DISCLAIMERS

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Abstract: Disclaimers are practical expressions of either renunciation or repudiation of interest of self or other, whether they be drawn up as formal clauses or as improvisations (acceptable substitutes). We use them to regulate social interaction by making certain limitations known to parties. Diversity of situations reflects in diversity of expression and means of enforcing such limitations; therein lies disclaimers' long and luxuriant history in virtually all cultures. Beyond their origin in the permanent need to amend things of practical relevance, their current popularity relates to the impetus of technological progress in communication and to the emerging forms of authorship and literacy.
Keywords: clause drafting; denial/disavowal; disclaim/-er; discourse; ESP; liability; small-print vs large-print text; warning

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A. Definitions and scope

Disclaimers are a quite particular species of functional discourse employed in regulating interaction between individuals or groups in terms of rights, powers, and obligations being renounced or denied. It occurs in the form of clauses and articles and is normally an integral part of behavior codes, contracts, or various legislation whenever their authors or beneficiaries need the assurance. Being a formal kind of text meant to address serious matters, it tends to be preserved in written/printed (that is, *permanent*) form. From a strictly *formal* perspective, this category should not include all negative or limiting messages that we create (as the prefix *dis-* might suggest), but only those that fit the definition closely.

The definitions themselves do not absolutely impose a certain format, so that a/any negative statement or text should turn into a disclaimer. Nevertheless, a degree of freedom will always exist, both in the creation and in the assessment of disclaimers, although primarily these are formal texts composed by professionals, in a legal or business jargon, and intended to function as one of the following (according to Legal-dictionary.thefreedictionary.com):

1) *denial or renunciation by someone of his/her title to property.*
2) *denial of responsibility for another's claim, such as an insurance company's refusal to admit coverage under an insurance policy.*
3) *statement of non-responsibility, as is made when dissolving a partnership or business.*

In the source just quoted, the first and the last definitions cover cases of a rather particular nature – limited to one's property, and to dissolution of a business, respectively, while the second refers to the general principle governing disclaimers, i.e. "denial of responsibility". Disclaimers are hence expressions either of self-denial or of denial directed at a different party, and are expressly created via language for specific, or special purposes.

The next reference source (which is business-oriented) has one particularized definition, given in the sense "hedge clause" (cf. 1, a preventative measure), and a more universal one (cf. 2), expressing two possibilities – the out-ward "denial or disavowal of a claim", and the in-ward renunciation of someone's (actual or potential) property or rights (Businessdictionary.com):

1. *Clause or statement in a document that tries to prevent creation of a warranty or contract. Also called hedge clause.*
2. *Denial or disavowal of a claim, or renunciation of interest in or title to a property.*

Even on a more general and relaxed level of understanding, "a repudiation or denial of a claim" (cf. Caruth & Stovall: 287) is "a defensive measure"; and since '*dis*-claim' is derived from and implies 'claiming' – an action which involves the use of language – it follows logically that disclaimers will be *text*, serving the need to be explicit, precise, and commanding (Encyclopedia.com, citing *West's Encyclopedia of American Law*):

The denial, refusal, or rejection of a right, power, or responsibility.
A disclaimer is a defensive measure, used generally with the

purpose of protection from unwanted claims or liability. A restaurant may disclaim responsibility for loss or damage to a customer's personal property, or a disclaimer clause in a contract might set forth certain promises and deny all other promises or responsibilities. A disclaimer of warranty, which is provided for in the uniform commercial code, limits a warranty in the sale of goods. It may be general or specific in its terms.

In the act of disclaiming, the intention to "deny, refuse, or reject" is to be effected according to a logical scheme that involves: (i) understanding the context which requires disclaiming, (ii) deciding what aspects are relevant for the parties concerned, and (iii) actually expressing the disclaims; then (iv) communicating the disclaimer to the parties interested (Reference.com):

> Q: How do I write a disclaimer form?
> A: Quick Answer
> Writing a disclaimer form for a business involves three steps: understanding the business and services offered, deciding the terms and making clients aware of the document. The disclaimer is a statement that intends to protect the services (or products), property, and information of a business or individual.

Nevertheless, not all disclaimers are tailored according to these exact principles – or, more importantly, exist as definite terms in an official document. Oftentimes, the necessity of denial/disavowal leads communicators to improvising text that may or may not be accepted as a disclaimer. If a rejection is the case, those are basically instances of wording that follow the general principle of negation, but do not conform with formal standards, being either oral in nature (and so, potentially devoid of witnesses) or, if written, being free-styled and frequently lacking the elements of rigor associated with formal/official appearance.

For most people, most of the time, "[a] disclaimer is a statement that is made to limit the scope of your potential liability." (cf. Policymaker.io). It is customarily needed ahead of the potential liability, therefore it is an anticipatory type of action; exceptions are situations when the relation between parties changes along the way and alterations in business terms are needed. Statistically speaking, it is most frequently the formal expression of a limitation – either *repudiation* (denial of others' satisfaction) or, less frequently, an expression of *renunciation* (denial of one's own satisfaction).

As is made abundantly clear in all definitions quoted above, the nature of the limitation varies according to the context where the disclaimer is defined or used in real-life situations. Even loose explanations that we encounter on 'how-to' websites will express the gist of what these are about: "Disclaimers are everywhere – anytime someone is warning you of something, letting you know something for your own good, it's basically a disclaimer." (Destinationlegal.com). The reasons seem to be rather obscure as to why guidelines for disclaimers are much easier to come across in digital environments than in actual composition manuals; on the whole, this species is clearly under-represented in materials for training in the writing of utility texts.

