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Karin Mika

*Cleveland State University*, [k.mika@csuohio.edu](mailto:k.mika@csuohio.edu)

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## Visual clarity in contract drafting

### Karin Mika

*Professor of Legal Writing, Cleveland-Marshall  
College of Law  
Ohio, USA*

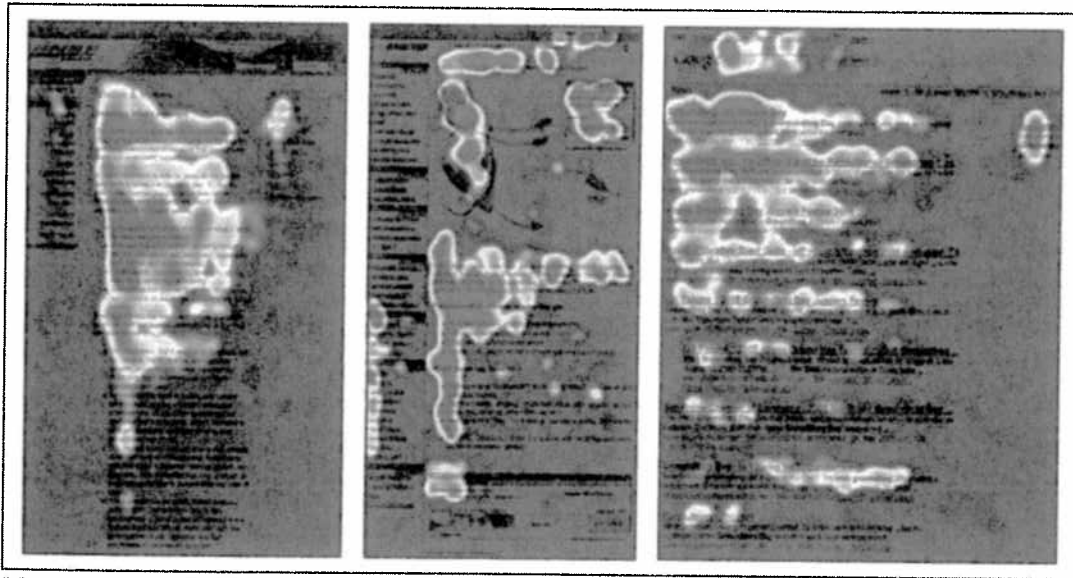
One of the underlying concepts of teaching clarity in contract drafting is teaching visual clarity as well as verbal clarity. Visual clarity is not too far afield from verbal clarity because visual clarity necessitates the same underlying themes of verbal clarity: avoiding verbose sentences containing legalese, and making a document accessible to the reader so that the reader can easily find and understand pertinent clauses.

Visual clarity takes verbal clarity a step further by making a document not only more visually easy to navigate, but also uses typeface and organizational concepts in order to set out an organization that contains content that is easier to read and thus easier to absorb.

Recent research in how information is processed indicates that there is no doubt that, as a society, we read faster, and that our attention span is less than it has ever been.<sup>1</sup> Most people are continually on information overload, and the day-to-day existence of everyone's life requires that more and more information is being continually processed.

This shift in the "speed" of life has changed the way in which information is organized and absorbed by our brains. Most people no longer have the luxury of reading for depth, and our brain has accommodated by honing its skimming technique, and this, in and of itself, has enabled a study of how people read and process information. Studies examining how we read online material suggest that we skim at the onset with a focus on the parallel structure on left side of screen while examining center content.<sup>2</sup> Changes in font or visuals catch our eye, and the longer a segment, the less focus the reader has. Decisions about the relevancy of content are made within three seconds.<sup>3</sup>

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Mapping recent shifts in the "speed" of life and how information is organized and absorbed by our brains.

Because how we read has changed, the visual organization we teach our students in contract drafting should also change to reflect a visual ease in organization. We should endeavor to teach our students that information contained in contracts must be visually accessible and easily understandable within just a few seconds of looking at a document.

