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PLAIN ENGLISH IN DESCRIPTIONS OF TERMS AND CONDITIONS

Faculty of Information Technology and Communication Sciences

Bachelor's Thesis

June 2020

ABSTRAKTI

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Kandidaatintutkielma
Tampereen yliopisto
Englannin kielen opintosuunta
Kesäkuu 2020

Lakiteksti voi olla vaikeasti ymmärrettävää, ja siksi lakitekstien kieltä on yritetty aktiivisesti muuttaa selkokielisemmäksi viime vuosikymmeninä. Ammatinharjoittajien lisäksi tämä näkyy myös maallikoille siinä, että palveluntarjoajat ovat alkaneet muuttaa käyttöehtotekstejään selkeämmiksi. Tämän tutkielman tarkoitus on selvittää, kuinka selkokieltä käytetään hyväksi näissä käyttöehtoteksteissä ja kuinka selkokieltä voitaisiin käyttää hyväksi niissä.

Tutkielman aineistona käytetään ruotsalaisen Klarna-pankin sekä yhdysvaltalaisen asunnonvuokrauspalvelu Airbnb:n käyttöehtoja. Aineisto valittiin siten, että valitut tekstit päällisin puolin tarkasteltuna osoittavat, että yritysten lähestymistapa käyttöehtojen laatimiseen edustaa kahta eri koulukuntaa selkokielen näkökulmasta. Siten ne tarjoavat mahdollisuuden ymmärtää eri lähestymistapoja selkokielelle.

Valittujen tekstien sisältöä tutkittiin, jotta voitiin ymmärtää, kuinka hyvin ne noudattavat selkokielisten lakitekstin kirjoitusohjetta, joka toimii tutkielman lähteenä. Sisältöä tarkasteltiin pääasiassa lukemalla tekstit tarkasti, erityisesti kirjoitusohjeiden piirteisiin paneutuen. Lisäksi tiettyjen kielellisten piirteiden tutkimisessa käytettiin hyväksi tietokoneohjelmia, joiden avulla saatiin esille tilastollisia tuloksia. Näin saavutettiin ymmärrys tekstien selkokielisyydestä monesta näkökulmasta.

Selkokielen hyväksyttävyydestä on keskusteltu paljon viimeisten vuosien ajan. Osa tutkijoista epäilee sen tarkkuutta lainopillisen tulkinnan yhteydessä, mutta useat tutkimukset osoittavat, että selkokielineen lakiteksti tarjoaa yhtäläisen vaikutuksen, kun tekstiä tulkitaan juridisesti. Selkokieltä onkin alettu käyttää runsaasti eri tahojen toimesta. Esimerkiksi valtioiden hallinnot ja yksityiset yritykset ovat alkaneet edistää selkeämmän lainopillisentekstin tuottamista.

Tämä tutkielma osoittaa, että vaikka päällisin puolin vaikuttaa siltä, että teksti on laadittu selkokielisiksi, se voi kuitenkin poiketa selkokielen normeista runsaastikin. Tutkielma yhtä lailla osoittaa, että näennäisesti vaikeaselkoinen teksti voi tarkemmin luettuna toimia ainakin osittain paremmin selkokielen näkökulmasta kuin pinnallisin puolin selkeämpi teksti. Tutkimuksen perustella voidaan siten sanoa, että käyttöehtojen kielen kirjo on laaja. Kumpikaan valituista teksteistä ei todellisuudessa täytä selkokielisyyden vaatimuksia, ja suurin este näiden kriteerien saavuttamiseksi todetaan olevan yritysten halu joko suojella omaa toimintaansa tai ylenpalttisesti mainostaa palvelujaan käyttöehtojen yhteydessä. Työn yhteenvetokappaleessa ehdotetaan, että todellinen selkokielineen teksti olisi todennäköisesti paras keino suojella yritystä sekä antaisi kaikkein positiivisimman ja luotettavimman kuvan sen toiminnasta.

Avainsanat: lakikieli, käyttöehdot, selkokieli

Tämän tutkielman alkuperäisyys on tarkistettu Turnitin OriginalityCheck palvelussa.

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1. Introduction

As is commonly known, an issue in traditional legal writing is that legal texts can be very difficult to decipher. The common assumption is that someone outside the profession will find legal texts difficult to understand, and thus attempts have been made to make legal language more accessible. Some of these attempts are as old as the Age of Enlightenment but the discussion on an accessible legal drafting has accelerated widely in the recent times (Mattila 2013, 96). This kind of accessible legal drafting is called plain language drafting.

The definitions of plain language use the experience of the reader as the most vital element in deciding whether the text is plain or not. The central element is that the intended reader finds the information they are looking for as easily as possible (Adler 2012, 68). The text should be designed, structured, and written in a manner that best suits the intended audience. This does not necessarily mean that the text needs to be accessible to everyone. To understand difficult subject requires expertise, but “[i]t is an error to assume ... that difficulty in context must be matched by difficulty in language” (Eagleson 1987, 45). The aim of a plain language drafter thus is to represent the content in the most accessible language possible. Plain language has, therefore, been promoted as a tool that provides accessible legal documents that help both the laity as well as the professionals.

Though the acceptability of plain language in legislative drafting is an ongoing discussion, it has been supported widely. Adler lists Canada, the United States, Australia, New Zealand, and England as countries who began producing plainer documents, both parliamentary and commercial, in the 1970s. Similarly, at about the same time Sweden and Finland began vetting their draft legislation, ensuring “that

new acts were plainly written” (ibid., 69), and during the past decades “various institutes have been established to study and promote plain language” (ibid., 71) – of which a notable example today is the Good Law initiative “which aims to make legislation more accessible and understandable for UK citizens” (United Kingdom Government 2020).

