring that organizations

¹⁴⁶ General Data Protection Regulation 2016/679, art 12(7).

¹⁴⁷ Monica Palmirani, Arianna Rossi, Michele Martoni, and Margaret Hagan, 'A Methodological Framework to Design a Machine-readable Privacy Icon Set' in Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS (2018) 1-2.

¹⁴⁸ Ibid 2-4.

¹⁴⁹ Matteo Turilli and Luciano Floridi, 'The Ethics of Information Transparency' (2009) 11 Ethics Inf Technol 105-112.

maintain openness and clarity in their data protection practices, and that individuals are equipped with the necessary information to make informed decisions about their personal data.

Achieved through fostering clear and comprehensible communication, legal design plays a crucial role in enhancing mutual trust between parties.¹⁵⁰ This aligns closely with the main goals of GDPR's Article that fundamentally aims to engender trust in data processing by empowering individuals to understand these processes. The findings of Nousiainen's study¹⁵¹ suggest that GDPR's objectives regarding trust and potentially empowerment can effectively be met through design methodologies.

3.3.2 Guidelines on Transparency: Avoiding Information Overload

According to the guidelines of the Data Protection Working Party, the requirement that the provision of information to, and communication with, data subjects is done in a “concise and transparent” manner means that data controllers should present the information efficiently and succinctly in order to avoid information fatigue, also known as, information overload.¹⁵²

The term “information overload” was first used as early as 1960's by Bertram Gross¹⁵³, and further popularized by Alvin Toffler¹⁵⁴. Despite the frequent discussions¹⁵⁵ for decades surrounding information overload in the digital age, there is not a universally agreed-upon definition or understanding of the term.¹⁵⁶ Here, I adopt the most broadly

¹⁵⁰ Katri Nousiainen, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in *Economics and Society*, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023).

¹⁵¹ Ibid.

¹⁵² Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679' 7.

¹⁵³ Bertram M Gross, *The Managing Organizations: The Administrative Struggle* vol 2 (1964) 856ff.

¹⁵⁴ Alvin Toffler, *Future Shock* (Random House 1970).

¹⁵⁵ See John Buchanan and Ned Kock, 'Information Overload: A Decision Making Perspective' in *Multiple Criteria Decision Making in the New Millennium: Proceedings of the Fifteenth International Conference on Multiple Criteria Decision Making (MCDM)* Ankara, Turkey, July 10–14, 2000 (Springer Berlin Heidelberg 2001); David Bawden and Lyn Robinson, 'Information Overload: An Overview' in *Oxford Encyclopedia of Political Decision Making* (Oxford University Press 2020).

¹⁵⁶ David Bawden and Lyn Robinson, 'Information Overload: An Overview' in *Oxford Encyclopedia of Political Decision Making* (Oxford University Press 2020).

recognized perspective, presented by David Bawden and Lyon Robinson, viewing information overload as the condition that occurs when an abundance of relevant and potentially beneficial information is available to such an extent that it impedes rather than facilitates.¹⁵⁷

The research has increasingly underscored the concept of information overload since as early as 1970¹⁵⁸ including its impact on individual's decision making,¹⁵⁹ illustrating how the sheer volume of privacy policies presents a significant barrier to individuals achieving a comprehensive understanding. This aligns with my hypothesis and arguments, emphasizing that the current state of privacy policies overwhelms users with information, making it impractical for them to invest the necessary time.

The study conducted by Lorrie Faith Cranor and Aleccia McDonald sheds light on the formidable challenge individuals face in comprehensively understanding the privacy policies of websites. The findings reveal that the median length of a privacy policy among the top 75 websites is approximately 2,514 words. According to the study it would take an individual 10 minutes to read each policy. Extrapolating this to the average number (1,462) of websites a person visits, the study highlights the immense time investment required. A user reading every privacy policy would spend around 25 days per year on this activity. For someone dedicating 8 hours a day to reading these policies, it would take *76 workdays annually*. Nationally, this translates to a staggering 53.8 billion hours, emphasizing the enormity of the task.¹⁶⁰

Cranor and McDonald's research highlights the information overload inherent in the landscape of privacy policies in early 2008, providing substantial support for this thesis on the challenges individuals face in navigating and comprehending these

¹⁵⁷ Ibid.

¹⁵⁸ David Bawden and Lyn Robinson, 'Information Overload: An Overview' (2020). Jacoby, Jacob. "Perspectives on information overload." *Journal of consumer research* 10.4 (1984): 432-435.

¹⁵⁹ John Buchanan and Ned Kock, 'Information Overload: A Decision Making Perspective' in *Multiple Criteria Decision Making in the New Millennium: Proceedings of the Fifteenth International Conference on Multiple Criteria Decision Making (MCDM)* Ankara, Turkey, July 10–14, 2000 (Springer Berlin Heidelberg 2001).

¹⁶⁰ Aleccia M. McDonald and Lorrie Faith Cranor, 'The Cost of Reading Privacy Policies' (2008) I/S: A *Journal of Law and Policy for the Information Society*, '2008 Privacy Year in Review' issue.

privacy policies. The economic assessment adds depth to my argument, emphasizing the broader societal impact of the substantial time investment required for privacy policy understanding. However, it is worth noting that the internet has evolved significantly over the past fifteen years, transforming into the Internet of Things (IoT).¹⁶¹ Therefore, I argue that the current landscape of privacy policies might be even worse, hypothetically resulting in even larger numbers and making the situation even more concerning from the perspective of information overload.

It is often pointed out that individuals are overwhelmed by an excess of information or data, yet they are deficient in knowledge¹⁶². This observation is frequently accompanied by a reference to Thomas Stearns Eliot's poignant lines: "Where is the wisdom we have lost in knowledge? Where is the knowledge we have lost in *information*?"¹⁶³ This concept mirrors the challenges faced in data protection law, specifically in privacy policies. The excessive complexity and volume of information in these policies may hinder end-users' understanding, thereby obscuring the knowledge and wisdom they are meant to impart. This aligns with the exploration of legal design as a potential solution to transform these dense legal texts into more user-centric, understandable, and practical tools, ensuring that the wisdom of the law is not lost in the sheer volume and complexity of information it presents.

Finally, Bawden and Robinson highlight that with too much information, or information that is too complex, decision-making can be impaired. People may make less informed or poorer decisions if they cannot understand the information presented

¹⁶¹ Ruth Ande and others, 'Internet of Things: Evolution and Technologies from a Security Perspective' (2020) 54 *Sustainable Cities and Society* 101728; Jianxin Wang and others, 'The Evolution of the Internet of Things (IoT) Over the Past 20 Years' (2021) 155 *Computers & Industrial Engineering* 107174. See James Curran, 'Rethinking Internet History' in *Misunderstanding the Internet* (2012) 34-65.

¹⁶² David Bawden and Lyn Robinson, 'Information Overload: An Overview' in *Oxford Encyclopedia of Political Decision Making* (Oxford University Press 2020.); Jacoby, Jacob. "Perspectives on information overload." *Journal of consumer research* 10.4 (1984): 432-435.

¹⁶³ T S Eliot, *The Rock* (1934).

to them.¹⁶⁴ This can be the case when dealing with a privacy policy, especially where an informed consent is required.

3.3.3 Guidelines on Clear and Plain Language: Initiatives in the EU and US

The "Clear Writing for Europe" initiative by the European Commission, launched in 2010, is focused on ensuring that texts produced by the Commission are written in a clear, concise, and jargon-free manner.¹⁶⁵ This initiative provides practical advice and resources for authors, including a booklet titled "How to write clearly"¹⁶⁶ available in 24 official languages, a weekly clear writing tip sent to Commission staff, and an email helpline. It also includes annual awards for clearly written Commission texts and organizes training and awareness-raising events. In addition, the initiative extends beyond the Commission, as they planned to set up an EU network of clear writers to share experiences and best practices and launch initiatives in all EU languages.¹⁶⁷

Therefore, the EU, recognizing the importance of clear communication, does encourage legal professionals to avoid abbreviations, keep it short, structure the document, beware of jargon, avoid foreign expressions and to be precise. These guidelines emphasize the need for texts to be clear, concise, and well-organized, particularly for people with intellectual disabilities, those with dyslexia and other reading difficulties, and non-native speakers. The key is to adapt the writing to meet the needs and expectations of the intended audience, using simple words, short sentences, active language, and clear layout designs including the use of related images and high-contrast colours for better readability.¹⁶⁸ These guidelines are indeed well-

¹⁶⁴ David Bawden and Lyn Robinson, 'Information Overload: An Overview' in *Oxford Encyclopedia of Political Decision Making* (Oxford University Press 2020).

¹⁶⁵ European Commission, 'Clear Writing for Europe' (European Commission) https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/translation/clear-writing-europe_en.

¹⁶⁶ Z Field (European Commission, Directorate-General for Translation), *How to Write Clearly* (Publications Office of the European Union 2015) <https://data.europa.eu/doi/10.2782/022405>.

¹⁶⁷ European Commission, 'Clear Writing for Europe' (European Commission) https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/translation/clear-writing-europe_en.

¹⁶⁸ Z Field (European Commission, Directorate-General for Translation), *How to Write Clearly* (Publications Office of the European Union 2015) <https://data.europa.eu/doi/10.2782/022405>.

aligned with legal design principles and promote the identification of the end-user and their needs.

However, I argue that despite these commendable efforts by the European Commission, a critical gap remains in the application of these principles, particularly in the context of the GDPR. The GDPR, while mandating the use of clear and plain language in legal documents such as privacy policies, as described earlier, lacks specific standards or definitions to guide this requirement. This ambiguity poses a significant challenge, potentially undermining the initiative's intent to make legal texts accessible to a wider audience.

While the "Clear Writing for Europe" initiative represents a significant step in promoting clear and plain language in EU communications, I have identified certain limitations in its effectiveness and reach. Firstly, the initiative primarily targets texts produced within the European Commission, which might not directly influence the broader spectrum of legal documents encountered by the general public, such as those pertaining to GDPR compliance. Additionally, the initiative's guidelines, while comprehensive, may not be uniformly applied or enforced across all EU institutions or member states, leading to inconsistent standards in legal documentation. Furthermore, there's a challenge in measuring the tangible impact of these guidelines on the actual understandability of legal texts by the intended audience, especially in diverse linguistic and cultural contexts within the EU.

These factors suggest that while the initiative is a commendable effort, there is still significant room for improvement in achieving its goals across the EU. Despite this initiative being in place for over a decade, its impact can be questioned, as in connection with this thesis. The ambiguity in GDPR's mandate for 'clear and plain language', without any in-depth guidelines directly connected neither to the articles nor their guidelines, indicates a gap in the application of these principles to legal documents.

For the sake of comparison of different Western legal landscapes, it is worthwhile to note that the US has also taken similar steps towards achieving understandability

amongst a wider audience. The Plain Writing Act of 2010 in the US mandates that government documents should be written clearly, concisely, and be well-organized to ensure they are understandable by the public. This Act aims to improve government communication and transparency. Compared to the EU's guidelines, which focus on clear writing in a multilingual context and address diverse audiences, the US Act specifically targets federal agencies' documents.¹⁶⁹

Providing a short comparative overview, I identify that both initiatives share the goal of making information accessible and understandable. However, I also highlight that the US Act has a more specific legal framework, whereas the EU's approach is broader and includes more diverse linguistic considerations. Additionally, the Plain Writing Act, being a legislative act, holds more enforceability and potentially greater efficacy compared to the European Commission's internal guidelines on clear writing. The US legal framework mandates federal agencies to use plain language, thereby ensuring compliance through legal obligation. In contrast, the EU's approach, while comprehensive and inclusive, consists of guidelines rather than enforceable laws. According to my argument, this difference implies that the US Act might have a more direct impact on government communication, given its binding nature, whereas the EU's guidelines, though broad and inclusive, rely more on voluntary adherence and may lack the same level of uniform enforcement.¹⁷⁰ Therefore, here, I argue that the EU's mission towards clear and plain language in legal documents and information, such as privacy policies directed to the data subjects, should severely be brought to the attention of legislators, considering more obligating measures, such as directive.

