The Consent That Never Was:

Children, Clickwrap Non-Formation, and the Age Verification Statutes as Legislative Admission

Travis Gilly*

Working draft, July 2026 (v0.1)

Abstract

Every day, children click I Agree. Courts, legislatures, and the platforms themselves have converged on a shared description of what happens in that moment: a contract forms, voidable at the child's election under the infancy doctrine. That description is doing enormous work. Because the infancy doctrine treats the child's contract as formed and merely voidable, the child's challenge is a validity challenge, and under the Federal Arbitration Act's severability regime a validity challenge belongs to the arbitrator. Between 2021 and 2026, federal courts relied on exactly this chain to send children's claims against Snap, StockX, Temu, Epic Games, Roblox, and Microsoft into the arbitral forums those companies drafted, behind the class waivers those companies drafted, under the delegation clauses those companies drafted.

This Article argues that the chain fails at its first link. The question the infancy doctrine answers, what a child may do about a contract that exists, is downstream of a question the courts compelling these children have not been asked: whether the interaction produced a contract at all. Mutual assent is measured objectively, against what the offeror knows or has reason to know about the party on the other side of the interface. A platform that designs for, markets to, and profits from an audience it knows includes children cannot reasonably read a child's tap as a manifestation of assent to thousands of words of undisclosed terms, and the inquiry notice standard the online contract cases apply, calibrated to the reasonably prudent adult user, returns no answer at all when the user is nine. A defect of that kind is a formation defect. Under *Buckeye*, *Granite Rock*, and the Act itself, formation belongs to the court, and no delegation clause can reach it, because until a contract exists there is nothing to delegate.

The Article then identifies a source of support the formation argument has never had before: the legislatures. Texas's App Store Accountability Act, in force since June 2026 and left in

*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.

effect by the Supreme Court in July 2026, forbids app stores from treating a minor's solo assent as sufficient for any download or purchase, and requires verified parental consent for each transaction. The federal COPPA regime does the same for the data layer. These enactments are legislative admissions that the child's click, standing alone, does not do what the platforms' motions to compel say it did. The Article traces what follows when the admission is taken seriously: the arbitration clause, the class waiver, the data license, and the liability cap all rest on an agreement that never came into being.

Keywords: contract formation; mutual assent; infancy doctrine; minors; clickwrap; arbitration; delegation clauses; *Buckeye Check Cashing, Inc. v. Cardegna*; *Granite Rock Co. v. International Brotherhood of Teamsters*; *K.F.C. v. Snap Inc.*; App Store Accountability Act; COPPA.

Contents

I. Introduction

On July 6, 2026, the Supreme Court declined to block Texas's App Store Accountability Act while constitutional litigation over the statute proceeds in the lower courts.[1] The statute requires app stores to verify the age of every user, to affiliate each minor's account with a verified parent's account, and to obtain that parent's consent before the minor downloads an app or makes any purchase.[2] Within hours of the order, the commentary settled into a single frame. A representative advocacy post told parents that when a child taps I Agree to download an app, the child is "technically entering a legally binding contract," one that app stores "have been enforcing for years," and that the new statute finally adds the missing parental layer on top.[3]

Both halves of that frame are wrong, and the two errors point in the same direction. The first half concedes the platforms' central premise: that the child's tap produced a contract. The second half misreads the statute's meaning: a legislature that forbids treating a child's solo assent as sufficient has said something about what that assent was worth all along. This Article takes up both errors. It argues that the child's click on a clickwrap interface, standing alone, does not form a contract, because the interaction fails the objective test for mutual assent at the moment the platform's own knowledge of its audience is brought into the analysis; and it argues that the age verification statutes now spreading through the states, together with the federal children's privacy regime, are legislative admissions of exactly that failure.

---

1. Students Engaged in Advancing Tex. v. Paxton, No. 25A1389 (U.S. July 6, 2026); Comput. & Commc'ns Indus. Ass'n v. Paxton, No. 25A1390 (U.S. July 6, 2026) (orders denying applications to vacate the Fifth Circuit's stay of the preliminary injunction). The orders were brief, unsigned, and issued without noted dissent. *See Supreme Court Clears the Way: Texas's App Store Accountability Act Is Now Enforceable*, Lexology (July 8, 2026), https://www.lexology.com/library/detail.aspx?g=60cfedda-77a9-4539-b439-a68c4f42b52a (last visited July 9, 2026).

2. Tex. Bus. & Com. Code §§ 121.021–.022, *enacted by* Act of May 27, 2025, S.B. 2420, 89th Leg., R.S. (Tex. 2025) (the App Store Accountability Act, *codified at* Tex. Bus. & Com. Code ch. 121). Section 121.021 requires age verification at account creation and sorts users into four categories: child (under 13), younger teenager (13 to 15), older teenager (16 to 17), and adult. Section 121.022 requires that a minor's account be affiliated with a verified parent account and that the store obtain the parent's consent for each individual download or purchase; blanket permissions are prohibited. *See Texas App Store Age-Verification Law (SB 2420) Takes Effect*, Recording Law (June 7, 2026), https://www.recordinglaw.com/news/texas-app-store-age-verification-sb-2420/ (last visited July 9, 2026).

3. The framing is reproduced here as typical of the July 2026 commentary rather than attributed to any single author. Its two claims, that a contract formed and that the statute's contribution is supplemental parental consent, are the claims this Article contests.

The stakes of the distinction are procedural before they are substantive, and the procedural stakes are dispositive. Under the settled infancy doctrine, a child's contract is voidable rather than void: it exists, and the child may elect to disaffirm it.[4] Voidability is a validity concept: it presupposes that an agreement was concluded and asks whether the law will let one party escape it. And under the Federal Arbitration Act's severability regime, a challenge to the validity of a contract as a whole belongs to the arbitrator, while only a challenge to whether any agreement was ever concluded is reserved to the court.[5]

The consequence of parking children's claims on the voidability side of that line is now a documented pattern rather than a prediction. In 2021 the Sixth Circuit held that minors' infancy challenge to StockX's terms of service was "a matter of enforceability" rather than formation, so the delegation clause sent it to the arbitrator.[6] In 2022 the Seventh Circuit compelled a child who began using Snapchat at eleven to arbitrate, reasoning that "[a]s long as state law permits a child to ratify a contract, youth must be a defense rather than an obstacle to a contract's formation, and as a defense it goes to the arbitrator."[7] In 2024 a California district court compelled a minor Fortnite player to arbitrate because his disaffirmance theory attacked the license agreement "as a whole" rather than the delegation clause.[8] In 2025 a New York district court did the same to minor users of Temu, collecting the New York rule that age alone does not defeat mutual assent

4. RESTATEMENT (SECOND) OF CONTRACTS § 14 (Am. L. Inst. 1981) (natural persons under eighteen have capacity to incur only voidable contractual duties); *see, e.g.*, K.F.C. v. Snap Inc., 29 F.4th 835, 837 (7th Cir. 2022) ("Illinois treats such agreements as voidable, which means that children may elect how to proceed once they come of age."); I.C. v. StockX, LLC, 19 F.4th 873, 881 (6th Cir. 2021) (Michigan law; a minor's contract "is voidable" and "an executed voidable contract of an infant is valid until disaffirmed") (citations omitted).

5. Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445–46 (2006) (unless the challenge is to the arbitration clause itself, the validity of the contract is for the arbitrator in the first instance); *id.* at 444 n.1 (distinguishing validity from "whether any agreement between the alleged obligor and obligee was ever concluded," an issue the opinion does not reach); Granite Rock Co. v. Int'l Bhd. of Teamsters, 561 U.S. 287, 297 (2010) (a court may order arbitration "only where the court is satisfied that the parties agreed to arbitrate that dispute," and must resolve "any issue that calls into question the formation or applicability of the specific arbitration clause"); 9 U.S.C. § 4 (court may compel arbitration "upon being satisfied that the making of the agreement for arbitration . . . is not in issue").