Besides governmental initiatives, cases like Facebook in 2009, as recorded by Roslyn, have further accelerated the demand for plain documentation (Roslyn 2010). Roslyn’s study describes how *The New York Times* reported on 18 February 2009 that there was a ‘fierce reaction by Facebook users’” as a new user agreement stated that Facebook can “use, copy, publish, stream, store, retain, publicly perform or display, transmit, scan, reformat, modify, edit, frame, translate, excerpt, adapt, create derivative works and distribute (through multiple tiers)” all the words and pictures created by its users. The company’s chief executive Mark Zuckerberg responded to this by saying that they “think that a lot of the language in [their] terms is overly formal and protective” and that the new version “will be written clearly in language everyone can understand” (Roslyn 2010).

As will be explained below, plain English has been a vivid field of discussion during the past decades but while there has been much study as regards plain language in legal drafting in general, not much has been done to investigate the use of plain language in the descriptions of the terms and conditions (T&Cs). Therefore, this study sets out to investigate how plain language is used in the T&Cs today - more than ten years after the case Facebook quoted above. Something surely has been done to improve the situation but it is likely that some service providers are stuck in archaic customs and are still “overly formal and protective”, to quote the Facebook CEO Mark Zuckerberg. To be able to achieve a wider perspective to the

field, the T&Cs that are going to be investigated are chosen to represent different approaches. The chosen two texts come from Klarna Bank AB, a Swedish Bank specialised in online payments, and Airbnb, an American online marketplace for lodging and tourism experiences.

The structure of the thesis is following: Firstly, I'm going to present the background literature and to establish research questions. After that I will explain methods and materials, followed by a display of the results. Finally, the results are discussed and the study concluded.

2. Literature review

In this section, I'm first going to briefly explain the general research situation as regards plain language, and then describe the specific theoretical background which is used in this study. We will first begin by the advantages that are recognised in using plain language and then move to the criticism that it has received in the recent years.

2.1. Research background

The advantages of using plain language in legal drafting, as set out by Mark Adler in *The Oxford Handbook of Language and Law*, are that it is more precise, includes fewer errors and is cheaper to produce and interpret (2012, 72). He also states that plain language is more persuasive and more democratic, as noted by the New Zealand Law Commission (2008), "It is a fundamental precept of any legal system that the law must be accessible to the public."

Contrary to these advantages, Adler mentions that *legalese*, the traditional legal writing, is often justified by its precision - a claim repeatedly proven inaccurate by plain language drafters (Adler 2012, 71). For example, Brian Hunt argues that plain language is not able to produce the same accuracy as legalese (2003), but the claim was tested by Ian Siebörger and Ralph D Adendorff whose study set out to investigate how accurately an extract of a legal document can be translated into plain language (2011). The emphasis in Siebörger and Adendorff's study was on the accuracy of the plain language version. What they discovered was that the plain language version of the extract corresponded with the original document to "a very large, if not total, extent" (ibid., 502). Furthermore, the study revealed that in the case of a legal interpretation, there would not have been significant differences between the original legal document and the systematically redrafted versions of it. They conclude their study as follows:

These findings should motivate government and legal authorities to consider seriously redrafting of texts into plain language, instead of concluding prematurely that it is impossible to rewrite legal texts in plain language or that plain-language texts will necessarily be more problematic to interpret than texts written in conventional legal register (Siebörger & Adendorff 2011, 503).

Correspondingly, Adler points out that in general there are very few arguments against plain English in the context of legal drafting. As an example of these arguments he mentions the case of Francis Bennion, a British authority on legislative drafting, who "argued that plain language is not always appropriate in legal documents" as they sometimes *are* the law rather than just explain the law. Adler concludes, however, that "Bennion's complaint ... seems to imply that legal documents should be deliberately made opaque. But that extreme view is not

generally held” (ibid., 73). Thus, from Adler’s and Siebörger and Adendorff’s point of view, it appears clear that plain language should be the future of legalese.

However, by investigating the studies on the subject, one may notice that Adler’s statement is at least partly challenged even today. Most of the studies support more accessible legal language, but in the recent decade or so there continue to be studies pointing out that plain language is not necessarily “a ‘one size fit all’ device” (Hunt 2003). Soha Turfler, for example, notes that:

Plain style can be a valuable tool; but it must be used wisely, and not as a hegemonic device which relies on notions of prescriptivism, standard-language ideology, and moral superiority to make pronouncements about the drafters and users of legal texts (2015, 215) (see also Barnes 2011, Rabeea 2011, Webb 2019)

Thus, as note by Turfler, [t]he language of the law is a battlefield (2015, 195), and the consensus among scholar today seems to be that plain language may be a useful tool but the question whether plain language could be the only means of conveying legal meaning remains alive.

2.2. The background of plain language drafting techniques

As this study investigates how plain language is used in the T&Cs today, it is necessary to have a theoretical background that can be used to decide which features of a text make it plain. The theoretical background in this study will consist of the set of plain language drafting techniques in *The Oxford Handbook of Language and Law* (Adler 2012, 76-78).

The major aspects of plain language drafting from this source include planning, organising, and designing the text in a manner that makes the reader’s

work easier. It is also means using suitable language, writing grammatically, and having a style that makes the text flow as you listen to it in your “mind’s ear” (Ibid., 76). Lastly, the document is edited and tested so that there are no errors and so that it is known that the target audience understand the text as you intend them to understand it (ibid.).

