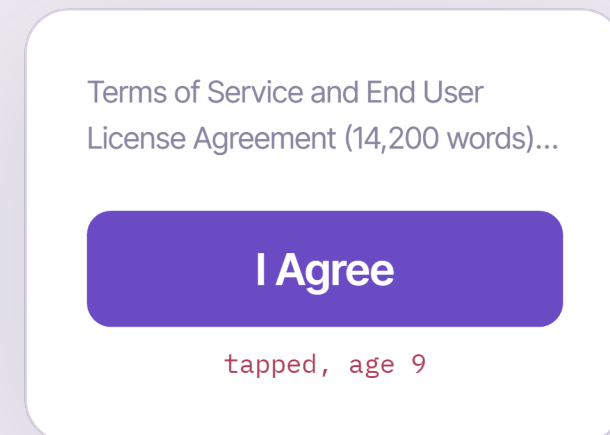


The Consent That Never Was

Children, clickwrap non-formation, and the age verification statutes as legislative admission

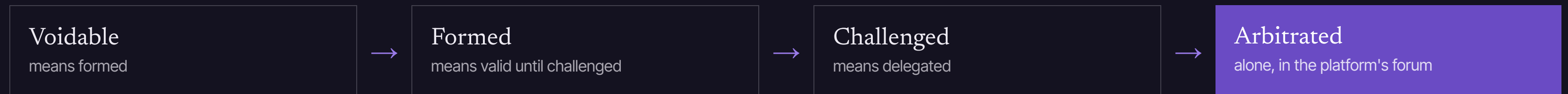
Every day, children tap "I Agree." Courts, legislatures, and platforms have converged on a shared story: a contract forms, voidable at the child's election under the infancy doctrine. That story is doing enormous work, routing children's claims into arbitration behind the class waivers and delegation clauses the companies drafted. This paper argues the chain fails at its first link, the interaction never produced a contract at all, and the new age-verification statutes are the legislatures' admission of exactly that.



"A contract formed, and the statute just adds parental consent." Both halves are wrong.

The first concedes the platforms' premise, that the tap produced a contract. The second misreads the statute: **a legislature that forbids treating a child's solo assent as sufficient has said what that assent was worth all along.**

One label decides everything. "Voidable" sends the child to arbitration, alone.



Every link after the first depends on the first. **And the first link, that a contract exists at all, was assumed by every court and contested by no child.**

The Voidability Settlement

A validity rule, an exit that rarely opens, and the premise it never examines

Protection by exit, not by non-entry, and "exit" is the word that does the damage.

A minor incurs only voidable duties and has an absolute right to disaffirm, in California, New York, Illinois, Michigan alike. The rationale is protective: shield the minor, and discourage adults from contracting with them.

But voidability is a **validity** concept. It presupposes a contract exists and asks only whether the child may escape it. The doctrine begins *after* formation, and that presupposition is the whole game.

To disaffirm, the child must quit, and lose the account, the purchases, the social world.

COMPLETENESS

Disaffirm the whole contract, not just the irksome parts.

ABANDONMENT

Keep using the service and you've manifested intent to keep the contract (Facebook cases).

ESTOPPEL BY BENEFIT

Cannot invoke infancy while keeping what the agreement delivered.

The one reported escape, C.W. v. Epic Games, came only by quitting the game entirely. The remedy costs the child everything the platform holds hostage to continued assent.

The Machine That Voidability Feeds

Severability, the formation reservation, and the 2021–2026 wave

VALIDITY → THE ARBITRATOR

Prima Paint severs the clause; **Buckeye** sends contract validity to the arbitrator; **Rent-A-Center** delegates threshold questions unless the delegation itself is attacked.

FORMATION → THE COURT

Buckeye's footnote fences off "whether any agreement was ever concluded"; **Granite Rock** and §4 keep formation with the court.

"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." — K.F.C. v. Snap, the platforms' own best case.

Sources Prima Paint v. Flood & Conklin, 388 U.S. 395 (1967); Buckeye, 546 U.S. at 444 n.1, 445–46; Rent-A-Center v. Jackson, 561 U.S. 63 (2010); Granite Rock, 561 U.S. at 297; K.F.C., 29 F.4th at 837; Gilly, secs. III.A–B.

Every court assumed a contract existed. No child argued otherwise.

2021 · 6th	I.C. v. StockX	Infancy is "a matter of enforceability," not formation, delegated to arbitrator.
2022 · 7th	K.F.C. v. Snap	Child from age 11 compelled; "youth must be a defense," so it goes to the arbitrator.
2024 · S.D. Cal.	S.T.G. v. Epic Games	Fortnite player compelled; disaffirmance attacked the license "as a whole." The formation door stood open and unused.
2025 · E.D.N.Y.	Ziboukh v. Whaleco (Temu)	Minors' disaffirmance theories delegated to the arbitrator.
2026 · E.D. Pa.	Tomlin v. Roblox	Epic, Roblox & Microsoft compelled one child's claims to three arbitrations. Seven weeks before this draft.

