

# CONTRACT MANAGEMENT Start your simplification journey with the IACCM Contract Design Pattern Library



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*Editor's note -- Few would disagree that the world of contract management has long been frustrated with lengthy contract language. Too often we find it disorganized, verbose, filled with legal jargon and impossible to understand.*

*But there's a change in the wind – a Contract Design Pattern Library<sup>1</sup> created for IACCM by our authors, Stefania Passera and Helena Haapio as “an ongoing collection of contract design patterns – effective repeatable solutions to commonly occurring usability and understandability problems in contracts.”*

*In this article Stefania and Helena walk you through the design pattern approach, and explain how contract patterns help you organize and communicate contracts more clearly so that they are read, understood, and acted upon. As you take this journey ask yourself, “what is the purpose of a contract?” You might think you know, but do you, really?*

Lawyers are often asked to draft contracts and provide risk-related advice and guidance. Many are good writers and produce text that is precise and thorough.

But what if people just do not read? What if they do not find what they look for – or do not understand what they find in the contract?

This may not be a problem if you think that the purpose of a contract is just to provide legal protection and remedies in the event of a dispute, or that contracts, once signed, are best left in the drawer.

However, IACCM's research reveals that legal functionality is just *one of the many* purposes of a contract. A recent survey of participants revealed a diversity of views. Eleven distinct 'purposes' emerged from that research as follows:<sup>2</sup> (Figure 1 lists them.)

#### **The purpose of a contract**

1. Record of rights, responsibilities and obligations
2. Protection and remedies in the event of a dispute
3. Framework for a mutually successful business outcome
4. Tool for risk apportionment
5. Support for a business relationship
6. Governance and performance management
7. Tool for risk management
8. Effective communication tool for those with a need to know
9. Providing operational guidance
10. Instrument for generating financial benefit
11. Demonstrating brand and corporate values

**Figure 1** – The purpose of a contract goes way beyond legal functionality.

The survey further showed that just 26% of the research respondents claimed that their contracts are good at fulfilling their purpose as tools for communication and operational guidance. The remaining 74%, familiar with the consequences of such shortcomings, describe them in terms of increased contract risk – increased costs or delays, operational inefficiencies and errors, and ultimately claims or disputes.

We need to support contract readers to understand and make use of what contracts say.<sup>3</sup> To do so, we need to equip contract crafters with the right tools to design (and not only draft) contracts that make sense for business people. After all, contract readers' problems easily become contract writers' problems (Figure 2 illustrates this point in several ways).

It's not a matter of creating a new toolbox for contract creators from scratch, but rather expanding and complementing what exists. There are plenty of good manuals and style guides out there to *draft text* that helps prevent ambiguity and insulate the contract against litigation attacks. Drafting approaches are also available to make prose more concise, and plain language guidelines to make it more digestible to users. **Figure 2** – Typical contract readers' and writers' problems caused by contracts not fulfilling their purpose of being effective communication tools.

Contract readers' problems	Contract writers' problems
<ul style="list-style-type: none"> <li>The contract is too long, I only have time to skim read.</li> </ul>	<ul style="list-style-type: none"> <li>The contract is too long, I only have time to skim read.</li> </ul>
<ul style="list-style-type: none"> <li>The contract is too long, I only have time to skim read.</li> </ul>	<ul style="list-style-type: none"> <li>People don't know the key points of the contracts.</li> </ul>
<ul style="list-style-type: none"> <li>I do not know where to find the information I need.</li> </ul>	<ul style="list-style-type: none"> <li>The contract is too long, I only have time to skim read.</li> </ul>
<ul style="list-style-type: none"> <li>I cannot find the information I need, even if I try.</li> </ul>	<ul style="list-style-type: none"> <li>The contract is too long, I only have time to skim read.</li> </ul>
<ul style="list-style-type: none"> <li>I cannot find the information I need, even if I try.</li> </ul>	<ul style="list-style-type: none"> <li>Business colleagues are not engaged in crafting the contracts and do not provide their knowledge.</li> </ul>
<ul style="list-style-type: none"> <li>I don't understand which of these provisions apply to my case.</li> </ul>	
<ul style="list-style-type: none"> <li>Contracts are probably written by lawyers for lawyers anyway, so why should I read it? It's not addressed to me.</li> </ul>	
<ul style="list-style-type: none"> <li>Contracts are probably written by lawyers for lawyers anyway, so why should I read it? It's not addressed to me.</li> </ul>	

### But why stop there?

- Why not consider information architecture, document organization and layouts that support strategic reading (the *de facto* reading style of busy people at work)?<sup>4</sup>
- Why not rely on explanatory diagrams to complement the limits of prose in encoding clearly and concisely specific types of information (for instance, processes with lots of exceptions and if/then conditions)?
- Or why not rethink completely the genre and format of contracts (think comic contracts<sup>5</sup> and even video contracts<sup>6</sup>), if readers' abilities, literacy levels and preferences prevent us from engaging them through more traditional means?
- And why stop at the contract document itself, if contractual knowledge can be conveyed and strengthened also through contract guides, playbooks, training materials, and even just by sketching together at meetings?