In this study, we are focusing on the features that are readily available and leave less scope for personal biases. Thus, the study investigates the features of organisation, design, language and grammaticality of the selected T&Cs. Though misspellings and grammatical flaws display a lack of testing and editing, we are not going to consider features such as planning, editing, and testing. It would be difficult to judge these features at this point, and a fairer account can be made by concentrating on the features that are accessible for us now. This furthermore means that style as a more subjective opinion is left out.

I will now give a more detailed description of each of the involved features - organisation, design, language, and grammar. It may be noted that the boundaries between the categories are not clear cut – indeed, language and grammar can hardly be separated. To briefly explain the difference between these two terms here before a more detailed description, we may summarise by grammar we mean grammatical correctness and by language different grammatical features such as passive voice. Thus, we are going to use Adler’s categorisation as such as a base for this study. You might wish to categorise the features differently but ultimately the features themselves are in the spotlight of the study, making the categorisation just a detail. For now, the categorisation is useful because it has been laid out in the order a writer would work their way through a writing process.

We will begin with the organisation, the first of the selected categories. A plain language drafter begins their work by organising the text coherently: The structure of the text ought to be from the general to the particular. It should also be sensible, clear, and logical, “divided into a hierarchy of sentences, paragraphs and – where appropriate – chapters, parts, and so on” (ibid., 76). Paragraphs are made short and to flow from paragraph to another: the first sentence of each paragraph should function as a link to the previous paragraph and act as a topic sentence for the current paragraph.

Further, on the sentence level, subject, verb, and object are kept close together, preferably in that order. This is because wide gaps between the subject, verb, and object cause problems for the reader as they are looking for these three key elements in trying to understand the meaning of the sentence (Wydick 2005, 41).

In addition, sentence length is an important element in plain writing: “[s]entences of more than 40 words and consecutive long sentences within that limit” are avoided (Adler 2012, 76). The tradition of long sentences originated when punctuation was used to guide oral delivery and thus many thoughts were compiled to a single sentence - a tradition of which ordinary English prose was freed but to which legalese has gotten stuck (Wydick 2005, 33). Therefore, Adler advises that the average length of the sentences is between 15 and 25 words.

To support the well-structured text the drafter decides on a suitable design for the text including features such as blank space, colour, and font, along with other visual elements. Blank space is used to appeal to the reader’s eye and to distinguish between paragraphs and sub-paragraphs, similarly to a traditionally structured academic text. Additionally, colour can be used if it helps, but ideally plain language design is simple to avoid distracting the reader. Thus, the use of colour must be

done with discretion, just to facilitate the reading. Similarly, the font is chosen to be suitable for the document, and its size is used to indicate heading level. Emphasis in bold or italics is used only to a limited extent. The other visual elements, such as tables or pictures, are used “to help readers understand [the] message or to emphasize it” (ibid., 77). While using lists, each item should form an intended subparagraph of its own without unnecessary repetition from the introducing line.

To proceed to more detail, let us consider the language aspect of a plain English text. Under this header, Adler has placed features of tone and vocabulary. Adler’s recommendations include that one adopts as informal a tone as possible, and moreover, one writes in concrete language. Wydick correspondingly observes that abstract language is a common defilement in legal context: “[t]he lure of abstract words is strong for lawyers” because they “want to be cautious and to cover every possibility, while leaving room to wiggle out if necessary” (2005, 57). Adler also recommends plain language drafters to avoid “inappropriate offense, misleading euphemism, over-emphasis, superfluous words” and “long, archaic, or unfamiliar words”. Instead, short words which are modern and/or familiar are preferred.

Furthermore, Adler recommends that one should avoid nominalisation and passive voice. The reasons for this are that nominalisation and passive voice make sentences longer as well as possibly create ambiguity by hiding the agent (Wydick, 2005, 23-28). One should likewise prefer expressing things positively (Adler 2012, 77) because multiple negatives make understanding a sentence much more difficult –the reader’s mind is made to jump back and forth from positive to negative (Wydick 2005, 71).

The further details of language are under the grammar category. The category consists of standard grammatical rules. The text should be grammatical,

the punctuation should be traditional, and capital letters should be used as in standard language. Additionally, one should not abide by such pieces of advice as not starting a sentence with *and* or *but*, or the suggestion of not ending a sentence with a preposition.

3. Research Questions

The aim in this study is to investigate the use of plain language in the descriptions of the terms and conditions. Additionally, a purpose is to propose how plain language could be used in the T&Cs descriptions. Thus, the research questions are: How is plain language used in the terms of service? How could plain language be used in them?

4. Methods and materials

4.1. Methods

The empirical study aims to investigate whether the plain language features listed above are found in the selected material. The investigation is done by close, manual reading, and some statistical data is collected by computer programs. The following sub-sections explain the use of the computer programs in relation to this study.

4.1.1. AntWordProfiler

To assist in understanding the differences in the vocabulary complexity in the T&Cs, AntWordProfiler by Laurence Anthony is used (2014). The program uses vocabulary lists to establish the complexity of the text by grouping the words found in a text

according to these lists. Thus, the program displays how big a portion of the words belong to a particular list, and given that the lists represent different levels of word complexity, AntWordProfiler can be used to understand the complexity level of the document's vocabulary.

