

Phantom Consent: Formation Failure, Inaccessible Interfaces, and the Collapse of the Clickwrap Shield

Travis Gilly*

Working draft, June 2026 (v0.3)

Abstract

Every consumer platform on the internet sits behind the same front door: a wall of terms presented through an interface engineered to be clicked rather than read, followed by an Accept button. Courts enforce what happens at that door under an objective theory of assent that asks whether a reasonably prudent offeree would have noticed the terms and understood the click to mean agreement. This Article identifies the population for whom that question has never honestly been asked. For users with cognitive, psychiatric, and neurodevelopmental disabilities, the assent ritual fails its own doctrinal predicates: there is no meeting of the minds, no inquiry notice that survives contact with an interface designed to defeat inquiry, and frequently no capacity to act on whatever notice exists. The Article names the resulting phenomenon *phantom consent*: the population-scale operation of platforms under apparent contracts that were never formed as to a definable class of disabled users. It then makes three moves. First, it shows that contract doctrine already contains everything needed to reach this conclusion, and that the First Circuit has already applied it, holding in *National Federation of the Blind v. Container Store* that no agreement to arbitrate forms where terms are presented through an interface the offeree cannot perceive. The extension from interfaces that defeat perception to interfaces that defeat processing is an extension of reasoning, not a leap. Second, it relocates the problem from contract law, where the inaccessible interface is only a shield raised case by case, to disability law, where the same interface is an independent statutory violation remediable by injunction: the consent gate is the first service of any place of public accommodation, and an inaccessible gate denies the full and equal enjoyment that Title III commands. Third, it traces what falls when the consent is phantom: the arbitration clause, the class action waiver, the data license, the liability cap,

*Travis Gilly is Founder and Executive Director of the Real Safety AI Foundation. ORCID: 0009-0007-2954-6313. Correspondence: t.gilly@ai-literacy-labs.org. The author discloses the use of speech-to-text software (Wispr Flow) and Anthropic's Claude as assistive technology for a diagnosed neurodevelopmental condition. All legal analysis, case synthesis, theoretical framing, doctrinal arguments, and conclusions are solely the author's own.

and the indemnification obligation, every shield the platform economy has built on a click that never carried legal meaning for this class. California has already written the premise into statute: acceptance of a general terms of use document does not constitute consent, and agreement obtained through dark patterns does not constitute consent. This Article supplies the protected class, the doctrine, and the remedy.

Keywords: contract formation; clickwrap; mutual assent; arbitration; Federal Arbitration Act; ADA Title III; cognitive accessibility; dark patterns; class actions; unconscionability.

Contents

I	Introduction	4
II	The Consent Literature Has No Plaintiff	7
III	Phantom Consent: The Term and Its Neighbors	9
IV	The Formation Failure	10
	A Assent Doctrine Already Tests Cognition	10
	B The Interface Is Engineered Against Comprehension	12
	C Three Doctrinal Routes and Their Sequencing	14
	D Class-Scale Operation	16
V	The Bridge Holding: <i>Container Store</i>	18
VI	From Perception to Processing: The Civil Rights Layer	20
	A The Consent Gate Is the Front Door of the Public Accommodation	20
	B Cognitive Accessibility as Effective Communication	21
	C The Remedy Asymmetry: The Shield Becomes a Sword	22
	D Autonomy, Not Paternalism	23
VII	The Shields That Fall	24
VIII	Objections and Limits	25
IX	Conclusion	27

I. Introduction

The modern consumer internet runs on a legal fiction so familiar that the law has stopped seeing it. A user arrives at a service. Before the service begins, an interface presents a document, typically five thousand to fifteen thousand words long, written at a postgraduate reading level,¹ containing an arbitration clause, a class action waiver, a license to the user's data, a limitation of liability, and an indemnification obligation, all of it behind a single button. The user clicks the button. From that moment forward, the operator treats the user as having agreed to everything in the document, and courts, most of the time, agree with the operator.

The scholarly literature has spent more than a decade demonstrating that this ritual does not produce anything resembling informed agreement for anyone.² The demonstrations are rigorous and the conclusion is now close to consensus: consent in the digital environment is, in Professor Solove's word, murky, a fiction maintained because the alternative seems administratively unthinkable. And yet the literature's very strength is the source of its practical weakness. Because the diagnosis is universal, the patient is everyone, and a harm to everyone is a policy problem rather than a cause of action. Bounded rationality does not state a claim. No plaintiff walks into federal court as "a person subject to the human condition." The consent critique has circled the courthouse for a decade without finding the door.

This Article supplies the door. There is a definable class of users for whom the failure of the assent ritual is neither general nor philosophical: users whose cognitive, psychiatric, and neurodevelopmental disabilities make the ritual's demands, sustained attention to dense text, executive sequencing of reading before clicking, resistance to interface pressure engineered to produce the click, unattainable in the form the interface actually presents them. For this class, the failure of consent is particularized, foreseeable, documented, and, critically, already cognizable

1. See Uri Benoliel & Shmuel I. Becher, *The Duty to Read the Unreadable*, 60 B.C. L. REV. 2255 (2019); OMRI BEN-SHAHAR & CARL E. SCHNEIDER, *MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE* (2014).

2. See Daniel J. Solove, *Privacy Self-Management and the Consent Dilemma*, 126 HARV. L. REV. 1880 (2013); Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent*, 96 WASH. U. L. REV. 1461 (2019); Daniel J. Solove, *Murky Consent: An Approach to the Fictions of Consent in Privacy Law*, 104 B.U. L. REV. 593 (2024).

under two bodies of law that have never been aimed at it together. Contract law holds that assent procured without notice an offeree could act on forms no agreement. Disability law holds that a public accommodation must communicate with disabled customers as effectively as with everyone else and must remove the barriers its own design erects. The consent interface sits at the intersection of those two commands and currently satisfies neither.

The Article gives the resulting phenomenon a name: *phantom consent*. Phantom consent denotes the systemic, population-scale operation of parties under apparent contracts that were never legally formed as to a definable class of putative signatories, where the obligations, waivers, and licenses purportedly created by those apparent contracts dissolve upon judicial determination of non-formation with respect to that class. The consent appeared to exist. The operator acted as though it existed. The disabled user appeared to have agreed. But because meaningful mutual assent was never achieved as to the class, no contract was formed as to the class, and the operator's authority to enforce its terms against class members was illusory from the outset.