These techniques, while familiar to information designers, are virtually unknown to many contract creators, because they have not been documented, contextualized, and explained in a way that makes sense for this community. Moreover, change is a matter of heart and inspiration: without examples and success stories it is quite hard to know what the art of the possible is, and get encouraged in pursuing it.

But this is about to change. And this is why we started to work with IACCM, first to explore contract simplification and visualization, and then to build the Contract Design Pattern Library.<sup>1</sup>

## WHAT DO WE MEAN BY CONTRACT SIMPLIFICATION?

Contract simplification means different things for different people. For us, it is about making contracts clearer, more straightforward, and easier to use and to act upon.

When simplification is suggested, some contract crafters are worried that something important is lost, and others are suspicious of dumbing down their texts. Indeed, commercial contracts cover complex content and they are often organized in a set of multi-layered documents for good reasons. While “intrinsic” subject matter complexity is unavoidable in some cases, there is plenty of avoidable complexity caused by “extrinsic” factors like:

- unnecessarily convoluted syntax and terminology;
- careless document organization, illogical information architecture, and misleading headings;
- lack of visual cues and other features that help the user navigate the contract document(s); and
- inappropriate use of typography leading to poor readability (e.g. using all caps to make clauses “conspicuous”, or multi-column layouts with tiny fontsize to make documents “shorter”)

Information designers talk about “quantity-simple” when referring to document length – something that looks plainer and shorter – and about “quality-simple” when referring to the user experience and ease of use. Our kind of simplification focuses mostly on the latter kind, with a recognition that it is not always possible to radically strip down contract texts without losing important detail – although this should not be an excuse to tolerate unnecessarily pompous prose. In fact, often easier to use contract documents may be somewhat longer because of a larger font size and generous margins, and the addition of subheadings, explanations, summaries, and diagrams<sup>7</sup>. However, what matters is the subjective experience of the readers: page count does not really matter if it takes them less time and effort to read through them, and understand.

## THINKING LIKE A (CONTRACT) DESIGNER

How can we get contract crafters to think more like information designers in terms of effective communication? And how can we help designers (if they get involved, at all) get up to speed with the specific challenges of contracts? How do we get both to keep business needs in focus and support contract users and stakeholders in achieving success?

Many design-based disciplines require cross-disciplinary collaboration and understanding – think about software development, interaction design, architecture, just to name a few. Professionals in these fields are able to communicate and collaborate around recurrent problems and more readily identify typical best practice solutions because they rely on *patterns*. And, over time, they tend to name, collect and systematize such patterns into *pattern libraries*. So why not do the same for contracts?

The IACCM Contract Design Pattern Library<sup>1</sup> is a self-help resource to support and inspire contract innovators to design usable and understandable contracts. It collects and organizes *contract design patterns* – effective repeatable solutions to commonly occurring usability and understandability problems in contracts – complemented with plenty of practical examples of real-life applications.

## SO, WHAT DOES A CONTRACT DESIGN PATTERN LOOK LIKE?

Each contract design pattern has a description to help you understand how you can use it, and a section with examples to see it in action. A pattern can often be used in different clauses or situations. We offer suggestions and examples of use for a certain pattern, but it is never an exhaustive list. Don't get discouraged if we haven't listed your context of application!

You know what is best for your business and your contract readers; so, if you think that a pattern may work well, it's worth trying it.

Moreover, each pattern has a comment section where you can exchange ideas, suggestions and feedback with your peers to develop your mastery of patterns. Do not use every pattern in every contract. Patterns are for you to choose and mix carefully based on the problems you are facing and the communication goal you seek to achieve.

## **PATTERNS ARE NOT READY-MADE, COPY-PASTEABLE SOLUTIONS**

A design pattern approach is a powerful one, because it forces its users to move away from the false comfort of copy-pasting and template thinking, which easily results in the endless rehashing of dysfunctional contract language. Although we all favor standardization and simplification, we are not big fans of mindless copy-pasting and one-fits-all approaches.

When you implement the solution that the pattern represents, you need to adapt it to your specific context (e.g., your users' needs and problems, your business goals, your brand and tone of voice, the specific type of information at hand etc.). Understanding why a pattern works and what problem it solves for contract readers will soon develop into a lifelong user-centered attitude.

