

The Scrivener: Modern Legal Writing



Writing Help At Your Fingertips—Readability Scale

by *K.K. DuVivier*

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Writing well takes constant diligence. We all can use some help. But many of us may not be taking advantage of the tools that are available right at our fingertips. Most of us, especially those who are spelling-challenged, run our documents through spell check. Now, many word processing programs list readability statistics in addition to spelling and grammar advice. For example, in Microsoft Word, go to the “Tools” category and click on “Spelling and Grammar.” At the end of the spell check, Microsoft provides a chart labeled “Readability Statistics.” Understanding these readability scales can help improve your writing.

Readability Scales

Readability scales were first created in the 1920s.¹ During World War II, the military used them to ensure that weapons manuals could be read by soldiers in combat situations.² Readability research was popularized in the 1940s by Rudolf Flesch. Flesch was a Viennese lawyer who came to the United States to study education and wrote the best-selling book *Why Johnny Can't Read*.³ Now there are at least a dozen readability formulas on the market. The Flesch Reading Ease scale and the Flesch-Kincaid Grade Level formula are listed in the Microsoft Word software. The “Extended Fry” scale is often used to assess children's books.⁴ Another popular readability scale is the “Fog Index” created by Robert Gunning, who founded a company called “Readable News Reports” and who advised newspapers on clear writing in the 1940s and 1950s.⁵

Readability scales attempt to measure reader effort. Most people find that they can read more efficiently when words and sentences are short. The scales measure “readability” by using a simple formula of counting syllables in words and words in sentences. Under the Flesch Reading Ease scale, text is rated

between zero and 100. A score of zero indicates text is incomprehensible. Last November in the Colorado election, the majority of the ballot measures scored zero.⁶ A score of 100 indicates the measured text should be some of the easiest to understand.

Documents written for the general public should aim for a score between 60 and 70, which translates to a reading level of the seventh or eighth grade.⁷ You can justify lower readability scores for documents written for judges and lawyers because this audience is better educated than the general public. However, legal documents generally contain complex ideas, and the less familiar your audience is with a subject, the higher your readability score should be.⁸ Consequently, legal readers, who often are working under time pressures, will appreciate your efforts to improve readability.

Because readability scales are scientific and objective, they “have become the accepted yardstick for measuring the clarity of writing.”⁹ Readability standards have been applied to securities disclosure statements,¹⁰ insurance policies,¹¹ income tax returns,¹² health care information for the poor,¹³ and, in Colorado, to Medicare Supplement insurance.¹⁴

Disadvantages of Readability Scales

The shortcoming of readability scales is that they can only measure the surface characteristics of words. They assume that reading is equivalent to understanding. Yet, using monosyllabic words does not assure readability. Computers can count syllables by counting the number of letters between spaces, but

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K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.

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The first “Scrivener” column appeared in The Colorado Lawyer ten years ago in the March 1991 issue. See DuVivier, “Slide Rules, Telegrams and Legal Writing,” 20 The Colorado Lawyer 485 (March 1991). It has been a regular bi-monthly feature since then.

they cannot determine whether the words are understandable. For example, the first two sentences of Lewis Carroll's "Jabberwocky" received a Flesch readability rating of 84.8, or a fourth grade level, because the sentences and words are short: "Twas brillig, and the slithy toves did gyre and gimble in the wabe. All mimsy were the borogoves and the mome raths outgrabe."¹⁵ In addition, the computer cannot evaluate connections between words. Consequently, Emily Dickinson's enigmatic poem, "I heard a Fly buzz when I died," gets a perfect 100 on the Flesch Reading Ease scale.¹⁶

Computers also can count the number of words between periods, but cannot distinguish citation sentences from grammatical sentences. Thus, the readability programs register every period as the end of a sentence. Consequently, a citation sentence, such as 42 U.S.C. § 1983 (1994), is read as four short sentences, which can inaccurately boost a text's readability rating.

Conclusion

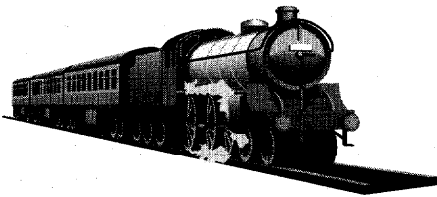
Here are some tips to help your documents rate high on the readability scales. As a general rule, keep your sentences short.¹⁷ Reading a sentence over twenty-one words becomes a struggle.¹⁸ You can avoid subordinate clauses by breaking longer sentences into shorter ones. However, be careful to avoid overly choppy text with little variation. Also, use short, everyday words.¹⁹ Only thirty-six of the 1,000 most frequently used words are more than two syllables.²⁰ When possible and appropriate, replace longer words with simpler, familiar ones.

If your word processing program has readability scales, check them out. As a general rule, they provide an accurate formula for predicting the ease with which your readers will digest your writing, so take advantage of this writing help at your fingertips.

NOTES

1. Crossen, "If You Can Read This, You Most Likely Are a High-School Grad," *Wall Street Journal* 1 (Dec. 12, 2000).
2. Hubbard, "Readability Test Finds if Writing Makes the Grade," *Denver Rocky Mountain News* 4A (Dec. 10, 2000).
3. Crossen, *supra*, note 1.
4. *Id.*
5. *Id.*
6. Editorial, "The Issue: Ballot Measures Written in the Most Obscure Verbiage. Our View: It's Time to Demand Straightforward English," *Denver Rocky Mountain News* 64A (Dec. 22, 2000).
7. Hubbard, *supra*, note 2.
8. O'Daniel, "Easier to Write With Word Processor," *New Straits Times—Computimes* 33 (Nov. 4, 1999).
9. Crossen, *supra*, note 1.
10. *Id.*
11. Indiana, Vermont, Massachusetts, and South Carolina require readability above a minimum score, such as 40 on the Flesch Reading Ease scale. Crossen, *supra*, note 1.
12. In Oregon, state income tax returns must rate at least a 60. Crossen, *supra*, note 1.
13. In Tennessee, health care information for the poor must meet the sixth grade level. Crossen, *supra*, note 1.
14. CRS § 10-18-103(2)(i) (2000). Text of a Medicare Supplement policy must achieve a minimum score of 40 on the Flesch Reading Ease test, according to 3 C.C.R. 702-4, § 23 (2000).
15. Crossen, *supra*, note 1. (Crossen reports a sixth grade level, but my word processor measured a fourth grade level.)
16. Crossen, *supra*, note 1.
17. DuVivier, "Plain English Part II: Shorter Sentences and Lighter Luggage," 27 *The Colorado Lawyer* 27 (March 1998).
18. Herman, "The Index of Gunning: A Quick Lesson in Utilizing Your Pen as a Sword," 167 *Global Cosmetic Industry* 34 (July 1, 2000).
19. DuVivier, "Plain English Part III: Choosing the Right Words," 27 *The Colorado Lawyer* 31 (May 1998).
20. Herman, *supra*, note 18. ■

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