Three features distinguish this Article's claim from the consent critique it builds on. First, the claim is doctrinal rather than aspirational. Every element is assembled from first-year contract doctrine, the modern internet-assent case law, and the Americans with Disabilities Act as written. Second, the claim has already survived contact with a federal court of appeals in its sensory form. In *National Federation of the Blind v. Container Store, Inc.*, the First Circuit held that no agreement to arbitrate was formed between a retailer and blind customers who enrolled in a loyalty program through a touchscreen interface that gave them no perceivable indication that contract terms existed at all, and it affirmed the denial of the retailer's motion to compel arbitration.³ The court wrote that "a party cannot enter into a contract to arbitrate when it does not know or have reason to know the basic terms of the offer."⁴ An interface that defeats

3. *Nat'l Fed'n of the Blind v. Container Store, Inc.*, 904 F.3d 70 (1st Cir. 2018).

4. *Id.* The court distinguished, rather than rejected, the settled rule that inability to read is not a defense to contract formation: that rule presumes the signatory knew a contract was being formed and chose not to learn its content, a presumption that fails where the interface communicates "zero hint" that binding terms exist.

perception forms no contract. This Article's central doctrinal move is the demonstration that an interface that defeats processing stands on identical footing, because the assent doctrine's touchstone was never eyesight; it was the offeree's fair opportunity to know and act, and an interface engineered against comprehension denies that opportunity as completely as an interface engineered without a screen reader.

Third, and most consequentially, the claim converts a shield into a sword. In contract litigation, the formation defect is defensive: it is raised by one defendant-facing plaintiff at a time, against one motion to compel at a time, and its victory frees one case. In disability litigation, the same defect is affirmative: the inaccessible consent gate is itself a denial of full and equal enjoyment of the place of public accommodation, remediable by an injunction that orders the gate rebuilt for everyone.⁵ The contract route gets a plaintiff into court. The civil rights route changes the door.

The argument proceeds as follows. Part II locates the Article in the consent literature and identifies the move the literature has not made. Part III defines phantom consent and situates it among the adjacent doctrines of void and voidable contracts, void ab initio status, non est factum, and putative marriage, explaining what the new term captures that the old ones do not. Part IV develops the formation failure in three doctrinal routes, mutual assent, capacity, and unconscionability, explains their sequencing under the Federal Arbitration Act's allocation of gateway questions, and divides the class between the band for whom accessible design can produce real assent and the band for whom no design can. Part V reads *Container Store* closely as the bridge holding. Part VI builds the civil rights layer: the consent gate as the front-door service of a public accommodation, cognitive accessibility as effective communication, the regulatory convergence already visible in California's consent rules, and the remedy asymmetry that makes the disability claim structurally different. Part VII traces the shields that fall. Part VIII answers objections, including the floodgates objection, the certainty objection, and the paternalism objection, the last of which has the matter exactly backwards. Part IX concludes.

5. 42 U.S.C. § 12182(a); *Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019) (holding the ADA applicable to the website and app of a public accommodation and rejecting the operator's due process objection).

II. The Consent Literature Has No Plaintiff

The inadequacy of digital consent is among the most thoroughly documented propositions in technology law. Professor Solove’s account of privacy self-management showed that the volume and complexity of consent decisions demanded of an ordinary user exceed any human’s realistic capacity, so that the regime’s premise, an informed chooser managing her own data relationships, describes no one.⁶ Professors Richards and Hartzog catalogued the pathologies of digital consent, unwitting, coerced, and incapacitated consent among them, and concluded that the conditions under which consent could do real moral work are systematically absent from the environments where the law relies on it most.⁷ Solove’s later synthesis proposes treating most digital consent as “murky,” a category the law should handle with suspicion rather than deference.⁸

This literature has been heard. Regulators cite it; the Federal Trade Commission’s dark patterns enforcement program is recognizably its operational child.⁹ California wrote its conclusion directly into statutory text, in a provision this Article will lean on repeatedly: under the California Consumer Privacy Act as amended, “[a]cceptance of a general or broad terms of use, or similar document, that contains descriptions of personal information processing along with other, unrelated information, does not constitute consent,” and “agreement obtained through use of dark patterns does not constitute consent.”¹⁰ The first sentence is the consent critique enacted: the State of California has legislated that the clickwrap ritual, as such, is not consent to data processing. The second sentence supplies an effects test: a dark pattern is “a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy,

6. Solove, *Privacy Self-Management and the Consent Dilemma*, *supra* note 2, at 1880–93.

7. Richards & Hartzog, *supra* note 2.

8. Solove, *Murky Consent*, *supra* note 2.

9. FED. TRADE COMM’N, *Bringing Dark Patterns to Light* (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report.pdf (staff report cataloguing design practices that “trick or manipulate consumers” into choices they would not otherwise make).

10. CAL. CIV. CODE § 1798.140(h).

decisionmaking, or choice,” a definition that turns on what the interface does rather than what its designer intended.¹¹

And yet, for all its success in the regulatory register, the literature has produced almost nothing in the litigation register, and the reason is structural. A universal diagnosis has no plaintiff. If the assent ritual fails everyone, then its failure is the background condition of the digital economy, and courts, institutionally allergic to holdings that would unsettle every consumer contract simultaneously, retreat to the objective theory: the reasonable offeree is charged with the notice a reasonable offeree would have, and the click is what the click has always been. The critique is accepted as description and rejected as doctrine in the same breath.

The move this Article makes is to stop arguing about everyone. There is a class of users, large, definable, and protected by statute, for whom the failure is neither background nor philosophical but specific, measurable, and foreseeable to the operator: users whose disabilities are, in the statute’s own vocabulary, impairments of the very faculties the assent ritual taxes. Cognitive, learning, psychiatric, and neurodevelopmental disabilities collectively affect a substantial fraction of the adult population of the United States under any definition drawn from federal health surveillance data; federal surveillance places serious difficulty concentrating, remembering, or making decisions as the single most prevalent functional disability type in the adult population.¹² The platforms know these users are in the user base, at prevalence rates or higher; several market their products to exactly this population, as cognitive assistance, as mental health support, as companionship for the isolated. For this class, the consent critique stops being

11. CAL. CIV. CODE § 1798.140(l). The implementing regulations require consent mechanisms to use “language that is easy for consumers to read and understand,” to “avoid technical or legal jargon,” and to offer “symmetry in choice” between consenting and declining. CAL. CODE REGS. tit. 11, §§ 7003(a), 7004(a).