The lists used in this study are the New General Service List (NGSL) and the New Academic Word List (NAWL) by Charles Browne, Brent Culligan, and Joseph Phillips (2013). The NGSL is a list of words, or more specifically, list of lemmas, aimed at assisting second language learners to learn the most useful words of the English language. Lemmas are the head words in a dictionary and any inflection of the word belongs to that lemma. Thus, using lemmas as the base for the list means that both *go* and *goes* belong to the same lemma, *go*. Below, I'm simply referring to words though strictly speaking by word I actually mean lemmas that include their inflections.

The 2,800 words that constitute the NGSL were compiled with the help of the Cambridge English Corpus, and they cover 90% of the words in its general section (Browne et al. 2013). The NAWL is a similar list aimed for further language learning. Its purpose is to expand the learner's vocabulary so that they have a high coverage of common academic words. The NAWL contains 960 words, and when used together with NGSL they cover 92% of the academic section in Cambridge English Corpus (Browne et al. 2013).

The package provided on the webpage of AntWordProfiler consists of 4 separate lists. The NGSL is divided into three separate lists, the first list consisting of the most frequent words, the second of the next most frequent words, and the third of the least frequent words. The NAWL is included as a separate list, and in addition to the NGSL and NAWL, the package contains a supplemental base word list which

contains weekdays, months, and spelled out numbers. These lists serve as the base for the word complexity level. The three NGSL lists form the levels one, two, and three and the NAWL the fourth level. AntWordProfiler thus categorises the words of the selected material according to these lists, and the results display how many percent of words there are in each level. Image 1 below displays AntWordProfiler in practice.

Image 1

A Screenshot from AntWordProfiler

The screenshot shows the AntWordProfiler 1.4.1m interface. The 'User File(s)' list contains 'AirbnbANT.txt' and 'KlamaANT.txt'. The 'Level List(s)' list contains '1st.txt', '2nd.txt', '3rd.txt', '4th.txt', '5th.txt', '6th.txt', and '7th.txt'. The 'Results' panel displays the following information:

Number of types: 149
 Number of groups (families): 132

Level list 6: 6th.txt
 Number of types: 174
 Number of groups (families): 50

Level list 7: 7th.txt
 Number of types: 54
 Number of groups (families): 52

Statistics

LEVEL	FILE	TOKEN	TOKEN%	CUMTOKEN%	TYPE	TYPE%	CUMTYPE%	C
1	1st.txt	9685	71.11	71.11	799	42.84	42.84	532
2	2nd.txt	1480	10.87	81.98	336	18.02	60.86	251
3	3rd.txt	512	3.76	85.74	163	8.74	69.6	133
4	4th.txt	942	6.92	92.66	337	18.07	87.67	285
5	5th.txt	258	1.89	94.55	139	7.45	95.12	132
6	6th.txt	51	0.37	94.92	5	0.27	95.39	5
7	7th.txt	646	4.74	99.66	52	2.79	98.18	51
0	-	46	0.34	100	34	1.82	100	34
TOTAL:		13620		1865		1423		

Table of ranges: Types
 TTypes No. of Files

Output Settings:

- Statistics
- Word Types
- Word Groups (Families)
- Include complete frequency list
- Include words in user file(s) but not in level list(s)
- Include words in level list(s) but not in user file(s)

Sort Settings:

- Sort Level 1: frequ
- Sort Level 2: word

Batch Process:

- No
- Yes

Buttons: Start, Exit

There are of course words that are not present in these lists. Fortunately, AntWordProfiler can be set to provide a list of missing words, and since vocabulary is an important aspect of plain writing, the uncategorised words are manually categorised according to their occurrence in the Corpus of Contemporary American English (COCA). The searches in COCA are done by using capital letters on the

searches so that the hits for a given word also include its inflections, not just the base form. This is to follow the method used by Browne et al. in creating the NGSL and NAWL– to use lemmas, not individual words.

The results of these corpus searches are categorised in the following manner: Whatever words have the number of hits for the lemma and its inflections under 2,000 are compiled to a new list, representing level five on the scale of word complexity; whatever words had the number of hits between 2,000 and 15,000 are added to NAWL, i.e. the list on level four; whatever words have the number of hits between 15,000 and 35,000 are added to the list on level three; words that have hits between 35,000 and 90,000 hits were added to the list on level two; and words above 90,000 hits are added to the list on level one. The supplemental word list is set to be level six, which is not going to be considered in this study, as they are somewhat unimportant – weekdays, months, and numbers can only be written in a way, independent of the formality of the document. Proper nouns and other words that do not serve a purpose in this categorisation are likewise added to a seventh list, which is not going to be further discussed. Thus, all the words in the materials are categorised by AntWordProfiler.

4.1.2. Microsoft Word

Microsoft Word (MS Word) is used in this study to provide statistical account of sentence length, paragraph length, and grammatical features such as passive voice. The program provides these statistics with the help of the “Spelling and Grammar” tool whenever the language of the document is correct and the preferences of this tool are set to show readability statistics. In this study, the calculation of the average sentence length excludes titles, subtitles, and bullet point lists because MS Word

does not appreciate that titles and subtitles are not part of the following sentence. Thus, they alter the result if included in the calculation. Similarly, bullet point lists which do not contain full stops are counted as a continuous sentence in MS Word. Strictly speaking this is true, but for the purposes of this study, the bullet point lists are excluded as they do, in fact, facilitate reading, rather than make it harder.

4.2. Materials

The materials for this study were chosen with the desire to investigate two documents of T&Cs that represent different approaches to drafting legal documents. The selected texts are Klarna Bank's Service Terms (Klarna 2019) and Airbnb's Terms of Service (Airbnb 2019).