6. *I.C.*, 19 F.4th at 886 (plaintiffs "simply recycled the same arguments that pertain to the enforceability of the agreement as a whole" rather than attacking the delegation provision specifically).

7. *K.F.C.*, 29 F.4th at 838.

8. S.T.G. v. Epic Games, Inc., 752 F. Supp. 3d 1200, 1203–04 (S.D. Cal. 2024). The court observed that the plaintiffs "do not argue that disaffirmance means they never entered into the EULA"; their position was that the agreement later became void. *Id.* The formation door stood open and unused.

and holding the minors' disaffirmance theories delegated to the arbitrator.[9] And on May 20, 2026, seven weeks before this draft, a Pennsylvania district court granted the motions of Epic Games, Roblox, and Microsoft to compel a minor's claims to arbitration and stayed the case.[10]

Notice what every court in that line assumed and no party contested: that a contract existed for the infancy doctrine to operate on.[11] The children argued status. They said, in effect, we are children, so the law lets us out. The platforms answered, correctly under the settled doctrine, that the law lets children out of contracts that exist, that an exit is a validity question, and that validity questions were delegated. The argument this Article makes was available to every one of those children and raised by none of them: that the interaction never produced a contract, because a platform that knowingly solicits assent from an audience of children cannot, under the objective theory the platforms themselves invoke, reasonably treat a child's tap as a manifestation of assent to terms the child had no fair opportunity to know. That is a formation argument. Formation belongs to the court. Even the Seventh Circuit's opinion in *K.F.C.*, the strongest authority against the children, says so in terms: "Even the most sweeping delegation cannot send the contract-formation issue to the arbitrator, because, until the court rules that a contract exists, there is simply no agreement to arbitrate."[12]

The Article proceeds in seven further Parts. Part II states the voidability settlement precisely, including the equitable limits that have made disaffirmance nearly useless for children who keep using the service, and isolates the premise the settlement never examines. Part III traces the procedural machine that premise feeds: severability, delegation, and the 2021 to 2026 wave of orders compelling children to arbitrate. Part IV builds the non-formation argument on three grounds: the objective theory's knowledge exception, the adult calibration of the inquiry notice standard, and the structural character of the defect, which makes it a common question rather than the individualized inquiry that has always doomed capacity theories at class

9. Ziboukh v. Whaleco Inc., 795 F. Supp. 3d 349 (E.D.N.Y. 2025) (relying on *K.F.C.* and *I.C.*).

10. Tomlin v. Roblox Corp., No. 2:25-cv-04301 (E.D. Pa. May 20, 2026) (order granting motions to compel arbitration and staying litigation as to all defendants pending arbitration).

11. *See infra* Part III.C.

12. *K.F.C.*, 29 F.4th at 837.

certification. Part V turns to the statutes, and reads the Texas Act, its sibling state enactments, and the amended federal COPPA rule as legislative admissions that a minor's solo assent is legally insufficient. Part VI traces what falls when the admission is credited: arbitration clauses, class waivers, data and AI training licenses, and liability limits, as applied to the class of users who were children at the click. Part VII answers the objections, including the ratification syllogism of *K.F.C.*, the objective-click response, the floodgates concern, age misrepresentation, and the argument that the statutes cure the problem prospectively and therefore quiet it retrospectively. Part VIII concludes.

II. The Voidability Settlement and the Question It Leaves Open

A. The Infancy Doctrine as a Validity Rule

American law's protection for the contracting child is old, uniform in outline, and framed entirely in the vocabulary of avoidance. A natural person below the age of majority has the capacity to incur only voidable contractual duties.[13] California has codified the structure: a minor "may make a contract in the same manner as an adult, subject to the power of disaffirmance,"[14] and "a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards."[15] New York's courts state the same rule: an infant's contract is voidable and the infant has an absolute right to disaffirm, which is protection by exit rather than protection by non-entry.[16] Illinois and Michigan run the same way.[17]

13. Restatement (Second) of Contracts § 14 (Am. L. Inst. 1981).

14. Cal. Fam. Code § 6700; *see* C.W. v. Epic Games, Inc., 435 F. Supp. 3d 1024 (N.D. Cal. 2020) (applying §§ 6700 and 6710 to a minor's video game license agreement).

15. Cal. Fam. Code § 6710. Disaffirmance "may be made by any act or declaration" indicating an intent to disaffirm, and no specific language is required. Celli v. Sports Car Club of Am., Inc., 29 Cal. App. 3d 511, 517 (1972); Berg v. Traylor, 148 Cal. App. 4th 809, 820 (2007); *see C.W.*, 435 F. Supp. 3d 1024 (applying both).

16. *See Ziboukh*, 795 F. Supp. 3d 349 (collecting New York authority that "contracts by minors are voidable, not void" and that the protection New York law provides "is to allow them the right to disaffirm a contract . . . not to find that no enforceable contract exists") (citations omitted).

17. *K.F.C.*, 29 F.4th at 837 (Illinois); *I.C.*, 19 F.4th at 881 (Michigan).

The doctrine's rationale has always been protective. The law shields minors from their own improvidence and from the designs of others, and it discourages adults from contracting with them: any loss occasioned by a minor's disaffirmance "might have been avoided by declining to enter into the contract."[18] Under California's modern statute the exit is generous: a minor may disaffirm all obligations, even for services already rendered, without restoring the consideration.[19] A narrow band of children's contracts is void outright rather than voidable, including, in California, contracts relating to personal property not in the minor's immediate possession or control, a provision one court held could reach children's purchases of platform currency charged to a parent's card.[20] The band is narrow by design; the doctrine's center of mass is voidability.

B. The Equitable Limits: Why the Exit Rarely Opens

On paper, an absolute right to disaffirm looks like strong protection. In the platform cases it has functioned as almost no protection at all, because courts have wrapped the exit in equitable conditions a child user can rarely satisfy.

The first condition is completeness. A minor who disaffirms must disaffirm the entire contract rather than its irksome portions.[21] The second is abandonment. Continued use of the service after suit manifests an intention to keep the contract, which defeats the disaffirmance. The Ninth Circuit so held against minors who sued Facebook over the commercial use of their names and likenesses while continuing to use the platform: "By continuing to use facebook.com after

18. Berg v. Traylor, 148 Cal. App. 4th 809, 818 (2007) (quoting Niemann v. Deverich, 98 Cal. App. 2d 787, 793 (1950)), *quoted in* I.B. ex rel. Fife v. Facebook, Inc., 905 F. Supp. 2d 989, 1000 (N.D. Cal. 2012).

19. *I.B.*, 905 F. Supp. 2d at 1001 (quoting Deck v. Spartz, Inc., No. 2:11-cv-01123, 2011 WL 7775067 (E.D. Cal. 2011), and Burnand v. Irigoyen, 30 Cal. 2d 861, 866 (1947)).

20. Cal. Fam. Code § 6701(c); *I.B.*, 905 F. Supp. 2d at 999–1000 (denying dismissal of a § 6701(c) theory where minors purchased Facebook Credits against parents' accounts they did not control); *see also* In re Apple In-App Purchase Litig., 855 F. Supp. 2d 1030, 1035–36 (N.D. Cal. 2012) (declaratory claim that minors' in-app currency purchases are voidable survived dismissal).