12. See CTRS. FOR DISEASE CONTROL & PREVENTION, *Disability Impacts All of Us* (last updated July 15, 2024), <https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html> (reporting that 28.7 percent of U.S. adults have some type of disability, and that cognition, defined as serious difficulty concentrating, remembering, or making decisions, is the most prevalent functional disability type, at 13.9 percent of U.S. adults). The Article’s argument does not depend on any particular prevalence figure; it depends on the operators’ constructive knowledge that the class exists at scale within their user bases, which the public surveillance data alone establishes.

a lament about modernity and becomes the factual predicate of two well-established legal claims. The remainder of this Article assembles them.

III. Phantom Consent: The Term and Its Neighbors

This Article introduces a term of art for a phenomenon that existing contract vocabulary captures only imperfectly. *Phantom consent* denotes the systemic, population-scale operation of parties under apparent contracts that were never legally formed as to a definable class of putative signatories, where the putative obligations, waivers, and licenses created by those apparent contracts dissolve upon judicial determination of non-formation with respect to that class.

The existing categories are adjacent but insufficient, and it is worth being precise about why. A *voidable* contract has been formed but is subject to rescission at the election of the injured party, as with most capacity defects, fraud in the inducement, and mistake.¹³ A *void* contract is one the law treats as legally ineffective notwithstanding its apparent existence, as with fraud in the factum and illegality. *Void ab initio* describes the retroactive character of that ineffectiveness: void from the beginning rather than invalidated going forward. *Non est factum* addresses the individual signatory who executed an instrument fundamentally different from the one she understood herself to be signing.¹⁴ The putative marriage doctrine addresses parties who in good faith believed themselves married and were not, and unwinds the relation upon discovery.¹⁵

Each of these doctrines describes an individual, adjudicated determination that a particular formation failed. None describes the phenomenon at issue here: an entire class of putative signatories operating for years under terms they could not meaningfully assent to by reason of disability, whose apparent consent was never formed as to the class, and whose purported obligations never attached. Phantom consent names the class-scale dimension. The

13. See RESTATEMENT (SECOND) OF CONTRACTS § 7 (Am. L. Inst. 1981).

14. See RESTATEMENT (SECOND) OF CONTRACTS § 163 (Am. L. Inst. 1981).

15. See, e.g., CAL. FAM. CODE § 2251.

phenomenon differs from void ab initio in that no individual adjudication of voidness is required as to each class member; the contract never came into being as to the class. It differs from non est factum in being population-scale rather than signatory-specific. And it differs from putative marriage in the identity of the party laboring under the illusion: here the deluded party is the platform operator, which has built an enforcement architecture on agreements that, as to this class, do not exist.

The practical consequence, once adjudicated, matches void ab initio in the individual case: every clause that depends on the contract for its legal effect fails together. The significance of the class framing is procedural and is developed in Parts VI and VII: the determination flows from a formation defect common to the class and produced by a uniform practice of the operator, which is precisely the configuration Rule 23(b)(2) exists to adjudicate.¹⁶

IV. The Formation Failure

A. Assent Doctrine Already Tests Cognition

A valid contract requires offer, acceptance, consideration, and mutual assent; mutual assent requires a meeting of the minds on the material terms; and a meeting of the minds presupposes that each party had the capacity to understand the terms and a fair opportunity to do so before manifesting assent.¹⁷ In the internet cases, courts have operationalized this requirement as a two-part inquiry: the offeree is bound only where the interface gave reasonably conspicuous notice of the terms and the offeree took some action that unambiguously manifested assent to them.¹⁸

What is striking about this body of law, for present purposes, is that it is already a body of cognitive doctrine that has never been asked a cognitive question. *Specht v. Netscape* refused

16. Fed. R. Civ. P. 23(b)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (a (b)(2) class is proper where “a single injunction or declaratory judgment would provide relief to each member of the class”).

17. RESTATEMENT (SECOND) OF CONTRACTS §§ 17, 19 (Am. L. Inst. 1981).

18. *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849 (9th Cir. 2022) (stating the two-part test of reasonably conspicuous notice and unambiguous manifestation of assent).

to enforce terms reachable only by scrolling below a download button, because “a reasonably prudent offeree” would not have known of them; the inquiry was, explicitly, about what a mind in the user’s position could be charged with noticing.¹⁹ *Nguyen v. Barnes & Noble* held that a conspicuous hyperlink to terms, without more, does not put even a reasonably prudent user on inquiry notice.²⁰ *Meyer v. Uber* calibrated the standard to “a reasonably prudent smartphone user,” acknowledging that the cognitive baseline is environment-relative.²¹ *Berman* tightened the conspicuousness requirement against interfaces that bury or camouflage notice.²² Every one of these cases asks the same underlying question: given this interface, could this mind fairly be charged with knowledge and agreement? The doctrine’s unit of analysis has always been the interaction between an interface and a cognition. Courts simply standardized the cognition, installed a “reasonably prudent” user as the fixed term, and varied only the interface.

The standardization is where the protected class disappears. For most doctrinal purposes, an objective reasonable-person standard is a sensible administrative device. But the Americans with Disabilities Act is, at its core, a congressional command that facially neutral standards calibrated to the unimpaired majority may not be used to deny disabled people meaningful access to public life.²³ When the fixed term of the assent inquiry is a cognition that the plaintiff, by reason of disability, does not have, and when the interface is engineered, as Part IV.B shows, to defeat even the cognition the doctrine assumes, the two-part test returns a false positive: it charges with notice and assent a user who, under the conditions the operator created, could achieve neither. The doctrinal materials for correcting the false positive already exist inside contract law itself, in the three routes that follow.