As ubiquitous as they are common, disclaimers are easily ignored and melt in the background of our everyday experience. Yet, dealing with disclaimers closely creates an awareness that they share certain features with other forms of specialized discourse, particularly *warning messages* and *contingency clauses*. With those, disclaimers share the beneficiary's intention to anticipate situations (implying rights or obligations) that need be avoided, as well as specialized means of expression aimed at discouraging certain entities from pursuing undesired action. In the following sections, samples with commentary will detail such aspects further.

B. How disclaimers work

In order to achieve the best results, disclaimers are anticipatory, explicit, and conspicuous. The lack of these features lead to an effect that is largely diminished. Non-anticipatory (i.e. occurring post-factum), implicit (only derivable from other terms), and/or inconspicuous (e.g. in some way concealed in communication) disclaimers can still have an effect if there is a history of relevant activities apt to replace a missing or faulty disclaimer, and if the legislation does not provide, or provides inconclusively, for the situations applicable.

The golden principle *function determines form* apparently governs contract-drafting more definitely and decisively than other types of communication, as these texts are to be considered of critical importance (cf. for instance Adams: 60). The obvious function here is to state a limitation of rights or responsibility; to that specific end, "[a] disclaimer is a renunciation of one's legal right or claim or a repudiation of another's right or claim. And the verb *disclaim* has the corresponding meaning." (Adams: 615).

Schultis et al. show repeatedly (pp. 22 ff etc, while describing American commercial regulations valid on state level) that commercial disclaimers "must be conspicuous" and "not unconscionable", and authors of disclaimers will normally observe such rules. Nevertheless, the principle of fair warning is sometimes eluded if superior interests – such as, *exempli gratia*, the pursuit of profit beyond the other parties' interests – prevail. Transgression, however, is not possible in the absence of disclaimers (whose necessity is absolute in order to effect repudiation), but only by affecting conspicuousness or conscionableness.

Disclaimers are encountered in all departments of human interaction, in a remarkable variety of formulation. This state of affairs is a strong indication of *their versatile character*. By means of illustration, a corpus of disclaimer texts (see throughout this article samples no. 0-18) will provide opportunities to contemplate patterns of interaction (understood either anthropologically- or linguistically-wise). Notice how whenever something is at stake that may cause a loss for a relevant party, specific means are employed that serve the interest of the disclaimer beneficiary.

Even the enterprise least likely to beget conflict of interest

can resort to disclaimers in order to diminish the possibility of undesired developments in a relationship. Although disclaiming whatever should be avoided is not an infallible solution, it is effective most of the time. Below is an example of a researcher's attempt to avoid any misunderstanding between himself and others (potential collaborators) by way of a disclaimer. He made it conspicuous inside a dedicated website intended to popularize his research project and to ask for assistance, created in 2006. The author (a doctoral student) did that by using font of same size as the rest of the text on the homepage, and by placing the disclaimer (presented as such) in a position where it would be visible without the need to scroll down the page:

> #1 *This website is not a business, neither part of, or associated with one. / Its purpose is to engage individuals in support of an academic project, / as defined inside this website.*
> INTERPRETATION Author's point of view: "Looking for commercial interests here is pointless, as nothing is being sold or bought. My sole intention is to ask for informative support with my scientific project, see contents of website for relevant details." In all honesty, the idea at the origin of the disclaimer placement was to avoid any misinterpretations and complications arising from managing a website with "political correctness" in its URL. (No complications did arise.)

More often, though, a disclaimer is the instrument for ensuring a certain degree of stability in business relations (where the effective action power of the parties is concerned). In sales (and specifically in the drafting of sales contracts), this creation inherited from ancient Roman commercial practice is frequently used in forms that are adapted to the plausible situation:

> #2 *Caveat emptor!* [Let the buyer beware!]
> INTERPRETATION: Acceptance (and effects) of the service rendered by making this purchase (i) remain the customer's exclusive responsibility, and (ii) constitute an absolute condition of purchase.

Under this clause, the buyer automatically assumes any and all risks of dis-satisfaction upon buying the goods or service "as is" – no further complaint will matter between the selling and the buying parties. This classic maxim, sometimes rephrased to suit a specific situation in terms of adequacy and precision, is the most common disclaimer in commercial practice when an extended warranty is not intended for the goods being sold. In principle, the justification of this disclaimer is to protect a business from disruption in its activity, given that the buyer is normally given the chance to assess the goods and to consider the suitability of the purchase in advance. It should also be noted that, despite the universal character of *caveat emptor*, in recent times, commercial legislation tends to allow buyers the right to reverse any purchase (with the exception of some perishables) within a grace period of (in Romania, e.g.) thirty days, and with "No questions asked".