21. *I.B.*, 905 F. Supp. 2d at 1003 (quoting Holland v. Universal Underwriters Ins. Co., 270 Cal. App. 2d 417, 421 (1969)); *accord C.W.*, 435 F. Supp. 3d 1024 (the infancy defense cannot be used inequitably to keep a contract's benefits while shedding the obligations attached to them).

bringing their action, Plaintiffs manifested an intention not to disaffirm the contract."[22] A district court reached the same result for a forum selection clause: minors could not disaffirm the clause while continuing to use the service.[23] The third is estoppel by benefit. Children who received grades, standing, or services through the agreement cannot invoke infancy while keeping what the agreement delivered: "[i]f an infant enters into any contract subject to conditions or stipulations, he cannot take the benefit of the contract without the burden of the conditions or stipulations."[24]

The one reported escape proves the price of the exit. In *C.W. v. Epic Games*, a minor Fortnite player defeated a motion to compel arbitration, and he did it only by quitting: he disaffirmed the entire license agreement, stopped playing, and thereby rescinded the contract in full, taking the arbitration clause down with it.[25] Under voidability, the child's remedy costs the child the service, the account, the purchases, the social world attached to them, and everything else the platform holds hostage to continued assent. A doctrine that conditions a child's legal protection on the child's willingness to abandon her social environment is a doctrine that will almost never be used, and the platforms know it.

C. What Voidability Presupposes

Every rule described above operates on an object. Disaffirmance rescinds a contract; ratification confirms a contract; the benefits estoppel polices a contract's package of burdens and advantages. The doctrine's vocabulary presupposes that the antecedent event, contract formation, occurred. That presupposition was harmless in the world the doctrine grew up in. When a sixteen year old signed an employment form across a counter, or bought a car, or engaged a talent agent, there

---

22. C.M.D. ex rel. De Young v. Facebook, Inc., 621 F. App'x 488, 489 (9th Cir. 2015). The court rested on the longstanding California rule that a party "cannot apply to his own use that part of the transaction which may bring to him a benefit, and repudiate the other." *Id.* (quoting Babu v. Petersen, 4 Cal. 2d 276, 286 (1935)).

23. E.K.D. ex rel. Dawes v. Facebook, Inc., 885 F. Supp. 2d 894, 899 (S.D. Ill. 2012).

24. A.V. v. iParadigms, LLC, 544 F. Supp. 2d 473, 481 (E.D. Va. 2008) (quoting 5 WILLISTON ON CONTRACTS § 9:14 (4th ed. 2007)) (minor students who submitted papers through a plagiarism-detection clickwrap could not void it while retaining its benefits), *aff'd on other grounds*, 562 F.3d 630 (4th Cir. 2009).

25. *C.W.*, 435 F. Supp. 3d 1024 (holding that the minor's valid disaffirmance of the license agreements meant he could not be compelled to arbitrate under the arbitration provision they contained; under California law disaffirmance rescinds the entire contract and renders it a nullity).

was a bargaining encounter a court could recognize as offer and acceptance: terms physically present, a counterparty physically present, a signature solicited and given.[26] The question worth litigating was what the child could do afterward, and voidability answered it.

The clickwrap encounter is not that encounter. The terms run to thousands of words no one reads,[27] presented behind a link at the one moment attention is least available, to a party the offeror never sees.[28] The empirical consent literature concludes that even adult users lack the comprehension and voluntariness that informed agreement requires, an information asymmetry the researchers describe as structural.[29] And the party on the child's side of that interface is a child, a user the developmental literature describes as unable even to reliably distinguish commercial content from entertainment, let alone parse the data-processing terms woven behind it.[30]

The infancy doctrine has no opinion about any of this, because the infancy doctrine begins after formation. Ask it whether the click of a nine year old on an interface engineered for frictionless acceptance produced a meeting of the minds and it answers a different question: it tells you what the nine year old may do about the contract you have assumed into existence. The assumption is the whole game, and Part III shows who wins it.

---

26. *See A.V.*, 544 F. Supp. 2d at 480 ("In Virginia, the essential elements of a contract are offer, acceptance and consideration.").

27. Jonathan A. Obar & Anne Oeldorf-Hirsch, *The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services*, 23 INFO., COMMC'N & SOC'Y 128 (2020) (experimental participants overwhelmingly skipped or skimmed policies; a large majority accepted terms that included surrendering a first-born child), https://doi.org/10.1080/1369118X.2018.1486870 (last visited July 9, 2026).

28. *Cf.* Nicosia v. Amazon.com, Inc., 834 F.3d 220, 236–37 (2d Cir. 2016) (purchase page with "between fifteen and twenty-five links," text "in at least four font sizes and six colors," and notice "not directly adjacent" to the order button did not establish reasonable notice as a matter of law even for adult users).

29. Masooda Bashir, Carol Hayes, April D. Lambert & Jay P. Kesan, *Online Privacy and Informed Consent: The Dilemma of Information Asymmetry*, 52 PROC. ASS'N FOR INFO. SCI. & TECH. 1 (2016) (survey evidence that users "not only do . . . not read privacy policies, they likely would not be able to understand them if they did"), https://doi.org/10.1002/pra2.2015.145052010043 (last visited July 9, 2026).

30. Michel Walrave & Wannes Heirman, *Adolescents, Online Marketing and Privacy: Predicting Adolescents' Willingness to Disclose Personal Information for Marketing Purposes*, 27 CHILD. & SOC'Y 434 (2012) (minors' ability to assess the purposes of online marketing and personal data processing is limited and further complicated by the blurring of commercial and entertainment content), https://doi.org/10.1111/j.1099-0860.2011.00423.x (last visited July 9, 2026).

III. The Machine That Voidability Feeds

A. Severability and Delegation

Three Supreme Court decisions supply the machine's parts. *Prima Paint* launched the severability principle: an arbitration clause is treated as an agreement separate from the contract that contains it, so a claim of fraud in the inducement of the contract generally goes to the arbitrator, while fraud in the inducement of the arbitration clause itself goes to the court.[31] *Buckeye* generalized it: "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance," and this is so even if the challenge would render the contract void under state law.[32] *Rent-A-Center* added the delegation layer: where the parties' agreement delegates threshold questions of enforceability to the arbitrator, a court must enforce the delegation unless the plaintiff's challenge is directed specifically at the delegation provision itself, and recycling arguments against the agreement as a whole does not count.[33]

Assembled, the parts produce a routing system. Label a defect *validity* and it travels: to the arbitrator under *Buckeye*, or to the arbitrator even as to arbitrability itself under *Rent-A-Center*, in the forum the drafting party selected, stripped of class procedures by the waiver the drafting party wrote. Label the same defect *formation* and it stays: with the court, on the public record, before any clause the disputed instrument contains can operate.[34]

B. The Formation Reservation

The reservation for formation is as clear as the routing rule. *Buckeye* itself fenced it off: the contract's validity "is different from the issue whether any agreement between the alleged obligor

31. Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 403–04 (1967).

32. *Buckeye*, 546 U.S. at 445–46.

33. Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 72 (2010); *see I.C.*, 19 F.4th at 886 (the specificity requirement "is not a mere pleading requirement"; courts "look to the substance of the challenge").