Alternatively, in the absence of specific case law on Article 12(1) of the GDPR focusing on user-centric information requirements, the role of case law, especially preliminary

¹⁶⁹ Public Law 111–274, 'Plain Writing Act of 2010', 124 STAT. 2861 (2010).

¹⁷⁰ Guidelines are soft law and therefore non-binding and not legally enforceable on member states. Christine M Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) *International & Comparative Law Quarterly* 850–866; Gregory C Shaffer and Mark A Pollack, 'Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance' (2009) 94 *Minn L Rev* 706. See for analogy Iris Benöhr, 'The United Nations Guidelines for Consumer Protection: Legal Implications and New Frontiers' (2020) 43(1) *Journal of Consumer Policy* 105–124; Angela Campbell and Kathleen Cranley Glass, 'The Legal Status of Clinical and Ethics Policies, Codes, and Guidelines in Medical Practice and Research' (2000) 46 *McGill LJ* 473.

rulings from the Court of Justice of the European Union (CJEU), is pivotal. This process, however, is contingent upon individual cases being brought forward and eventually reaching the CJEU for adjudication. A notable instance demonstrating this pathway's impact is Case C-311/18, commonly referred to as Schrems II. This case serves as a landmark, illustrating how individual legal challenges can shape the interpretation and implementation of data privacy laws and standards at the highest judicial levels.¹⁷¹

3.4 Why Care About User-Centricity in Data Protection?

In addressing the final question of this chapter, it is crucial to consider the intertwining roles of organisational awareness, the impact on data subjects, and the inherent value of data within the framework of GDPR compliance on a global level.

Organisational Awareness and Data Protection Culture: The GDPR has amplified the responsibility of data controllers in managing personal data. This heightened accountability necessitates a robust understanding of GDPR obligations to ensure compliance and evade penalties.¹⁷² Key to this is organizational awareness, which is instrumental in adhering to Article 30 of the GDPR, mandating a record of processing activities.¹⁷³ This requirement is more than a regulatory compliance checkbox; it serves as a self-assessment tool, fostering introspection on data processing practices.

Controllers must also *assess* whether the information provided is clear and understandable, considering the intended audience. The goal is to ensure that an average member of the target audience can easily grasp the overall picture of how personal data is processed. It is therefore not enough from an organisation to just make

¹⁷¹ Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems ECLI:EU:C: 2020:559.

¹⁷² General Data Protection Regulation 2016/679, art 24. See European Data Protection Board, 'Data Controller and Data Processor Guide for SMEs' https://edpb.europa.eu/sme-data-protection-guide/data-controller-data-processor_en.

¹⁷³ General Data Protection Regulation 2016/679, art 30.

the information available; it must be presented in a clear, concise, and intelligible manner.¹⁷⁴

Privacy management in an organisation falls under the purview of the data controller, and often, a Data Protection Officer (DPO) is designated to oversee compliance, particularly in scenarios mandated by the GDPR.¹⁷⁵ While the data controller orchestrates the data processing activities¹⁷⁶, the DPO monitors compliance and serves as a liaison with regulatory authorities.¹⁷⁷ However, a critical question emerges: who ultimately shoulders the responsibility for privacy policies intended for data subjects? The answer may not be straightforward, as it could encompass the entire organisation, the DPO, or senior management. The Vastaamo case is illustrative of this dilemma, where the CEO was held personally liable for data protection offenses, underscoring the importance of top-level management in data protection.¹⁷⁸

Implementation of legal design in contract creation and negotiation offers significant advantages for organisations, including reduced litigation risks, as Nousiainen's study shows. By emphasizing clear and comprehensible language, legal design minimizes ambiguities that often lead to disputes, thereby decreasing the likelihood of renegotiations, breaches, and strategic non-compliance. This approach not only fosters a deeper understanding and stronger commitment to contractual terms but also

¹⁷⁴ Office of the Data Protection Ombudsman of Finland, 'Inform Data Subjects about Processing' <https://tietosuoja.fi/en/inform-data-subjects-about-processing>.

¹⁷⁵ General Data Protection Regulation 2016/679, art 39. See European Data Protection Supervisor, 'Data Protection Officer (DPO)' https://edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en.

¹⁷⁶ General Data Protection Regulation 2016/679, art 24. See European Data Protection Board, 'Data Controller and Data Processor Guide for SMEs' https://edpb.europa.eu/sme-data-protection-guide/data-controller-data-processor_en.

¹⁷⁷ General Data Protection Regulation 2016/679, art 39. See European Data Protection Supervisor, 'Data Protection Officer (DPO)' https://edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en.

¹⁷⁸ European Data Protection Board, 'Administrative Fine Imposed on Psychotherapy Centre Vastaamo for Data Protection Violations' (European Data Protection Board, 2022) https://edpb.europa.eu/news/national-news/2022/administrative-fine-imposed-psychotherapy-centre-vastaamo-data-protection_en; 'Administrative Fine Imposed on Psychotherapy Centre Vastaamo' (Finlex, 2021) <https://finlex.fi/fi/viranomaiset/tsv/2021/20211183>; Office of the Data Protection Ombudsman, 'Administrative Fine Imposed on Psychotherapy Centre Vastaamo for Data Protection Violations' (Tietosuoja, 2021) <https://tietosuoja.fi/en/-/administrative-fine-imposed-on-psychotherapy-centre-vastaamo-for-data-protection-violations>.

results in considerable savings in legal and administrative costs, enhancing the overall efficacy of legal processes.¹⁷⁹ Analogously, I argue that legal design has potential to serve as a pivotal strategy for organizations to navigate the intricate landscape of data protection law, particularly in averting GDPR fines. In the current absence of established case law for Article 12(1), as described in section 3.3.3., legal design can take a preventative role, akin to avoiding litigation. By refining the clarity and accessibility of the organisation's privacy policies through design enhancements, companies could proactively reduce the risk of non-compliance and the consequent imposition of fines. In essence, legal design emerges not only as a tool for contract improvement but as a shield against regulatory consequences, potentially reinforcing the importance of proactive and innovative solutions in the realm of data protection compliance.

Impact on Data Subjects and Trust and Empowerment: Transparency in privacy policies does not necessarily deter individuals from agreeing to conditions. On the contrary, it fosters trust, leading to a positive sentiment among data subjects, as discussed earlier. I argue that the sense of being well-informed makes individuals more willing to provide information, thereby reinforcing the notion that transparency and trust are intertwined.

Privacy policies empower individuals with rights to access, correct, and delete their personal data, offering control over its usage.¹⁸⁰ Understanding and exercising these rights is pivotal for data subjects, as data is not just information; it is a valuable asset.¹⁸¹ The ownership and value of data raise important considerations for both individuals and organisations. By recognizing the value of their data, individuals can make more informed decisions about their privacy and the terms they agree to.

¹⁷⁹ Katri Nousiainen, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in *Economics and Society*, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023)

¹⁸⁰ General Data Protection Regulation 2016/679, art 15-21.

¹⁸¹ Kean Birch, D T Cochrane, and Callum Ward, 'Data as Asset? The Measurement, Governance, and Valuation of Digital Personal Data by Big Tech' (2021) 8(1) *Big Data & Society* 20539517211017308.

Brussels Effect: The EU frequently sets a precedent for global regulatory standards, a phenomenon known as the 'Brussels Effect.'¹⁸² Consequently, this section posits, albeit briefly, that the current inadequacies within the GDPR's stipulations on transparency, understandability, and the employment of plain language may inadvertently instigate a similar effect internationally. Non-EU countries, emulating these ambiguous and open-to-interpretation articles, might contribute to a widespread lack of user-centricity in legal documents on a global scale.

In conclusion, the importance of privacy within data protection stems from a complex interplay of organisational responsibility, the empowerment of data subjects, and the recognition of data as a valuable asset, in addition to having potentially a global impact due to Brussels Effect. A nuanced understanding of these facets is essential in shaping privacy policies that not only comply with legal requirements but also resonate with the needs and rights of individuals.

¹⁸² Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press, USA 2020); Simon Gunst and Ferdi De Ville, 'The Brussels Effect: How the GDPR Conquered Silicon Valley' (2021) 26(3) *European Foreign Affairs Review* 437-458.

4 Empirical Framework: How to Approach Privacy Policies?

This chapter establishes the empirical groundwork for the thesis. It transitions into the practical realm, bringing to life the earlier theoretical and legal dogmatic discussions through a case study conducted by the author, wherein a privacy policy undergoes a transformation through a design process. This transformation is evaluated for user-centricity and transparency through test groups, providing empirical evidence to support this thesis' arguments.

4.1 Empirical Case Study: Designing Castrén & Snellman's Privacy Policy

As previously discussed, studies have revealed that individuals often bypass the process of thoroughly reading privacy policies, typically agreeing to them without full understanding.¹⁸³ This trend can be attributed to the overwhelming volume of complex legal language presented in these documents. Such an information overload leaves individuals feeling powerless, particularly in contexts where they might inadvertently consent to major tech companies infringing upon their privacy rights.¹⁸⁴

The empirical component of this thesis offers a systematic exploration of user-centricity, understandability, and transparency within the realm of the GDPR, specifically examining the effectiveness of legal design in privacy policy drafting. The methodology is anchored in comparative analysis, leveraging quantitative assessments to capture the nuanced responses of diverse participant groups to both conservative and legal designed privacy policies.

¹⁸³ Tatiana Ermakova, Benjamin Fabian, and Eleonora Babina, 'Readability of Privacy Policies of Healthcare Websites' in *Wirtschaftsinformatik Proceedings* 2015; Jonathan A Obar and Anne Oeldorf-Hirsch, 'The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services' (2020) 23(1) *Information, Communication & Society* 128-147.
¹⁸⁴ Aleecia M. McDonald and Lorrie Faith Cranor, 'The Cost of Reading Privacy Policies' (2008) I/S: A *Journal of Law and Policy for the Information Society*, '2008 Privacy Year in Review' issue. See Samreen Rizvi, 'Unveiling the Data Privacy Secrets: A Deep Dive into Tech Giants' Policies and Practices' (2022) 1(1) *Unique Endeavor in Business & Social Sciences* 29-35; Brett Dembrow, 'Investing in Human Futures: How Big Tech and Social Media Giants Abuse Privacy and Manipulate Consumerism' (2021) 30 *U Miami Bus L Rev* 324; Bipin C Desai, 'Privacy in the Age of Information (and Algorithms)' in *Proceedings of the 23rd International Database Applications & Engineering Symposium* (2019).

In the context of design philosophy, user-centricity prioritizes the needs and desires of end-users in the design and development of products, services, and experiences. It puts the user at the centre of the design process and seeks to understand their needs, goals, behaviours, and motivations in order to create solutions that meet their needs effectively and efficiently.¹⁸⁵ In this empirical part, user-centricity is the guiding principle, ensuring that privacy policies are designed with the user in mind, and meet their needs effectively and efficiently.

In a user-centric approach, the user's needs and requirements are the starting point for any design or development project, and the design is iteratively refined and tested with real users throughout the development process.¹⁸⁶ This ensures that the final product or service is tailored to the needs of the target audience and meets their expectations. User-centric design seeks to create solutions that are not only functional but also intuitive and enjoyable to use, leading to higher levels of user satisfaction and engagement.¹⁸⁷ In this case study a conservative privacy policy goes through a transformative and iterative design process, aiming to increase user-centricity, as presented.