19. *Specht v. Netscape Commc’ns Corp.*, 306 F.3d 17 (2d Cir. 2002) (Sotomayor, J.).

20. *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171 (9th Cir. 2014).

21. *Meyer v. Uber Techs., Inc.*, 868 F.3d 66 (2d Cir. 2017).

22. *Berman*, 30 F.4th 849. *See also Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279 (9th Cir. 2017) (an offeree’s silence or inaction does not manifest assent absent a duty to speak).

23. *See* 42 U.S.C. § 12101(b)(1).

B. The Interface Is Engineered Against Comprehension

The assent ritual's hostility to understanding is not an accident of legal drafting; it is a design output. The typical consumer terms of service document runs five thousand to fifteen thousand words, is written at a postgraduate reading level, buries material terms in cross-referenced subsections, and is presented behind a clickwrap button with no friction requiring review, no comprehension verification, no alternative path, and no negotiable term. The user is expected to click Accept and begin. For a non-disabled user with strong reading comprehension and free attention at the moment of signup, the mechanism already strains the meaningful-assent requirement, which is the consent literature's settled point. For a user with an attention deficit condition, an autism spectrum condition, an intellectual disability, a specific learning disability, acute psychiatric symptoms, dementia, or stroke sequelae, the mechanism fails foreseeably and by design. And the ritual presumes a faculty those same conditions tax directly: the metacognitive monitoring by which a reader detects her own non-comprehension. A user who cannot reliably register that understanding has failed cannot self-select into rereading, asking for help, or declining; the interface's tacit demand that she do so is a demand for the very capacity the disability impairs.

The design layer deserves emphasis because the law has begun to regulate it by name. Dark patterns, in California's effects-based statutory definition, are interfaces "designed or manipulated with the substantial effect of subverting or impairing user autonomy, decisionmaking, or choice."²⁴ The Federal Trade Commission's staff report catalogues the techniques: false urgency, obstruction of the disfavored choice, confusing double negatives, visual interference, forced action, nagging.²⁵ Now hold the statutory definition against the

24. CAL. CIV. CODE § 1798.140(I).

25. FED. TRADE COMM'N, *Bringing Dark Patterns to Light*, *supra* note 9. The Commission's enforcement program has converted the catalogue into orders; its action against Epic Games, resolving allegations that the Fortnite interface used dark patterns to bill consumers for unwanted purchases, produced a settlement of \$245 million. Press Release, FED. TRADE COMM'N, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges (Dec. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/fornite-video-game-maker-epic-games-pay-more-half-billion-dollars-ov>

protected class. A dark pattern is an interface whose substantial effect is to impair decision making. An attention deficit condition is, in clinical terms, an impairment of the executive functions that produce considered decisions; so are many psychiatric and neurodevelopmental conditions.²⁶ An interface engineered to impair decision making operates with disparate force on the population whose decision making is already impaired, in exactly the way a staircase operates with disparate force on the population that cannot climb stairs. The dark pattern is a cognitive staircase. The general population is inconvenienced by it; the protected class is excluded by it. And the operator that deploys it has, in the statute's own terms, manufactured the conditions under which whatever agreement emerges "does not constitute consent."²⁷

The engineering extends from the content of the gate to its placement in time. The signup flow positions the terms wall at exactly one point: after the user has decided to obtain the service and immediately before the service begins. For any user, that is the moment of maximum motivational pressure toward the click, the point at which attention has already committed to the goal on the far side of the gate; the Commission's catalogue recognizes the genus when it names false urgency among the techniques.²⁸ For a user whose disability is an impairment of executive function, the same moment is the moment of minimum capacity to perform what the ritual demands, the suspension of a goal already in motion and the redirection of sustained attention to thousands of words of dense text. The interface therefore schedules the only opportunity to read at the moment reading is least available to the class, and it offers no other: no advance copy delivered while the decision to sign up is still being made, no post-enrollment review window with a genuine right to unwind, no path to the service that does not pass through the wall at that instant. The worst moment to ask and the only moment offered are the same moment, and both are design choices. The surrounding ecology compounds what the placement produces. Years of cookie banners, update notices, and permission prompts have trained the click that clears

26. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (diagnostic criteria for attention-deficit/hyperactivity disorder and autism spectrum disorder).

27. CAL. CIV. CODE § 1798.140(h).

28. FED. TRADE COMM'N, *Bringing Dark Patterns to Light*, *supra* note 9.

an interruption into a reflex gesture rather than a communicative act, so the click the operator harvests as assent arrives already emptied of the meaning the objective theory assigns to it.

Two consequences follow for the formation analysis. First, the operator cannot invoke the objective theory's usual presumption of regular dealing, because the interface is not a neutral conduit; it is an instrument built to produce clicks unaccompanied by understanding, and the operator built it. Second, constructive knowledge attaches. The prevalence data is public. The marketing is targeted. The user research that every major platform conducts almost certainly documents both the presence of the class and the interface's effect on it. The placement is instrumented too: signup funnels are among the most heavily tested surfaces in consumer software, and the optimization record that produced the gate's position and form is a record of the operator's knowledge of what that position and form do to reading and completion behavior. An operator who engineers an interface against comprehension, deploys it to a user base known to include millions whose disabilities are impairments of comprehension's preconditions, and then claims the resulting clicks as contracts, is asserting agreements it has reason to know were never formed.

C. Three Doctrinal Routes and Their Sequencing

Three strands of first-year contract doctrine carry the conclusion, and the order of presentation matters because of the Federal Arbitration Act's allocation of gateway questions.

First, and primarily, *failure of mutual assent*. A contract is not formed where the parties never achieved mutual assent to the material terms.²⁹ Clickwrap acceptance, in the absence of any mechanism verifying comprehension, does not produce mutual assent where the signatory lacked the cognitive capacity to read and understand the terms within the time and under the conditions the signup flow actually imposed. The disabled user's click is physical assent; it is not legal assent, because the meeting of the minds was never achieved as to that user. The point carries decisive procedural weight: under Restatement section 17, absence of mutual

29. RESTATEMENT (SECOND) OF CONTRACTS §§ 17, 19.

assent is a formation defect rather than a validity defect, and a contract lacking formation is not voidable; it never came into being. Formation is the one gateway question the Supreme Court has consistently reserved to courts. “[W]here the dispute at issue concerns contract formation, the dispute is generally for courts to decide,” the Court held in *Granite Rock*, and *Buckeye Check Cashing* expressly distinguished challenges to a contract’s validity, which may go to the arbitrator, from the antecedent question “whether any agreement between the alleged obligor and obligee was ever concluded,” which does not.³⁰ The mutual-assent route therefore keeps the phantom consent determination in front of an Article III judge.

