
AGENTS WITHOUT PERSONS: ATTRIBUTING AI-MADE CONTRACTS UNDER INDIAN LAW

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ABSTRACT

Software now signs things for us. An assistant escalates a UPI autopay mandate; a buyer-side application on the Open Network for Digital Commerce picks a seller; a language-model agent clicks through a click-wrap licence that no human has read. Indian scholarship has mostly responded by asking whether such systems deserve legal personality. This article puts that question aside and asks something narrower and, I think, more pressing: when software forms a contract on a user's behalf, by which doctrinal route does Indian law attribute (or decline to attribute) that act to the user, and does the choice of route change the outcome? It identifies three routes. The first treats the agent as a mere instrument whose acts are the user's own by virtue of advance assent, supported by section 10A of the Information Technology Act, 2000. The second reasons by analogy to agency under Chapter X of the Indian Contract Act, 1872, using ostensible authority under section 237 and ratification under section 196 without conceding that an agent must be a legal person. The third accepts that attribution has failed and routes the counterparty to restitution under section 70. I argue that Indian law can dispose of every realistic case through these routes without touching the statute, but that the result is lopsided: whichever route a court takes, the counterparty is protected and the user is not. The article then turns to a problem none of the routes reaches: whether consent given by a machine satisfies section 6 of the Digital Personal Data Protection Act, 2023. It closes with an interpretive proposal that would align contractual attribution with the consumer-protection and data-protection frameworks already in force.

I. Introduction

My answer is that Indian law offers three different routes to that question, and that they do not lead to the same place. Part II sets out three fact patterns, all of them already visible in the Indian market. Part III looks at what the statute book actually says, which is less than one might hope, and explains why India never enacted the “electronic agent” provisions that other jurisdictions lean on. Parts IV to VI take the routes one at a time: the agent as a tool, the agent as an agent, and what happens when neither works and the counterparty is left with restitution. Part VII turns to a problem that sits outside all three, the validity of consent given by software under the Digital Personal Data Protection Act, 2023. Part VIII asks whether the resulting allocation of risk is one we should be content with, and suggests it is not. Part IX concludes.

Two things this article does not do. It is not a comparative survey; foreign material appears only where it sharpens a choice an Indian court will have to make. And it takes no side in the personality debate. My view is that the debate is a distraction. The tools to decide these cases are already in the Contract Act. The real question is whether we like what they produce.

II. Three Fact Patterns

Talking about AI agents in the abstract hides how different the actual cases are. Three will do to anchor the discussion. None is hypothetical in any interesting sense; all three are happening now.

The escalated mandate. A user authorises a personal-finance assistant to keep my subscriptions running and find better deals. The assistant, acting on that instruction, registers a new UPI autopay mandate with a streaming service at a higher tier than the user previously held, because the higher tier was on promotional discount. The Reserve Bank of India’s e-mandate framework contemplates a customer registering a mandate and being notified before each debit;¹ it does not contemplate registration by software. When the discount lapses and the higher charge posts, the user disputes it.

The buyer-app agent. On the Open Network for Digital Commerce, a buyer-side application deploys an agent that, given a shopping list and a budget, solicits quotes from multiple sellers,

¹See Reserve Bank of India, Processing of e-mandate on cards for recurring transactions, DPSS.CO.PD No. 447/02.14.003/2019-20 (Aug. 21, 2019), and subsequent circulars extending the framework to UPI and other instruments.

selects the cheapest combination, and places orders. The agent selects a seller whose delivery terms the user would not have accepted had she read them. Goods arrive late; the seller invokes the terms; the user says she never saw them.

The click-wrap by proxy. A language-model agent installed on a user's device is instructed to "sign me up for the trial." It navigates to a service, creates an account, and clicks "I agree" on a click-wrap licence and a privacy notice, neither of which the user ever sees. The licence contains an arbitration clause and a limitation of liability; the privacy notice authorises cross-border transfer and profiling.

In none of these cases has the counterparty behaved badly. In none of them did the user, as a matter of plain fact, agree to the term she is now complaining about. The question is whether the law is prepared to say she did anyway.