Taxonomies of disclaimers may be derived from several perspectives, distinctions being made by form, or by function of denial or limitation. The different cases resulting can be placed in a descriptive diagram that describes exclusively linguistic mechanisms, as follows:

Disclaimers, Types:

By form:
- Communication channel:
Written (disclaimers-proper)
Oral (basic – limited, likely contestable)
- Degree of formality:
Disclaimers-proper (conforming with standards)
Improvisation (free-styled)

By function:
- Direction:
Self-oriented, i.e. renunciation (yielding rights or benefits of self)
Outward, i.e. repudiation (denying others' rights or benefits)
- Specialization:
Commercial (selling goods, or leasing property)
Property (especially inheritance and ownership rights)
Service (e.g. EULA)

From a sociolinguistic perspective, observations are relevant in a general description of disclaimers regarding (i) the type of society or lesser group involved, (ii) its context and history of behavior, or (iii) the relationships established with other entities. Related communicative functions of the juridical and business orientation – in particular, the warning and contingency types – often interfere with the area of disclaimers, as can be seen below (warning-type announcements and contingency clauses or similar text).

Furthermore, pragmatically relevant are some rather special cases of practical law that are effected in the absence of the expected authority, e.g. the "I renounce you!" disclaimer that works as a powerful pragmatic tool in parts of the Islamic world, which can be used by husbands in order to shortcut the divorce process (traditionally, uttering the formulation is enough to effect divorce). *Talaq* is the respective Islamic term for 'divorce' achieved privately; it denotes dissolution of marriage when a Muslim man can sever marital ties with his wife by initiating a speech event that should have "I renounce you!" at its illocutionary core, while being addressed at the respective spouse (cf. News18.com): "'Triple talaq', or talqa-e-biddah as its [*sic*] known among Muslim communities, is a practice which gives a man the right to divorce his wife by uttering 'talaq' three times in one sitting, in any form including email or text message, without his wife's consent."

Exceptions aside, in most cultures the necessity for preservation of decision has led to the absolute prevalence of written over spoken text. Indeed, such necessity has played a major role in the development of writing systems, composition, and eventually specialized jargon as well as repositories of rules and regulations governing social relationships:

#3 *Verba volant, scripta manent.* [Spoken words fly away, written words remain]
"If you wish a lasting effect of your words, write them down!", i.e. written and signed clauses prevail over oral agreements. (If you prefer to settle important issues in speech, you will find that approach marred by ephemerality.)

One should not believe, though, that once a disclaimer is in place, all necessary social regulation is completed. Apart from the activities specifically attached to business partnerships, official bodies can ensure that disclaimers do precisely what they are supposed to. Notable examples are regulations establishing the conspicuous character of disclaimers (as well as any relevant commercial information) on the Romanian national market, e.g. the obligation to sell imported goods with accompanying documentation translated into Romanian, and to avoid, in the presentation of disclaimers that are included in commercial ads, a font size that is illegible (print), or a speaking rate that is non-intelligible (audio). The samples below are warnings of fame in the Romanian mass-media; one is related to the sale of pharmaceutical products, while the other to the airing of video materials that are potentially offensive to viewers:

#4 (a) *Acest medicament se poate eliberera fără prescripție medicală. Citiți cu atenție prospectul și informațiile de pe ambalaj. Dacă apar manifestări neplăcute, adresați-vă medicului sau farmacistului.* [This medicine is issued without a prescription. Be informed and act responsibly with regard to using it. Should negative effects occur, contact your physician or druggist]. (b) *Atenție, urmează imagini cu puternic impact emoțional...* [Caution needed! The following content may cause viewers a strong emotional impact].
(a) Aired via radio and TV. Traditionally, the three-statement-long warning was uttered in three short breaths, at a very high speed (this particular delivery being the oral equivalent of the small-print presentation). After a number of years when the announcement was run at hardly intelligible rate, the regulating body (CNA, the National Audiovisual Council) decided it should be reformatted for better access by the audience (cf. the National Audiovisual Council decision #378). The distinction between over-the-counter and prescription medication is a critical part of market regulation in the western countries; in Romania, it tends to align itself with benchmarks established by the European Union (of which the airing of warnings like this is an example). (b) This warning (endemic in the TV environment), apparently intended to ward off sensitive viewers, is likely to result into an increase in audience, as for some, a dissuasion of this type will work as an attention trigger. The illocutionary effect of Atenție, ... is the opposite of what would be expected from the disclaimer if taken for its face-value; hence, it would be reasonable to expect TV producers to deliberately speculate this paradox to their advantage (i.e. increasing the audience of their news programs).

Explicit and conspicuous anticipation of future situations that we wish to avoid: that is the functional mechanism of disclaimers, and it is made effective by denying oneself or others certain rights or privileges. In the following section, various types of disclaimer are described, showing the working relationship between form and contents in a multiplicity of expressions.

C. Form and contents of disclaimers

Communicators' interests (cf. definitions and scope, supra) define disclaiming text, along with its informative contents and adequate style of expression. Contents must be intimately connected to the disclaiming function. In the following example, let us consider the worlds of knowledge that can be concealed behind this succinct formulation coming from a given person of interest:

#5 *No comment!* The relevant individual(s) will not make any comments."
The repudiation occurs at a time when comments are expected, while the point of denying access to information is basically for self-protection (or sometimes for the sake of third parties). Additionally, it is implied that, should anyone think they have heard anything else apart from the disclaimer, that message will have no effect whatsoever: "No comment!", beside promising not to let anything out on the case of interest, cancels everything else that may have been said. NB. The power of the spoken *No comment!* resides in the usual context in which it is issued, with a number of witnesses compelled by convention to accept such tactical decisions from persons of interest.