4.1.1 Study Design

The study is structured around two sequential questionnaires administered to three distinct groups. The first questionnaire gauge reactions to an original, conservative, non-designed privacy policy, focusing on its understandability, language, transparency, user-centricity, conciseness, ease of remembering and internalisation, and the degree to which it made participants feel overwhelmed. The second questionnaire expand this inquiry to a legal designed privacy policy, adding evaluations of design methods. Both questionnaires were realized by Survey Pal.

¹⁸⁵ Jeff Patton, 'Understanding User-Centricity' (2007) 24(6) IEEE Software 9-11.

¹⁸⁶ Janice James, Barbara Mirecki, and Susan Perfetti, *User-Centered Design: A Defensible Framework (Interacting with Computers, 2003)*.

¹⁸⁷ Janice James, Barbara Mirecki, and Susan Perfetti, *User-Centered Design: A Defensible Framework (Interacting with Computers, 2003)*.

The team conducting the case study as a legal design project, consists of expertise from diverse education backgrounds, such as legal, linguistic, psychology, legal tech and graphic design. This aligns with the interdisciplinary approach and collaborative culture pertinent to legal design, as discussed throughout this thesis, for example in sections 1.4.1 and 1.6.

4.1.2 Test Group and the Controlled Variables

The participants were categorized into three groups, having a total amount of 55 people, to capture a broad spectrum of perspectives:

Group 1: Comprising **legal professionals** and law students, serving as a reference group, this group's expertise facilitated a critical examination of the legal interpretation and user-centricity shaped by Article 12(1) of the GDPR. This group of 20 people was carefully chosen in order to compile a diverse group of all ages and levels of legal proficiency. The youngest participant is eighteen years old, while the oldest is 57 years old. The mother tongue of the participants is either Finnish or Swedish.

Group 2: Laypeople participants in this group offered insight into laypeople's interactions with privacy policies, providing a contrast to the legal professionals' perspective. This groups of 20 people were carefully chosen in order to compile another diverse group of all ages and all educational backgrounds. The youngest participant is fifteen years old and the oldest one is 65 years old. The mother tongue of the participants is either, Finnish, Swedish or English.

Group 3: Serving as an unbiased **control group**, these laypeople only evaluated the legal designed privacy policy, thus providing a fresh perspective on the effectiveness of legal design without the influence of the original policy's biases. This group consists of fifteen laypeople with diverse educational backgrounds, including those whose mother tongue is English, Swedish, or Finnish. The youngest participant is nineteen years old, and the oldest one is 67 years old.

First, group 1 and 2 are asked to read the original main page of the privacy notice found on Castrén & Snellman Attorney Ltd's website and the specific privacy notice for

marketing and stakeholder purposes. Then, they are to answer the first questionnaire measuring understandability, transparency, plain language, memorization, and length of the original privacy policy. The second part consists of asking all three groups to read the legal designed versions of the same privacy policies, now both embedded to the website with interactive functions. This prototype is designed with a tool called Figma, a platform for designing prototypes.¹⁸⁸ Lastly, the participants answer the second questionnaire measuring those same metrics in addition with statements concerning design methods used in the legal designed version.

Firstly, I hypothesise that the understandability is lower in the group of laypeople, whereas legal professionals are more used to legalese. Furthermore, the hypothesis of this empirical study is that legal design creates more concise, understandable, transparent, and digestible privacy policies, written in more plain language than the conservative ones. By understandability, it is meant here that the end-users can read and understand the privacy notice without consulting a lawyer or having a legal background themselves. It is anticipated that terms in legalese in a plain and non-engaging format would create negative and overwhelming emotions and therefore decrease the sense of trust and willingness to provide personal information. It is further hypothesized that the privacy notice written in plain language and combined with visual aids of legal design, would bring benefits, such as better approachability, greater understanding, and evoke positive emotions like empathy and trust.

4.1.3 Method of Analysis

Responses were collected using a Likert scale, a unidimensional scale that is used to collect respondents' attitudes and opinions¹⁸⁹, providing a quantitative measure of agreement or disagreement (on scale 1-5) with a series of statements related to the privacy policies. The analysis focuses on valid percentages of responses, allowing for a

¹⁸⁸ Figma, 'What is Figma?' <https://help.figma.com/hc/en-us/articles/14563969806359-What-is-Figma>.

¹⁸⁹ Rensis Likert, 'A Technique for the Measurement of Attitudes' (1932) 140 *Archives of Psychology* 1-55.

direct comparison of sentiments across groups and between the original and legal designed policies.

4.1.4 Comparative Approach

The comparative analysis method is employed to discern the impact of legal design on the clarity and user-centricity of privacy policies. By juxtaposing the responses to the original and legal designed privacy policies within and between groups, the study aimed to isolate the effect of legal design techniques on the comprehension and user experience of privacy policies.

4.1.5 Iterative Process: Human-Centred Design Applied as a Methodology

Human-centred design represents a design philosophy centred on comprehending and addressing the needs, preferences, and constraints of individuals, with the aim of crafting products, services, and experiences that are both efficient and appealing. This approach prioritizes empathy, collaborative efforts, and iterative development to forge solutions that are not only functional but also resonant with users. It typically entails a multidisciplinary collaborative process, amalgamating expertise from diverse fields such as design, engineering, and psychology. This integration of varied perspectives and specialized knowledge ensures that the final outcome is holistically informed and user centric.¹⁹⁰

The methodology initiates with a deep understanding of the end-users and permeates every phase of design and development. This approach mandates that designers continuously integrate user research, feedback, and testing to ensure the creation of products that genuinely address user needs.¹⁹¹ Central to this approach is the conviction that the most effective and gratifying products are those crafted in alignment with users' cognitive, emotional, and behavioural patterns. Consequently, it

¹⁹⁰ Kevin A Clark, *Human Centered Design: Human Interaction and Collaborative Innovation* (Springer Berlin 2011) 13-21.

¹⁹¹ Margaret Hagan, 'A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' (2018) 6(2) *Indiana Journal of Law and Social Equality* 200-205.

emphasizes user experience over technical or aesthetic aspects, striving to develop solutions that are functionally robust and resonate with users on emotional and cultural levels.¹⁹²

Legal design projects employ this iterative work model, foundational to human-centred design, as previously described. Iterative project methodologies, such as the one employed in this case study, are commonly utilized in domains like software development and product design, where outcomes are often complex or uncertain, and the development trajectory is not readily predictable. This approach, which segments a project into smaller, manageable iterations, enables teams to manage risk and uncertainty more effectively. Additionally, it helps in maintaining the project's alignment with its intended trajectory, ensuring consistent progress and adaptability to emerging challenges or requirements.¹⁹³ This approach involves developing the project through successive cycles, each informed by the outcomes of the preceding one, usually a prototype. During each cycle, the project team undertakes a series of specific tasks, collects feedback and data, and then integrates this information into the subsequent development phase. This iterative process enables continuous evolution and enhancement of the project, allowing for adjustments and refinements based on the insights gained from each cycle.¹⁹⁴

The human-centred design approach does not in itself provide a direct solution for which type of intervention will best solve a wicked and complex legal problem. It is a methodology that could result in various types of design work e.g., different design patterns, linguistic design, use of technology, information layouts and much more.¹⁹⁵ The above-described human-centered design is used as a methodology in this case study and its application is presented below.

¹⁹² Kevin A Clark, *Human Centered Design: Human Interaction and Collaborative Innovation* (Springer Berlin 2011) 13-21.

¹⁹³ Margaret Hagan, 'A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' (2018) 6(2) *Indiana Journal of Law and Social Equality* 200–205.

¹⁹⁴ Alistair Cockburn, 'Iterative and Incremental Development: A Brief History' (2006) *ACM* 2-5.

¹⁹⁵ Margaret Hagan, 'A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' (2018) 6(2) *Indiana Journal of Law and Social Equality* 200–205.

4.1.6 Design Method: Privacy Design Pattern Library

In this empirical study, while designing a user-centric privacy policy, I have meticulously considered the common hurdles to effective legal communication identified in previous research conducted by Rossi, Ducato, Haapio, Passera and Palmerani on legal design patterns. These hurdles, extensively documented in the literature, range from small print and language complexity to vagueness of terms and the daunting 'wall of text' effect. Other significant challenges include excessive length, lack of audience-tailoring, wrong timing, and inaccessibility for visually impaired users. Furthermore, issues like scattered information across various legal documents, habituation to helplessness among users, and the difficulty in comparing information across different services contribute to the non-comprehension or complete disregard of legal information in privacy policies and similar documents.¹⁹⁶

This combination of hurdles results in individuals' lack of comprehension, partly or even fully.¹⁹⁷ Supported by this thesis' case study, I argue that legal design can offer a solution to this non-readership problem, as argued by scholars like Ben-Shahar and Schneider.¹⁹⁸ Aware of these hurdles, my approach integrates legal design patterns to address and overcome these barriers. By employing a combination of patterns, tailored to enhance readability and user engagement, the study aims to transform privacy policies into more accessible, comprehensible, and user-friendly documents. This approach not only tackles the immediate issues of legibility and comprehension but also addresses deeper problems of user engagement and empowerment in the context of legal documentation.

Additionally, Nousiainen's study illuminates fundamental principles in contract design that transcend conservative legal documents. These principles include clarity,

¹⁹⁶ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019).

¹⁹⁷ Ibid.

¹⁹⁸ Omri Ben-Shahar and Carl Schneider, 'The Failure of Mandated Disclosure' (2011) 159 University of Pennsylvania Law Review 647-749.

simplicity, a hierarchy of information, and the incorporation of visual elements to aid comprehension.¹⁹⁹ Building on Nousiainen's insights, the application of contract design principles to privacy policies becomes evident. Aligning with the clarity and simplicity advocated in contract design, privacy policies can benefit from a shift towards plain language, ensuring that the end-users can easily understand complex legal concepts. By employing legal design techniques, privacy policies and data processing information can be made more transparent and accessible, thus increasing user comprehension and trust, as Nousiainen's study shows. This approach not only adheres to the regulatory demands of GDPR but also reinforces its underlying intent to create a more transparent and trust-based data processing environment

In the digital domain, an innovative approach to privacy policy design is the implementation of a layered structure. This design strategy allows users to immediately access specific sections of a privacy notice, streamlining their search for information on individual rights and obligations.²⁰⁰ Such a method alleviates the need to navigate through extensive text to find pertinent details, which is especially important when the individual is supposed to understand not only their data processing of their personal data, but also data subject's rights, such as right to deletion and correction²⁰¹.

Lastly, acknowledging challenges in adapting design methods to legal contexts, prompts a thoughtful consideration of the unique challenges in applying legal design to privacy policies. According to Nousiainen, this includes navigating legal intricacies while maintaining user-centricity.²⁰² Exploring how design methods, as discussed by

¹⁹⁹ Katri Nousiainen, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in *Economics and Society*, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023).

²⁰⁰ Monica Palmirani, Arianna Rossi, Michele Martoni, and Margaret Hagan, 'A Methodological Framework to Design a Machine-readable Privacy Icon Set' in *Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS (2018)* 1-3. See Robert Waller, Stefania Passera and Helena Haapio, 'Layered Contracts: Both Legally Functional and Human-Friendly' in Jacob K, Schindler D, Strathausen R and Waltl B (eds), *Liquid Legal – Humanization and the Law: Law for Professionals* (Springer, Cham 2022).

²⁰¹ General Data Protection Regulation 2016/679, art 16 and 17.

²⁰² Katri Nousiainen, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in *Economics and Society*, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023)

Nousiainen, can be adapted to suit the nuances of legal contexts is crucial, as this may involve finding a balance between clarity and legal precision.