The Klarna Bank's text appears user friendly and accessible. It is relatively short with just over 2,000 words. With a glance one may notice that the language used in the document is very informal: "Simply put, a smooth user experience both before you have done your purchases and after you have done a purchase. These terms explain in more detail what this means". The Airbnb Terms of Service, on the other hand, are considerably longer, consisting of more than 11,500 words. Also, picking almost any sentence in the document, one may notice that the text is formal or very formal: "Hosts alone are responsible for identifying, understanding, and complying with all laws, rules and regulations that apply to their Listings and Host Services (as defined below)." Thus, the selected documents appear to represent different approaches to legal drafting, and therefore serve as suitable counterparts for the study.

Due to the length of the Airbnb document, this study focuses on the first 4 sections, or about 2600 words of the terms. The Klarna terms are analysed in their totality.

5. Results

The texts are studied separately and the results are presented below one text at a time, divided under the topics laid out by Adler.

5.1. Klarna

5.1.1. Organisation

In the Klarna T&Cs the autofill feature, with the help of which the consumer only needs to provide some of their information for the system to fill in the other details, and the Klarna mobile app are discussed first (see Appendix for header structure). This is reasonable in the sense that these are the aspects of the Klarna services that are most visible for the user, but explaining these two features first in the T&Cs has resulted in some other, more important articles being left to the end of the T&Cs. The two important articles that come only in the end of the T&Cs are handling of personal data and the usage of tracking technologies (cookies). For many who wish to read the T&Cs of a given service today, the central questions may well be how their personal data is used by the company and whether the company is using technologies to track the user's actions while using the services. Thus, the terms do not wholly conform with the plain language principles which demand that the reader finds what they are looking for with least difficulty.

This and the other such inconsistencies in the structure can be attributed to Klarna's desire to use the description of the T&Cs as a means of promoting their

services instead of solely providing legal explanations for the users. For example, the section on the Klarna mobile app begins with a 316-word description of the features included in the Klarna App. To understand the volition behind the description of the features, here is a quote of the two first sentences of the Klarna App section:

The Klarna App, provided to you by way of an app or a web portal is your hub for all your Klarna purchases and *all other great features Klarna offers*. By using the Klarna App you can pay your purchases, track your packages and *many more things* (Emphasis added).

As can be seen, the Klarna T&Cs are here more concerned with convincing the reader of the usefulness of the Klarna App than with the reader's need of finding information on what they are signing up for when they use the Klarna services. Indeed, what follows are two bullet point lists promoting the features provided by the app; the legal responsibilities of the user as well as the rights of Klarna Bank are explained only later on in the text. From the plain language point of view, this is questionable because a person desiring to investigate a description of the terms and conditions is mostly concerned with finding information on what they are signing up for when they use the services. They are not after a marketing text about the features that the service provider offers, though these might justifiably be written into the terms with a different attitude.

In fact, the marketing aspect of the Klarna T&Cs raises another issue – the need for a plain language drafter to “avoid irrelevant detail” (Adler 202012, 76). Much of the 316-word promotion of the Klarna app could justifiably be placed into this category of irrelevant detail.

Despite the structure of the content and the content itself being at times questionable, the more detailed plain language features in terms of organisation are

well done. Firstly, the paragraph structure is good in the Klarna T&Cs. The paragraphs are consistently short - consisting of less than three sentences on average - and excluding the bullet point lists, the 33 distinct paragraphs are divided under 10 sub headers which function as topic sentences for the following paragraphs. This provides a structure that is acceptable according to Adler's recommendations.

Moreover, the paragraphs that are not preceded by a sub header connect to the preceding paragraph in one way or the other, and they also function as topic sentences for the new paragraphs. For example, after a paragraph explaining that as Klarna App user one may upload, publish, and share content, the next paragraph begins by a sentence explaining what kind of content is appropriate to be uploaded. The new paragraph is thus begun by a sentence which is directly connected to the preceding paragraph. Furthermore, the content of the new paragraph is an explanation that Klarna has the right to monitor and moderate the uploaded content. Hence, the opening sentence functions as a topic sentence as well – there is a connection between what is suitable to be uploaded and Klarna's right to monitor and moderate the uploaded content. Similar connections can be observed elsewhere in the text too. The paragraph structure is, therefore, well done from the plain language point of view.

On a more detailed level, the sentence structure of the Klarna T&Cs also fulfils the plain language criteria well. Firstly, as Adler explains, a good average sentence length in a plain language text is between 15 to 25 words per sentence, and sentences of more than 40 words are avoided (Adler 2012, 76). Though three sentences of the 98 sentences in the Klarna T&Cs exceed the 40-word limit, the average sentence length in the terms is 21.6 words per sentence, falling within the

boundaries given by Adler. Secondly, the desired subject-verb-object word order is well observed throughout the document, and these elements are also kept close together consistently. The exceptions to this pattern are mostly cases such as: “You can at any given time delete all cookies on your device”. Here the adverbial “at any given time” breaks the verb phrase, but since the distance between the subject, verb and object grows only slightly, these oppose the plain language ideals minimally.

5.1.2. Design

The design of the Klarna T&Cs is mainly in line with the plain language recommendations. The text on the website is without elaborate design, and there is plenty of empty space “to rest the eye” (Adler 2012, 76). In addition, the font is clear and the text colour is consistently black which makes it least distracting. Similarly, the bullet point lists are indented as subparagraphs as they ought to be according to the plain language recommendations (ibid., 77).