Compare these two clauses and their visual accessibility. (The clauses deal with a Tenant's Maintenance obligations and a Landlord's obligation to make emergency repairs within 72 hours.):

In Example 1, the font modifications (e.g., boldface, and underlining), points of

**MAINTENANCE**

- (a) **TENANT'S OBLIGATION:** Tenant shall make no alterations or improvements to the premises or construct any building on the premises without the PRIOR WRITTEN CONSENT of Landlord. If the Tenant believes a repair or improvement is necessary, Tenant should contact Landlord through the 24-hour central voice mail service at 440.555.1222.
- (b) **COVENANT TO REPAIR WITHIN 72 HOURS:** Landlord agrees to arrange for all necessary major repairs to be made within 72 hours of Tenant's notice at Landlord's expense. Major repairs are determined on a case-by-case basis at the a landlord's discretion and shall include:
  - \* Heating issues
  - \* Air conditioning issues
  - \* Sanitation issues
  - \* Hot water issues
  - \* Issues that Landlord finds affecting the major use of the Leased Premises
- (c) **FAILURE TO REPAIR WITHIN 72 HOURS:** If the repair is not made within 72 hours, Tenant will receive a \$10 deduction of rent per day beginning at the expiration of the 72 hour timeframe until the repair is made. Such deduction shall be prorated for any partial days including the day the repair is made. The deduction shall not occur if the failure to repair is (i) beyond the Landlord's control, (ii) Landlord notified Tenant within 24 hours of the original repair time and (iii) Landlord provided a new repair time that does not exceed one week of the original repair time. If the repair cannot be arranged within the 72 hours at the fault of the Tenant, there shall be no deduction in rental amount.

Example 1

1.3 Maintenance:

Tenant shall make no alterations or improvements to the premises or construct any building on the premises without the prior written consent of Landlord. If Tenant believes a repair or improvement is necessary, Tenant should contact Landlord through the 24-hour central voice mail service at 440.555.1222. Landlord agrees to arrange for all necessary major repairs to be made within 72 hours of Tenant's notice at Landlord's expense. Major repairs are determined on a case-by-case basis at the Landlord's discretion and shall include: Heating issues, Air Conditioning issues, Sanitation issues, Hot water issues, Issues that Landlord finds affecting the major use of the Leased Premises. If the repair is not made within 72 hours, Tenant will receive a \$10 deduction of rent per day beginning at the expiration of the 72 hour timeframe until the repair is made. Such deduction shall be prorated for any partial days, including the day the repair is made. The deduction shall not occur if the failure to repair is beyond the Landlord's control. Landlord notified Tenant within 24 hours of the original repair time and Landlord provided a new repair time that does not exceed one week of the original repair time. If the repair cannot be arranged within the 72 hours at the fault of the Tenant, there shall be no deduction in rental amount.

Example 2

organizational emphasis, division of topics through paragraph headings, symmetric columns, and white space, draw the reader's visual attention to the most important components of the clause without the reader doing much more than taking a few second glances at the document.

In Example 2 (which contains the exact same wording as Example 1, but does not include the purposeful visual separations), the reader is first drawn to the visual of a large block of text without consideration of content. The reader, rather than instantaneously gathering content, must momentarily consider the physical task of reading the block of text while attempting to orient his or her brain to organizing

and prioritizing content. Thus, Example 2 presents a multiple step process for the reader in which information cannot be obtained by mere skimming.

Creating large blocks of text is not the only obstacle to creating visual clarity. Although varied organization may enhance absorption of content through visual clarity, too much varied organization in addition to asymmetrical organization detracts from clarity. Consider Example 3:

Similar to the clause created in all block text, Example 3 presents its own challenges to quickly determining and prioritizing content. First, the boldfaced text draws the reader's eyes, however, the lack of uniformity in terms being bolded, underlined, or italicized forces the reader to try to disengage

from the visual to focus on the content to determine the significance of the content that is created with other fonts. Second, the asymmetric and lengthy list at the bottom of the page further forces the reader to engage in another type of visual shift as well as a mental re-prioritizing of content. Finally, the overall lack of symmetry in structure and missing white space between segments causes the reader to first assess the disconcerting elements of the visual picture being presented as opposed to being able to quickly absorb important content. Thus, the overall result of the visual organization is to force the reader out of the skim mode and into a mode

