Even lawyers don't like legalese: Study

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It's no secret that legal documents are notoriously difficult to understand, causing headaches for anyone who has had to apply for a mortgage or review any other kind of contract. A new MIT study reveals that the lawyers who produce these documents don't like them very much either.

The researchers found that while lawyers can interpret and recall information from legal documents better than nonlawyers, it's still easier for them to understand the same documents when translated into "plain English." Lawyers also rated plain English contracts as higher-quality overall, more likely to be signed by a client, and equally enforceable as those written in "legalese."

The findings suggest that while impenetrable styles of legal writing are well-entrenched, lawyers may be amenable to changing the way such documents are written.

"No matter how we asked the questions, the lawyers overwhelmingly always wanted plain English," says Edward Gibson, an MIT professor of brain and cognitive sciences and the senior author of the study. "People blame lawyers, but I don't think it's their fault. They would like to change it, too."

Eric Martínez, an MIT graduate student and licensed attorney, is the lead author of the new study, which appears this week in the *Proceedings of the National Academy of Sciences*. Frank Mollica, a former visiting researcher at MIT who is now a lecturer in computational cognitive science at the University of Edinburgh, is also an author of the paper.

Parsing legal language

Since at least the 1970s, when President Richard Nixon declared that federal regulations should be written in "layman's terms," efforts have been made to try to simplify legal documents. However, another study by Martínez, Mollica, and Gibson, not yet published, suggests that legal language has changed very little since that time.

The MIT team began studying the structure and comprehensibility of legal language several years ago, when Martínez, who became interested

in the topic as a student at Harvard Law School, joined Gibson's lab as a research assistant and then a Ph.D. student.

In a [study](link) published last year, Gibson, Martínez, and Mollica used a text analysis tool to compare legal documents to many other types of texts, including newspapers, movie scripts, and academic papers. Among the features identified as more common in legal documents, one stood out as making the texts harder to read: long definitions inserted in the middle of sentences.

Linguists have previously shown that this type of structure, known as center-embedding, makes text much more difficult to understand. When the MIT team tested people on their ability to understand and recall the meaning of a legal text, their performance improved significantly when center-embedded structures were replaced with more straightforward sentences, with terms defined separately.

"For some reason, legal texts are filled with these center-embedded structures," Gibson says. "In normal language production, it's not natural to either write like that or to speak like that."

Those findings raised a question that Gibson and his colleagues set out to explore in their new study: Why do lawyers write documents with such an impenetrable style? To get at that question, the researchers decided to perform a similar study using lawyers as their test subjects.

Before beginning the study, the researchers came up with five possible explanations for why lawyers produce this kind of legal text. The most likely possibility, Gibson believed, was one he calls "the curse of knowledge." This means that lawyers are so skilled at writing and reading legal documents, they don't realize how difficult they are for everyone else.

Other possible explanations included that lawyers simply copy and paste from existing templates; that they write in legalese to make themselves sound more "lawyerly" to their colleagues; that they wish to preserve a monopoly on legal services and justify their fees; or that legal information is so complex that it can only be conveyed in very prescribed ways.

To explore these hypotheses, the researchers recruited a group of more than 100 lawyers, from a diverse range of law schools and law firms, and asked them to carry out the same comprehension tasks that they had nonlawyers perform in their 2022 study.

They found that lawyers, not surprisingly, were much better at parsing and recalling information from legal documents. As shown in the 2022 study, nonlawyers could typically recall about 38 percent of what they read in a legal document, and their success rate went up to between 45 and 50 percent with plain English versions of those texts. When faced with legal documents, lawyers could remember about 45 percent of what they read, and that number jumped to more than 50 percent when they were asked to read the simplified versions of the documents.

This suggests that legal language represents a stumbling block for lawyers as well as nonlawyers. The finding also refutes the curse of knowledge hypothesis, because if that hypothesis were correct, then lawyers would be equally good at recalling both styles of information.

"Lawyers are much better, it turns out, at reading these contracts either in plain English or in legalese and understanding them and answering questions about them. However, they have a much harder time with the legalese, just like regular people," Gibson says.

"Using plain language would be beneficial for everybody, given that legalese is harder for both lawyers and nonlawyers to understand,"

Martínez adds.

Simpler is better

In a second set of experiments, the researchers evaluated lawyers' attitudes toward legal documents and simplified versions of those documents. After recruiting another group of more than 100 lawyers, the researchers asked them to rate the documents on a variety of criteria, including enforceability, willingness to sign such a document, overall quality, and the likelihood that a client would agree to the terms. The lawyers were also asked if they would hire the person who wrote each of the documents.

Surprisingly, the lawyers rated the plain English documents as being higher quality than the original documents, and more likely to be agreed to by themselves and their clients. They also rated them to be equally enforceable as the original legal documents, and said they would be more likely to hire the person who wrote the plain English version.

These findings essentially ruled out all of explanations that the researchers had considered, except for the copy and paste hypothesis: the idea that lawyers are copying old contracts and editing them for each new use. One possible reason why that has become a common practice is that lawyers want to keep using contracts that have been previously demonstrated to be enforceable.

Over time, these contracts may have become increasingly complex as lawyers amended them for specific situations by adding center-embedded clauses.

"Maybe an original contract was written for one set of people, and if you want it to be more restricted, you add a whole new definition of that restriction. You can add it within a sentence, and that ends up being

center-embedded," Gibson says. "That's our guess. We don't know the details of how, and that's what we're working on right now."

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