4.1.7 Transformation: The Privacy Policy Before and After

This section visually depicts the transformative journey of a privacy policy from its original state to its redesigned version. This section provides a tangible representation of how legal design principles can be applied to a conventional privacy policy, enhancing its clarity, accessibility, and user-friendliness.

Through a series of screenshots, this section witnesses the metamorphosis of a dense, legalese-filled document into an engaging, comprehensible, and visually appealing format, exemplifying the practical impact of legal design in action.

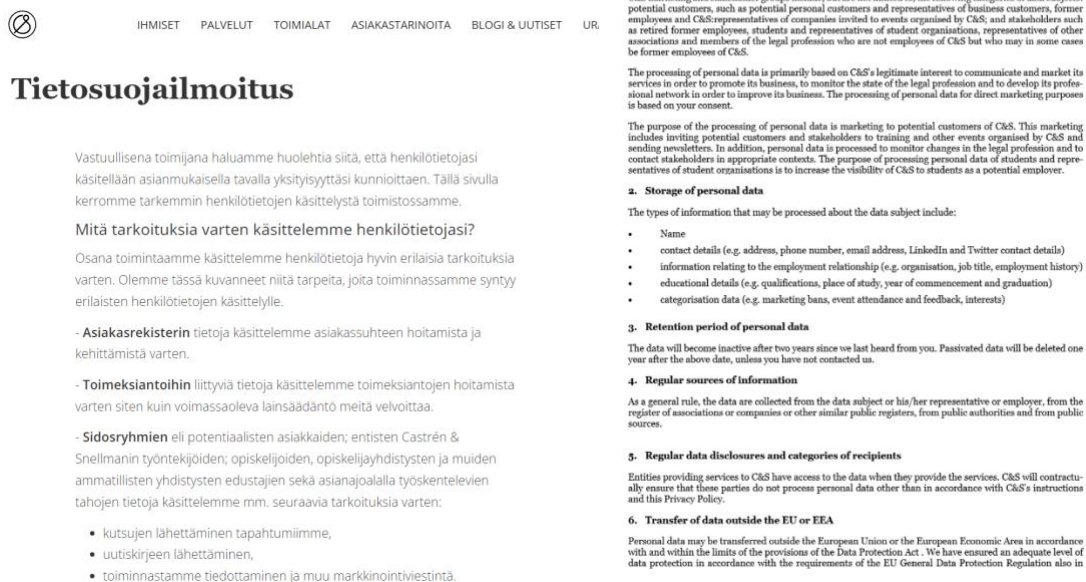


Figure 1: Screenshots of the Original Privacy Policy: Before Transformation. Left - Website Displaying General Privacy Policy; Right - Word Document of Marketing & Stakeholders' Privacy Policy (Before Transformation).

The initial form of Castrén & Snellman Ltd.'s privacy policy was bifurcated. The first part, a general privacy policy available on their website, provided broad information about data processing and the rights of data subjects. The second part, specific to Marketing & Stakeholders, existed as a separate Word document. To create a cohesive, user-friendly experience, I utilized Figma to amalgamate these two components into one integrated unit on the website. This approach aimed to facilitate seamless navigation for users, allowing them to effortlessly switch between the general privacy policy and specific ones tailored for particular data processing purposes.

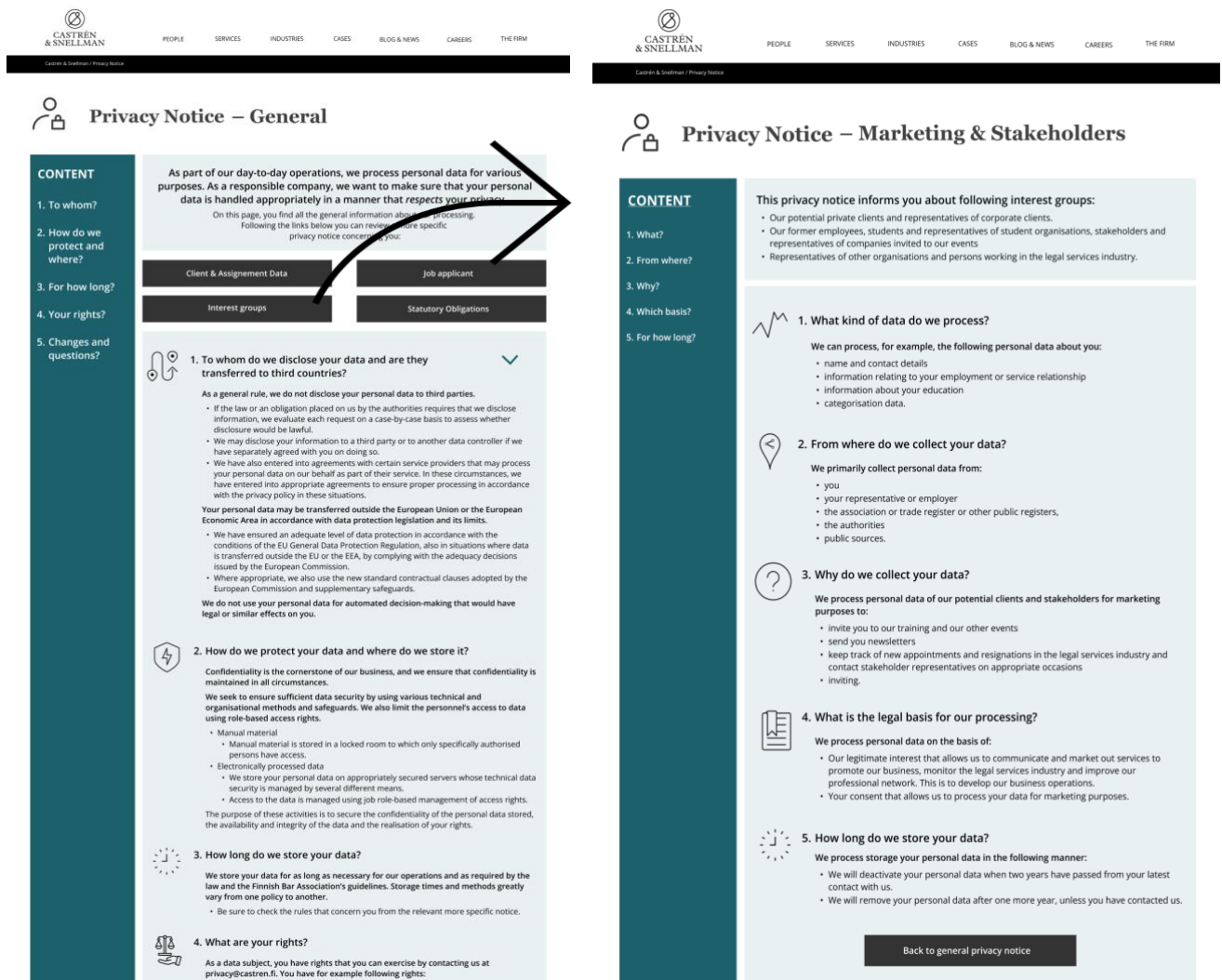


Figure 2: Screenshots of the Designed Privacy Policy: After Transformation. Left - Website Displaying General Privacy Policy; Right - Word Document of Marketing & Stakeholders' Privacy Policy (Before Transformation)

The interactive prototype of the designed privacy policy can be accessed through [this link](#), or through the QR-code:



This showcases the **reorganization** of the privacy policy content. The general policy, now streamlined, features headlines formatted as questions for clarity and engagement. All content applicable universally across specific policies is consolidated in this general section. Conversely, details unique to each specific policy, like purpose and storage time, are distinctly presented in their respective sections, eliminating repetition and creating a cohesive structure.

Utilizing **bullet points** in the listing significantly enhances the readability and comprehension of the privacy policy. Bullet points break down complex information into digestible, clearly defined items, making it easier for users to quickly identify and understand key points. This format aids in organizing content in a visually appealing and straightforward manner, which helps in retaining the user's attention and improving their overall experience with the document.

Employing **bold text** in the privacy policy effectively draws the user's attention to critical sections, facilitating easier skimming and focus on essential information. This technique helps to highlight key points or terms, allowing users to quickly navigate through the content and absorb important details without feeling overwhelmed. By emphasizing vital information in this manner, the design aids in mitigating information overload, making the document more user-friendly and accessible.

Icons were used in order to enhance user comprehension and engagement. Icons can provide a visual representation of key concepts, making them easier to understand at a glance. This visual aid was aiming to supports quicker information processing and to break down complex legal terms into more digestible elements. The presence of icons not only adds an aesthetic appeal but also contributes to a more intuitive and user-friendly experience, helping to demystify legal jargon and making the policy more approachable for the end-user.

In the digital domain, an innovative approach to privacy policy design is the implementation of **a layered structure**. This design strategy allows users to immediately access specific sections of a privacy notice, streamlining their search for information on individual rights and obligations.²⁰³ Such a method alleviates the need to navigate through extensive text to find pertinent details, which is especially important when the individual is supposed to understand not only their data processing of their personal data, but also data subject's rights, such as right to deletion and correction²⁰⁴. Implementing drop-down menus in the privacy policy can effectively condense information, allowing users to explore topics in-depth as needed. This approach was used to minimize information overload, making the policy more navigable and user centric.

²⁰³ Monica Palmirani, Arianna Rossi, Michele Martoni, and Margaret Hagan, 'A Methodological Framework to Design a Machine-readable Privacy Icon Set' in Data Protection / LegalTech: Proceedings of the 21st International Legal Informatics Symposium IRIS (2018) 1-3. See Robert Waller, Stefania Passera and Helena Haapio, 'Layered Contracts: Both Legally Functional and Human-Friendly' in Jacob K, Schindler D, Strathausen R and Watl B (eds), Liquid Legal – Humanization and the Law: Law for Professionals (Springer, Cham 2022).

²⁰⁴ General Data Protection Regulation 2016/679, art 16 and 17.

5 Analytical Framework: How to Create User-Centric and Transparent Privacy Policies?

This chapter not only presents the results of the previously presented empirical case study conducted at Castrén & Snellman Ltd., but also analyses them in the light of previous research and the theoretical and normative frameworks of this thesis. It includes detailed observations from the original privacy policy, a comparative analysis between the original and a designed privacy policy, and insights from a control group. Additionally, the overall impact of specific design methods employed across all groups is examined.

Further, the chapter discusses the evolution towards better and fairer privacy policies aligning with the user-centric requirements of the Article 12(1). This is done by encompassing multiple dimensions such as the psychological development of a lawyer's mindset, linguistic advancements, visual and functional improvements in aesthetics, and technological advancements.

5.1 Findings: Empirical Study at Castrén & Snellman Ltd.

5.1.1 Overview of the Original Privacy Policy and Comparison of Experiences

The first section presents an analysis contrasting the perceptions of legal professionals and laypeople regarding the original privacy policy. While legal professionals generally found the policy understandable, they struggled with internalizing its content, and many felt overwhelmed. Laypeople showed varied levels of comprehension based on their personal experience on scale one to five, with many finding it complex and lengthy. Figure 3 illustrates the comparative analysis of average ratings for the original privacy policy between legal professionals and laypeople, highlighting their differing perceptions across aspects under review. Both groups indicated a need for more engaging and accessible privacy policies, highlighting the importance of tailoring these documents to enhance understanding and interest among general audiences.