Second, and secondarily, *capacity*. Restatement section 15 renders a contract voidable where, by reason of mental illness or defect, a party is unable to understand in a reasonable manner the nature and consequences of the transaction, or is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of the condition.³¹ The first prong is cognitive; the second is volitional, and the leading American decision applying it, *Ortelere v. Teachers’ Retirement Board*, holds that capacity requires the volitional ability to act reasonably on one’s understanding, so that a party may comprehend a transaction perfectly and still lack capacity where illness deprives her of the ability to act on the comprehension.³² The volitional prong maps directly onto users in acute psychiatric states, and onto the executive-function profile of several neurodevelopmental conditions, at the moment of clickwrap acceptance. The timing analysis of Part IV.B sharpens the showing: the volitional impairment the second prong describes reaches its depth at precisely the moment the signup funnel selects for the transaction, and the operator selected that moment. But the capacity route carries a procedural limitation the assent route does not: because section 15 renders the contract voidable rather than void, a capacity challenge attacks validity, and under *Rent-A-Center* and *Henry Schein* a validity challenge may be delegated to the arbitrator where the agreement contains a delegation

30. *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 296 (2010); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006).

31. RESTATEMENT (SECOND) OF CONTRACTS § 15(1)(a)–(b).

32. *Ortelere v. Teachers’ Ret. Bd.*, 25 N.Y.2d 196, 250 N.E.2d 460 (1969).

clause the challenger has not specifically contested.³³ Capacity is accordingly pleaded here as the secondary route, for plaintiffs whose facts will not sustain the assent route or whose adversary's terms contain no delegation clause.

Third, and cumulatively, *unconscionability*. Restatement section 208 authorizes a court to refuse enforcement of an unconscionable contract or term.³⁴ Procedural unconscionability addresses the manner of formation: take-it-or-leave-it presentation, information asymmetry, absence of reasonable opportunity to review, a comprehension-hostile environment. Substantive unconscionability addresses the terms: forced arbitration against a consumer adversary, class waiver, unilateral data license, liability caps disproportionate to foreseeable harm. The clickwrap stack presents both dimensions together, with particular force as applied to users whose disabilities compound the procedural defects. Like capacity, unconscionability is a validity doctrine subject to delegation; it operates here as cumulative support rather than as the lead.

D. Class-Scale Operation

A clarification is necessary about what the class framing does and does not claim. Contract capacity under section 15 is inherently individualized: each signatory's capacity at the moment of formation is a separate factual question, and this Article does not propose collapsing that inquiry into a class-wide capacity determination. What the class framing targets is the operator's uniform practice. The clickwrap consent gate, as implemented, is a single, facially neutral mechanism that systematically fails to achieve mutual assent with members of a protected class under conditions the operator created and maintains. A court adjudicating that practice under Rule 23(b)(2) is adjudicating the operator's conduct, exactly as it would adjudicate any uniform policy challenged for its classwide effects,³⁵ and the relief runs against the practice: modification of the consent architecture so that the meaningful-assent requirement is actually met for class members, together with declaratory relief that the arbitration and class waiver clauses are inoperative as to class

33. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63 (2010); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019).

34. RESTATEMENT (SECOND) OF CONTRACTS § 208.

35. Fed. R. Civ. P. 23(b)(2); *Dukes*, 564 U.S. at 360.

members whose apparent consent the practice produced. Contract doctrine supplies the grounds; the civil rights record, developed in Part VI, supplies the evidence that the affected population is large, identifiable, and disproportionately burdened by the challenged mechanism.

A second clarification divides the class itself, and the division disciplines everything that follows. For most class members the formation failure is conditional: the member holds the legal power of agreement, and assent fails because the interface withholds the conditions under which that power could be exercised, conditions a redesigned gate can supply. For a smaller band, members with the most severe intellectual and developmental disabilities, no consent flow produces mutual assent under any design. For those under guardianship the law has already answered categorically: a person whose property is under guardianship by reason of an adjudication of mental illness or defect has no capacity to incur contractual duties at all, so the apparent contract her click produces creates no duty and there is nothing for better design to cure.³⁶ For the rest of the band the answer comes from the assent requirement itself: where no presentation of terms, however accessible, could produce a meeting of the minds, the primary route of Part IV.C operates without the design condition, and the conclusion is the same. As to this band, enforcement is formation theater: the operator treats as contract an act the law of contract excludes from formation, while the same legal order has placed a guardian or supported decision maker beside that person precisely because it does not regard her solitary click as a binding choice. The two bands take different things from the same adjudication. For the larger band, redesign manufactures the assent conditions the current gate withholds, and the agreements that follow are real. For the smaller band, the declaration does the work: the operator's terms were never in force, participation runs through the channels disability law already maintains, agreement by a guardian or through a supported decision making arrangement, and the platform's statutory access obligations under Part VI run to the user in either case, because Title III rights never depended on a contract.

36. RESTATEMENT (SECOND) OF CONTRACTS § 13 (Am. L. Inst. 1981). Section 13's incapacity operates at the level of formation and is categorical, in contrast to the voidable contracts section 15 describes.