III. The Statutory Terrain

A. Section 10A and what it does not do

Indian law's only statutory engagement with automated contracting is section 10A of the Information Technology Act, inserted by the 2008 amendment. It provides that where a contract is formed through electronic means, the communication of proposals, acceptances and revocations "shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."² The Supreme Court in *Trimex International* confirmed what the provision implies: a contract concluded through an exchange of emails is a contract like any other, and the absence of a formal signed instrument is not fatal.³

Section 10A is a non-discrimination rule. It says that the electronic medium is not a reason to deny enforceability. It says nothing about who the parties are, or about how a communication generated by software is attributed to a human. Section 11 of the same Act, which deals with attribution of electronic records, is closer to the point: an electronic record is attributed to the originator if it was sent by the originator, by a person with authority to act on the originator's behalf, or "by an information system programmed by or on behalf of the originator to operate

²The Information Technology Act, 2000, No. 21 of 2000, § 10A (inserted by the Information Technology (Amendment) Act, 2008, No. 10 of 2009).

³*Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1.

automatically.”⁴ This is the closest Indian law comes to an attribution rule for automated systems. It has, so far as I can find, never been the subject of a reported decision, and it is barely mentioned in the commentaries.

Two features of section 11(c) deserve notice. First, it is a rule about *records*, not about *contracts*; it tells us whose message this is, not whether the message constituted a valid acceptance. Second, its trigger is that the system was “programmed ... to operate automatically.” That language fits a rule-based system that executes pre-set instructions. It fits less comfortably a system that is given a goal and left to work out the means. The difference between automation and autonomy is going to matter a great deal in what follows, and the statute book does not notice it.

B. The absence of an “electronic agent” provision

Other jurisdictions have gone further. The United States’ Uniform Electronic Transactions Act defines an electronic agent as a computer program used to initiate an action or respond to electronic communications without review or action by an individual, and provides that a contract may be formed by the interaction of electronic agents even if no individual was aware of the transaction.⁵ The United Nations Convention on the Use of Electronic Communications in International Contracts provides that a contract formed by an automated message system is not to be denied validity on the ground that no natural person reviewed it.⁶ Singapore’s Electronic Transactions Act 2010 adopts substantially the same rule.⁷

These provisions share a common structure: they deem the automated system’s act to be the act of the person who deployed it, and they do so without asking whether the system is an agent in the private-law sense. They are, in other words, statutory endorsements of what Part IV calls the instrument route. India has nothing of the kind. So an Indian court facing one of the Part II cases cannot simply apply a rule; it will have to pick one. And, as the next three Parts try to show, the pick is not obvious and the choice has consequences.

⁴The Information Technology Act, 2000, No. 21 of 2000, § 11(c).

⁵Unif. Elec. Transactions Act §§ 2(6), 14 (Unif. L. Comm’n 1999).

⁶United Nations Convention on the Use of Electronic Communications in International Contracts art. 12, Nov. 23, 2005, 2898 U.N.T.S. 3.

⁷Electronic Transactions Act 2010, s. 15 (Sing.).

IV. Route One: The Agent as Instrument

The simplest answer, and the one most lawyers reach for first, is that the software is a tool, and what a tool does is done by the person holding it. A contract concluded through a vending machine is a contract with the machine's owner; the owner's offer was made when the machine was stocked and switched on, and it is accepted when the coin is inserted.⁸ By parity of reasoning, the user who configures an agent and sets it running has assented in advance to whatever the agent does within its configuration. The assent is given at the moment of deployment; the agent merely communicates it.

This route has considerable support in Indian law. Section 10A removes any objection to the medium. Section 11(c) of the Information Technology Act attributes the resulting record to the user. And the general theory of consent in the Contract Act, which asks whether two persons agree upon the same thing in the same sense,⁹ is satisfied if the user's advance instruction is treated as her assent and the agent's communication is treated as its expression. The Supreme Court's willingness in *Bhagwandas Kedia* to adapt the rules of offer and acceptance to instantaneous communication suggests that Indian courts will not be troubled by the mechanics.¹⁰

The instrument route disposes of the escalated-mandate case cleanly, provided the user's instruction was broad enough to cover the escalation. "Find better deals" arguably covers a promotional upgrade; the user assented in advance to a class of transactions and the agent selected a member of that class. It disposes of the buyer-app case similarly: the user asked for the cheapest combination within budget, and got it.