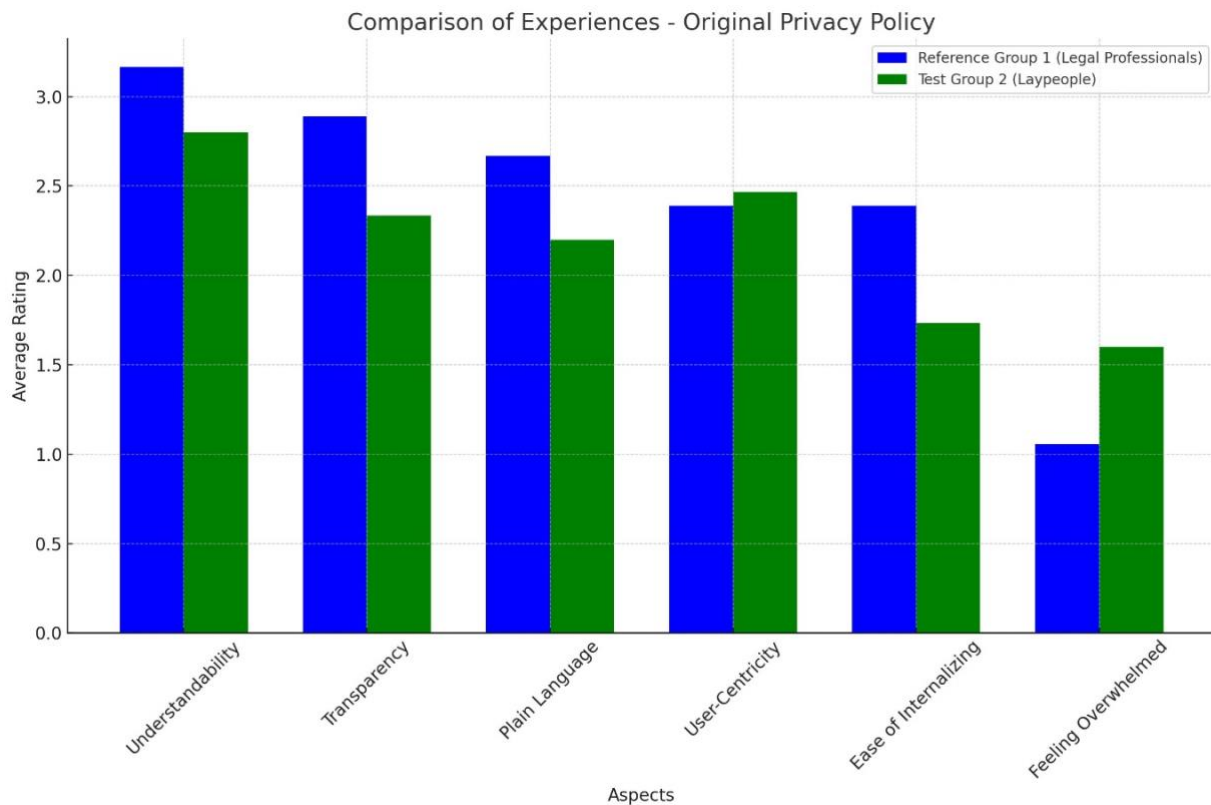


Figure 3: Comparative Analysis of Average Ratings for the Original Privacy Policy between Legal Professionals and Laypeople. The bar chart depicts the average ratings across different aspects, such as Understandability, Transparency, and User-Centricity, illustrating the distinct experiences and perceptions of each group.

Legal professionals' experience

A significant majority, 67%, of the group consisting of legal professionals found the original privacy policy to be quite or very understandable. 50% of the group agreed on it being transparent and 44% agreed that it is user centric and written in plain language. 39% agreed that it is easy to internalize and remember but there was a clear decentralization in the results, 22% disagreeing and 28% neither disagreeing nor agreeing.

This shows that even legal professionals have somewhat hard time to internalize and in fact remember the substance of a privacy policy written legalese, without using any design methods. 61% felt significantly overwhelmed or somewhat overwhelmed by the

original privacy policy but controversially a slight majority, 55%, found the length to be suitable.

Laypeople's experience

A distribution of ratings shows a more diverse perception of the original privacy policy's understandability among laypeople compared to legal professionals. There is a significant portion of laypeople that finds the policy moderately to quite understandable (60% combined for ratings 4 and 5), but also a notable proportion that struggles with it (33% combined for ratings 2 and 3). The presence of lower ratings (2 and 3) suggests that certain aspects of the original privacy policy may be complex or not easily understandable for individuals without a legal background.

Compared to the reference group consisting of legal professionals, laypeople show a broader range of responses, indicating varied levels of comfort with legal text. Regarding transparency, 53% of the laypeople experienced the privacy policy to have low or moderate transparency. 67% had very difficult or somewhat difficult to internalize and remember the original privacy policy's substance. The majority of laypeople (69%) perceived the original privacy policy as either long or too long, indicating a general consensus that the document was more extensive than preferred.

In addition, an aspect not displayed in Figure 3, the laypeople exhibited a moderate level of interest in their rights (with 40% showing high interest) but a higher willingness to understand them (60% showing high willingness). This suggests that while the original policy did not strongly spark interest, it did not deter the willingness to understand rights. The results suggest a need for privacy policies that not only inform but also actively engage laypeople, sparking both interest and understanding.

5.1.2 Comparative Analysis between the Original and Designed Privacy Policy

This section evaluates various aspects such as understandability, language clarity, transparency, user-centricity, and memory retention, comparing the original and designed privacy policies. The analysis, supported by a bar chart showing average ratings from legal professionals and laypeople, demonstrates significant

improvements in the legal designed privacy policy, particularly in terms of user-centricity and comprehensibility. This comparison underscores the effectiveness of legal design in enhancing privacy policies.

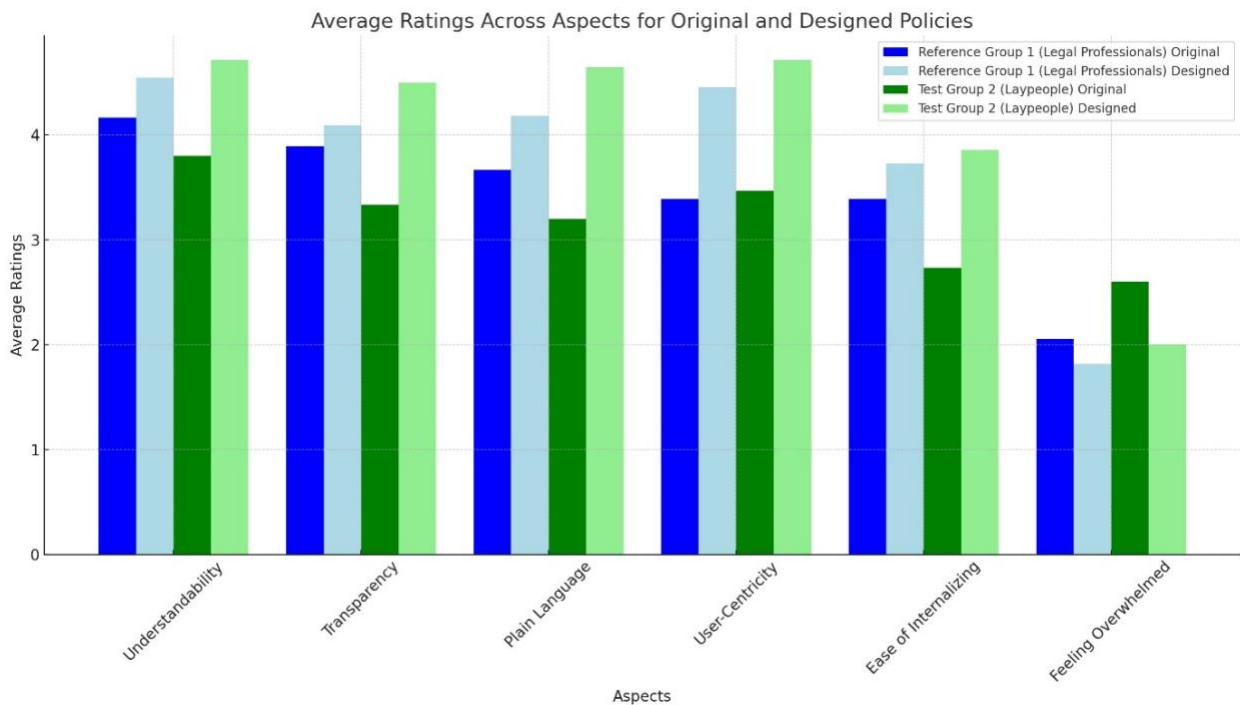


Figure 4: Trend of Average Ratings Across Aspects for Original and Designed Policies. This bar chart presents the progression of average ratings for Legal Professionals and Laypeople for both the Original (in darker shades) and Designed (in lighter shades) Privacy Policies. Each bar represents a group's rating trend across various aspects like Understandability and Transparency, highlighting the changes and improvements from the Original to the Designed Policy.

Understandability

There is a notable increase in the percentage of legal professionals who rated the legal designed privacy policy as very understandable (rating 5), from 28% for the original policy to 73% for the designed policy. This suggests that the legal design elements significantly enhanced the understandability of the privacy policy for legal professionals.

The shift towards higher ratings among the laypeople for the designed policy is striking, especially the large percentage of 72% who found it very understandable

(rating 5). This suggests a substantial improvement in understandability due to the legal design elements. Unlike the original policy, where there was a notable portion that found it less understandable (ratings 2 and 3), the designed policy has no responses below rating 4. This indicates a significant reduction in perceived complexity and an increase in accessibility for non-legal audiences.

While both groups showed improvements in the understandability of the designed policy, the change is more pronounced among laypeople. This may reflect the greater impact of legal design on those who are not familiar with legal jargon or complex legal concepts.

Plain language

The proportion of top ratings (5) by the legal professionals increased from 17% in the original policy to 27% in the designed policy, reinforcing the idea that the designed policy was better received in terms of whatever specific aspect this statement was addressing.

The designed privacy policy is perceived by the laypeople as being much more in plain language, indicated by the high percentage (71%) giving it the top rating. This is a notable improvement from the original policy. The lower ratings (1 and 2) for plain language usage are absent in the legal designed policy, suggesting that legal design effectively addressed issues related to complex language.

Transparency

The distribution of ratings for the original policy is more spread out, with notable percentages for ratings 3 (22%) and 5 (22%). The designed policy, on the other hand, sees a concentration in the middle (ratings 4 with 55% and rating 5 with 28%), indicating a more consistently positive perception amongst legal professionals.

The designed privacy policy is perceived as more transparent by laypeople, with a significant jump in the highest rating (5) from 13.33% to 57.14%. This suggests that legal design greatly enhanced the clarity and openness of the information.

Compared to legal professionals, laypeople show a more dramatic shift in perceptions of transparency with the legal designed policy. This underscores the impact of legal design in making legal documents more transparent for a non-legal audience.

User centricity

The shift towards higher ratings in the designed policy is particularly notable amongst the legal professionals. The proportion of participants rating the user-centricity as the highest (5) jumps from 6% in the original to 55% in the legal designed policy. The percentage of lower ratings (2 and 3) decreased significantly, suggesting that the legal design elements made the policy considerably more user-centric in the eyes of the participants.

There is also a dramatic increase in the perception of user-centricity in the legal designed policy, with a vast majority (79%) rating it as highly user-centric. This is a marked improvement from the original policy.

Compared to legal professionals, laypeople show a similar trend of improved user-centricity in the legal designed policy, though the effect is more pronounced among laypeople. This highlights the importance of legal design in making privacy policies more user-friendly for the general public.

Level of internalizing and remembering

The shift towards higher ratings amongst the legal professionals for the legal designed policy indicates an improvement in how easy it is to internalize and remember the information. Particularly, the top rating 5 almost tripled from 11% in the original to 28% in the designed policy.

The results highlight the effectiveness of legal design in making legal information not just understandable but also more retainable for laypeople. There is a noticeable improvement in the ease of internalizing and remembering the privacy policy with the legal designed version. The percentage of participants finding it very easy (rating 5) increased from 7% to 29%.

