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Nota di contenuto

Front matter -- Contents -- Acknowledgments -- Prologue: World A (Agreement) and World B (Boilerplate) -- Part I. Boilerplate, Consumers' Rights, and the Rule of Law -- Chapter One. An Overview of Worlds A and B -- Chapter Two. Normative Degradation -- Chapter Three. Democratic Degradation -- Part II. Boilerplate and Contract Theory: Rationales and Rationalizations -- Chapter Four. A Summary of the Philosophy of Contract -- Chapter Five. Can Autonomy Theory (Agreement, Consent) Justify Boilerplate Deletion of Rights? -- Chapter Six. Can Utilitarian-Welfare (Economic) Theory Justify Boilerplate Deletion of Rights? -- Part III. Boilerplate and Contract Remedies: Current Judicial Oversight and Possible Improvements -- Chapter Seven. Evaluating Current Judicial Oversight -- Chapter Eight. Can Current Oversight Be Improved? -- Chapter Nine. Improving Evaluation of Boilerplate -- Part IV. Escaping Contract: Other Remedial Possibilities -- Chapter Ten. "Private" Reform Ideas -- Chapter Eleven. Reconceptualizing (Some) Boilerplate under Tort Law -- Chapter Twelve. "Public" and Hybrid Regulatory Solutions -- Afterword: What's Next for Boilerplate? -- Notes -- Index

Sommario/riassunto

Boilerplate--the fine-print terms and conditions that we become subject to when we click "I agree" online, rent an apartment, enter an employment contract, sign up for a cellphone carrier, or buy travel tickets--pervades all aspects of our modern lives. On a daily basis, most of us accept boilerplate provisions without realizing that should a dispute arise about a purchased good or service, the nonnegotiable boilerplate terms can deprive us of our right to jury trial and relieve providers of responsibility for harm. Boilerplate is the first comprehensive treatment of the problems posed by the increasing use of these terms, demonstrating how their use has degraded traditional notions of consent, agreement, and contract, and sacrificed core rights whose loss threatens the democratic order. Margaret Jane Radin examines attempts to justify the use of boilerplate provisions by claiming either that recipients freely consent to them or that economic efficiency demands them, and she finds these justifications wanting. She argues, moreover, that our courts, legislatures, and regulatory agencies have fallen short in their evaluation and oversight of the use of boilerplate clauses. To improve legal evaluation of boilerplate, Radin offers a new analytical framework, one that takes into account the nature of the rights affected, the quality of the recipient's consent, and the extent of the use of these terms. Radin goes on to offer possibilities for new methods of boilerplate evaluation and control, among them the bold suggestion that tort law rather than contract law provides a preferable analysis for some boilerplate schemes. She concludes by discussing positive steps that NGOs, legislators, regulators, courts, and scholars could take to bring about better practices.