V. The Bridge Holding: *Container Store*

The extension this Article proposes is shorter than it first appears, because a federal court of appeals has already taken the structurally identical step for a sensory disability. The facts of *National Federation of the Blind v. Container Store* deserve close attention precisely because they are so ordinary.³⁷

Blind customers enrolled in the retailer's loyalty program in its stores. Enrollment ran through a point-of-sale touchscreen. The terms and conditions, including an arbitration clause, existed within that touchscreen flow. The interface was visual; the plaintiffs could not perceive it; the store associates who assisted with enrollment did not read the terms aloud or mention their existence. When the customers later sued under accessibility statutes, the retailer moved to compel arbitration on the strength of the enrollment terms. The First Circuit affirmed the denial of the motion as to the in-store plaintiffs. Its reasoning is the template for everything that follows. The court accepted that inability to read is not, standing alone, a defense to contract formation; the cases establishing that rule involve signatories who knew they were executing legal documents and bore the consequences of declining to learn the contents. But that presumption of known contracting collapses where the offeree had "zero hint" that terms existed at all: "a party cannot enter into a contract to arbitrate when it does not know or have reason to know the basic terms of the offer."³⁸ No knowledge, actual or constructive; no formation; no arbitration. The shield never existed for this class of customers, because the interface through which it was supposedly erected was inaccessible to them.

Three features of the holding matter here. First, its engine is general contract doctrine, the meeting of the minds, applied through the FAA's formation gateway; the court did not need the ADA to void the clause, which means the holding travels to every consumer contract context. Second, the court's treatment of the illiteracy rule supplies the answer to the most predictable

37. *Container Store*, 904 F.3d 70.

38. *Id.* The court found no evidence the in-store plaintiffs "had any knowledge, actual or constructive, that arbitration terms applied to their enrollment," and held the retailer failed to carry its burden of establishing that an agreement to arbitrate was ever consummated.

objection to this Article's thesis. The objection runs: courts enforce contracts against people who do not read them every day, so cognitive difficulty reading cannot defeat formation. *Container Store*'s response: the duty-to-read cases presuppose an offeree who knew contracting was occurring and had a fair opportunity to learn the terms; where the interface itself withholds that opportunity, the presumption never arises. The question is never whether the offeree in fact read; it is whether the offeree was given notice she could act on. Third, the limits of the holding define this Article's work. The court expressly declined to reach unconscionability and declined to decide the plaintiffs' accessibility claims about the enrollment process itself. *Container Store* establishes that an interface defeating perception forms no contract. It leaves open, because it did not need to answer, the two questions this Article answers: whether an interface defeating processing stands on the same footing, and what affirmative obligations disability law imposes on the consent gate itself.

On the first question, the extension is compelled by the holding's own logic. The First Circuit's rule is framed in terms of knowledge and reason to know, faculties of the mind, not the eye. A blind customer at a touchscreen receives signal her body cannot convert into information. A customer with a significant cognitive disability at a fifteen-thousand-word clickwrap wall receives information her mind, under the conditions imposed, cannot convert into understanding, and the interface, unlike the world, was deliberately built that way. In both cases the offeree leaves the interaction without knowledge or reason to know the basic terms of the offer, which is the precise condition under which, per *Container Store*, no contract to arbitrate forms. If anything, the cognitive case is stronger on the operator-conduct axis: the touchscreen's inaccessibility to blind users was indifference; the dark pattern's hostility to comprehension is engineering.

VI. From Perception to Processing: The Civil Rights Layer

A. The Consent Gate Is the Front Door of the Public Accommodation

Title III of the ADA provides that no individual shall be discriminated against “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.”³⁹ Discrimination includes the failure to make reasonable modifications to policies, practices, and procedures where necessary to afford access, and the failure to take such steps as may be necessary to ensure that no individual with a disability is denied services because of the absence of auxiliary aids and services.⁴⁰ The Ninth Circuit in *Robles v. Domino’s* held these obligations applicable to a public accommodation’s website and app, and rejected the operator’s protest that liability without specified technical standards offends due process: the statute’s requirements have been on the books, and applicable, the entire time.⁴¹

The web accessibility docket built on these authorities has, to date, asked whether disabled customers can use the services behind the gate: order the pizza, stream the film, book the room. This Article’s observation is that the docket has been litigating the building while walking past the door. The consent flow is not paperwork adjacent to the service; it is the first service, the threshold transaction every user must complete to receive any other, and the platform controls its design as completely as a store controls its entrance. An entrance whose operation requires faculties a protected class lacks, sustained attention to thousands of words of legalese under interface pressure engineered to truncate attention, is a barrier in the front doorway. When the gate’s design forecloses meaningful participation in the very transaction that defines the user’s rights, data, remedies, forum, the disabled user has been denied full and equal enjoyment of the

39. 42 U.S.C. § 12182(a).

40. 42 U.S.C. § 12182(b)(2)(A)(ii)–(iii); 28 C.F.R. §§ 36.302(a), 36.303.

41. *Robles*, 913 F.3d 898. In circuits not requiring a physical nexus, web-only services have been held public accommodations directly. See *Nat’l Ass’n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012).

accommodation's privileges at the first pixel. The privileges of a modern platform include the legal relationship itself.

B. Cognitive Accessibility as Effective Communication

The doctrinal vehicle is effective communication. The auxiliary aids regulation requires public accommodations to “furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.”⁴² The regulation’s illustrative lists run sensory, interpreters, captioning, screen readers’ raw material, because the litigated docket has run sensory; nothing in the statutory text confines the obligation there. The ADA’s definition of auxiliary aids and services expressly includes the “acquisition or modification of equipment or devices” and “other similar services and actions,” open-ended language Congress chose for a statute it intended to evolve with technology.⁴³ Communication is effective when the content arrives as usable information in the recipient’s mind. A consent flow communicates effectively with a cognitively disabled user when that user can, in a reasonable manner under the actual conditions, learn what she is agreeing to. Plain-language summaries, layered disclosure, comprehension checkpoints, extended or pressure-free review conditions, and the elimination of manipulative design from the consent path are the cognitive analogues of the ramp and the screen reader, and the technical standards already exist: the Web Content Accessibility Guidelines’ cognitive accessibility guidance describes, in implementable detail, what content usable by people with cognitive and learning disabilities looks like.⁴⁴

Regulatory convergence is already visible, and from outside disability law entirely. California’s consent regulations, promulgated under the dark patterns mandate, require that consent mechanisms “use language that is easy for consumers to read and understand,” that they “avoid technical or legal jargon,” and that they present “symmetry in choice” between the path of

42. 28 C.F.R. § 36.303(c).

43. 42 U.S.C. § 12103(1)(C)–(D).