Compared to legal professionals, laypeople show a more significant challenge in internalizing and remembering the original policy, but also a notable improvement with the legal designed version. The results highlight the effectiveness of legal design in making legal information not just understandable but also more retainable for laypeople.

Feeling overwhelmed

Surprisingly, a higher percentage (55%) of legal professionals felt significantly overwhelmed (rating 1) even by the legal designed privacy policy. This could be due to higher expectations of detail and depth that legal professionals might have from privacy policies. Higher feeling of being overwhelmed could be interpreted in various ways, including a possible expectation for more comprehensive detail that was not met in the legal designed policy.

There is an increase of 23% in laypeople not feeling overwhelmed at all by the designed policy compared to the original, indicating an improvement in the policy's ability to communicate without causing stress. Notably, the extreme feeling of being overwhelmed (rating 5) was eliminated in the legal designed policy responses, pointing towards a significant improvement in the policy's accessibility. The elimination of the extreme overwhelm response and the increase in participants not feeling overwhelmed at all are particularly indicative of the benefits that a user-centric, clearly written, and well-structured privacy policy can provide. These findings underscore the potential of legal design in making privacy policies more accessible and less intimidating to the laypeople audience.

5.1.3 Designed Privacy Policy's Results from the Control Group: Laypeople's Experience

This section presents the control group's (laypeople) feedback on the legal designed privacy policy. Figure 5 shows bar charts reflecting their ratings on the same aspects as previously under review. The majority rated positively the policy's use of plain language, its user-centricity, and conciseness. Additionally, most found the policy easy

to internalize and remember, and did not feel overwhelmed by it, indicating the policy's effectiveness in clarity and approachability for non-legal audiences.

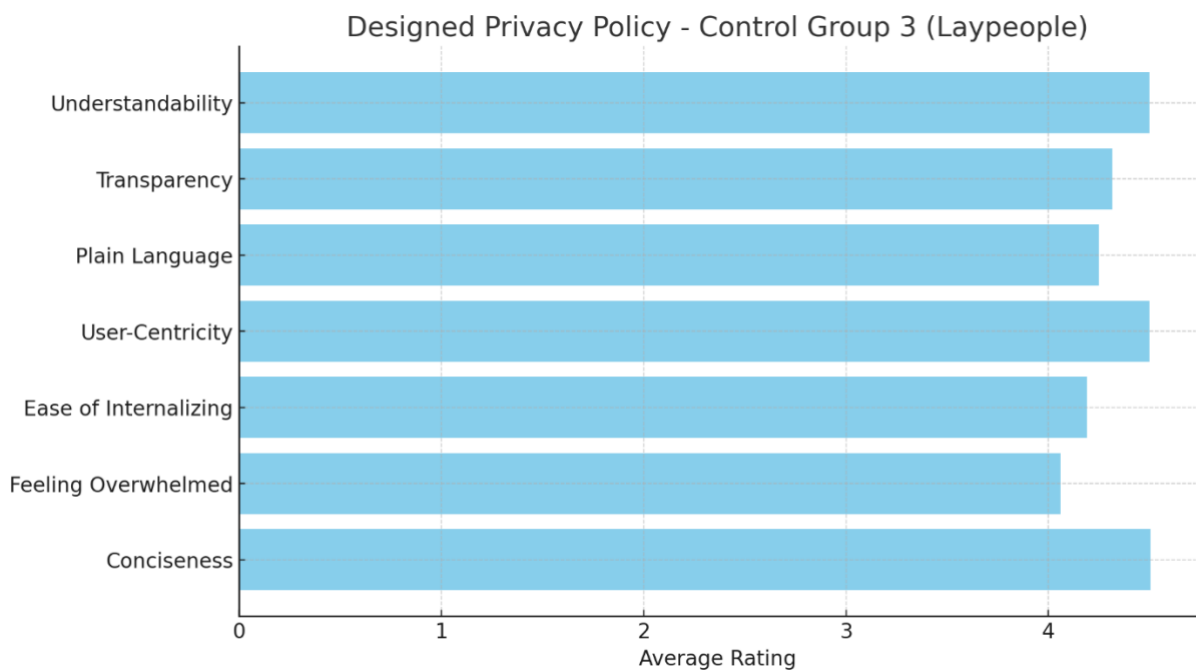


Figure 5: Average Ratings by Laypeople for Key Attributes of the Designed Privacy Policy. This bar chart illustrates the control group's assessment across seven aspects, indicating the policy's performance in terms of clarity, accessibility, and user engagement.

Plain language

The majority of the control group, which was made up of laypeople, responded favourably to the use of plain language in the document, with half deeming it fairly plain and 38% considering it to be very clear. The distribution of responses indicates that the majority of the control group felt the policy was articulated in an accessible manner, which is encouraging for the principles of legal design.

User-centricity

The majority (63%) of the control group felt that the policy was highly user-centric, indicating strong agreement with the design's focus on the user's needs. A quarter of the group rated the policy as quite user-centric, which along with the higher rating suggests that 88% of participants found the policy to be user-oriented to some degree.

Easiness to internalize and remember

The predominant sentiment from the control group is that the designed privacy policy was quite easy to internalize and remember, with over half of the participants (56%) choosing this option. A small number (13%) found it only moderately easy, indicating that there is some room for improvement to enhance the memorability of the policy.

Feeling overwhelmed

The majority of the participants did not feel overwhelmed by the legal designed privacy policy, with 31% not feeling overwhelmed at all, and 50% only slightly overwhelmed. Only a small percentage felt moderately (13%) or quite overwhelmed (6%), suggesting that the designed policy was not perceived as overly complex or information-dense for the control group.

Conciseness

The majority of participants in the control group perceived the privacy policy to be very concise (57%), indicating a strong approval of the policy's brevity and clarity. A significant number also rated it as quite concise (38%), combining for a total of 94% of participants who felt positively about the conciseness of the policy.

5.1.4 The Overall Impact of Specific Design Methods Used: All Groups

This section synthesizes observations from combining responses of all participant groups regarding the effectiveness of various design methods in privacy policies. The evaluation reveals that certain design elements, such as bullet points and bolding, significantly improve comprehension and retention. There is a consensus on the value of concise language, with a majority favouring shorter sentences for better

understandability. The use of personalized language and interactive design elements like drop-down menus are also highlighted as beneficial for enhancing transparency and user-centricity. Additionally, visual emphasis through bold text and bullet points proves effective for aiding memorability.

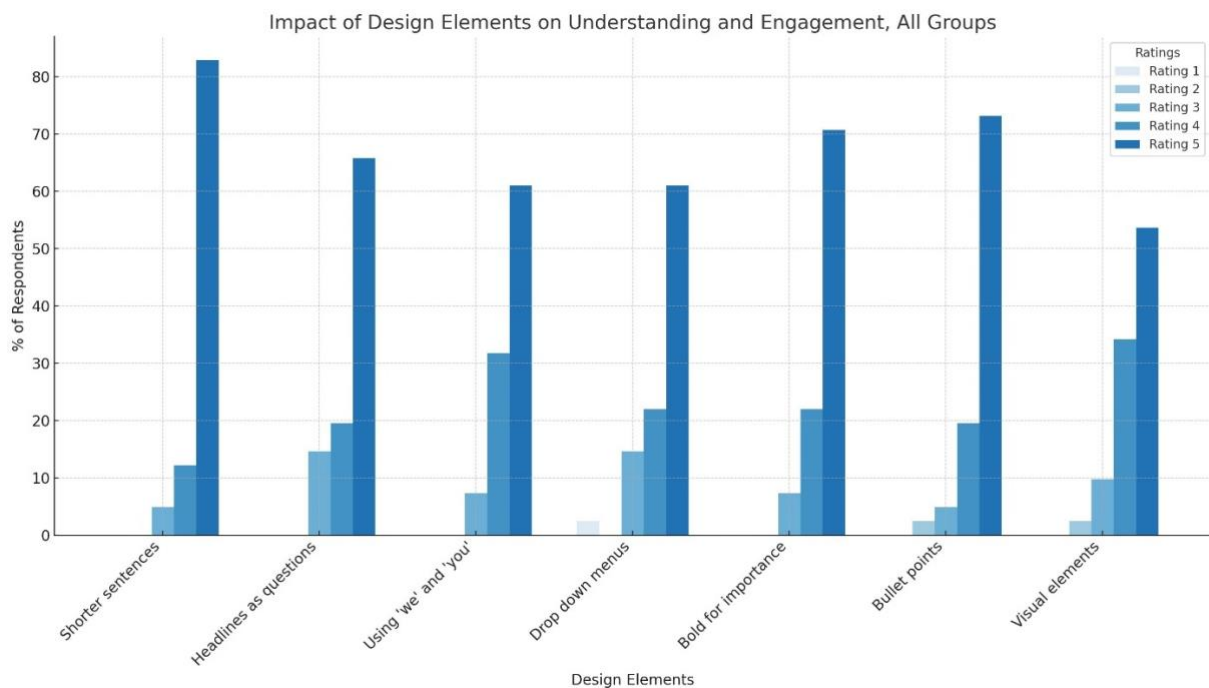


Figure 6: The impact of various design elements on understanding and engagement. The data showcases how each element was rated by all participants across all three groups. Grouped bars in shades of blue represent the distribution of ratings from 1 (least effective) to 5 (most effective) for each design feature, indicating that elements like bullet points and bolding crucial parts are particularly effective in enhancing user comprehension and retention.

Shorter sentences

The strong agreement (83% rated 5) with the statement "Making shorter sentences increases understandability" reflects a clear preference among respondents for concise language in privacy policies. This aligns with the hypothesis that legal design, which includes simplifying legal jargon and making texts more accessible, can significantly enhance the user-centricity and understandability of legal documents like privacy policies. The need for shorter sentences to improve understandability may indicate

that current privacy policies are often too complex or verbose, aligning with the hypothesis of this research that the current requirements of Article 12 of the GDPR may be insufficient in ensuring user-centricity in privacy policy communication.

Headlines as questions

The high percentage (66%) of respondents who strongly agree (rating 5) suggests that framing headlines as questions can significantly improve the understandability of privacy policies. These results support the idea that legal design, particularly in terms of formatting and structuring information, can be a powerful tool for making legal documents more transparent and user-centric.

Personalized language

A substantial majority (61%) strongly agreed (rating 5) with the idea that using personalized language, like 'we' and 'you', in privacy policies can significantly improve their transparency. The preference for personalized language supports the hypothesis that privacy policies should be transparent and easily understandable to users. These results support the idea that legal design, particularly in terms of language and personalization, can be a practical tool for making legal documents more transparent and user-centric.

Interactive features

The high percentage (61%) of respondents who strongly agree with the use of drop-down menus suggests that interactive design elements can significantly enhance the user-centricity of privacy policies. The preference for drop-down menus might indicate that current privacy policies are often text-heavy and lack interactive features, which can impede user engagement and understanding. These results support the idea that legal design, especially in terms of interactivity and user engagement, can be a practical method for improving the user-centricity of legal documents.

Bold and bullet points

A significant majority (71%) percentage of respondents strongly agreed that the use of bold text on important parts can enhance the memorability and internalization of privacy policies. Additionally, 73% strongly agreed that the use of bullet points also enhances retention and internalization. These results support the idea that legal design, particularly in terms of visual emphasis, can be a practical method for improving the communication and effectiveness of legal documents. The responses to this statement reinforce the notion that using design elements like bold text to emphasize key information and using elements like bullet points to structure information, can enhance the memorability and internalization of privacy policies, supporting the broader application of legal design in law and GDPR compliance.