A two-word disclaimer can enforce all expectations – if only the speaker of it will be consistent in attitude and remain silent. Some philosophical and legal implications of exercising the right to remain silent are obviously at work here, among which the right not to self-incriminate oneself reigns supreme (cf. the Fifth Amendment to the US Constitution, which states "nor shall [any person] be compelled in any criminal case to be a witness against himself", and similar provisions in the legislation of other countries). Other situations deeming *No comment!* necessary are those when the scarcity of relevant information and the need to be objective in the case of an ongoing investigation runs contrary to the need of the press to learn the truth.

At the opposite end of the range of possibilities of expression, the need to avoid a future predicament may be such that any possible contingency whatsoever is worth including explicitly in what can turn out to be a *very* lengthy, tentatively exhaustive disclaimer. This much detail in a repudiation text is rarely the case, yet it is not specifically forbidden by rules governing the use of disclaimers:

#6 Disclaimer does not cover misuse, accident, lightning, flood,

tornado, tsunami, volcanic eruption, earthquake, hurricanes and other Acts of God, neglect, damage from improper reading, incorrect line voltage, improper or unauthorized reading, broken antenna or marred cabinet, missing or altered serial numbers, electro-magnetic radiation from nuclear blasts, sonic boom vibrations, customer adjustments that are not covered in this list, and incidents owing to an airplane crash, ship sinking or taking on water, motor vehicle crashing, dropping the item, falling rocks, leaky roof, broken glass, mud slides, forest fire, or projectile (which can include, but not be limited to, arrows, bullets, shot, BB's, shrapnel, lasers, napalm, torpedoes, or emissions of X-rays, Alpha, Beta and Gamma rays, knives, stones, etc.).
"We admit no responsibility, whatever the possible, or inescapable (*Acts of God*) source of your problem may be." NB. The encasing formulation (i.e. "Disclaimer does not cover"), nevertheless, is marred by the negation of the verb "cover", implying – if the text is read carefully – that all those *force-majeure*-type events are *not* included, in fact (unless the disclaimer is elsewhere and this text only refers to it, which is not the case). A most ample disclaimer is thus self-canceled by an (apparently) accidental negation. In the absence of "not", this would be the *absolute disclaimer*: "Disclaimer [does] cover (i.e. *denies any compensation for*) about forty-four different specific situations, plus other Acts of God".

In pragmatic terms, the previous sample is an extreme application of the Maxim of Relation, although constituting an ostentatious abuse of (at least partially) the Maxim of Manner, as well as of the Maxim of Quantity (cf. Paul Grice's Maxims, under the Cooperative Principle). At the same time, the disclaimer at hand is a quite interesting development from the perspective of the Maxim of Quality, whereby one tries to give information that is *truthful*. In this anticipatory type of situation, obviously one cannot be truthful in the standard sense (as the situations of relevance have not occurred yet), but we can reasonably agree that the excess of detail is based on a relevant history, as "these things happen" (and consequently have an impact on the author's ability to fulfill his/her obligations).

Disclaimers are, generally, examples of applied pragmatism, whenever an intended function is followed with consideration and competence to the end that is desired. Consider the following sample and its lack of ambiguity, along with its corporate source:

#7 *DISCLAIMER OF WARRANTY. The software is licensed "as-is." You bear the risk of using it. Microsoft gives no express warranties, guarantees or conditions. You may have additional consumer rights or statutory guarantees under your local laws which this agreement cannot change. To the extent permitted under your local laws, Microsoft excludes the implied warranties of merchantability, fitness for a particular purpose and non-infringement.*
The clarity of "as-is" and of "Microsoft gives no express warranties, guarantees or conditions." leaves the end-users doubt-free – they will have to either "bear the risk of using [the software]" or renounce it.

Apart from disclaimers-proper (and makeshift-disclaimers taken in their immediate sense of utility), there are aspects of *tort law* (legislation dealing with management of civil wrongs) whose actual contents rely on the non-mediated experience of many individuals whose mission is precisely the avoidance of tort. In corporate and legal circles, a folklore has resulted based on a considerable wealth of existing cases that involve life with disclaimers.

At times, the power and persistence of certain legal or other binding text/discourse can be perceived as utterly crushing to a party, and may be compared to God's inflexible decisions. A humorous maxim was inspired by analogy with the text at Job 1:21, ". . . the LORD gave, and the LORD hath taken away; blessed be the name of the LORD." (Job's reaction upon learning about the death of all of his children and the loss of all of his property):

#8 *The large print giveth and the small print taketh away.*
A fair warning to anyone inclined to ignore the fine print/bold print cleavage. (This being a disclaimer about disclaimers.) Also: the conclusion that (as of "taketh away") people *do* as a matter of fact ignore disclaimers ("the small/fine print" in legal documents and binding text).

Should we feel as powerless and distressed as innocent Job, that state may still be our own making. "If you do in your life as the law (/as the Bible) asks of you, you will be protected against all harm" is a rather simplistic view; but if harm comes your way, it may be because in fact you have ignored the fine print in some contract or other. When installing new software on their computers for instance, people are ever in a hurry to complete the operation and enjoy using the new application, and so rush to click "I agree" to allow the installation process to proceed although they have not read and considered the relevant terms thoroughly. (The same usually happens when we sign a contract for a cable TV, or telephone or data transmission service etc.) Sooner or later, they find themselves complaining about various issues resulting from the use of the respective program or service.