As observed in the organisation section above, the Klarna T&Cs are divided into different sections lead by headers and sub headers. Though this provides structure to the text, the design of the title hierarchy is not done perfectly. There is a clear font difference between some sub headers and headers, namely, that the first sub header is completely in capital letters and the lowest level headers are italicised but not emboldened. But the hierarchy of the two embolden headers in between is less visible for the reader. In fact, though the font is slightly different in these headers, the size of the characters in them is the same. Moreover, as the titles on both of these levels are emboldened, there is difficulty in understanding the intended structure.

These headers differ from each other in that four of them begin with an ordinal number indicating that a new section of the terms begins there, but this is not enough. These four numbered headers are the higher level of the two, which is logical, but since the sub headers are not numbered, and in addition have the same size font as the higher level headers, the readers who only see one header at a time are easily left unaware of the overall structure of the text. Thus, numbering the sub headers and using different size fonts would have added to the conformity with the plain language ideals. It would have allowed the reader to understand the structure with less difficulty.

Despite this confusion in the header structure, the overall design of the Klarna T&Cs conforms very well to the plain language ideals. The design is plain and does not vary unnecessarily and thus distracts the reader as little as possible.

5.1.3. Language

The tone adopted in the terms is at times very informal. This informal tone is visible in the sections where Klarna is promoting their product, for example: “[t]his will enable you to save time and focus on more important *stuff* than *filling out* the same information *over and over again*” (emphasis added). One of the requirements for a plain text is that it ought to be as informal as possible, thus this kind of language is compatible with the plain language norms.

However, in the case of Klarna, writing in too casual a way has led to the text steering away from plainness as well. This is mostly visible in the norm-breaking use of “smooth” and in the instances where the Klarna product is emphatically promoted. An example of this promotion can be taken from before the long list of features that are included in the Klarna mobile app. This list, which composes about

10% of the whole document, is introduced by: “[t]o mention a *few* of the features we are most proud of” (emphasis added). To state that the following list contains a *few* features could well be classified as over-emphasis or superfluity, which ought to be avoided in a plain language document. Thus, the informality of the text has also resulted in the text not being totally plain.

On the other hand, the informality that is present in the more advertising parts of the T&Cs is not to be found in the more serious, legal parts. For example, under the title “Duration and termination of this agreement”, a title which itself rebels against the plain language norms by containing nominalisation, the following two sentences are to be found “This agreement is concluded for an indefinite period of time. It applies until it is terminated by you or us and can be terminated at any time.” As can be seen, the two sentences are both in passive voice and use vocabulary that is more formal than in the earlier quotes from other parts of the document. The vocabulary in the legal parts of the document is consistently of similar formality and though the document contains only 14.6% percent of passive verbs, the number of passive verbs in the legal parts is considerably higher, 26.6%, in the last third of the document. A similar statistical difference between the different parts of the document can be observed in the vocabulary formality. According to the grouping explained in the method section, there are 13 instances of words that are categorised into the list of most complex words (level 5). This amounts to 0.64% of all the words in the document, which is not very high. However, the level 5 words (e.g. *indemnify*, *contractual*, and *passported*) occur mostly towards the end of the document in the sections solely concerned with the legal aspects of the contract between the user and Klarna Bank. Only 3 words of these 13 complex words occur elsewhere in the text, despite the length of the legal parts in the end being only a third of the

document. Thus, the formality difference between different sections is observable on the level of vocabulary as well. Table 2 displays the distribution of words according to vocabulary complexity in the Klarna terms.

Table 2

Vocabulary Complexity in the Klarna Terms

Complexity level	%	Number of hits
Level 1	75.25	1532
Level 2	7.12	145
Level 3	4.13	83
Level 4	5.8	118
Level 5	0.64	13

5.1.4. Grammar

The Klarna text conforms to the standard grammar rules and thus to the plain language expectations as well. We are not going to discuss minor mistakes in punctuation, which could be considered a violation of plain language in terms of editing and testing, but the point worth mentioning is related to the use of initial capitals to flag defined terms. The Klarna terms contain such initial capitals and this does violate the plain language guidance slightly (Adler 2012, 77). The main issue here, however, is the inconsistency and confusion that might arise due to the manner in which this form of capitalisation is used in the terms. The first sentence of the terms displays the problem: “These terms apply between Klarna Bank AB (publ)

(‘Klarna’) and you when you use Klarna’s services and features as described in these terms (the ‘Services’).” As you may notice, there is an inconsistency in how the flagged terms are defined in this sentence. Firstly, Klarna Bank AB is defined as Klarna by the immediately following ‘*Klarna*’ in parenthesis. However, the following parenthetical definition does not function in the same manner. Instead, the definition for *Klarna’s services* is moved to the end of the sentence, possibly confusing the reader with whether the ‘*Services*’ refer to the terms or to Klarna’s services, the latter of which seems to be the right choice.

It is equally noteworthy that despite not defining the word *terms* so as to allow the use of initial capital later in the document, the text nevertheless introduces a new capitalised term, *Agreement*, under the subsection two, Klarna App. Thus, there is inconsistency and potential confusion caused for the reader by mixing flagged terms and defining them unclearly.