Visual elements

The positive response (54% rated 5) to using visual elements, such as icons and colours, supports the hypothesis that visually engaging and aesthetically pleasing design can make legal documents like privacy policies more user-centric and engaging. However, the results were more distributed compared with the previous statements regarding design methods' effectiveness. That could indicate that icons and colours do not make the document more understandable just for the sake of icons and colours, and rather must serve a real purpose when used. Using visual elements can be distracting and controversially make the document less understandable. Therefore, it is important to consider the well-known tip: less is more.

5.2 Evolution Through Four Lenses: Towards Fairer and More Transparent Privacy Policies

User-centricity and transparency are core components of legal design, and the feedback from all groups indicates that the legal designed policy was successful in this regard, particularly with the laypeople groups. The strong response from laypeople may be reflective of the fact that user-centric approaches resonate well with the general

public when dealing with privacy policies, emphasizing the importance of such methods in legal document preparation, especially in privacy policies.

The last section of the analytical framework addresses the evolution of privacy policies through four lenses: the psychological shift in legal practitioners' mindsets, linguistic refinements for clearer communication, visual and functional design for user-friendliness, and the incorporation of artificial intelligence (AI) for technological advancement. The objective of this section is to synthesize the theoretical, legal, empirical, and analytical frameworks underpinning this thesis, thereby fostering an integrated approach that offers a comprehensive view of the evolution within the legal domain.

5.2.1 Lawyer's Mindset—The Psychological Evolution

Legal design invites a paradigm shift in the legal profession, urging a departure from the predominant calculative thinking—characterized by Heidegger as a process that "computes ever new, ever more promising and at the same time more economical possibilities"—towards a more contemplative approach.²⁰⁵ Contemplative thinking does not seek to validate established views but rather to uncover new insights, a perspective echoed by Sakari Hänninen and crucial for the psychological development of lawyers.²⁰⁶ Heidegger emphasizes that legal professionals often adhere to calculative thinking, which focuses on predetermined conditions.²⁰⁷ This transformative thinking within legal design challenges the conservative and complex conservative presentation of legal language, such as that found in privacy policies. The goal is to foster innovative realizations, acknowledging the need for change and advancement in the legal sphere, particularly within data protection law.

The mindset change also encompasses a broader understanding of justice. Often seen as a social construction, the concept of justice transcends the dichotomy between

²⁰⁵ Martin Heidegger, *Discourse on Thinking* (trans John M Anderson and Hans Freund, Harper & Row 1966) 46.

²⁰⁶ Pauli Rautiainen, Aura Kostiainen, Visa Kurki, Niko Soininen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 100–103.

²⁰⁷ Martin Heidegger, 'Die Frage nach der Technik' in *Vorträge und Aufsätze* (1954).

objective natural phenomena and subjective preferences. Additionally, Rautiainen et al. highlight that it exists within the intersubjective space, lending it a form of objectivity that is unique to the social fabric of human interactions.²⁰⁸ This perspective on justice is integral to reorienting the legal professional's mindset from one fixated on rigid objectivity to one that embraces the nuanced, intersubjective nature of law.

Goodrich, through a psychoanalytical lens, as discussed earlier in section 2.1, critiques the legal profession for its detachment and obscurity, traits rooted in a bygone era of religious and theistic traditions that revered objectivity and certainty. He contends that the legal field, driven by antiquated texts and doctrines, has historically shielded itself from personal self-reflection and political scrutiny.²⁰⁹ Legal design challenges this static and myopic view of the law, advocating for the lawyer's mindset and the whole field to evolve in step with interdisciplinary advancements.

This thesis argues that the transition is pivotal when considering privacy policies, which have traditionally been drafted with an objective alignment to GDPR, often overlooking the subjectivity and practical comprehension of the end-user. The objective nature of law, as discussed by Goodrich,²¹⁰ can lead to a neglect of the subjective dimensions of legal communication, casting the individual—the subject of law—into obscurity. This oversight can impede the individual's right to access legal information in privacy policies that are comprehensible and meaningful.

In the context of this thesis, particularly in relation to the psychological evolution of the lawyer's mindset, Plato's Allegory of the Cave serves as an enlightening analogy. Plato's allegory, where prisoners in a cave perceive shadows as the entirety of reality,²¹¹ parallels the conservative mindset in legal practice. Lawyers, often entrenched in the 'cave' of conventional legal drafting, perceive and present legal documents in ways that obscure their true intent and essence, similar to the shadows on the cave wall. The

²⁰⁸ Pauli Rautiainen, Aura Kostiainen, Visa Kurki, Niko Soininen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023).

²⁰⁹ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

²¹⁰ *Ibid* 1050-1052.

²¹¹ Plato, *The Republic* (trans Grube GMA) (Hackett Publishing Company 1992) bk VII.

journey of the prisoners from the cave into the light mirrors the transformative process advocated in legal design. Just as prisoners realize the limitations of their previous perceptions upon seeing the world outside the cave²¹², legal design challenges lawyers to step beyond the confines of conservative legal language and dense text. It encourages the adoption of a more contemplative approach, moving away from the calculative thinking that dominates legal practice. This shift involves recognizing the need for clear, visually engaging, and comprehensible legal documents, akin to emerging into the light of understanding and true legal reality.

In this way, legal design symbolizes an escape from the shadows of complex legal jargon and intricate text, illuminating the genuine substance of legal documents. It underscores the importance of psychological evolution within the legal profession, urging lawyers to embrace a mindset that prioritizes user-centricity and accessibility. By doing so, legal design not only aims to present legal information more clearly but also to fundamentally change how lawyers perceive and interact with the law itself, akin to the enlightening journey from the shadows into the light in Plato's allegory.

To conclude, the empirical study of this thesis aims to show that incorporating legal design into the creation of privacy policies represents an opportunity to revitalize the lawyer's approach, aligning it with modern needs. It is about shedding the restrictive and arcane baggage of the past²¹³ and adopting a mindset that embraces clarity, user-centricity, and the dynamic interplay between the objective and subjective aspects of law. By doing so, legal design does not just aim to meet the objective standards set by GDPR but goes beyond, to truly meet the needs of the data subject, fostering a deeper understanding and an authentic connection with the law. This shift signifies a move towards a more empathetic and user-centered legal culture, reflective of a modern and evolving society.

²¹² Ibid.

²¹³ Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

5.2.2 Language by Information Design–The Linguistic Evolution

This second lens of review delves into how the structuring of legal information can facilitate the creation of privacy policies that are not only compliant but also comprehensible and engaging to the end-user. It articulates the transformation of privacy policy language from a dense legal lexicon to a more accessible vernacular, leveraging the principles of information design to bridge the gap between legal complexity and lay understanding.

As described throughout this thesis, GDPR's guidelines on transparency emphasises how essential it is for controllers to articulate the consequences of data processing in clear, unambiguous language, detailing the actual impact on data subjects.²¹⁴ Employing information design transforms complex legalese into accessible language, making privacy notices more in alignment with the guidelines.

Information design in legal design refers to the use of design principles and techniques to present legal information, the actual text, in a clear, concise, and engaging way, as defined by Rossi, Ducato, Haapio, Passera and Palmirani.²¹⁵ The goal of information design is to help people understand complex legal information and make informed decisions. This is achieved by using hierarchy within the text by creating structure, and by visual aids such as diagrams, graphs, and illustrations to present information in a way that is easy to understand and remember.²¹⁶ These techniques help people make sense of complex legal information and make informed decisions, as stipulated in the GDPR, without necessarily the need for specialized knowledge or expertise.

Information design is harnessed to deliver legal content in a manner that is easily digestible. This involves a commitment to plain language, eschewing jargon in favour

²¹⁴ Article 29 Data Protection Working Party, 'Guidelines on Transparency under Regulation 2016/679' (2016) 10.

²¹⁵ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019).

²¹⁶ Rachel Finn and Angela Daly, *The Role of Information Design in Legal Decision-Making* (Journal of Law and Information Science, 2020.); Rune Pettersson, *Information Design* (John Benjamins Publishing Company 2002) 15-19.

of clarity, and ensuring legibility through appropriate font choices and the strategic use of bold type for key passages. The concept extends to the provision of understandable examples to illustrate legal-technical terms, making abstract concepts more tangible and thus, more relatable for the reader.²¹⁷ Based on the findings of the empirical study presented in section 5.1, these methods of information design, employed to the legal designed privacy policy, did meet the intended goal.

The structure of legal documents is another cornerstone of information design. A consistent layout with labelled sections, a table of contents for quick navigation, and multi-layered notices provide a clear roadmap through the document.²¹⁸ This multi-tiered approach offers an immediate overview and the option to delve deeper into specific areas as needed, respecting the user's time and cognitive load, which aligns with the GDPR's goal to avoid information fatigue, as discussed in section 3.3.2.

Furthermore, the design acknowledges the diverse needs of various user groups. For instance, child-friendly language is recommended for documents targeting underage users, ensuring inclusivity and comprehension across age groups. Progress mechanisms and estimations of reading time also cater to the user's need for orientation and time management within the document.²¹⁹

The integration of multimodal communication—combining auditory, visual, and textual channels—alongside interactive chatbots and frequently asked questions (FAQs) sections, can also significantly enhance the user experience.²²⁰ These methods ensure that the legal information is not only presented but also personalized and responsive to the user's inquiries and concerns.

By incorporating these various aspects of information design, the findings in the empirical study posit that legal documents can evolve into tools that empower users.

²¹⁷ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019).

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

The aim is to foster an informed user base that understands and can act upon the legal information provided, thereby advancing the objectives of fairness, transparency, and user-centricity in data protection law. This approach also reflects a psychological evolution for legal professionals, who must adapt their communication strategies to meet the needs of a changing audience in an increasingly interdisciplinary legal landscape. By improving access to legal information and helping individuals make informed decisions, as stipulated in the Article 4(11) of the GDPR (see section 3.2.1), information design can play a critical role in individual's understanding of the legal content in the privacy policies we face daily.

Finally, as Nousiainen suggests, legal design is an evolving field with promising future implications.²²¹ Similarly, envisioning the future implications of adopting design principles in privacy policies can guide ongoing efforts toward user-centric data protection compliance.

5.2.3 Aesthetics by Information Design–The Visual and Interactive Evolution

In this third lens, the focus is on how aesthetics and information design interplay to enhance the understanding and engagement of users with privacy policies.

Manderson, being an international leader in interdisciplinary scholarship in law and the humanities,²²² argues that aesthetics is a unique way of knowing, one that transcends rational and literal interpretations. He emphasizes the role of sensory perception in understanding, suggesting that legal documents should be designed to evoke a meaningful experience for the end-user.²²³ This approach goes beyond mere communication; it is about crafting an experience of understanding and relevance, making the data subject more engaged in their rights.

²²¹ Katri Nousiainen, 'Measuring the Impact and Value of Legal Design in Commercial Contracting within the Law and Economics Framework' in *Economics and Society*, Publications of the Hanken School of Economics Nr 374 (Helsinki 2023)

²²² 'Dr Desmond Manderson - Researchers' (Australian National University) <https://researchers.anu.edu.au/researchers/manderson-dra>.

²²³ Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice* (University of California Press 2000) 10.

Additionally, Scherwin extends the discussion of aesthetics into the realm of legal documentation. While his focus is primarily on the courtroom, the principles he outlines are equally applicable to privacy policies. Visual storytelling, he posits, must be added to the lawyer's cultural toolkit, as visual meaning-making is fundamentally different from text-based interpretation. Our response to visuals is rapid, holistic, and affective, shaped by a lifetime of visual experiences.²²⁴ This fact can be leveraged in legal design, especially to enhance laypeople's understanding of privacy policies.