Nevertheless, a world where everybody – absolutely everybody – reads and considers through all implications in agreements that they become part of is hard to imagine. A paradox of sorts appears when the principle of free engagement may be affected by complete knowledge of applicable terms (in the sense in which e.g. if the beneficiaries knew all clauses in a contract, they would renounce entering it). Legally speaking, it is freedom of contract that is at stake, which is part of the general freedom that people should enjoy in modern-day life. A description of this vital issue goes as follows (Bandsuch, in Kolb: 2205).

The freedom to contract as desired was a much-protected legal principle under early common law and still is in many ways. Caveat emptor, let the buyer beware, was a natural consequence of such a principle, since the parties were entitled to enter into a contract as they chose. However, the freedom was not so absolute as to ignore how fraud or duress would impair such freedom and the resulting contract. In that

same vein, failure to satisfy a promise regarding the quality or type of good would also invalidate a contract as failing to meet its warranty, though the warranty was required to be expressly communicated.

As the samples selected for illustration throughout this text will have us believe, any type of contents is within the possibilities associated with disclaiming future or permanent predicaments. And as shown at the very beginning of this presentation, it is ultimately the purpose and the function pursued that will establish what the contents of the disclaimer should be specifically.

D. Versatile diversity

People's anticipation and prevention of future litigious issues determine them to produce, often by way of improvisation, a broad diversity of disclaimers. Even if drawn as an after-effect of intense feelings at work (e.g. frustration over past negative experiences), and drafted on the spot, a disclaimer can still reach its intended audience, and attain its goal; this may happen despite flaws such as expression oblivious of composition rules or lack of formal rigor. Below is such an example – an unsigned handwritten notice posted at the entrance (indoors) of an apartment building in Sibiu, urging some residents to quit disturbing neighbors for access and to get their own electronic access keys (the original spelling is preserved):

#9 *LOCATARI !*
NU MAI DERANJAȚI PE
ALȚII , LUAȚIVĂȚI CARTELA
ȘI DESCHIDEȚIVĂȚI
UȘA !
[Residents! Quit disturbing others, get your own keys and let yourselves in!]
Certain individuals collecting benefits at the expense of others is a rather common experience in communities everywhere. An unwritten social contract is supplemented by a written clause meant obviously to regulate relations among the members of the relevant group. Aside: Despite the claim that "others" are disturbed, the possibility exists that this is the exclusive opinion of the harassed individual who wrote and/or posted the message.

From a sociolinguistic point of view – studying the mores and behavior patterns of a given social group – such samples of folk discourse (albeit half-literate) are extremely valuable. They too "hold a mirror up to life", and offer precious insight both into the manner of expression of the "common people" and into their lives and established inter-relations. Apartment-building postings or notices in particular are a rich source of "flavored" discourse, samples of which are often posted in bunches on web portals specializing in humor; an established sub-category consists of examples authored by more or less illiterate or inept *admin*'s (i.e. apartment-building superintendents).

Sample #8 above demonstrates for the mindful reader of utility-destined discourse that quite a few disclaimer-like texts are not *disclaimers per se*, but are simply made, via overt intentions, to work as such. Consequently, these can be defined fundamentally by their function (– to avoid future undesired possibilities, one way or another), rather than strictly by their form (i.e. non-standardized – at least not the manner that legal clauses in official documents are by formally denying future possibilities). In established business, though (cf. infra samples #9 and 10), disclaiming has long established repositories of dedicated formulations that, as expected, accompany mainstream-media productions.

In the mass publication of books (and in the Anglosphere, for the most part), set disclaimers are printed at the beginning of the volume, in order (a) to ascertain the copyrights that apply; and (b) to limit the unlawful circulation of the book, as the samples below illustrate for books printed in the UK over the past few decades. Occasionally, a notice defining the extent to which multiplication of the copyrighted material is permitted is included on the back of the title page, such as (c). Finally, in fiction publishing, the wording along the lines of (d) is recommended.

#10 (a) *[Author's name] has asserted his/her right under the Copyright, Designs and Patents Act, 1988 to be identified as the author of this work*. (b) *This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, resold, hired out, or otherwise circulated without the publisher's prior consent in any form of binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.* (c) *Copyright. The law allows a reader to make a single copy of part of a book for purposes of private study. It does not allow the copying of entire books or the making of multiple copies of extracts. Written permission for any such copying must always be obtained from the publisher in advance.* (d) *This is a work of fiction. Names, characters, businesses, places, events and incidents are either the products of the author's imagination or used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.*
(a) Assertion and enforcement of the fact that the name next to the title of the book is the actual author of the book (denying the right of other entities to name themselves authors of the work in question and derive benefits). (b) Does consent supersede *form*? This may not be clear enough for some readers. Ultimately, it may seem that one can "lend, resell, hire out, or otherwise circulate by way of trade or otherwise" a book if "any form of binding or cover other than that in which it is published" is not the case (i.e. if the book is preserved as it was sold in the first place). Ultimately, the formula seems to impose the impossibility of circulating the book in a form other than the original one. (c) We can only speculate on the probability that such a notice will deter people from making as many copies of copyrighted materials as they please, no matter what the law says – when said law is all but inapplicable. In emerging nations such as Romania, millions of full copies of countless

books have been made with no permission from publishers whatsoever. Deeper-level reading: a consideration of the codes that apply legal principles but apparently lack the means of enforcement. (d) The perfect cover for whatever use of names, characters etc to be considered fictitious, any resemblance to reality a matter of coincidence. Sample (d) is an inspired illustration of the power of the written word in general, and of a disclaimer in particular: make-believe (– words, nothing more), but strong enough to eliminate future encumbrance. Apparently, all that a writer has to do to enjoy freedom of action is say the magical words: "This is a work of fiction. ...".