34. *Compare Buckeye*, 546 U.S. at 445–46 (validity travels to the arbitrator), *and Rent-A-Center*, 561 U.S. at 72 (delegated threshold questions travel unless the delegation itself is attacked), *with Granite Rock*, 561 U.S. at 299–300 (formation stays with the court), *and* 9 U.S.C. § 4.

and obligee was ever concluded," and the opinion addressed only the former, leaving undisturbed the line of cases holding that courts decide whether the obligor ever signed, whether a signor had authority, and whether a signor had the mental capacity to assent.[35] *Granite Rock* made the reservation operational: a court may order arbitration "only where the court is satisfied that the parties agreed to arbitrate that dispute," and to satisfy itself of that, "the court must resolve any issue that calls into question the formation or applicability of the specific arbitration clause."[36] The statute says the same in its own grammar: a court compels arbitration "upon being satisfied that the making of the agreement for arbitration . . . is not in issue."[37] And the First Circuit has applied the reservation to an interface: where an arbitration agreement lived inside a touchscreen flow that blind customers could not perceive and no employee disclosed, no agreement to arbitrate was formed, the question was for the court rather than the arbitrator, and the court rejected the company's "attempt to re-package" the argument as a validity challenge.[38]

Nothing in the delegation cases reaches across this line, and the Seventh Circuit has said exactly why: "the breadth of a delegation is irrelevant if the parties did not enter into a contract."[39] The reservation is not a technicality. It is the Act's consent principle: arbitration is

35. *Buckeye*, 546 U.S. at 444 n.1 (citing, *inter alia*, Spahr v. Secco, 330 F.3d 1266 (10th Cir. 2003)).

36. *Granite Rock*, 561 U.S. at 297. Where a party contests formation or enforceability, "the court" must resolve the disagreement, and the presumption of arbitrability applies only where a validly formed and enforceable agreement is ambiguous about scope. *Id.* at 299–301; *accord* First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 943 (1995) (arbitration resolves "only those disputes . . . that the parties have agreed to submit").

37. 9 U.S.C. § 4.

38. Nat'l Fed'n of the Blind v. Container Store, Inc., 904 F.3d 70, 82–83 (1st Cir. 2018). The panel wrote: "There can be no mutual assent or meeting of the minds – and hence no contract – if the one to whom the offer is supposedly made is unaware of the contract's terms and conditions," and, while "inability to read is not a defense to contract formation," 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." *Id.*

39. *K.F.C.*, 29 F.4th at 837; *accord I.C.*, 19 F.4th 873 (even the broadest delegation provision cannot send formation to the arbitrator; courts decide challenges to the "existence of an agreement in the first instance" (quoting In re Auto. Parts Antitrust Litig., 951 F.3d 377, 385 (6th Cir. 2020))); Boykin v. Family Dollar Stores of Mich., LLC, 3 F.4th 832, 843–44 (6th Cir. 2021) (courts "must decide this formation question" regardless of what the alleged contract says).

a creature of agreement, and a clause inside an instrument cannot bootstrap the instrument into existence.[40]

C. The Wave: 2021 to 2026

Now run children through the machine. Because the infancy doctrine hands them a validity theory, every child who invokes it self-sorts onto the arbitrator's side of the line, and the delegation clause does the rest.[41]

The Sixth Circuit went first. In *I.C. v. StockX*, minors whose data was exposed in a breach argued infancy against the platform's terms. The panel agreed that formation questions are for courts even in the face of a delegation clause, and then held that infancy was not such a question: under Michigan law a minor's contract "is not synonymous with a nonexistent contract"; it is voidable, valid until disaffirmed, so the infancy defense "is a matter of enforceability covered under the delegation provision."[42] The dissent saw the trap closing: an infancy challenge can logically be directed only at the entire contract, never at a single clause, so a specificity rule built for clause-level attacks systematically forecloses the child's defense from judicial review.[43]

The Seventh Circuit followed with the line that names this Article's target. K.F.C. was eleven when she began using Snapchat; she sued under Illinois's biometric privacy statute; the court compelled arbitration. Judge Easterbrook's syllogism was clean: a voidable agreement, unlike a void one, may be ratified; what can be ratified must exist; what exists was formed; therefore "youth must be a defense rather than an obstacle to a contract's formation, and as a defense it goes to the arbitrator."[44] The syllogism is valid, and Part VII returns to it, because

---

40. 9 U.S.C. § 2 (a written provision "in" a contract to arbitrate a controversy "arising out of such contract"); *First Options*, 514 U.S. at 943 (arbitration is a way to resolve "only those disputes . . . that the parties have agreed to submit").

41. *See supra* Parts II.A, III.A.

42. *I.C.*, 19 F.4th at 881, 886.

43. *I.C.*, 19 F.4th 873 (Moore, J., dissenting) (reasoning from *Spahr* that a status-based incapacity necessarily affects the whole contract rather than any single clause, so the specificity rule forecloses judicial review of the child's defense by construction; *Spahr* itself observed that it "would be odd indeed" to conclude that a party challenged a single provision on capacity grounds, 330 F.3d at 1273).

44. *K.F.C.*, 29 F.4th at 837–38.

its soundness depends entirely on a premise about *why* the agreement exists, and the premise assumes the answer to the formation question this Article raises.

The district courts extended the pattern. *S.T.G. v. Epic Games* compelled a minor Fortnite player to arbitrate because his void-ab-initio disaffirmance theory was "a challenge to the EULA as a whole" under *Rent-A-Center*, while expressly noting the argument the plaintiffs did not make: they "do not argue that disaffirmance means they never entered into the EULA."[45] *Ziboukh v. Whaleco* compelled minor Temu users on the same logic, restating New York's position that age alone does not defeat mutual assent and sending the minors' claims to the arbitrator.[46] The newest district decision concedes the premise even while extending the pattern. In *S.G. v. Epic Games*, the court held that whether the minor himself ever formed an agreement to arbitrate with the platform is a question of contract formation reserved to the court, delegation clause notwithstanding, and then compelled the child anyway, because his father had accepted the license on the shared account at least in part for the child's benefit.[47] The route to compulsion is the concession. To bind the child, the platform needed the parent's assent, which is the arrangement the age verification statutes now mandate and the arrangement the child's own tap never supplied. And *Tomlin v. Roblox* closed the set in May 2026, sending a child's claims against three of the largest interactive platforms on earth to arbitration in a two-page order.[48]

The pattern's shape deserves a plain statement. The infancy doctrine exists to protect children from the designs of adults who contract with them. As deployed in these cases, the doctrine is the instrument by which the adults' chosen forum, chosen procedure, and chosen liability limits are fastened onto the children. The protective rule became the routing label.

---

45. *S.T.G.*, 752 F. Supp. 3d at 1203–04.

46. *Ziboukh*, 795 F. Supp. 3d 349. The court went further for minors using another person's account, holding that such use is an implicit representation of being the account holder that binds the child to the terms the account owner accepted. *Id.* (quoting Nicosia v. Amazon.com, Inc., 384 F. Supp. 3d 254, 274 (E.D.N.Y. 2019)).

47. S.G. v. Epic Games, Inc., 796 F. Supp. 3d 614 (N.D. Cal. 2025) (treating the minor's own formation question as one for the court under *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1127 (9th Cir. 2013), and binding the minor through the parent's assent under California agency principles). The court was careful to separate the two questions: disaffirmance of a valid contract goes to the arbitrator, while whether the minor formed an agreement at all stays with the court. *Id.*

48. *Tomlin*, No. 2:25-cv-04301 (E.D. Pa. May 20, 2026).

That inversion is not a misapplication by any single court; each opinion is internally faithful to *Buckeye* and *Rent-A-Center*. The inversion happens one step earlier, at the unexamined premise that a contract formed, and it can only be undone there.

IV. Non-Formation: The Question Before the Defense

The argument of this Part is not that children have a status that voids their contracts. Status arguments are the ones the wave already drowned.[49] The argument is that the clickwrap interaction between a platform and a child fails the objective test for mutual assent, measured the way that test has always been measured: from the position of the offeror, charged with what it knows and has reason to know about the party manifesting assent. Age enters the analysis as a fact the platform knows about its audience rather than as a personal characteristic of the plaintiff. That difference in entry point changes everything downstream: it makes the defect a formation defect, it places the question before the court, and it converts the most individualized inquiry in contract law into a single structural question about an interface.