Scherwin further argues that the efficacy of visual elements in legal communication is significant, as visual stimuli can greatly enhance understanding and belief in the conveyed information.²²⁵ This argument is pivotal when considering the integration of visual elements in legal documents, particularly in areas as complex as privacy policies. Furthermore, Scherwin's assertion that visual delight may act as a barometer for visual truth offers a compelling rationale for the use of legal design. In the context of privacy policies, incorporating visual elements could revolutionize these often dense and impenetrable documents, making them more engaging and understandable to users. Scherwin's perspective suggests that the aesthetically pleasing presentation of legal information can not only simplify legal language but also enhance the user's engagement and trust in the document.²²⁶

The use of visual elements such as tables, graphs, icons, and flowcharts in legal design aids in breaking down complex information, making it more accessible for the user. Interactive features like video tutorials and gamified experiences, as mentioned earlier, transform engagement with legal terms from passive reading to active learning.²²⁷ Rautiainen et al. also provide that to make legal research information accessible, the

²²⁴ Richard K Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (3rd edn, Routledge 2011) 2-3.

²²⁵ Ibid 154-155.

²²⁶ Ibid 154-155.

²²⁷ Arianna Rossi, Rossana Ducato, Helena Haapio, Stefania Passera, and Monica Palmirani, 'Legal Design Patterns: Towards a New Language for Legal Information Design' in 'Internet of Things – Digital Edition of Proceedings of the 22nd International Legal Informatics Symposium 2019' (JUSLetter IT, 21 February 2019). See Helena Haapio and Stefania Passera, 'Contracts as Interfaces: Exploring Visual Representation Patterns in Contract Design' in M J Katz, RA Dolin, and M Bommarito (eds), *Legal Informatics* (Cambridge University Press, forthcoming) (published ahead of print as part of a doctoral dissertation, 2016) 37 pages.

words must be well-crafted and that carefully considered images could be useful²²⁸—this recommendation can be extended to legal documentation, such as privacy policies. The concepts of UI and UX are crucial in this context. UI pertains to the graphical and interactive aspects that a user encounters, while UX encompasses the broader experience, including emotional, cognitive, and physical interactions.²²⁹ Both elements play a significant role in making legal documents like privacy policies more user-centric and engaging, and both elements were comprehensively leveraged in this empirical study.

Reflecting in a Freudian manner²³⁰, as earlier described in section 2.1.1, legal design has the potential to 'crack open' the legal text not through traditional rule application but through analytical techniques of reconstruction and visualization—hallmarks of legal design. This approach signifies a paradigm shift in GDPR compliant legal communication, aiming to make privacy policies more approachable and meaningful to the data subject. This section highlights the potential of integrating aesthetic and functional elements into legal design, paving the way for a more user-centric and engaging approach to legal documentation.

In conclusion, the findings in this empirical study suggests that incorporating interactive elements, such as drop-down menus and layering, could improve the user-centricity of privacy policies, potentially leading to better compliance with the GDPR's requirements. The test groups' preference for visual elements indicates that current privacy policies may often lack visual engagement, which can hinder approachability and user engagement.

²²⁸ Pauli Rautiainen, Aura Kostiainen, Visa Kurki, Niko Soininen and Tapio Määttä, *Oikeus ja sen Tutkiminen* (Vastapaino 2023) 48.

²²⁹ Hoensik Joo, 'A Study on Understanding of UI and UX, and Understanding of Design According to User Interface Change' (2017) 12 *International Journal of Applied Engineering Research* 9931-9935.

²³⁰ Sigmund Freud, *Introduction to Psychoanalysis* (McClelland & Stewart 1917); Jonathan Lear, *Freud* (1st edn, Routledge 2015); Peter Goodrich, *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan London 1997) 1050-1052.

5.2.4 Artificial Intelligence—The Technological Evolution

Through this last lens, this section explores the burgeoning role of AI in the legal domain, particularly focusing on how tools like ChatGPT²³¹ can revolutionize the creation and design of privacy policies. This exploration delves into the ways AI can assist legal professionals, especially those unfamiliar with design principles, in reformulating and structurally organizing legal texts, specifically privacy policies, to be more user-centric and comprehensible. Based on research used for this section, AI has shown prominent potential in simplifying complex legalese and reshaping it into formats that align with GDPR's objectives of transparency and user-centricity. However, challenges and ethical considerations inherent in integrating AI into legal practices are not non-existent.²³²

As highlighted by Andrew Perlman, technologies like Generative AI, such as ChatGPT, are reshaping the legal landscape, offering unprecedented tools for legal drafting and research.²³³ Legal technology companies, law firms, lawyers, law students, clients, and prospective clients are using these tools for various legal applications.²³⁴ This integration marks a significant shift in how legal professionals approach document creation, moving from conservative methods to AI-assisted processes that streamline and enhance the quality of legal writing.²³⁵ The application of AI in legal design demonstrates a symbiotic relationship between technology and law, bridging the gap between legal complexity and design simplicity.

Nick Noonan discusses how ChatGPT can change how clients interact with legal services. It offers capabilities like providing general legal information, drafting legal documents, and researching legal issues and this can be particularly beneficial for

²³¹ OpenAI, 'About' <https://openai.com/about>. Accessed 30.1.2024.

²³² See Marjan Ajevski, Kim Barker, Andrew Gilbert, Liz Hardie, and Francine Ryan, 'ChatGPT and the Future of Legal Education and Practice' (2023) 57(3) *The Law Teacher* 352-364; Andrew Perlman, 'The Implications of ChatGPT for Legal Services and Society' (2022); Nick Noonan, 'Creative Mutation: A Prescriptive Approach to the Use of ChatGPT and Large Language Models in Lawyering' (2023).

²³³ Andrew Perlman, 'The Implications of ChatGPT for Legal Services and Society' (2022).

²³⁴ Nick Noonan, 'Creative Mutation: A Prescriptive Approach to the Use of ChatGPT and Large Language Models in Lawyering' (2023).

²³⁵ Andrew Perlman, 'The Implications of ChatGPT for Legal Services and Society' (2022).

clients who seek convenience or have hesitations in discussing issues with a human lawyer.²³⁶

Marjan Ajevski et al. highlight several ethical considerations and the importance of quality control in the use of AI in legal practice. They emphasize the risks of bias in AI models like ChatGPT, especially when trained on biased data, potentially leading to biases in legal documents. This underscores the need for fairness and representation in legal processes. The article also stresses the necessity of human oversight in AI-generated legal work. It urges legal professionals to understand AI limitations and maintain the accuracy and compliance of legal documents. Additionally, it addresses privacy concerns, advocating for strong measures to protect client data confidentiality when AI is utilized in legal settings.²³⁷

The empirical study conducted for this thesis leveraged ChatGPT to brainstorm various linguistic solutions, underpinning the research with AI-generated insights and drafts. This approach aligns with the observations by Sam Illingworth regarding AI's emerging role in legal education and practice.²³⁸ The technology not only facilitated the generation of initial drafts but also allowed for an exploration of different design approaches, underscoring the potential of AI in enhancing legal creativity and efficiency. However, despite the advantages offered by AI, the importance of human oversight remains paramount, as noted. The legal language partly drafted for the empirical study with the help of AI was meticulously reviewed by language experts, ensuring that the final legal design product upheld the highest standards of clarity, accuracy, and compliance. This step resonates with the ethical considerations and quality control highlighted in the literature on AI in legal practice.

²³⁶ Nick Noonan, 'Creative Mutation: A Prescriptive Approach to the Use of ChatGPT and Large Language Models in Lawyering' (2023).

²³⁷ Marjan Ajevski, Kim Barker, Andrew Gilbert, Liz Hardie, and Francine Ryan, 'ChatGPT and the Future of Legal Education and Practice' (2023) 57(3) *The Law Teacher* 352-364.

²³⁸ Sam Illingworth, 'ChatGPT: Students Could Use AI to Cheat, But It's a Chance to Rethink Assessment Altogether' (*The Conversation*, 19 January 2023) <https://theconversation.com/chatgpt-students-could-useai-to-cheat-but-its-a-chance-to-rethink-assessment-altogether-198019> accessed 17 January 2024.

The adoption of AI in legal practice, as discussed by Perlman, signifies a shift in the lawyer's mindset.²³⁹ It necessitates an openness to technological innovations and a willingness to embrace new methodologies for legal drafting and design. Furthermore, ChatGPT's role in transforming legal language, as seen in this thesis, embodies the linguistic evolution in legal design. AI tools can simplify complex legal jargon into user-centric language, making privacy policies more accessible and understandable to lay audiences. Finally, AI's ability to assist in organizing and structuring legal content contributes to the aesthetic evolution in legal design. As with linguistic changes, AI can help create visually appealing and interactive privacy policies, enhancing user engagement and comprehension.

To conclude and to effectively bridge the gap between the technological evolution and the previously discussed psychological, linguistic, and visual-interactive evolutions, this section offers insights to culminate this comprehensive review of the multifaceted evolution in the legal profession through legal design.

²³⁹ Andrew Perlman, 'The Implications of ChatGPT for Legal Services and Society' (2022).

6 Final Remarks

In this thesis, we embarked on a journey to explore the intricate relationship between legal design and GDPR compliance, particularly focusing on the transformation of privacy policies. The journey has led to a profound understanding of how legal design serves as a vital bridge in making the law more accessible, user-centric, and aligned with the spirit of GDPR.

Addressing the Research Questions and Hypotheses:

1. **Privacy Policy Effectiveness:** The empirical study conducted within this research and the presented previous research strongly support the hypothesis that the requirements of Article 12(1) of the GDPR are not adequately met in current privacy policy practices. This inadequacy is rooted in a conservative legal mindset that prioritizes legalistic precision over user-centricity. The findings suggest that while lawyers aim to minimize risks, this often comes at the cost of user understanding and engagement, thereby hindering the effectiveness of both the realisation of GDPR's main principle of transparency in Article 5(1)(a) and the further requirements of user-centric informing in Article 12(1).
2. **Legal Design's Potential:** The research confirms the hypothesis that legal design methodologies offer a practical solution to the deficiencies identified in the GDPR's Article 12(1). By employing human-centred design principles, legal design transforms privacy policies into formats that are not only compliant but also easily comprehensible to a broad audience. This transformation marks a significant shift from the conservative "lawyer for lawyers" approach, advocating for interdisciplinary collaboration among lawyers, designers, coders, and communicators. This collaborative effort is essential for creating legal documents that are accessible and engaging for everyone, not just legal professionals.

Concluding Remarks:

The journey through this thesis reveals that legal design is not merely an add-on to conservative legal practices but *a fundamental shift* towards a more inclusive and empathetic legal system. Legal design challenges the archaic mythologies and rigidities of conservative legal practices, advocating for a system where law is not only about rule application but also about user engagement and problem-solving.

The integration of AI tools like ChatGPT in this process represents a significant technological evolution alongside with the psychological, linguistic, visual and proactive evolution. It shows promise in enhancing the efficiency and user-centricity of legal document creation, especially in privacy policies. However, this integration must be navigated with careful ethical consideration and professional integrity, ensuring that human expertise remains at the forefront, at least for now.

The thesis also calls for a broader reformation in legal education, urging law schools to adapt their curricula to include teachings on innovative and currently relevant approaches such as legal design and AI technologies. This adaptation is crucial for preparing future legal professionals to navigate the evolving landscape of legal practice.

In conclusion, this thesis affirms that the path to a more accessible and user-centric legal system within data protection law lies in embracing legal design and its interdisciplinary approach. By doing so, we can ensure that legal documents, particularly privacy policies, are not only legally compliant but also truly understandable and engaging for the data subjects they are intended to serve. This shift towards a human-centred legal system is not just a professional obligation but also a societal imperative, paving the way for a legal system that truly works for its *people*.