Most contracts in which we engage in the marketplace, we do not care to read. Consequently, a classic question arising in the law of contracts is whether, and to what extent, the content of such agreements ought to be subject to special scrutiny of courts, regulators or legislatures. This paper, accordingly, develops an economic theory of the optimal regulation of unread contracts.

Under a prevalent view, when contract drafters are repeat players, there is little need for regulatory intervention, as the drafters' concern for their reputation serves a disciplinary function, which guarantees the efficiency of the drafted terms. Alternatively it is often maintained that a small percentage of informed consumers can guarantee efficiency. Our paper revisits these insights and finds them flawed in three main respects.

First, the mere assumption of repeat play does not, in and of itself, guarantee the sustainability of reputation. The socially desirable equilibrium, in which reputation disciplines sellers, is but one of many possible equilibria to which the market might converge and nothing guarantees that the optimal equilibrium would be selected.

Second, even if the desirable equilibrium is sustained, it is expected to guarantee the efficiency of only some contractual provisions, not all. In
particular, a reputation-minded drafter will tend to include efficient terms only to the extent that they pertain to high-probability contingencies, but not if they pertain to low-probability events.

Finally, the influential conviction of contract law theorists that an informed minority of consumers is sufficient to guarantee the efficiency of contract terms is shown to be inapplicable when the majority’s lack of information emanates from their failure to read.

Regulation is a means to correct the above-mentioned failures. As we establish, positive law, in its core principles, serves two corrective functions: first, it serves to eliminate inefficient equilibria; and second, it guarantees the efficiency of those aspects of the contract that reputation fails to remedy, i.e. provisions governing low probability contingencies.