Research shows most online consumer contracts are incomprehensible, but still legally binding

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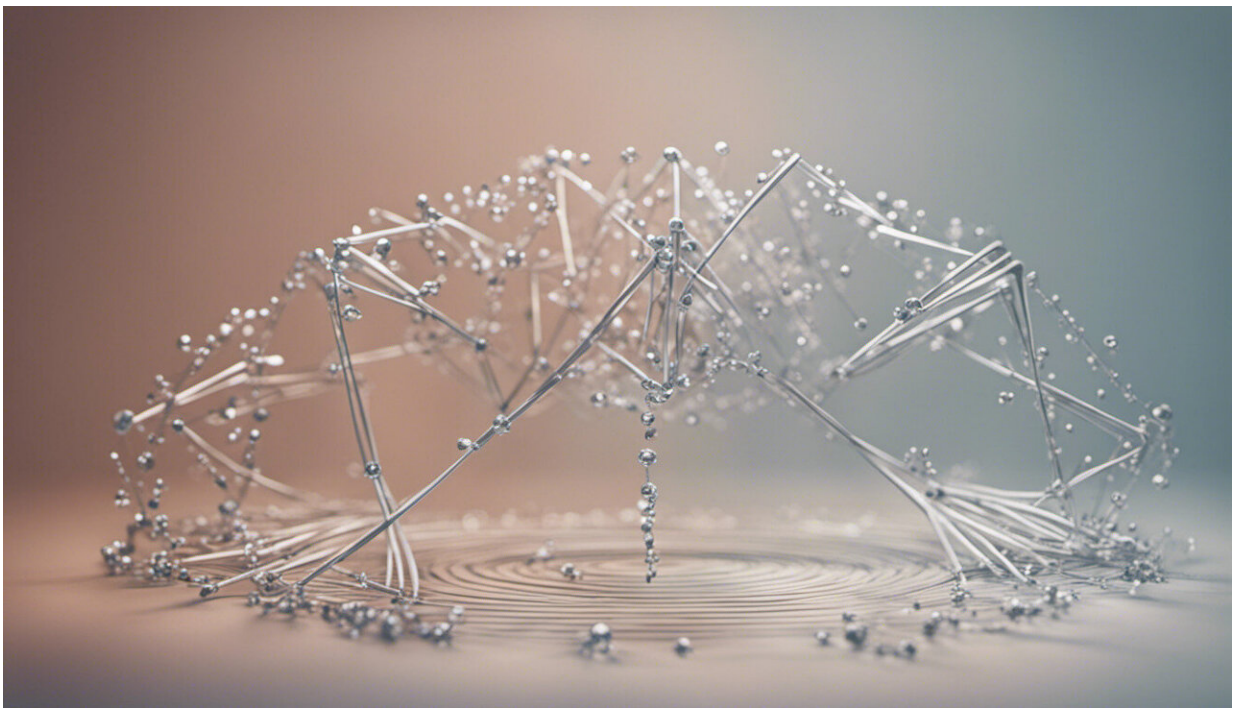

Credit: AI-generated image (disclaimer)

Most of us will have entered into consumer contracts with large companies and ticked a box to confirm we understand the terms and conditions – without bothering to read the fine print.

We accept standard form contracts when using social media, booking flights, opening a bank account, subscribing to a gym or renting a car. In all these cases, companies offer pre-drafted standardised agreements that are not negotiable.

At the same time, consumers are legally assumed to read the terms and conditions of their contracts. Because of this "duty to read", consumers are held responsible for the written terms of their agreements, regardless of whether they read them or not.

While consumers have the legal burden to read their contracts, companies do not have a general duty to offer readable ones. As our research shows, most of them are incomprehensible.

Checking readability

We have studied popular online consumer contracts and examined the readability of the 500 most popular sign-in-wrap contracts in the United States.

These contracts, now used routinely by popular companies such as Facebook, Amazon, Uber and Airbnb, assume that the user agrees to the website's terms and conditions by signing up. During the sign-up process, the website provides a hyperlink to its terms and conditions. But the consumer is not required to actually access the terms.

Many scholars argue that consumers do not read their contracts. Nonetheless, courts enforce these contracts based on the assumption that consumers had an opportunity to read them. In other words, according to this reasoning, consumers freely choose to ignore these contracts.

To examine this legal argument, we applied two well-established linguistic tools to check if consumers can actually read sign-in-wrap

contracts. We used the Flesch Reading Ease and the Flesch-Kincaid tests. Both tests are based on two factors: the average sentence length and the average number of syllables per word.

Consumer contracts as dense as academic papers

We found that according to these criteria, the contracts examined in our sample are very hard to read. In fact, they are written at the same level as academic articles. Reading these agreements requires, on average, more than 14 years of education. This result is troubling, given the recommended reading level for consumer materials is eighth grade.

Our study shows consumers cannot be expected to read their contracts. A contract is based on mutual assent, but consumers cannot truly assent to something they cannot read.

We hope such findings will encourage policymakers to revisit their approach to consumer contracts. For starters, legislatures should require companies to better communicate their terms. Beyond that, we should also detail systematic and objective criteria as to what is readable.

At the same time, courts should not assume consumers can read their contracts. Judges should hence be more willing to excuse consumers from unreadable agreements.

Where to from here

Linguistic tests may serve as a good starting point. But such tools should be used only as a perquisite legal standard for examining readability. Companies might deliberately generate good readability scores but that does not necessarily mean the text is actually easy to understand.

The purpose of plain language requirements is not to increase readability *per se*. Rather, it is to improve the chances that users will be able to understand these agreements, shop among them, and make informed decisions.

Making contracts readable does not rest other concerns, such as the incorporation of unfair terms. Policymakers need to take further steps to level the consumer-business playing field. Currently, the law neglects to impose on companies a clear and operational duty to draft readable contracts. Without a clear incentive, companies will continue to use unreadable texts as their contracts.

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