5.2. Airbnb

5.2.1. Organisation

The Airbnb terms are structured in a logical order. They begin by explaining the background of the terms such as: what is the purpose of the terms; whom they are meant for; what is Airbnb; and where to search for other information if these terms do not provide it (i.e. links to other policies and terms). And this is followed by a table of contents which is a list of 22 items that briefly explain the content of the document. The terms then continue by explaining the scope of the services, moving then to explaining what is involved in beginning to use the Airbnb platform, followed by a more detailed descriptions of different contractual aspects of the services. There surely are differing opinions whether the given order is the correct order but the most

important thing from the plain language point of view is that the reader finds what they need to find as quickly as possible. In addition, the table of contents help the reader to navigate through the long document and find the needed information with less difficulty, and thus this aspect of plain language writing is fulfilled in the Airbnb terms.

The paragraph structure, on the other hand, is only partly well-organised. The positive thing is that the length of the paragraphs is in line with the plain language norms - the average length of a paragraph in the whole document is less than three sentences. However, the topic sentences do not follow the plain language norms. In fact, at least within the close-read section, the Airbnb terms are not much concerned about structuring the paragraphs to having a topic sentence in the beginning. Rather, the paragraphs begin mostly with a sentence containing a new piece of information which does not connect to the preceding paragraph nor summarise what is written in the new paragraph. Thus, this aspect is not taken into consideration in the Airbnb terms at all.

In a similar manner, the length of the sentences in the terms is violating the plain language ideals. The average sentence length in the document is 32.9 words, which according to Adler should be between 15 and 25 words. The average from the whole document excludes bullet point lists which would have constituted long sentences not applicable in this calculation. The longest such sentence would have been 279 words and the longest sentence outside bullet point lists is 164 words. The recommended maximum length of a sentence is 40 words and almost every sixth sentence (14%) breaks this rule within the close-read section. Furthermore, there are instances of consecutive long sentences, which ought to be avoided (*ibid.*). For example under section two, "Eligibility, Using the Airbnb Platform, Member

Verification”, the first eight sentences are 56, 13, 50, 50, 21, 105, 45, and 53 words long respectively.

Lastly, it is positive that though the sentences in the terms are long, the distance between the subject, verb, and object is generally short. In the close-read section, the instances of breaking the contact between these items is most of the time due to a compound construction (e.g. *and*) which results in the subject being left slightly behind as it is not repeated or in the object coming later as the latter part of the compound construction has the same object. The example below demonstrates this with the help of brackets:

While we may help facilitate the resolution of disputes, Airbnb has no control over [the points (i), (ii), and (iii) could be here] and [Airbnb could be repeated here] does not guarantee (i) the existence, quality, safety, suitability, or legality of any Listings or Host Services, (ii) the truth or accuracy of any Listing descriptions, Ratings, Reviews, or other Member Content (as defined below), or (iii) the performance or conduct of any Member or third party.

5.2.2. Design

The design of the Airbnb terms is simple and according to the plain language recommendations. The header hierarchy is easy to follow due to the numbered headers and to the fact that there is only one header level, excluding the main title at the beginning (“Terms of Service for European Users”). In addition, each paragraph is numbered according to the header under which it is presented, i.e. under header number one, the first paragraph is labelled 1.1, the second 1.2 and so forth. The overall structure on the header level is thus easy to follow and complies with the plain language guidance.

Furthermore, the overall design is in line with this guidance as the design is consistent and plain. The paragraph structure is marked by empty lines, and the bullet point lists in the document are according to Adler's recommendations. In other words, the items in the lists are indented as sub-paragraphs and there is no unnecessary repetition from the line that introduces them. The items also continue grammatically from the line that introduces them.

Lastly, bold font is used in headers and to highlight defined terms when they appear for the first time, i.e. when they are defined. This seems to be a justifiable method from the plain language point of view as the bold font is not used excessively.

5.2.3. Language

The main concerns as regards the language of the Airbnb terms is the complexity of the vocabulary. The vocabulary in the terms is consistently formal, and in comparison with the Klarna terms, the percentage of words in the most complex vocabulary level, the fifth level, is three to four times higher. This means that on average more than every second sentence contains a word of the highest complexity. Examples from the Airbnb terms include *descramble*, *hereinafter*, *extenuating*, and *unenforceable*. The use of these and other similar words does not fulfil the criteria of adopting as informal a tone as possible and of avoiding long archaic words. The instances of using informal words are few in the terms. In Table 2 below, you'll find the distribution of the words according to the vocabulary complexity in the Airbnb terms.

Table 2*Vocabulary Complexity in the Airbnb Terms*

Complexity level	%	Number of hits
Level 1	70.38	8153
Level 2	11.52	1335
Level 3	3.69	428
Level 4	7.11	824
Level 5	2.11	245

But however complex the vocabulary is, the terms do display conformity to other plain language norms as regards language. Firstly, in the close-read section, nominalisation is not overtly used. There are examples of nominalisation. For example, the paragraph 1.3 begins by "... help facilitate the resolution of disputes" (1.3) instead of "help resolving disputes" which would have resulted in fewer words. But overall there are not too many of such instances in the close-read section.

In addition to the limited use of nominalisation, the terms display another positive sign as regards plain language. They use concrete language. This is most noticeable in the use of examples to demonstrate certain aspects in the terms. As an example, paragraph 4.6 reads:

Airbnb may enable features that allow you to authorize other Members or certain third parties to take certain actions that affect your Airbnb Account. For example, we may enable Members to link their Airbnb Accounts to businesses and take actions for those businesses, we may enable eligible Members or certain third parties to book Listings on behalf of other Members, or we may enable Hosts to add other Members as Co-Hosts (as defined below) to help manage their Listings.