In the cinematic environment (feature presentations), another set of disclaimers apply for similar purposes (cf. Wikipedia: 'All persons fictitious disclaimer'), as follows:

From about 2000 on, the traditional legal disclaimer for American studio films and TV series has been expanded to include greater threats on copyright infringement, as well as distancing the production from promoting the use of tobacco products, and also to assure audiences that no animals were harmed. Modern-day boiler plates are along the following lines:

#11 (a) *This motion picture is protected under the copyright laws of the United States and other countries throughout the world. Country of first publication: United States of America. Any unauthorized exhibition, distribution, or copying of this film or any part thereof (including soundtrack) may result in civil liability and criminal prosecution. The story, all names, characters, and incidents portrayed in this production are fictitious. No identification with actual persons, places, buildings, and products is intended or should be inferred.* (b) Copyright © *(year) (production company). All rights reserved.* (c) *No person or entity associated with this film received payment or anything of value, or entered into any agreement or connection with the depiction of tobacco products. (d) No animals were harmed in the making of this motion picture.*
(a) Disclaimer of copyright protection; of origin of production; of unauthorized use; of privacy or protection (two sentences): altogether, those clauses settle the most important legal issues regarding the production and distribution of the respective motion picture. (b) Making a legal claim on copyright/ownership rights. The wording of these disclaimers differs from jurisdiction to jurisdiction, as does their legal power. (c) Avoidance of tobacco-related issues. Should the statement be true, we can ask whether the absence of this disclaimer implies receiving and entering, respectively. (d) Avoidance of animal-rights issues (same question applies as above, c).

A disclaiming text can thus be any message apt to serve the functions based on which disclaimers are formally defined. An example of a rather unusual disclaimer – which can also be taken as the artistic team's statement of intent – is the boilerplate text running at the beginning of every episode of the TV series *Fargo* (FX, 2014-):

#12 *This is a true story. / The events depicted in this film took place in Minnesota in [year]. / At the request of the survivors, the names have been changed. / Out of respect for the dead, the rest has been told exactly as it occurred.*
"We are committed to telling the truth about what happened." Deeper-level interpretation (more realistic): "We pretend to tell the events as they happened for the sake of artistic effect; your job is to play along, which is part of the suspension-of-disbelief convention at work – by default – between artists and audiences." Some viewers may soon experience the suspicion that the recurring disclaimer is no more than a made-up device, a mannerism of sorts inserted for artistic effect only (see also Page's comment).

Authors of a cinematic narrative may want to direct their audience toward a certain frame of assimilation and/or interpretation of a piece of art. A possible example of how this works is given in a voice from the distant future at the very start of Roberto Benigni's production *La vita e bella* (1997):

#13 *Questa e una storia semplice, eppure non è facile raccontarla; come in una favola c'è dolore, e come una favola, è piena di meraviglia e di felicità.* [This story is simple, but not easy to tell; like in a fable, there is pain, and like a fable, it is full of wonders and happiness.]
Although "a simple story", this cinematic account also contains "pain, wonders, and happiness" – implicit reasons for the public to watch the tale with intense attention (see deeper-level interpretation at previous sample).

Artistic creativity aside, the kinds of situations where a disclaimer is needed for the most practical reasons are beyond count. In ancient Roman times, estates that were protected by guard dogs often had such a warning (#13a) visible outside the entrance; in our day, protection of private property (b) can transcend the very substance of that most traditionally cherished of institutions and social contracts whereby the parties may pledge to share a living "...for better, for worse, for richer, for poorer..." (basic Protestant wedding vow):

#14 (a) *Cave canem* [Beware of (the) dog!] (b) *Except as otherwise provided below, Prospective Husband and Prospective Wife waive the following rights: To share in each other's estates upon their death. To spousal maintenance, both temporary and permanent. To share in the increase in value during the marriage of the separate property of the parties. To share in the pension, profit sharing, or other retirement accounts of the other. To the division of the separate property of the parties, whether currently held or hereafter acquired. To any claims based on the period of cohabitation of the parties.*
(a) The proto-warning against unlawful or unwanted access. NB. This will also warn passers-by who would *not* trespass anyway. (b) Prenuptial agreement, conceived as a waiver of rights traditionally associated with marriage. A prenuptial agreement or waiver (informally, a 'prenup') is not a disclaimer *per se* but still serves as one, therefore it is worth

including in our presentation.

Apart from the cases when entities selling goods wish to avoid or to limit further responsibilities, probably the next most usual situation is the limitation of access to certain places. The first implication of the warning is that the interdiction not only implies, but is to some extent based on the capability of those warned to ignore it (an exception is apparently the case with #14d just below). In different contexts, and with varying degrees of concern involved, any of the following – and many others – can be employed as disclaimers of access:

#15 (a) *NO TRESPASSING!* (b) *POLICE LINE, DO NOT CROSS!* (c) *AUTHORIZED PERSONNEL ONLY!* (d) *Lasciati ogni speranza, voi ch'entrate!* [Abandon all hope, ye who enter here!]
(a) Denying access onto a private property. Yet, in the wrong context (no private property, or no right to deny access) the felicity of the message fails and the warning is but a jocular message (as when placed on the door of one of the family's children). (b) Denying access onto a crime scene during a police investigation. (c) Denying access to anyone lacking the credentials to enter an area. (d) Warning those who enter Hell that there will be no return/escape. Consider the absurdity of the warning against an action (i.e. entering the Underworld) which naturally is not, cannot be the voluntary option of those warned!