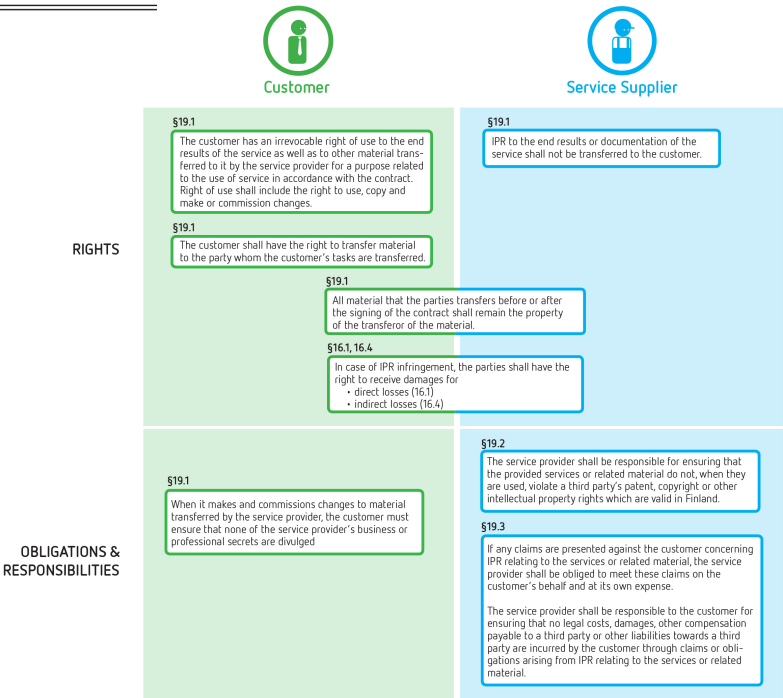
## **PATTERNS ARE NOT CLAUSE-SPECIFIC**

We are often asked if patterns can help in communicating simpler, more specific clauses. But that is not how patterns work. You will not find answers to questions like "*How do I visualize my Intellectual Property Rights (IPR) clause?*"

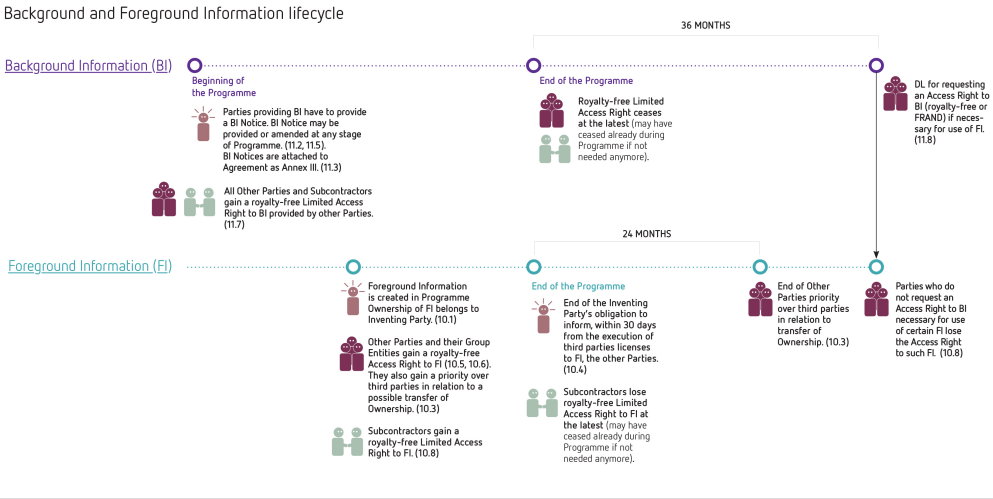
The answer, in that case, would depend on *what exactly you are trying to communicate about IPR*. If you are trying to summarize the allocation of rights between the parties, then a swimlane<sup>8</sup> might be appropriate (Figure 3). If you are trying to convey a process or a sequence of events related to IPR, then a timeline<sup>9</sup> may be better (Figure 4.)

Before using design patterns you always need to consider your users' information needs and your communication goals – what do you need people to know and what goal do they need to achieve?

INTELLECTUAL PROPERTY RIGHTS



**Figure 3** – (Click on the image to enlarge it) This swimlane, used in a visual guide explaining the Finnish public procurement terms (JYSE 2009 SERVICES), illustrates how intellectual property rights are allocated between the parties. © 2013 Aalto University & Suomen Kuntaliitto ry (The Association of Finnish Local and Regional Authorities). [Creative Commons BY-ND 3.0 Unported License](#)  
Design: Stefania Passera



**Figure 4** – (Click on the image to enlarge it) This timeline was used in a research consortium agreement to clarify how the rights of different parties to background and foreground information change over time. © 2016 DIMECC. Used with permission. Design: Stefania Passera

DESIGN PATTERNS ARE NOT (ONLY) ABOUT VISUALIZATIONS

When we talk about design patterns, some people immediately think of contract visualization techniques, like diagrams, icons, or comics. While many of these techniques are documented in our Library, design patterns are not necessarily something visual!