A. Assent Measured Against the Solicited Audience

The objective theory is usually recited as the platforms' friend: the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts, and an unexpressed state of mind is immaterial.[50] A click is an act; the act's reasonable meaning is acceptance; the child's inner non-comprehension does not signify. That recitation omits the theory's own limiting principle, stated in the same canonical case: undisclosed intention is immaterial "except when an unreasonable meaning which he attaches to his manifestations is known to the other party."[51] Objectivity is a two-way instrument. It protects an offeror who reasonably relies on an outward

49. *See I.C.*, 19 F.4th at 886; *K.F.C.*, 29 F.4th at 838; *S.T.G.*, 752 F. Supp. 3d at 1203–04; *Ziboukh*, 795 F. Supp. 3d 349; *supra* Part III.C.

50. Lucy v. Zehmer, 196 Va. 493, 502–03, 84 S.E.2d 516 (1954) ("the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts").

51. *Id.* at 503 ("If the words or other acts of one of the parties have but one reasonable meaning, his undisclosed intention is immaterial except when an unreasonable meaning which he attaches to his manifestations is known to the other party.").

manifestation; it withdraws that protection when the offeror knows or has reason to know that the manifestation does not carry the meaning the offeror proposes to assign it.

Apply the instrument honestly to the platform-child encounter. The platform is not a stranger surprised by a child at its door. It builds child-attractive products; it markets into child audiences; it monetizes child engagement through in-app purchase flows and advertising;[52] and, in the cases that populate Part III, it litigates against plaintiffs whose captions are initials because the plaintiffs are children.[53] The commercial ecosystem the platforms inhabit collects and processes minors' data at scale as a business model, and has for two decades.[54] A federal statute has, since 2000, obliged operators whose services are directed to children to know that fact about their audience and act on it.[55] Texas law now obliges every app store to verify the age of every user at account creation.[56]

An offeror with that knowledge cannot claim the objective theory's protection for the meaning it assigns a child's tap. What would a reasonable operator, knowing its audience includes children in the millions, understand a nine year old's tap on Continue to mean? It means the child wants the game. It does not mean, and the operator has no reasonable basis to take it to mean, that the child agrees to arbitrate in a designated forum, waives class procedures, licenses her data, and accepts a liability cap, terms the operator itself buried behind a hyperlink precisely because presenting them would interrupt the acquisition funnel. The manifestation of assent the platforms' motions describe is a meaning the platforms assigned, to conduct they engineered, by a party they knew could not supply it. *Lucy*'s exception was built for exactly this: the offeror who knows the manifestation is empty takes nothing from its form.

---

52. *See In re Apple In-App Purchase Litig.*, 855 F. Supp. 2d at 1035–36 (minors' purchases of in-app game currency); *I.B.*, 905 F. Supp. 2d 989 (minors' purchases of platform credits charged against parents' accounts); *C.W.*, 435 F. Supp. 3d 1024 (minors' purchases of Fortnite V-Bucks).

53. *See C.W.*, 435 F. Supp. 3d 1024; *I.B.*, 905 F. Supp. 2d 989; *C.M.D.*, 621 F. App'x 488; *E.K.D.*, 885 F. Supp. 2d 894; *I.C.*, 19 F.4th 873; *K.F.C.*, 29 F.4th 835; *S.T.G.*, 752 F. Supp. 3d 1200 (each captioned by a minor's initials).

54. Walrave & Heirman, *supra* note 30 (documenting the proliferation of child-targeted commercial sites and the finding that a large majority of websites targeting children and adolescents process personal data).

55. 15 U.S.C. §§ 6501–6506 (COPPA); 16 C.F.R. pt. 312 (the COPPA Rule, including the multifactor test for whether a service is directed to children). *See infra* Part V.B.

56. Tex. Bus. & Com. Code § 121.021; *see supra* note 2.

B. Inquiry Notice and the Reasonably Prudent User Who Is Nine

The online contract cases run formation through a two-part test: reasonably conspicuous notice of the terms, and an unambiguous manifestation of assent.[57] Where actual notice is absent, everything rides on inquiry notice, which turns on the clarity and conspicuousness of the terms as a function of interface design, judged from the perspective of a reasonably prudent user.[58] The reasonably prudent user of the case law has a specific cognitive profile. *Meyer* spells it out: "a reasonably prudent smartphone user knows that text that is highlighted in blue and underlined is hyperlinked to another webpage where additional information will be found," and such a user, seeing terms spatially coupled to a registration button, "would know that by clicking the registration button, he was agreeing to the terms and conditions accessible via the hyperlink, whether he clicked on the hyperlink or not."[59]

Every element of that profile is an adult competence. Knowing what blue underlined text signifies as a legal convention; understanding that a button labeled Continue or Play performs a second, invisible function of legal commitment; inferring from spatial proximity that linked legalese pertains to the act one is about to take: these are learned inferences about the juridical meaning of interface conventions, exactly the category of commercial-versus-content discrimination the developmental evidence says children perform unreliably.[60] The case law has simply never confronted its own calibration, because the test was built in disputes between companies and adult consumers.[61] Ask the test its own question with the actual audience

---

57. Meyer v. Uber Techs., Inc., 868 F.3d 66, 74–75 (2d Cir. 2017); Nguyen v. Barnes & Noble Inc., 763 F.3d 1171, 1176–77 (9th Cir. 2014); Specht v. Netscape Commc'ns Corp., 306 F.3d 17, 30 (2d Cir. 2002); Sgouros v. TransUnion Corp., 817 F.3d 1029, 1034–35 (7th Cir. 2016); Berkson v. Gogo LLC, 97 F. Supp. 3d 359, 401–03 (E.D.N.Y. 2015).

58. *Meyer*, 868 F.3d at 74–75 (whether "a reasonably prudent user would be on inquiry notice" turns on the "[c]larity and conspicuousness of arbitration terms," and, for web-based contracts, "clarity and conspicuousness are a function of the design and content of the relevant interface") (quoting *Specht*, 306 F.3d at 30, and citing Nicosia v. Amazon.com, Inc., 834 F.3d 220, 233 (2d Cir. 2016)).

59. *Meyer*, 868 F.3d at 77–80.

60. Walrave & Heirman, *supra* note 30; *cf.* Bashir et al., *supra* note 29 (even adult users lack the comprehension the consent model presumes).

61. *See Sgouros*, 817 F.3d 1029; *Meyer*, 868 F.3d 66; *Nicosia*, 834 F.3d 220 (cluttered purchase page did not establish reasonable notice as a matter of law even for adults).

inserted, whether a reasonably prudent *nine year old* would understand from this screen that binding terms exist and that a tap accepts them, and the test returns the platforms' answer inverted. There is no age at which the reasonably prudent user standard can be honestly applied to a child under thirteen and yield inquiry notice, and the platforms know the composition of their audience with a precision no offline merchant has ever possessed.

The doctrine's own logic already bends toward audience calibration; the cases just stopped short of the population where the calibration matters most. The Seventh Circuit, the same court that decided *K.F.C.*, has held that a click carries only the meaning the screen assigns it: where a website tells the user that clicking means one thing, "that click does not bind users to something else."[62] The same opinion observed that an internet user "may not realize that she is agreeing to a contract at all, whereas a reasonable person signing a physical contract will rarely be unaware of that fact."[63] The Ninth Circuit allocates the burden accordingly: "the onus must be on website owners to put users on notice of the terms to which they wish to bind consumers."[64] And at least one court has done expressly what this Part urges, calibrating the reasonable user to the evidence: lacking proof of the plaintiffs' sophistication, *Berkson* inferred the "average capacity and understanding" of the actual users from sociological and empirical research about actual internet use, declining to impute the fluency of judges to the people on the other side of the screen.[65] Every screen a platform ships into a child audience tells the child her tap means play. *Sgouros* supplies the consequence: the tap does not bind her to something else.