Conversely, the warning may be issued in a form other than written (if volatile, being repeated as many times as needed), for the good of the warned. The following message (#15a) is played back on loudspeakers in Italian rail stations, while #15b is a possibility either when a fire or a fire drill occur; finally, #15c and similar warnings are supposed to help avoid both accidents and the responsibility of those who make risky passage possible (such as builder of bridge, owner, local authority etc):

#16 (a) *Treno in transito! Allontanarsi dalla linea gialla!* [Transiting train approaching the station. Keep away from the yellow line (alongside the platform)!] (b) [fire alarm going off in a building] (c) *Betreten auf eigenen gefahr / Betreden op eigen risico* [Use at own risk] (d) *Tout abus sera puni!* [Any and all abuse will be punished.]
(a) Implied: "Consider yourselves warned! If you ignore this message and get harmed, we decline responsibility." Potential harm and compensation may still be subject to a ruling in a court of law: the rail company is not automatically exonerated of any legal responsibility. (b) Expressing at 100+ dB the emergency that all those present should immediately exit the premises (or otherwise proceed as instructed). (c) Message intended: "There is a risk. Tread with care." (d) General warning limiting access and threatening to punish abuse, as provided by law.

What the warning-type samples listed above have in common is the intention to avoid "loss of life and limb". People grow educated with the practical knowledge that by taking such warnings seriously, they will enjoy a good chance of survival in the physical environment. Nevertheless, from the myriad possibilities that an individual encounters in a lifetime, most have little, if anything, to do with life safeguarding but are simple, practical everyday matters; the disclaimers listed (a) through (c) below are some of the most frequently encountered:

#17 (a) *No shoes, no shirt, no service.* (b) *Batteries not included.* (c) *Some assembly required.*
(a) "Do not expect us to do business with you in the absence of decent dressing [on your part]!" (Lack of decent dressing brings about lack of service.) (b) "Do not find yourself unable to use the device you have purchased for lack of power!" (therefore, "Buy the batteries needed for operating this device separately!") (c) "Do not expect to unwrap the goods and find them in utilizable form!" (ergo "Be ready to do some assembly work when the goods have been delivered!")

Whether serving individual or group, private or public purposes, in formal or informal contexts or expression, disclaimers are part and parcel of our existence. The functions addressed or expressed cover all walks of life and are executed via all means available – as long as some form of denial or interdiction is the case.

The disclaiming offspring of human experience with legal terms may emerge in the most unexpected forms. An ad-hoc folklore develops around disclaiming actions, attitudes, behavioral patterns etc currently trending in the digital media, and addressing various social issues. A complex of factors will decide its success (popularity), among which creator's *inspiration* and favorable *context* are decisive.

Memes circulated along a variety of channels are powerful vehicles for the commandment of the day on the public agenda. A play on words from the massive manifestations for democracy in early-2017 Romania directed against PSD (the then-ruling Social-Democrat Party) had its leader Liviu Dragnea's first name included in a pun intended to re-negotiate the social contract after passing *Ordonanța de urgență 13* ("a piece of emergency legislation . . . [meant] to weaken the punishment for abuse of power, negligence while in office and conflict of interest [which] decriminalised some forms of corruption, if the financial damage caused amounted to less than roughly £38,000", cf. Gillet):

#18 (a) *We don't beLiviu!* (b) *No amu-i bai!* [Now there's trouble!]
(a) "We reject your assurance that the Emergency Ordinance 13 is good for Romania. Furthermore, we reject the Government and its authority." (b) One of many warnings on banners displayed during mass protests, this time showing regional flavor (the extended north-Transylvanian area including Cluj, where the author witnessed this message). The same idea as in (a) is implied – deeming the government an illegitimate one.

Wherever the chances are ripe that an infringement on the interests of the party promoting a disclaimer will occur, those are the domains most likely to breed disclaimers. We should note, though, that the "selling party" and the "buying party", respectively, are separated by all odds in becoming the *disclaiming party*. Although buyers disclaiming future eventualities are not unheard of (– as corporate entities rather than individuals), it is fundamentally the seller's job to somehow limit the warranties granted. To counterbalance that situation, (i) an educated market (buying-wise) will promote those businesses (sellers) that do not abuse their position; and (ii) official regulating bodies will also defend the buyers' interests and rights. (Naturally, these achievements are possible only on a free market, under the rule of law.)

E. Conclusions

For all their polymorphic capacities and ubiquitous nature, disclaimers will be considered and employed as such according to what our needs dictate us. Whatever changes is ever the context, which means eventually that people's renewed perceptions of reality will derive inspiration and create disclaiming discourse anew. Human creativity is, in this field, at its best, revealing versatile luxuriance in the form of rather modest-sized communications.