Some patterns are about information architecture – ways to organize and order content to make it easier for users to navigate, search, and make sense of the document. Other patterns apply to text – how to summarize it, for example, or how to affect the tone of voice of the communications. And some other patterns just document activities you can do while designing and simplifying contracts – like contract document mapping,<sup>10</sup> which you can use to start your simplification journey, to get an overview of the set of documents and their content, structure and length, and then start to plan their reorganization.

There are a number of ways to use the Library. One of its main goals is to show examples of the art of the possible. The Library is not a silver bullet, and the patterns are not templates, however. (See Figure 5.)

This Library is about:	This Library is <u>not</u> about:
<div><ul style="list-style-type: none"><li>· Encouraging contract crafters to think about contract users in everyday business scenarios and how to communicate effectively with them</li><li>· Recognizing typical information problems in contracts – and preventing and solving them</li><li>· Collecting design patterns to learn from new and better ways to craft contracts</li><li>· Offering flexible guidelines and models that you can adapt to your needs</li><li>· Inspiring you through examples of options that you can use in the (re)design of your contracts</li></ul></div>	<div><ul style="list-style-type: none"><li>· Providing templates or ready-made solutions intended to be copy-pasted</li><li>· Showing how to choose the right content for your contract</li><li>· Emphasizing clarity of language or text alone</li><li>· Using images or text ready to be copy-pasted in your contracts</li><li>· Teaching you to become an expert in graphic design or contract writing</li><li>· Using tools to create or automate the generation of text or images</li><li>· Giving legal advice: the text and images are provided “as is” and are examples only</li></ul></div>

**Figure 5** – What the IACCM Contract Design Pattern Library is and is not.

HOW TO GET STARTED WITH CONTRACT DESIGN PATTERNS – SOME TIPS

- First of all, we encourage you to explore the Library at your pace, get familiar with the design pattern approach, and get inspired by the examples we collected.
- Don't select a design pattern just because it looks cool. Patterns are for you to choose and mix carefully (no need to use them all at the same time!) based on the problems you are facing, and the communication goal you seek to achieve.
- As a starting point, think of your users' needs, your business goals, and the information you are trying to communicate. The Library offers some facilitating questions to get you started.<sup>11</sup>
- Don't worry about technical skills when you use visual patterns. At the beginning, just sketch on paper, focusing on getting the idea right. Your goal is clarity and functionality, rather than beauty or a wow-effect. And if your ideas are clear, finding a way to design documents or visuals is a relatively simple challenge for anyone with a modicum of computer literacy. You can create reasonably clear visualizations in Microsoft PowerPoint even if you are not a designer. Really.
- For more sophisticated visualizations, you may want to ask for help from your marketing or design department. It's a good idea to bring your sketches with you: mockups and prototypes will help you collaborate and communicate with designers around your idea.
- Experiment and scale: no need to overhaul all your contracts at once. Experiment with some patterns and test whether they help you reach your goals. Start with small experiments and pilots (g., a few clauses, one document), and use them to envision how your contracts could be and gain feedback from their end users.
- Involve different stakeholders to ensure that your redesigned contracts are useful and usable at different stages of the contracting lifecycle, and are compatible with your contract creation, management, and analytics tools. Make sure that scaling up is a continuous learning experience for all teams and departments involved – small experiments and lots of feedback are less risky and costly than big plans in the face of the unknown.

## CONTRIBUTE BACK TO THE CONTRACT DESIGN PATTERN LIBRARY

The IACCM Contract Design Pattern Library is a work in progress. To make it grow, we seek the contribution of examples and new patterns from contract innovators. If you have a solution that you keep on using and reusing successfully in your contracts, please consider sharing it by adding it to the Library.<sup>12</sup>

Contributions can be either real-life examples of patterns already documented in this library or a completely new pattern yet to be documented in the Library.

### **Learn more – webinars available!**

Stefania and Helena hosted a live, online webinar for IACCM members in May 2019 to showcase the basics of how design patterns work and how to fit design patterns into contracts to clarify known complexities.<sup>13</sup> They also hosted a webinar with Rob Waller of the Simplification Center in June 2016 on contract simplification.<sup>14</sup> Stefania also hosted an earlier presentation about the Library in March 2019.<sup>15</sup> Based on the many questions from participants, it looks like contract design patterns are rapidly generating much interest. Future iterations are forthcoming.

## REFERENCES

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