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# WHO IS RESPONSIBLE WHEN AN AGENT BUYS?


Liability and consumer protection at a new frontier of e-commerce law

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on behalf of Polimeni.Legal · Position statement #32

# THE GAP WE WANT THE WORKSHOP TO NAME



**LIABILITY ALLOCATION = A STANDARDS-RELEVANT GAP**

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# THE CURRENT PURCHASE FLOW

## human-driven

1. NEED
2. WEB SEARCH
3. MERCHANT WEBSITE/ MARKETPLACE
4. ORDER
5. T&C APPROVAL
6. CHECK OUT
7. PAYMENT

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# THE NEW PURCHASE FLOW

**machine-executable**

1. MANDATE
2. SELECT
3. PRE-CONTRACT INFO ?
4. ORDER
5. T&C APPROVAL
6. CHECK OUT
7. PAYMENT

# ONE PURCHASE. THREE AUTHORITIES.

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**USER MANDATE**

## "Buy me a cabin suitcase under €200."

**What the user clearly authorised:**

- product category
- maximum purchase price

**AT CHECKOUT**

| | |
|---|---|
| Suitcase | **€180** |
| Delivery | **+ €15** |
| **Loyalty plan** | **+ €49 / year** |

Agent accepts merchant T&Cs and places the order.

**THE LEGAL QUESTION**

**Was the agent authorised to…**

**BUY** the suitcase?

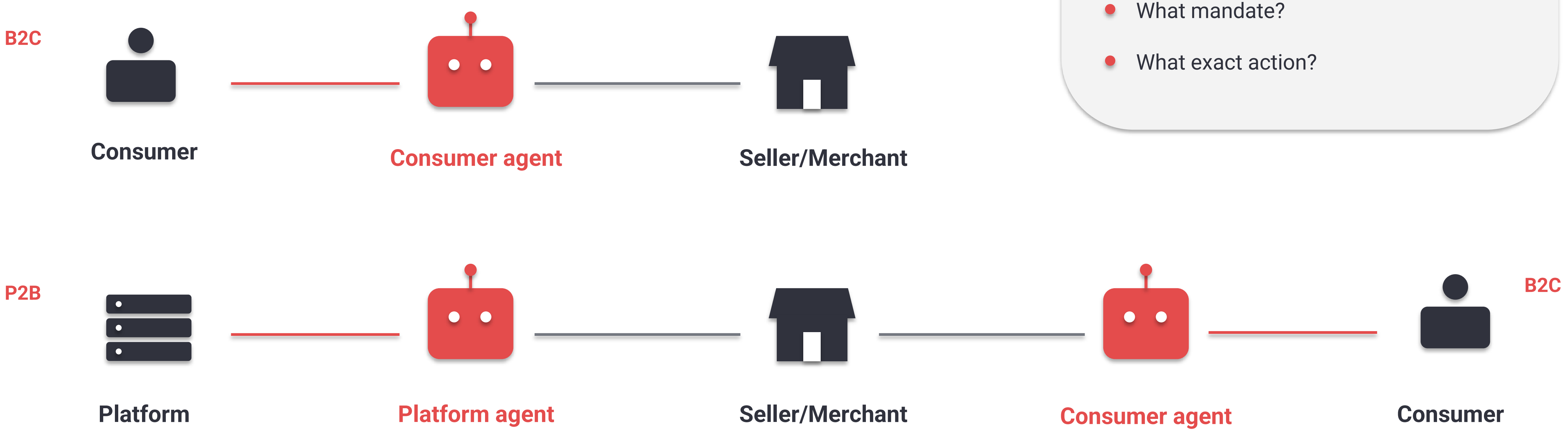
**ACCEPT** those T&Cs?

**COMMIT** to a recurring €49/year obligation above the price threshold given by the user?

**One "purchase" can contain several legally distinct acts.**

# THE ATTRIBUTION GAP

**The same question appears on both sides of the market.**




## WHOSE ACT IS IT?

- Who deployed it?
- For whom?
- What mandate?
- What exact action?