In systemic terms, the universal behavioral pattern *Approach–Withdrawal* appears to be implicated in disclaimer-related activities. Its natural form is modified via culture, in the sense that, all things being equal, *approach-type* marketing activities for goods and services are paired in principle with *withdrawal-type* actions of limitation of warranty or benefits for said goods and services (ergo disclaimers). Having acknowledged that pattern, the great problem that remains to be solved, in theoretical as well as in practical terms, is how exactly to balance the two opposite trends, since they are also complementary (one cannot exist without the other).

*

Disclaimers render upon us the chance of acting against the most burdensome given of all, the *irreversibility* of our actions, by attempting to prevent the worst from happening. One may find himself, when confronted with the anguish of an unfortunate choice, calling on the simple action that lies at his fingertips when functioning in a virtual environment: *press Ctrl + Z and undo the wrong*; but in the real world, the option is but an immaterial illusion, a mere worthless husk of the godly power to fundamentally change things *a posteriori* – once bad things have occurred, and all may seem lost.

What we do in disclaimers may come closest to such feat: proposing a limitation that is applicable to whatever wrongs may prey upon us – except in the future, never in the past. We act in our disclaiming activities as resolutely as is humanly possible toward the ultimate advantage that post-modern humans claim: to undo whatever doing is no longer acceptable before it happens. Alas, retroactive/reparatory action is only available in relation to matter as soft as the manipulation of bytes of information that IT makes possible. But then, soft-matter work is not the godly, definitive work, but only temporary molding before a finite shape is decided upon.

Homo dubius is anguished in expectation of the moment when time, space, matter, information, and energy altogether will cease to resist human purpose. Until that day arrives, we are left with such means as disclaimers and similar devices, minute parts of the larger, more complex system of social organization. A simple and sensible thing to do at this late stage of our discussion is to think it all over, seeking possibilities of fixing implacable wrongs, and write a new disclaimer:

#19 *This supersedes all previous disclaimers.*
A means of reverting all previous acts that may be deemed improper at some point in time. A universal disclaimer.

Notes:

1. Political-correctness.info. On-line from mid-2006 to late 2007. Text placed on Homepage (contents by Sorin Ungurean).
2. A classical-Latin disclaimer turned maxim, preserved to this day as part of our common Western heritage.
3. Another classical-Latin disclaimer turned maxim.
4. (a) Warning traditionally recited at high speed at the end of over-the-counter-medicine ads on radio and TV; (b) Warning uttered by Romanian news anchors to introduce video material of a shocking nature.
5. 'Magical' expression used by public figures in critical contexts when caution prevails over the necessity to explain what is happening and is of interest to the public.
6. The "mother lode" of all comprehensive disclaimers, by anonymous author (available online at Fiction.net, Greenkeys.tv etc).
7. Disclaimer of Warranty (MS) Microsoft Corp. "End-User License Agreement" (*EULA*). Included with the data package downloaded by the author on a personal computer, circa June 2004.
8. Humorous yet cynical variation on a biblical theme, in quasi-legalese.
9. Notice posted at the entrance of an apartment building on the outskirts of Sibiu – written in green marker, hand lettering as reproduced above; conspicuous *in situ* in December 2015 (extant 2015-2016).
10. (a), (b) Set text on verso of title page, UK publications (books); (c) Set text; see for illustration, among others, Carter and Long. *The Web of Words* (Cambridge University Press, 1987), p. ii; (d) set text on verso of title page, novels and short stories (works of fiction).
11. (a) – (d) specialized disclaimers featured in "American studio films and TV series" (motion-picture boilerplates).
12. *Fargo*. FX, 2014-. Season 1 first aired 2014 (ten episodes); Season 2, 2015 (ten episodes); Season 3, 2017 (ten episodes); and Season 4, 2020

(eleven episodes). Superimposed text, consecutive plates.

13. *La vita e bella*. Italy, 1997. First lines in the film.
14. (a) Disclaimer made conspicuous in certain places across the classical Roman world; (b) Prenup contents can obviously vary. For the quoted variant, see Burnham: 378, or Findlaw.com.
15. (a) – (c) Official notices posted in places where unauthorized access is prohibited; (d) Arguably, the most famous (because powerful) line in Dante Alighieri's *Divine Comedy* (*La divina commedia. L'Inferno*. Canto III, v. 9). Beside the traditional rendering of Dante's verse in English, others are available as well, e.g. "All hope abandon, ye who enter in." (Longfellow, in Alighieri: 23).
16. (a) Recurring warning announcement played back in loudspeakers, in Italian rail stations; (b) Fire alarm – in different ages of history, effected via different means of noise-making; (c) Bilingual (German/Dutch) sign on a small wood bridge; a picture of it is included in the "Disclaimer" article, Wikipedia (a–c: Warning disclaimers meant to safeguard "life and limb"); (d) Universal message warning against committing misdeeds, in French.
17. (a) Posted at the entrance of certain venues of business where (i) the need for dress decency in the interaction is real; and (ii) there is a good chance that some customers might otherwise ignore such requirements (e.g. in the proximity of beaches and swimming pools); (b) Text accompanying electric appliances that do not include batteries needed in operation; (c) Printed on goods such as certain furniture packaged in a compact form, as parts, for the sake of easy transportation.
18. (a), (b) Two of many disclaiming messages made conspicuous by protesters in Romania in early 2017 and later, anti-corruption and anti-government coalition of citizens.
19. A type of disclaimer meant to revoke previous ones.

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