1. MAINTENANCE:

Tenant agrees to maintain the Premises throughout the Term of the Agreement in as good condition and repair as the time of commencement of this Agreement, normal wear and tear excepted. Tenant must notify Landlord of any major repairs that need to occur. Major repairs include the heating issues, air conditioning issues, sanitation issues, hot water issues, and any other issues that affect the major use of the apartment. **Tenant must report issues to a central voice mail** service at any time. Major repairs will completed with **72 hours** of reporting, Tenant shall receive a ten dollar (\$10) deduction from rent per day for every day the repair is not completed after the 72 hour grace period. Tenant will be prorated for the part of the day the repair is not completed. If repair cannot be made within 72 hours, with no fault of Landlord, Landlord may avoid the ten dollar (\$10) penalty if the delay is reported to Tenant within 24 hours, and a time set to repair as soon as possible. It is Tenant's responsibility to arrange a mutually convenient time for entity repairing problem to fix problem. *If this mutually convenient time is not within the 72 hour grace period, there will be no ten dollar (\$10) penalty per day.*

The Landlord promises to keep all Provisions in working order. Provisions include:

- (a) Stove,
- (b) Refrigerator
- (c) Microwave
- (d) Dishwasher, Kitchen Sink and Faucets
- (e) Kitchen Cabinets
- (f) Bathroom sink, Bathtub, Toilet
- (g) any and all Doors
- (h) any and all Attachments to said Doors
- (i) any and all Fixtures
- (j) any and all Electrical Connections
- (k) any and all Water Piping and or Connections
- (l) Mailbox; Two Fire Extinguishers
- (m) Washer and dryer for clothes
- (n) Storage cubicle

Said storage cubical is located in the basement, tenant shall provide their own combination lock and provide management with the combinations

- (o) communal access to the Dumpster  
trash is collected once a week

Example 3

where understanding content quickly is impossible.

Here is a checklist of elements to consider when drafting for visual clarity:

- Make sure content is in smaller and more manageable segments.
- Use bullets and left-justification for lists rather than incorporating lists into paragraphs.
- Use left-justification to highlight major components of segments.
- Make sure major points of emphasis are set off by font change, such as boldface.
- Include white space for better content absorption by the reader.
- Avoid using too many different visual devices on a page.
- Use parallel grammatical structure as well as a symmetric visual representation that is easy to follow and not disconcerting to the reader.

Plain language is an essential component of writing any document that is to be used as a living document in which the parties must be able to quickly find and absorb a clause pertinent to a contractual relationship. However, because of the way in which we have come to process information, clarity of a document is no longer tied only to direct and clear wording, but to a visual presentation that enhances the clarity of the underlying language

of the document. This is particularly important in contract drafting because contracts are living documents to be used by the parties in ascertaining their rights and obligations. The easier the document is to access and use, the more beneficial the document will be for parties to the agreement.

### Endnotes

<sup>1</sup> Jakob Nielsen's Alertbox, F-Shaped Pattern for Reading Web Content, (Discussion on) How People Read the Web: The Eyetracking Evidence, Nielsen Norman Grp. (April 17, 2006), <http://www.nngroup.com/articles/f-shaped-pattern-reading-web-content/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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k.mika@csuohio.edu

#### Professor of Legal Writing

**Mika** has been associated with the Cleveland-Marshall Legal Writing Program since 1988. Professor of Legal Writing Mika teaches first year Legal Writing as well as upper level writing courses, including Document Drafting. Professor of Legal Writing Mika has presented nationally on various topics, including those related to using technology in the classroom and improved methodology for teaching legal analysis to first year students. She has published various articles on teaching writing, as well as on substantive topics including Labor Law and privacy issues.