The First Circuit's blind-customer holding supplies the doctrinal bridge, and its logic travels without modification. *Container Store* distinguished the settled rule that inability to read is no defense: that rule presumes a signatory who knew a contract was being formed and

62. *Sgouros*, 817 F.3d at 1035 (holding no contract formed where the interface assigned the click a meaning other than acceptance of the service agreement).

63. *Id.* at 1035.

64. *Nguyen*, 763 F.3d at 1179. *Accord Berkson*, 97 F. Supp. 3d at 403 ("The burden of showing agreement to details of a contract on a website's contract of adhesion is on the vendors," who design the interface and seed it with terms favoring themselves).

65. *Berkson*, 97 F. Supp. 3d at 367. The first question of *Berkson*'s four-part validity inquiry asks whether there is substantial evidence that "the user was aware that she was binding herself to more than an offer of services or goods in exchange for money." *Id.* at 402. For the child user, the answer the platforms' own design choices compel is no.

chose not to learn its content, a presumption that fails where the interface communicates no hint that binding terms exist.[66] An interface that defeats perception forms no contract because it denies the offeree the fair opportunity to know and act. An interface whose every juridical signal is legible only to adults denies a child the same opportunity through a different channel. The touchstone was never eyesight, and it was never age; it was the offeree's fair opportunity to know that an offer with terms was on the table. A screen that communicates "game" to its known child audience while communicating "contract" only in adult conventions gives the child user zero hint in the operative sense, and *Container Store* says what follows: no mutual assent, no contract, and a court rather than an arbitrator says so.

C. The Capacity Split, and Why the Structural Frame Avoids It

A skeptic will ask why this is not just the capacity argument in new clothes, and the question deserves a precise answer, because capacity's procedural fate is contested in a way the structural argument is built to avoid. The circuits split over mental incapacity. The Fifth Circuit sends a mental-capacity defense against the whole contract to the arbitrator as an ordinary validity challenge under *Prima Paint*.[67] The Tenth Circuit holds the opposite: the *Prima Paint* rule cannot be applied "with precision" to a party who claims to have lacked the mental capacity to assent, because that claim goes to the making of the agreement, so it stays with the court.[68] A child litigating status-based incapacity therefore gambles on geography, and after *I.C.* and *K.F.C.* the geography mostly loses.

The structural argument does not enter that gamble, because it does not plead the child's mental state at all. It pleads the interface and the offeror's knowledge. The claim is not that this plaintiff failed to understand; it is that this screen, presented by this operator to an audience the operator knew included children, was incapable of producing a manifestation of assent from any member of that audience under the objective standard. That is an assent claim of the *Container*

66. *Container Store*, 904 F.3d 70; *see supra* note 38.

67. Primerica Life Ins. Co. v. Brown, 304 F.3d 469, 472 (5th Cir. 2002).

68. *Spahr*, 330 F.3d at 1273. *Buckeye* cited *Spahr* in the footnote that fences formation off from its holding, without resolving the split. 546 U.S. at 444 n.1.

Store type, a claim about whether the offeree class had reason to know the basic terms of the offer, and assent claims sit on the formation side of *Buckeye*'s footnote in every circuit. The framing also solves the problem that has always wrecked capacity theories as class theories: incapacity is assessed person by person, which destroys commonality, while the structural question, whether this interface obtained assent from anyone in the defined class of child users, is asked about the defendant's design once and answered classwide.[69]

One more feature of the structural frame deserves emphasis: it is falsifiable, which is what makes it law rather than sentiment. A platform that presents terms in child-legible form, reads them aloud in age-appropriate language, verifies age and routes minors to a parent for the commitment step, could form contracts touching child users. The Texas statute now sketches that architecture as a legal mandate.[70] The argument condemns the interfaces the platforms actually shipped, which were engineered on the opposite theory: that the click's value lies precisely in its frictionlessness, and friction is what knowing acceptance would require.

V. The Legislative Admission

A. Texas and the Statutory Wave

The App Store Accountability Act does one thing this Article cares about, and it does it in mandatory language. It forbids the app store from treating the minor's own assent as sufficient. Age must be verified at account creation; a minor's account must be affiliated with a verified parent's account; and the store must obtain the parent's consent, transaction by transaction, before the minor downloads or purchases anything, with blanket permissions expressly prohibited.[71] The Act took effect June 4, 2026, when the Fifth Circuit stayed the district court's injunction

69. *Compare Spahr*, 330 F.3d at 1273 (capacity challenge examined through the claimant's own mental state), *with Container Store*, 904 F.3d at 82–83 (assent examined through the interface and what the offeree class had reason to know).

70. Tex. Bus. & Com. Code § 121.022; *see infra* Part V.

71. Tex. Bus. & Com. Code §§ 121.021–.022; *supra* note 2.

pending appeal, and the Supreme Court declined to disturb that stay on July 6, 2026.[72] Texas is not alone; similar legislation has passed in Utah, Louisiana, and California, and roughly half the states impose age verification requirements on minors' access in some form.[73]

Two cautions about what the July 6 order was, because the commentary has inflated it. The order was interim, unsigned, and without noted dissent; it resolved emergency applications about a stay, decided no merits question, and pronounced nothing about contract law, which the litigation, a First Amendment challenge, has never involved.[74] Anyone citing the order as a unanimous merits ruling misstates it, and anyone citing it as a contracts holding cites a case about a subject it does not contain. The statute's evidentiary value for this Article is independent of the litigation's outcome. It lies in what the legislature enacted, and would survive even the Act's invalidation on speech grounds, because a First Amendment defect in the remedy says nothing about the legislative finding that motivated it.

B. The Federal Layer: COPPA and Verifiable Parental Consent

The federal regime has embodied the same judgment for a quarter century, and it recently deepened it. The Children's Online Privacy Protection Act conditions the collection of personal information from children under thirteen on verifiable *parental* consent; the child's own agreement is legally nothing.[75] The Federal Trade Commission's 2025 amendments, effective June 23, 2025, with a general compliance date of April 22, 2026, tightened the machinery: a broadened definition of personal information reaching biometric identifiers, new data retention

---

72. Comput. & Commc'ns Indus. Ass'n v. Paxton, No. 25-51073 (5th Cir. June 4, 2026) (stay pending appeal, superseding a May 28 administrative stay); Comput. & Commc'ns Indus. Ass'n v. Paxton, No. 1:25-cv-01660-RP (W.D. Tex. Dec. 23, 2025) (preliminary injunction); *supra* note 1. *See Fifth Circuit Keeps Texas App Store Law Alive*, Tex. Pol'y Rsch. (June 5, 2026), https://www.texaspolicyresearch.com/fifth-circuit-keeps-texas-app-store-law-alive/ (last visited July 9, 2026).

73. *Supra* note 1 (Lexology) (noting similar legislation passed in Utah, Louisiana, and California, and that 27 state attorneys general filed in support of Texas); Amy Howe, *Texas Asks Court To Leave in Place Age-Verification and Parental-Consent Law on Apps*, SCOTUSblog (June 22, 2026), https://www.scotusblog.com/2026/06/texas-asks-court-to-leave-in-place-age-verification-and-parental-consent-law-on-apps/ (last visited July 9, 2026) (noting half the states have similar age-verification requirements for minors).

74. *Supra* note 1. The challengers' theories sound in speech: that the Act is a content-based restriction subjected to the wrong tier of scrutiny. *See* Howe, *supra* note 73.