44. W3C, *Making Content Usable for People with Cognitive and Learning Disabilities* (W3C Working Group Note, Apr. 29, 2021), <https://www.w3.org/TR/coga-usable/>. The existence of published, industry-recognized standards answers the administrability objection in the same way WCAG answered it for sensory web access in *Robles*: the operator cannot claim ignorance of what compliance would look like.

agreement and the path of refusal.⁴⁵ That is a cognitive accessibility standard for consent flows, enacted as consumer protection law, applicable to everyone. The disability claim takes the same design obligations and gives them what the consumer regulation lacks: a private right of action, a federal forum, and an injunction.

C. The Remedy Asymmetry: The Shield Becomes a Sword

Here is the structural payoff of relocating the problem. In contract law, the inaccessible consent gate is a shield: a defense, raised by one plaintiff at a time, against one motion to compel at a time, victorious only in the negative sense that a particular clause goes unenforced in a particular case. Nothing about winning the *Container Store* motion required the retailer to fix the touchscreen. In disability law, the same gate is a sword: its inaccessibility is itself the statutory violation, and the statutory remedy is an injunction ordering the barrier removed.⁴⁶ An order under Title III, certified for a Rule 23(b)(2) class, does what no accumulation of individual arbitration victories can do: it rebuilds the consent architecture for every member of the class prospectively, and as a practical matter for every user, because consent flows are not built per-customer. The contract route frees the plaintiff from the shield. The civil rights route melts the foundry where the shields are made.

The two routes also reinforce each other evidentially. The civil rights record, prevalence data, design documentation, the operator's own user research, establishes at class scale what the contract doctrine needs case by case: that the affected population is large and identifiable, that the operator knew, and that the formation mechanism fails this population systematically. The contract holding, in turn, supplies the civil rights claim with its damages-side leverage: an operator facing a judicial determination that its arbitration clauses and data licenses were never formed as to a protected class confronts exposure that makes injunctive redesign the cheap option. Each body of law cures the other's enforcement weakness.

45. CAL. CODE REGS. tit. 11, §§ 7003(a), 7004(a).

46. 42 U.S.C. § 12188(a) (Title III remedies); *Robles*, 913 F.3d 898.

D. Autonomy, Not Paternalism

The objection will come dressed as solicitude: does this argument not infantilize disabled adults, suggesting they cannot contract? It has the matter exactly backwards, and the inversion is worth stating carefully because it disposes of the objection completely. The claim is not that disabled users lack the legal power of agreement; the claim is that the operator's interface denied them any genuine occasion to exercise it. The target of the phantom consent doctrine is the interface, never the user's agency. The remedy, an accessible consent flow, is the remedy that produces real consent: it gives the disabled user, for the first time, the practical ability to know what she is agreeing to and to agree or refuse on that knowledge. Paternalism removes choices; this claim manufactures the conditions for choice. The deepest autonomy violation in the current arrangement is the existing one, in which an operator extracts a click engineered to be uninformed and then wields it, for years, as the user's own voice, against her, in the operator's chosen forum, under the operator's chosen terms. A doctrine that refuses to let manufactured assent impersonate the user's will is an autonomy doctrine. The supported decision-making movement in disability law rests on the identical principle: the answer to impaired decisional conditions is support for real decisions, never the fiction that whatever happened was a decision.⁴⁷ The same principle disposes of the objection in the band Part IV.D set apart, where no redesign produces assent. Honoring an adjudication of incapacity, and routing agreement through the guardian or supporter the law has already placed beside the member, takes the member's circumstances as the law has actually found them; harvesting her click and enforcing it against her for years is the arrangement that erases her.

47. *See, e.g.*, TEX. EST. CODE ANN. § 1357.002(3) (defining supported decision-making as a process of supporting an adult with a disability to enable the adult “to make life decisions . . . without impeding the self-determination of the adult”).

VII. The Shields That Fall

When the consent is subject to a class-scale non-formation determination, every clause depending on the contract for legal effect fails together. It is worth walking the inventory, because the inventory is the platform economy's entire litigation defense.

Arbitration clauses. An arbitration clause is a term within a contract; if the contract was never formed as to the class, the clause was never part of any binding agreement as to class members, and a motion to compel arbitration must be denied because there is nothing to compel arbitration under. The Federal Arbitration Act's savings clause preserves "such grounds as exist at law or in equity for the revocation of any contract,"⁴⁸ and failure of mutual assent, incapacity, and unconscionability are exactly such grounds: they apply to arbitration clauses because they apply to every contract, and they target nothing. *Concepcion* and *Epic Systems* are not to the contrary; those decisions preempt state rules that disfavor arbitration as such, and a formation requirement that every contract must satisfy disfavors nothing.⁴⁹ *Container Store* is the proof of concept: a formation challenge grounded in interface inaccessibility, adjudicated by the court under *Granite Rock's* gateway rule, defeating the motion outright.

Class action waivers. The waiver typically lives inside or beside the arbitration clause. If the contract failed at formation, the waiver fails with it, and the disabled plaintiff retains the right to proceed as class representative, including under Rule 23(b)(2) for the injunctive class that the civil rights claim requires. This failure is load-bearing for the entire architecture: individual arbitration of individual harm cannot produce design change; classwide injunctive relief can.

Data and training licenses. The license by which the operator claims rights in the user's inputs, including, in the current platform generation, the right to train commercial artificial intelligence models on them, is a contract term. No formation, no license. As to the class, the operator has been processing, and in some cases productizing, data it never acquired rights to,

48. 9 U.S.C. § 2.

49. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Epic Sys. Corp. v. Lewis*, 584 U.S. 497 (2018). *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022), confirms the through-line: courts may not invent arbitration-specific procedural variants, in either direction; arbitration contracts stand on ordinary contract footing.

an exposure that extends well beyond this Article's scope and into state privacy statutes whose consent definitions, as Part II showed, the clickwrap ritual independently fails.⁵⁰

Liability caps and indemnification. The limitation of liability that shrinks the operator's exposure to fees paid, and the indemnification clause by which the user purportedly agreed to defend the operator, are contract terms. As to the class, neither exists. The damages architecture of any subsequent litigation proceeds uncapped, under whatever substantive law supplies the claim.

