

# European Journal of Privacy Law & Technologies

2020/1



G. Giappichelli Editore

# European Journal of Privacy Law & Technologies

---

*Directed by* Lucilla Gatt

2020/1



G. Giappichelli Editore

European Journal of Privacy Law & Technologies

On line journal

Italian R.O.C. n. 25223

G. GIAPPICHELLI EDITORE - TORINO

VIA PO, 21 - TEL. 011-81.53.111 - FAX 011-81.25.100

<http://www.giappichelli.it>



Co-funded by the Rights,  
Equality and Citizenship (REC)  
Programme  
of the European Union

The Journal is one of the results of the European project TAtodPR (Training Activities to Implement the Data Protection Reform) that has received funding from the European Union's within the REC (Rights, Equality and Citizenship) Programme, under Grant Agreement No. 769191.

The contents of this Journal represent the views of the author only and are his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Published Online by G. Giappichelli in June 2020

[www.ejplt.tatodpr.eu](http://www.ejplt.tatodpr.eu)

| <b>Challenge Title: The prospects of legal design applied to privacy documents in light of the innovations introduced by the GDPR</b> |  |
|---|--|
| <b>Use Case Author</b>  | Sergio Guida, Raffaele Serpe, Alsob & ‘Legal Design Startup Project’ team reps.  |
| <b>Topic</b>  | Privacy in Legal Design.   |
| <b>Overview</b>   | <p>Everyday people, both as individuals and families and as businesses, are forced to interface with contracts, documents and legal procedures often without having the appropriate skills to “navigate” these systems. In many countries, the difficulty of bureaucracy and legal language often puts citizens in difficulty causing a sense of inadequacy towards the legal system but also the feeling of not having full control of their situation.</p> <p>So, some researchers have begun to discuss how the legal system could be rethought in terms of language and tools through the design approach. The discipline that tries to answer this question has been called “<b>Legal Design</b>” and aims to bring the legal world closer to people who have no training or experience in the legal field. In general terms, Legal Design is inspired by the concepts of <b>Design Thinking</b> and <b>User Experience (UX)</b>: the intent is to maintain an approach that puts people at the center of the design and delivery of services also in the legal world to make the more intuitive, usable and inclusive user-experience.</p> <p>Not only does a graphic and visual form made more effective in terms of Visual Law help to understand the content of a privacy document, but it can also help the understanding of the related legal process. In essence, the goal is to make citizens more aware with well-designed rules and procedures in terms of “Legal Design”, also towards the production of documents – just even in the Privacy’s field - that are simple, clear but above all attractive to the recipients.</p> |
| <b>1. Engage</b>  |  |
| <b>Big idea</b>   | Drawing the Privacy of the Future  |
| <b>Essential Question</b>   | Will people appreciate the prospects of Legal Design applied to Privacy documents, also in the light of the innovations introduced by the GDPR?  |
| <b>Initial resources</b>  | Gatt L., Montanari R., Caggiano I.A., <i>Consent to the processing of personal data: a legal and behavioural analysis: some Insights into the Effectiveness of Data Protection Law, EJPLT</i> , 2018, I. Available at <a href="https://www.rivisteweb.it/doi/10.1437/87306">https://www.rivisteweb.it/doi/10.1437/87306</a>  |