75. 15 U.S.C. §§ 6501–6506; 16 C.F.R. pt. 312.

limits, and a requirement of separate verifiable parental consent before disclosing children's information to third parties for targeted advertising and related purposes.[76] The amended rule also rebuilt the third party disclosure gate on the same premise: absent an exception, the operator must obtain separate verifiable parental consent before disclosing a child's personal information to third parties, unless the disclosure is integral to the website or online service. Advocates pressed the Commission to declare disclosures for advertising and for training artificial intelligence categorically outside the integral core, and the Commission answered that integrality is a fact specific question about the service.[77] The answer concedes the frame this Article needs: whether a disclosure was something the child's use of the service actually required is a question about the service. It was never a question the child's click could settle.

C. What the Statutes Concede

Read the state and federal enactments as a body and extract their common premise. Congress: a child's agreement to data collection is not agreement; a parent must supply it, verifiably.[78] Texas, Utah, Louisiana, California: a child's tap on a download or purchase button is not authorization; a parent must supply it, per transaction, with blanket delegation forbidden.[79] These are not consumer-protection garnishes on an otherwise valid consent architecture. They are findings, embedded in operative text, that the consent architecture never worked for this population. A legislature does not require a substitute decisionmaker for decisions the original decisionmaker was making validly.

76. Children's Online Privacy Protection Rule, 90 Fed. Reg. 16918 (Apr. 22, 2025) (codified at 16 C.F.R. pt. 312) (effective June 23, 2025; compliance by April 22, 2026, for most provisions); *see* *COPPA Rule Amendment Compliance Deadline Approaches*, Hunton Andrews Kurth (Apr. 23, 2026), https://www.hunton.com/privacy-and-cybersecurity-law-blog/coppa-rule-amendment-compliance-deadline-approaches (last visited July 9, 2026).

77. 90 Fed. Reg. at 16950 (preamble discussion of § 312.5(a)(2); commenters urged that disclosures "for advertising purposes" and "for training or developing artificial intelligence technologies" never qualify as integral, and the Commission treated integrality as fact specific); *id.* at 16979 (adopted rule text conditioning third party disclosure on separate consent unless "integral to the website or online service").

78. 15 U.S.C. §§ 6501–6506; 16 C.F.R. § 312.5 (verifiable parental consent).

79. Tex. Bus. & Com. Code § 121.022; *supra* notes 2 and 73.

The platforms understood the point when they fought it. The industry's own litigation position against SB 2420 is that requiring parental consent burdens minors' independent access to speech, an argument that presupposes the pre-statute regime ran on the minor's independent action.[80] And Big Tech's amici warned of enormous compliance costs across app stores and millions of developers,[81] costs which are the price of building, for the first time, the consent machinery whose absence the platforms' motions to compel have been papering over with the word voidable. The legislative wave is a bill for retrofitting assent into a system that shipped without it.

Call this the legislative admission, and be precise about its legal character, because it operates as evidence rather than as retroactive command. No canon converts SB 2420 into a rule that pre-2026 contracts with minors are unformed; statutes presumptively speak forward. The admission's work is done inside the common law analysis of Part IV, at the offeror's-knowledge element. After COPPA, no operator of a child-directed or mixed-audience service can plead ignorance that its audience includes children whose solo assent federal law disregards; after the age verification wave, no app store can plead a settled commercial understanding that a minor's tap suffices. The statutes fix the knowledge component of the objective test as a matter of public record, and they demolish the reliance narrative, the platforms' implicit claim to have reasonably understood the click as assent, for every transaction within their shadow.

D. The Retrospective Shadow

The admission's forward text casts a backward light.[82] Consider the corpus it illuminates: every arbitration clause, class waiver, data license, and liability cap that a platform today holds against a person who clicked as a child, including the accumulated agreements of users who have since

80. *See* Howe, *supra* note 73 (describing the challengers' arguments); *cf.* Brown v. Entm't Merchs. Ass'n, 564 U.S. 786 (2011) (holding video games protected speech and invalidating California's restriction on their sale to minors, the doctrinal tradition on which the challengers draw).

81. *Id.*

82. *See supra* Parts III.C, IV.A.

reached majority and are told they ratified by continuing to play.[83] The statutes do not void that corpus. They strip it of its innocence. A platform defending the corpus must now argue that a manifestation of assent it is forbidden to accept from a child in 2026 was nonetheless reasonably understood as assent from the same child in 2019, on the same interface, under the same federal children's privacy regime, with the same knowledge of its audience. The argument can be made. It cannot be made with a straight face, and Part VII's objections show that nothing better is available.

VI. What Falls

Follow the non-formation conclusion through a single child's litigation, and then through the class.

For the single child, the sequence inverts the wave. The platform moves to compel arbitration and invokes the delegation clause. The child answers on formation: no agreement was ever concluded between this operator and the class of users it knew to be children, because the interface was incapable of extracting a manifestation of assent from that audience under the objective standard. Under *Granite Rock* and section 4, the court must resolve that issue itself; under *K.F.C.*'s own concession, no delegation clause can reach it.[84] If the formation challenge succeeds, everything bolted to the instrument falls together, because there is no instrument. The arbitration clause and its delegation provision go first; they were never agreed to.[85] The class action waiver goes with them; *Concepcion* enforces waivers inside valid agreements and has nothing to say where no agreement was concluded.[86] The license to collect, process, sell, and train on the child's data goes; a license is a creature of the contract that grants it. The limitation of liability and indemnification provisions go. What remains is the relationship the law supplies

83. *See C.M.D.*, 621 F. App'x at 489 (continued use manifested an intention to keep the contract); *K.F.C.*, 29 F.4th at 837 (voidable agreements "may be ratified" once children come of age).

84. *Granite Rock*, 561 U.S. at 297; 9 U.S.C. § 4; *K.F.C.*, 29 F.4th at 837.

85. *Container Store*, 904 F.3d at 82–83 (no formation, no arbitration; question for the court).

86. AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011) (enforceability of class waivers within arbitration agreements under the FAA).

when parties interact without a contract: the platform holds and exploits the child's data, likeness, and money without permission, on terms set by property, tort, restitution, and statute rather than by the platform's drafting department.

For the class, the structural frame does the certification work that capacity never could. The common question is single and defendant-focused: whether this interface, in this period, presented to an audience the operator knew included children, was capable of forming a contract with a child user. It is answered with the operator's own design files, marketing materials, age-signal data, and COPPA compliance record, evidence common to the class by construction.[87] The relief follows the same shape: a declaration that no agreement was formed as to class members who were minors at the relevant clicks, which unwinds the arbitration and waiver defenses across the class in one order rather than one child at a time. The contrast with the voidability route is the whole point. Disaffirmance is personal to the minor, exercised one child at a time, defeated by continued use, and surrendered by ratification at majority.[88] Non-formation is structural, asserted about the defendant's conduct, and indifferent to whether the child kept playing, because a child's continued use of a service cannot ratify an agreement that never existed. Ratification, like disaffirmance, needs an object.[89]

The remedial asymmetry deserves one more sentence, because it answers the question of why the platforms fought so hard to keep children inside the voidability frame. Voidability makes the child pay for her own protection with exile from the service. Non-formation makes the platform pay for its own interface with the loss of every shield the interface pretended to erect. The doctrine a court selects decides who bears the cost of the defect, and the defect was the platform's product all along.

---

87. The amended COPPA Rule itself lists the evidence bearing on a service's child-directedness, including "marketing or promotional materials or plans, representations to consumers or to third parties, reviews by users or third parties, and the age of users on similar websites or services." 90 Fed. Reg. at 16978 (§ 312.2); *see id.* at 16936.