Sources I.C., 19 F.4th 873; K.F.C., 29 F.4th 835; S.T.G., 752 F. Supp. 3d 1200; Ziboukh, 795 F. Supp. 3d 349; Tomlin v. Roblox Corp., No. 2:25-cv-04301 (E.D. Pa. May 20, 2026); Gilly, sec. III.C.

Non-Formation: The Question Before the Defense

Assent measured against the audience the offeror solicited

The objective theory never protected an offeror against a meaning the offeror knew was absent.

A platform that designs for, markets to, and profits from an audience it knows includes children cannot reasonably read a child's tap as assent to thousands of words of undisclosed terms. **The click's value is a function of the clicker's known identity.**

This is a claim about the transaction and the offeror's knowledge, not the child's mental state. That is what makes it a **formation claim, which belongs to the court**, and not a capacity defense, which the wave delegated away.

The screen tells the child her tap means "play." It cannot then bind her to something else.

The inquiry-notice test, from Meyer, Nguyen, Specht, Sgouros, Berkson, was built for adult consumers. Ask it about a reasonably prudent nine-year-old and it inverts: **there is no age under thirteen at which it honestly yields inquiry notice.**

CONTAINER STORE · THE BRIDGE

The touchstone was never eyesight, and never age. It was the offeree's fair opportunity to know an offer with terms was on the table.

A screen that says "game" to its known child audience, and "contract" only in adult conventions, gives the child zero hint. **No mutual assent, no contract.**

It pleads the interface, not the child's mind, and that changes everything downstream.

Capacity splits and loses. Mental-capacity challenges divide the circuits (5th to arbitrator, 10th to court); a child litigating status gambles on geography and mostly loses.

Structure survives. "Did this interface obtain assent from anyone in the class?" is asked of the design once, answered classwide, no per-child inquiry, and it is falsifiable: verify age and route to a parent, and contracts could form.

The Legislative Admission

Texas, COPPA, and what the statutes concede about the click

State and federal law now forbid treating the child's solo assent as sufficient.

STATE · APP STORE ACCOUNTABILITY ACT

Verify age; affiliate a verified parent account; obtain parental consent **per transaction**, blanket permission prohibited. Utah, Louisiana, California, and ~half the states echo it.

FEDERAL · COPPA (SINCE 2000)

Collection from under-13s needs verifiable parental consent; the child's own agreement is **legally nothing**. The 2025 amendments deepen it and make integrality a question about the service.

Caveat: the July 6 order was interim, in a First Amendment case, deciding no contract question, **and the statute's evidentiary value survives even if the Act is struck on speech grounds.**

A legislature does not appoint a substitute decisionmaker for decisions the original one was making validly.

The statutes are findings in operative text that the consent architecture **never worked for this population**. The platforms conceded it when they fought SB 2420 as a burden on minors' "independent" access, presupposing the old regime ran on the minor's independent act.

The admission works as **evidence, not retroactive command**. It fixes the offeror's-knowledge element of the objective test on the public record, and demolishes the reliance narrative for every transaction in the platforms' shadow.

What Falls

The single child, the class, and the objections answered

If nothing was formed, everything bolted to the instrument falls with it.

Arbitration + delegation Never agreed to; they go first.	Class-action waiver Concepcion has nothing to say where no agreement exists.	Data & AI-training license A creature of the contract that grants it.	Liability caps Gone with the instrument that set them.
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For the class, one common question answered with the operator's own design files. Voidability makes the child pay with exile; non-formation makes the platform pay with every shield the interface pretended to erect.

<i>"A child can ratify, so a contract exists."</i>	Valid, but it runs through status; this argument runs through the transaction. Post-majority ratification concedes something was missing before it.
<i>"A click is a click."</i>	The objective theory never protected an offeror against a meaning it knew was absent. The click's value depends on the clicker's known identity, which the platforms built the infrastructure to know.
<i>"Floodgates."</i>	A self-inflicted scale is no defense; the cure is priced and live; and for 20 years the risk was silently allocated to the children.
<i>"The child lied about her age."</i>	A birthdate field that accepts any input and verifies nothing is not reliance infrastructure. Run misrepresentation on actual, verified reliance or not at all.
<i>"The statutes only cure it going forward."</i>	Prospectivity is a feature of remedies, not a certification of the past, and COPPA has voided children's solo consent since 2000, throughout the whole wave.

The chain has exactly one vulnerable link, and it is the first. Formation was assumed by every court because no plaintiff contested it, and the assumption cannot survive contact with the objective theory's own terms. The legislatures have now said in operative text what the interfaces always presupposed: the child's click, alone, forms nothing.

There was no consent. There was a child, a screen built to be tapped, and a company that knew the difference.

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THE CONSENT THAT NEVER WAS

"Until the court rules that a contract exists, there is simply no agreement to arbitrate."

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