|                              |   |
|------------------------------|---|
|                              | <p>Caggiano I.A., <i>Il consenso al trattamento dei dati personali tra Nuovo Regolamento Europeo (GDPR) e analisi comportamentale. Iniziali spunti di riflessione</i>, in <i>DIMT</i>, 2017. Available at <a href="https://www.dimt.it/wp-content/uploads/2017/06/images_pdf_Caggiano.pdf">https://www.dimt.it/wp-content/uploads/2017/06/images_pdf_Caggiano.pdf</a></p> <p>Passaglia P. e Poletti D. (a cura di), <i>Nodi virtuali, legami informali: internet alla ricerca di regole: a trent'anni dalla nascita di internet e a venticinque anni dalla nascita del web</i>, Pisa university press, 2017. Available at: <a href="https://www.pisauniversitypress.it/scheda-ebook/paolo-passaglia-dianora-poletti/nodi-virtuali-legami-informali-internet-alla-ricerca-di-regole-9788867418053-455105.html">https://www.pisauniversitypress.it/scheda-ebook/paolo-passaglia-dianora-poletti/nodi-virtuali-legami-informali-internet-alla-ricerca-di-regole-9788867418053-455105.html</a></p> <p>Hagan M., <i>User-Centered Privacy Communication Design. Proceedings of the Symposium on Usable Privacy and Security (SOUPS) 2016</i>, Denver, Colorado. Available at SSRN: <a href="https://ssrn.com/abstract=2981075">https://ssrn.com/abstract=2981075</a></p> <p>Aulino L., <i>La conclusione dei contratti online: legal design e clausole vessatorie</i>, <i>Diritto dell'Internet</i>, 2020, <a href="https://dirittodiinternet.it/la-conclusione-dei-contratti-online-legal-design-clausole-vessatorie/">https://dirittodiinternet.it/la-conclusione-dei-contratti-online-legal-design-clausole-vessatorie/</a></p> <p>Research activities of the <i>Research Centre of European Private Law (ReCEPL)</i>:<br/> <a href="https://www.unisob.na.it/ateneo/c008_e.htm?vr=1&amp;lg=en">https://www.unisob.na.it/ateneo/c008_e.htm?vr=1&amp;lg=en</a><br/> <a href="http://www.notafasanoiaccarino.it/plugins/blocchi_contenuto/public/contents/59/allegati/153929947PDFdellaPubblicazione.pdf">http://www.notafasanoiaccarino.it/plugins/blocchi_contenuto/public/contents/59/allegati/153929947PDFdellaPubblicazione.pdf</a><br/> <a href="http://www.lawbydesign.co/en/legal-design/">http://www.lawbydesign.co/en/legal-design/</a></p> |
| <p><b>Guiding points</b></p> | <ul style="list-style-type: none"> <li>– The use of design thinking in the legal field was born at Stanford Law School &amp; d.school in the United States. The intent is to maintain an approach that places people at the center of the design and delivery of services also in the legal world to make the experience more intuitive, usable and inclusive.</li> <li>– The design methodologies offer an opportunity to review the way in which the main tools of privacy's activity are conceived and narrated, namely documents, contracts and procedures.</li> <li>– Citizens perceive the need to simplify the visualization and will appreciate the potential of legal design from the simplification of language, to the redesign of privacy documents, up to the simplification of procedures both for citizens and for professionals and operators.</li> </ul>   |
| <p><b>Reflections</b></p>    | <ul style="list-style-type: none"> <li>– Users express the need to simplify the display when they interface with long pages of terms and conditions concerning privacy even when they are using digital services.</li> </ul>  |

|                                    |   |
|------------------------------------|---|
|                                    | <ul style="list-style-type: none"> <li>- The key point is that, starting from the analysis of the texts of some modules (e.g. ‘information on the use of personal data’ and ‘privacy consent’ for various activities, both online and in the physical world), to “translate “the requests - almost always perceived both by the writers and by the users as bureaucratic or slightly more - in simpler questions for the citizen, also adapting to the level of understanding of the user’s language.</li> <li>- A dialogical participation with citizens is therefore highly desirable, each of whom has to deal with privacy forms every day, also and above all for web activities.</li> </ul>   |
| <p><b>Other notes</b></p>          | <p>In researching our scenario, we found that, at least in Europe, no particular attention is given to the most vulnerable individuals, including people with disabilities.</p> <p>For them the benefits in terms of accessibility to be reached are:</p> <ul style="list-style-type: none"> <li>- firstly “passive”, such as the effectiveness of the protection relating to the networking of data, but</li> <li>- above all ACTIVE, that is, thanks to which people are put in a real condition to know thoroughly their rights and to be able to exercise them in practice as effectively as required by the regulations.</li> </ul>  |
| <p><b>2. Investigate</b></p>       |   |
| <p><b>Activity Description</b></p> | <p>Also in the wake of the GDPR innovations, we experimented practically how the advantages of effectively <b>involving citizens since by design</b> could be proved to be the right key so as the legal documents we encounter in everyday life can finally convey to much more substantial transparency and sense of control of the situation but also clearly and immediately perceptible.</p> <p>Questions posed to the interested people during the <b>field survey</b> sounded like the following:</p> <ol style="list-style-type: none"> <li>1. How much time do you spend reading a privacy policy of the type that has been shown to you?</li> <li>2. Are you usually inclined to sign this type of information?</li> <li>3. Have you understood what it entails giving your consent to the processing of your personal data?</li> <li>4. In light of what has been explained to you, do you think that the content of the privacy information could be written more clearly?</li> <li>5. In light of what has been explained to you, do you think that the graphics of the privacy policy could have been prepared more clearly and intuitively?</li> </ol> |