88. *I.B.*, 905 F. Supp. 2d at 1004 (the power of avoidance is personal to the minor); *C.M.D.*, 621 F. App'x at 489 (continued use defeats disaffirmance).

89. *See supra* Part IV.C; *cf. K.F.C.*, 29 F.4th at 837 (ratification presupposes a voidable, existing agreement).

VII. Objections

A. The Ratification Syllogism

K.F.C. is the strongest counterargument and it must be met on its own terms. The syllogism runs: state law lets a child ratify; only an existing agreement can be ratified; therefore youth is "a defense rather than an obstacle to a contract's formation."[90] The syllogism is valid. Its major premise, though, concerns the legal consequence of youth as a status, and the argument of Part IV never travels through status.[91] The claim is that no manifestation of assent occurred, measured objectively against the offeror's knowledge of its audience, which is a claim about the transaction rather than about the plaintiff. *K.F.C.* itself preserves that route twice over: it concedes that no delegation can capture the formation question,[92] and it decides nothing about the interface question, because the plaintiff there argued youth and only youth. A holding that the status argument fails cannot foreclose the assent argument no party made. And the syllogism's own hinge quietly favors the assent route: ratification by an adult, after majority, with knowledge, is itself a manifestation of assent that could form a contract as of the ratification, which is exactly why ratification doctrine cannot manufacture formation retroactively for the years of childhood use, and why platforms invoking post-majority conduct are conceding that something was missing before it.

B. The Objective Click

The platforms' broadest answer is that objective assent doctrine protects the integrity of the click: a click is a click, courts do not inquire into the clicker. The response is Part IV.A compressed. The objective theory has never protected an offeror against meanings the offeror knew were absent; *Lucy*'s exception is as canonical as its rule.[93] The doctrine asks what a reasonable offeror

---

90. *K.F.C.*, 29 F.4th at 838.

91. *See supra* Part IV.A; *cf. Buckeye*, 546 U.S. at 444 n.1 (fencing off whether "any agreement . . . was ever concluded").

92. *Id.* at 837.

93. *Lucy*, 196 Va. at 503; *supra* notes 50 and 51.

would understand from the offeree's conduct, and an offeror who has verified, inferred, or deliberately declined to learn that the offeree is a child is charged with the understanding that the offeree's tap carries no juridical meaning. The click's evidentiary value is a function of the clicker's known identity; the platforms built the identity infrastructure, and the statutes now compel them to operate it.[94]

C. Commerce and the Floodgates

The floodgates objection says that internet commerce cannot survive formation uncertainty at this scale: platforms cannot verify every user, and a rule of non-formation for children destabilizes billions of agreements. Three answers. First, the scale is the platforms' own construction. The defect exists at population scale because the platforms deployed a single frictionless consent gate to a population they knew included children; the size of a self-inflicted problem is not a defense to it. Second, the uncertainty is bounded and curable, and the statutes have already priced the cure: age verification, parental affiliation, and per-transaction consent are now live legal requirements in Texas and its sibling states, and the app stores are complying.[95] A platform that wants enforceable agreements going forward knows exactly how to form them. Third, the floodgates argument proves the Article's point about who has been holding the risk. For twenty years the formation risk of child clickwrap existed and was silently allocated to the children, in the form of arbitral forums, waived class rights, and licensed data. The objection asks a court to keep the allocation because reversing it is expensive. Courts allocate the cost of defective formation to the party who controlled the formation process; there is nothing novel in that assignment except its beneficiary.

94. *See supra* Parts IV.A, V.A; *cf. Ziboukh*, 795 F. Supp. 3d 349 (platforms already litigate account identity as a source of binding implicit representations).

95. *Supra* notes 2 and 72.

D. Misrepresentation of Age

Platforms will point to the child who lied, entering a false birthdate to pass a gate. Age misrepresentation raises real questions about individual estoppel, and nothing here forecloses a platform from litigating them against a particular plaintiff. Two boundaries, though. A birthdate field that accepts any input and verifies nothing is not reliance infrastructure; an offeror does not acquire reasonable reliance on an assertion it designed to be unverifiable and had statutory reason to distrust.[96] And courts have already extended the account-holder cases to bind children through implicit representations made by mere use of another person's account,[97] a doctrine that attributes to a child a sophisticated legal fiction the child has never heard of. The misrepresentation cases should run on actual, verified reliance or they become one more channel for assigning adults' meanings to children's conduct.

E. The Statutes as Prospective Cure

Finally, the platforms will read the statutes against the Article: the legislatures acted prospectively, so the pre-statute regime must have been lawful, and the new consent machinery is a policy upgrade rather than an admission. The inference does not hold. Legislatures regulate prospectively because that is what legislatures do; prospectivity is a feature of remedies, never a certification of the past. The statutory findings and operative structure identify a present incapacity, that minors' solo assent cannot authorize these transactions, and present incapacity of that kind did not begin on the effective date. The COPPA regime makes the point unanswerable, because it is not new: federal law has refused legal effect to children's solo consent in this exact commercial setting since 2000, throughout every year in which the platforms' motions to compel

96. *Cf.* 16 C.F.R. pt. 312 (operator obligations turn on what the service is directed to and what the operator knows, a scheme that would be pointless if a self-declared birthdate settled the matter).

97. *Ziboukh*, 795 F. Supp. 3d 349 (child's use of another's account is an implicit representation of being the account holder).

described children's clicks as contract formation.[98] The 2026 wave did not change what a child's click was worth. It ended the industry's permission to pretend otherwise.

VIII. Conclusion

The infancy doctrine was built to protect children from adults who would bind them, and for two centuries it did its work at the only point the technology of contracting exposed: after formation, at the exit. The clickwrap platform moved the vulnerability to the entrance, engineered the entrance for frictionless passage, and then discovered, in the doctrine's own protective vocabulary, the perfect routing label for keeping children's claims away from courts. Voidable means formed; formed means valid until challenged; challenged means delegated; delegated means arbitrated, alone, in the platform's forum. Between 2021 and 2026 that chain processed children in the Sixth, Seventh, Ninth, and multiple district courts,[99] and its last link closed seven weeks before this draft, when a single order sent one child's claims against Epic, Roblox, and Microsoft to three separate arbitrations.

The chain has exactly one vulnerable link, and it is the first one. Formation was assumed by every court in the wave because no plaintiff contested it, and the assumption cannot survive contact with the objective theory's own terms. An offeror is charged with what it knows about its audience. These offerors knew their audience with data-driven precision, designed their consent gates for that audience's frictionless passage, and now operate under statutes, federal and state, that forbid them from treating that audience's solo assent as assent at all. The legislatures have said in operative text what the platforms' interfaces always presupposed in practice: the child's click, alone, forms nothing. Courts asked to compel a child to arbitrate should ask the question the Federal Arbitration Act reserves to them and the delegation clause cannot take away, whether

98. The COPPA Rule was adopted in 2000, updated in 2013, and amended in 2025. *See Unpacking the FTC's COPPA Amendments: What You Need To Know*, White & Case LLP, https://www.whitecase.com/insight-alert/unpacking-ftcs-coppa-amendments-what-you-need-know (last visited July 9, 2026); 90 Fed. Reg. 16918.

99. *I.C.*, 19 F.4th 873; *K.F.C.*, 29 F.4th 835; *C.M.D.*, 621 F. App'x 488; *S.T.G.*, 752 F. Supp. 3d 1200; *Ziboukh*, 795 F. Supp. 3d 349; *S.G.*, 796 F. Supp. 3d 614; *E.K.D.*, 885 F. Supp. 2d 894.

an agreement was ever concluded, and they should answer it with the statutes' candor. There was no consent. There was a child, a screen built to be tapped, and a company that knew the difference.