Turning to other features, passive voice is an undesirable feature in a plain language text, and the Airbnb terms do not attract great attention in this regard. Compared with the Klarna terms, the Airbnb terms do have a higher overall percentage of passive verbs (19.4% compared with 14.6%) but when comparing the Airbnb terms with the sections in the Klarna terms that include clear legal descriptions, the Airbnb terms have a lower percentage (19.4% compared with 26.6%). In the case of Airbnb, the passive voice can at times also be seen justifiable as it does ease the reading by moving a heavy part of speech to the end: “[T]he Airbnb company you contract with and the applicable Terms of Service will be determined by your new country of residence or establishment as specified in the Terms of Service for Non-European Users... (Emphasis added)”. By starting the sentence above with the italicized element, it would have been harder to understand. Furthermore, not all passive sentences in the terms hide the agent, which would have been more undesirable as regards the plainness of the text: “No third party is authorized by Airbnb to ask for your credential”. Thus, the Airbnb terms can be said to have performed decently in terms of passive voice.

5.2.4. Grammar

The Airbnb terms are written according to the standard grammar rules and therefore conform to the plain language rules. The only aspect in which they do not conform to

the guidance is that the terms use defined terms which are written with initial capitals. This is against the drafting techniques explained by Adler but even Adler uses capitals with defined terms in his example of a plain language draft. Thus, we may conclude that the Airbnb terms conform to the grammatical rules with the minor exception of using initial capitals with defined terms.

6. Discussion

The Airbnb and Klarna terms display both a different approach to the descriptions of terms and conditions. As presented above, the attitude which is found in the Klarna terms differs from the one used to write the Airbnb terms. The Klarna terms are at times highly informal and much concerned with providing a positive image of the company. To provide a positive image of themselves is, of course, desirable even for Airbnb but the Klarna terms do this much more frankly. The danger in this is that while possibly wishing to provide a plain text for the clients to read, the other interests of the company become more important than the plainness of the text.

As discussed in the result section, the organisation of the Klarna terms has suffered from this volition of using the T&Cs as a means of promoting the product and the company. The excessive explanation of the features in the Klarna app is an example of this drawback. The Klarna terms also state that “[i]n order to make your shopping experience even smoother [sic.] Klarna can, based on your previous purchases, pre-select the payment method”. From the plain language point of view, the sentence does not need such a promotive tone to it. The strangely spelled *smoother* and the emphatic *even* are not necessary.

However, going to the other extreme is not necessary either. The over-emphatic way in which the Airbnb terms protect the company does not qualify better as regards plain language. The insistent “but have no obligation to” and “hosts *alone* are responsible” (emphasis added) do not promote the company but they do express what the Facebook CEO Zuckerberg called over protection.

I would argue that there ought to be a way to write honest T&Cs which neither promote the service excessively nor unnecessarily protect the company from undue responsibilities. I would further state that a tone like this would result in happier clients and, based on what Adler and others have written about plain languages legal force, would be equally effective in court. The sentence from the Klarna terms two paragraphs above could have been written as: “To make your shopping experience smoother, Klarna can, based on your previous purchases pre-select the payment method”. This removes the unnecessary emphasis on the greatness of the services but preserves the positive factual value of the statement – the fact that the reason for the action is to make the shopping experience easier, not to exploit the client, for example.

Similarly, removing *alone* from “hosts *alone* are responsible” increases the feeling of trust between the service provider and the reader as the reader does not feel that the company is trying to create two sides to the situation – the hosts who *alone* are responsible and the company who thrusts all responsibility on the hosts. This kind of honesty and modesty would most likely increase the reader’s faith in the company, and thus serve as the best promotion, and indeed as a good protection for the company. Thus, while deviating from certain plain language requirements in the hope of attracting clients or protecting the company, Klarna and Airbnb may only have done a disservice to their reputation.

7. Conclusion

The purpose of this study was to investigate how plain language is used in the T&Cs by investigating two apparently different approaches to the field of describing the terms and conditions. The results show that while a text might with a glance seem to be plain, there nevertheless can be much to improve in the structure and style of the text, as in the case of Klarna. Indeed, at times it becomes clear that the plainness of the T&Cs was not the main motivation in writing them. On the other hand, even a text which might at first seem to deviate highly from the plain language norms, a text such as the Airbnb terms, nonetheless display features of plain language, and at time perform better from this point of view than the seemingly plainer counterpart. It is therefore reasonable to conclude that there continue to be varying approaches to the T&Cs descriptions, and that while a text might display some aspects of plainness, it might lack in other regards as regards plain language.

The limitations of this study are, of course, the limited number of texts that were investigated. Due to the clear difference in the attitude to writing the texts, these two texts do provide a wide perspective into the field, but they do not display the whole spectrum of T&Cs drafting. An interesting further investigation on the subject would, in fact, include an analysis of a text that is publicly stated to represent plain language, such as the Facebook terms that were mentioned in the introduction. This would ideally provide an understanding of the real possibilities of plain language drafting in this context as the other interests of the company would be minimised. After all, one of the main realisations in this study was that the plainness, and the T&Cs as a whole, can, in fact, be more a method of creating a positive image of the company than a legal description of the services.

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Appendix: Klarna Services Terms – Header Structure

(Italicized added as explanations, the numbering taken directly from the terms)

Description of the services *(short explanation of Klarna service's purpose)*

1. Autofill and Preferences
2. Klarna App
3. Show historical purchases and transactions
4. Offers and benefits

Improvement of the Services

Privacy and your personal data

Cookies and similar tracking technologies

Your Obligations

Third party services

Duration and termination of this agreement

Klarna *(contact details and the like)*

Complaints