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# THE NEW PURCHASE FLOW – THREE AUTHORITIES

## machine-executable

1 MANDATE › 2 SELECT › 3 PRE-CONTRACT INFO ? › 4 ORDER › 5 T&C APPROVAL › 6 CHECK OUT › 7 PAYMENT

**AUTHORITY TO BUY ≠ AUTHORITY TO ACCEPT TERMS ≠ PAYMENT AUTHORISATION**

The protocol may execute the step. The law still asks whether it binds the principal.

# EU vs U.S.: DIFFERENT CONTRACT QUESTIONS

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EU

## Can the agent bind the consumer?

**Electronic contracts are recognised.**

But B2C law protects the commitment moment:

- pre-contractual information
- explicit acknowledgement of payment obligation
- non-compliance may mean the consumer is not bound

Agent attribution / consent still depends on applicable national contract law + EU consumer rules.

U.S.

## Who bears the loss if it goes wrong?

**E-SIGN expressly recognises electronic-agent participation.**

A contract is not invalid solely because an electronic agent acted — if its action is legally attributable to the person to be bound.

The dispute may therefore shift to:

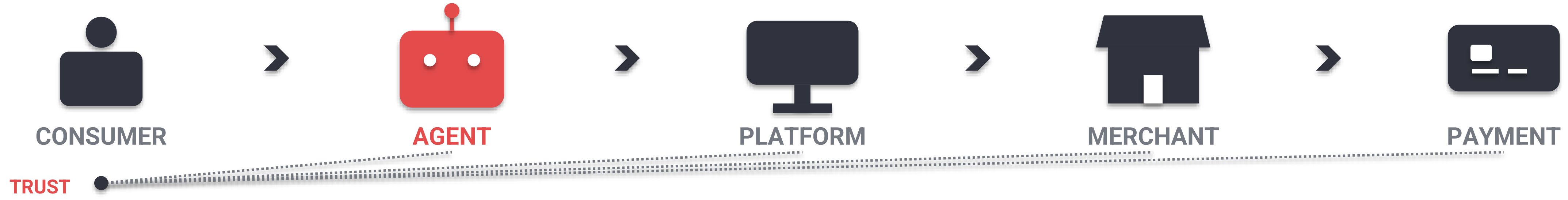
**scope of authority → causation → damages**

Sources: Directive 2011/83/EU, Art. 8(2); Directive 2000/31/EC, Art. 9 | 15 U.S.C. §7001(h); UETA §14

**BOTH NEED RELIABLE EVIDENCE OF IDENTITY · AUTHORISATION · PROVENANCE**

# LEGITIMATE EXPECTATION = TRUST






**Legal point**

The contract may be with the merchant.

The decision may be driven by the agent.

1. **How are the T&C/ToS drafted?**
2. **May legally the legitimate expectation of the consumer shift from the merchant to the agent and its provider?**
3. **If so, what happens in court?**

# STANDARDS DO NOT DECIDE LIABILITY

**They preserve the facts law needs to determine it.**

### IDENTITY

Who / what acted?

### AUTHORISATION

For whom — and within what scope?

### PROVENANCE

What happened, on what terms, when?

**PROTOCOL / STANDARDS LAYER** UCP · MCP · WebMCP · identity credentials · logs

**LAW DECIDES ATTRIBUTION → RESPONSIBILITY → LIABILITY**

# THE GAP WE WANT THE WORKSHOP TO NAME

**LIABILITY ALLOCATION = A STANDARDS-RELEVANT GAP**

### 01 GAP ANALYSIS

Where does existing law assume a human intermediary?

### 02 LIAISON

Technical community ↔ regulatory community

### 03 LEGAL LEGIBILITY

Identity · Authorization · Provenance

**Ask “who is responsible?” while the architecture is still being decided — not after.**

# DISCUSSION Questions for the room.

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1. When an autonomous agent completes a defective transaction, on what principle should responsibility be allocated between the consumer, agent provider, platform and merchant?

2. What minimum evidence must a protocol preserve to prove the agent’s identity, mandate, consent and the transaction it actually executed?

3. What does authority to purchase actually include — acceptance of T&Cs, subscriptions and other obligations? And how are consumer protections preserved?

4. **If standards stay legally neutral, what must they preserve so a court can reconstruct responsibility?**

# THANK YOU!