|                            |   |
|----------------------------|---|
| <b>Resources</b>           | <p>List any reading, web or video resources here that you think would be good to ‘get the readers going’.</p> <p>Our initiative, kindly sponsored by two very important scientific realities such as ReCEPL (Research Centre of European Private Law/Centro di Ricerca in Diritto Privato Europeo) and ALSOB (Associazione Laureati Suor Orsola Benincasa), participated with great success in the XXXIII edition of FUTURO REMOTO 2019, BE 4.0, a well-known Science festival held in Naples at Città della Scienza.</p> <p>Link:<br/> <a href="http://www.cittadellascienza.it/futuroremoto/legal-design-e-visual-law-applicati-a-documenti-privacy-disegnamo-la-privacy-del-futuro/">http://www.cittadellascienza.it/futuroremoto/legal-design-e-visual-law-applicati-a-documenti-privacy-disegnamo-la-privacy-del-futuro/</a></p>                         |
| <b>Synthesis</b>           | <p>The more significant task will be the realization of your video summarizing your point of view. Hopefully, a kind of survey conducted by you would be much appreciated.</p>  |
| <b>Reflections</b>         | <ul style="list-style-type: none"> <li>– The nature and setting of our project lead our project to be particularly close to the world of training but also to impact investing or sustainability themed entities and companies that are among the main stakeholders.</li> <li>– The protection of personal data and privacy is in fact a topical issue for all users, starting from young people, destined to enter early - when they are not already - in the group of “passive subjects”, that is “weaker contractors” in any type of contract with entities and companies that produce and use documents written in “legalese”.</li> <li>– With legal-designed documents both the issuer and the receiver fully understand each other, and it is minimized any perceived source of concern or possible arbitrators, also and especially online.</li> </ul> |
| <b>Other notes</b>         | <p>Particular attention has to be paid to the so-called ‘<b>weak subjects</b>’ - e.g. people with disabilities - for whom the fundamental objective is to allow to fully understand the rights expressed in the legal documents, starting just with those Privacy-related.</p> <p>So we imagined a second Startup, specifically dedicated to developments in this direction.</p>  |
| <b>3. Act</b>              |   |
| <b>Solution Prototypes</b> | <ul style="list-style-type: none"> <li>– Recently, in Italy, a team of experts and professionals - all of the <b>2nd Level University Master in Data Protection Officer &amp; Privacy Law</b>, after successfully obtaining the title at the University of Suor Orsola Benincasa – illustrated to the interested people</li> </ul>  |

|  |   |
|--|---|
|  | <p>various examples of legal documents INTERACTIVELY.</p> <ul style="list-style-type: none"> <li>– During a scientific and popular event of great relevance and affluence, “prototypes” of documents redesigned and re-presented through visual techniques were shown, enriched with illustrations, diagrams and intuitive icons.</li> <li>– Users were happy to report to the (future) Start-up’s Team the doubts and difficulties that emerged in their daily experience in the field of privacy and data protection, also providing by feedback comments, ideas and suggestions very useful to ‘design the privacy of the future’.</li> </ul>                              |
| <b>Solution</b>                        | <ul style="list-style-type: none"> <li>– Legal design has made possible to highlight how the new design is not only graphic but reduces the information to be communicated to the essential, making it clearer and more understandable</li> <li>– The new design vehicles in an intuitive and immediate way so as not to discourage. Indeed, it promotes the reader to read and understand his or her rights, and how to exercise them in practice.</li> </ul>  |
| <b>Implementation plan</b>             | <p>In summary, the potential of legal design appears high and substantial, starting from the simplification of the language, to the redesign of the privacy documents, up to the simplification of the procedures for entities and companies and the actual, as well as perceived usability.</p> <p>All details are available at the link:<br/> <a href="https://www.dataprotectionlaw.it/2020/02/06/legal-design-visual-law-gdpr/">https://www.dataprotectionlaw.it/2020/02/06/legal-design-visual-law-gdpr/</a></p>   |
| <b>Evaluate</b>                        | <p>The results of the interviews with interested users as well as your feedback, comments, ideas, suggestions, etc. could be collected in a volume edited by the Startup.</p>   |
| <b>Other notes</b>                     | <p>This case asks for an innovative path through multidisciplinary and “contamination” between different disciplines, such as data protection, design thinking, user engagement, management systems and procedures for privacy and security.</p>  |
| <b>4. Reflection and documentation</b> |   |
| <b>Case notes</b>                      | <ol style="list-style-type: none"> <li>1. Multidisciplinary skills are very important in the design and implementation of highly innovative products and services based on legal design, aimed at maximizing user experience in fields where “digital transformation” is, in our country, still in its infancy.</li> <li>2. Pay particular attention to ‘weak subjects’, for whom, in addition to the fundamental objective of allowing full accessibility and usability of privacy rights, the highest objective would be to bring out and enhance the enormous patrimony in terms of Human Capital which often, even in their case, lies latent and unexpressed.</li> </ol> |