The sequencing discipline from Part IV bears repeating in operational form. The phantom consent argument leads with mutual assent, the formation route that *Granite Rock* and *Buckeye* reserve to courts, precisely so that the determination is made by an Article III judge in a public proceeding rather than delegated to an arbitrator under *Rent-A-Center*.⁵¹ Capacity and unconscionability travel as secondary and cumulative grounds. The plaintiff pleads the civil rights claims on the merits and deploys phantom consent against the inevitable threshold motion. The substantive claim supplies the remedy; the formation argument supplies the forum.

VIII. Objections and Limits

Floodgates. If clickwrap fails the cognitively disabled, the objection runs, no consumer contract on the internet is safe. The limiting principles are already built in, and there are three. First, the protected class: the doctrine operates for users whose disabilities, within the meaning of the ADA, impair the faculties the assent ritual demands; it is a disability doctrine, anchored to a statutory class, and supplies no theory for the merely hurried.⁵² Second, the interface predicate: the claim is strongest, and in its civil rights form available at all, where the operator's interface is itself comprehension-hostile, dense, pressured, manipulative, in ways the existing

50. See CAL. CIV. CODE § 1798.140(h).

51. *Granite Rock*, 561 U.S. at 296; *Buckeye*, 546 U.S. at 444 n.1; *Rent-A-Ctr.*, 561 U.S. 63.

52. 42 U.S.C. § 12102(1)(A), (2)(A) (defining disability and listing "reading," "concentrating," and "thinking" among the major life activities an impairment may substantially limit).

conspicuousness cases and the dark patterns authorities already know how to identify.⁵³ An operator whose consent flow meets cognitive accessibility standards has, by that fact, manufactured the meaningful-assent conditions that defeat the claim as to every class member for whom such conditions can be manufactured; the doctrine creates the safe harbor it asks operators to inhabit.⁵⁴ The harbor does not reach the smaller band Part IV.D identified, and could not, because no interface supplies a capacity an adjudication has found absent or that no presentation of terms could engage; as to that band the operator's protection is the one contract law has always offered, proof of formation through a channel the law recognizes for the person, and the burden runs as it does in the sophisticated-user answer below, in mirror image: the operator that cannot prove a formation the law permits has no contract to enforce. Nor is there an escape through screening, because the gate has no honest instrument for it: asking every user to disclose disability at the door erects a new barrier and a new intrusion in place of the old one; inferring incapacity from behavioral data is surveillance conducted by the very instrument whose consent function is in dispute; and proceeding as if the question does not exist is the status quo under challenge. The triage objection therefore collapses into the design obligation itself: build a gate that collects real assent where assent is possible, and stop counting clicks as contracts where it is not. Third, the remedy: the lead remedy is redesign, not contractual anarchy. The end state of a successful phantom consent campaign is not an internet without enforceable terms; it is an internet whose terms are enforceable because, for the first time, they were actually agreed to by everyone the law regards as capable of agreement, and extracted from no one it does not.

Certainty. Commercial law prizes the security of transactions, and a formation doctrine sensitive to the offeree's actual cognitive situation seems to threaten it. But the assent doctrine has policed exactly this line for twenty years without commercial collapse: *Specht*, *Nguyen*, *Meyer*, and *Berman* are nothing other than judicial specifications of when an interface's output may be trusted as agreement.⁵⁵ This Article asks the same question with the standardized user

53. *See supra* Parts IV.A–B.

54. *See* W3C, *Making Content Usable*, *supra* note 44; CAL. CODE REGS. tit. 11, §§ 7003(a), 7004(a).

55. *Specht*, 306 F.3d 17; *Nguyen*, 763 F.3d 1171; *Meyer*, 868 F.3d 66; *Berman*, 30 F.4th 849.

replaced, where the statute requires it, by the actual one. The operator's certainty was always conditional on giving real notice; the condition is merely being enforced as to a class against whom it was never met.

Individualization. Capacity is individual, and Part IV conceded it. But the operative class theory does not require otherwise: the Rule 23(b)(2) adjudication targets the operator's uniform practice, the single consent gate deployed identically to every member of the class, and uniform practices producing classwide legal effects are the paradigm of (b)(2) treatment.⁵⁶ The relief, redesign plus a declaration that the practice's outputs are unenforceable as to the class, requires no individualized damages inquiry at the certification stage.

The sophisticated user. Some class members, the objection runs, understood the terms perfectly. Certainly; and the operator remains free, in any individual enforcement action, to prove actual knowledge and assent as to a particular user, exactly as *Container Store* left the retailer free to enforce arbitration against the plaintiff who enrolled online through a flow that disclosed the terms.⁵⁷ Phantom consent strips the operator of the presumption, manufactured by its own interface, that the click was agreement. It does not forbid the operator from proving agreement where agreement occurred. The burden simply returns to where contract law always placed it: on the party asserting the contract.

IX. Conclusion

The consent critique was right, and it was stuck. It was right that the clickwrap ritual produces, for the general population, something far short of agreement, and it was stuck because a defect belonging to everyone belongs, in litigation, to no one. This Article has identified the population for whom the defect is particular, statutory, and actionable, and has assembled, from doctrine no more exotic than the first-year contracts curriculum, the modern assent cases, one First Circuit holding, and the ADA as written, the two-claim architecture that follows: no contract was

56. Fed. R. Civ. P. 23(b)(2); *Dukes*, 564 U.S. at 360.

57. *Container Store*, 904 F.3d 70.

formed, so the shields fall; the gate is inaccessible, so the gate gets rebuilt. The first claim wins a case. The second claim changes the interface for everyone who comes after, which has been, throughout, the point.

A closing observation about timing. Legislatures have begun building protective statutes whose every safeguard is gated on a consent act: an attestation, a parental approval, a per-service authorization. Whatever the merits of those designs, they stack the entire weight of protection on the one interface transaction this Article has shown to be unavailable, as a matter of meaningful performance, to a substantial protected class, including many of the people the statutes most intend to protect. A legal architecture that distributes safety through consent flows will distribute it away from the people who cannot operate them, while their clicks continue to be harvested as agreement. The first system that should be made accessible is the one that asks for everything. The law, on the reading this Article has given it, already requires exactly that. It has merely never been asked.