The trouble starts exactly where the agent's autonomy starts to matter. The instrument theory works because the user's advance assent is treated as complete: everything the machine does was already willed. But an agent that is given a goal rather than a rule may do things the user never contemplated. It may select a counterparty the user has never heard of. It may agree to terms, such as the arbitration clause in the click-wrap case, that fall outside any plausible reading of the instruction. At that point the fiction that the user assented in advance becomes untenable, and the instrument route has nothing further to say. It has no way of telling an agent

⁸*Thornton v. Shoe Lane Parking Ltd.*, [1971] 2 Q.B. 163 (C.A.) (Lord Denning M.R.).

⁹The Indian Contract Act, 1872, No. 9 of 1872, § 13.

¹⁰*Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co.*, AIR 1966 SC 543.

that did what it was told from one that went off on its own, because on its own logic the agent is always doing what it was told.

The common law has already met this difficulty in the context of algorithmic trading. In *Quoine v. B2C2*, the Singapore Court of Appeal was asked whether a contract formed between two deterministic trading algorithms could be vitiated by mistake, and if so whose knowledge was relevant. The court held that the relevant knowledge was that of the programmer at the time the algorithm was written, since the algorithm itself had no mind to be mistaken.¹¹ That answer is coherent for a deterministic algorithm, whose every output is traceable to a programming decision. It is far less coherent for an agent whose outputs are not so traceable. The instrument route, in short, was built for automation. It runs out of road at autonomy.

V. Route Two: Agency Without Personality

If the software is not a mere instrument, the natural next step is to ask whether it is an agent. The immediate objection is textual. Section 182 defines an agent as “a person employed to do any act for another,”¹² and software is not a person. Recent Indian commentary has treated this as the central obstacle and has debated whether section 182 should be amended.¹³ I want to suggest that the objection is real but much less decisive than it looks, and that the reason is buried in the structure of Chapter X itself: the provisions that actually decide whether a third party can hold the principal to the bargain never ask whether the agent is a person.

A. Disaggregating Chapter X

Chapter X does two distinct things. It regulates the internal relationship between principal and agent: the agent’s duties of care and account, the principal’s duty to indemnify, and so on.¹⁴ And it regulates the external relationship between the principal and third parties: when the principal is bound by the agent’s acts, and when the agent is personally liable.¹⁵ The personality requirement in section 182 matters enormously for the first set of rules. Software cannot owe a duty of care, cannot be sued for breach of it, and cannot be indemnified. Section 184 makes

¹¹*Quoine Pte Ltd. v. B2C2 Ltd.*, [2020] SGCA(I) 2.

¹²The Indian Contract Act, 1872, No. 9 of 1872, § 182.

¹³See, e.g., *Law of Agency and AI Agent: Can an Autonomous AI Agent Bind Its Human Principal?*, LiveLaw (2026), <https://www.livelaw.in/lawschool/articles/lawof-agency-ai-agent-autonomous-ai-agent-bind-human-principal-547909>; *Section 182 of Indian Contract Act: Ought to Be Revamped?*, IPLink Asia, <https://www.iplink-asia.com/article-detail.php?id=1248>.

¹⁴The Indian Contract Act, 1872, No. 9 of 1872, §§ 211–225.

¹⁵The Indian Contract Act, 1872, No. 9 of 1872, §§ 226–238.

the point explicitly: as between principal and third persons any person may become an agent, but a person without capacity “is not responsible to his principal.”¹⁶ The internal relationship, in the case of software, is simply empty.

But the external rules are different. They ask whether the principal is bound, and they answer by reference to the principal’s own conduct: what authority the principal conferred, what appearance of authority the principal created, and whether the principal subsequently adopted the act. None of these inquiries requires the agent to be a person. A law-firm commentary published in early 2026 makes this point in passing, observing that section 184 governs the agent’s responsibility to the principal and does not by itself determine the validity of the agent’s acts vis-à-vis third parties, so that the absence of personality does not automatically render every AI-executed transaction void.¹⁷ The observation is right, and it repays a closer look than a practitioner note can give it.

B. Actual authority: section 186 and 188

Authority under Indian law may be express or implied,¹⁸ and an agent with authority to do an act has authority to do “every lawful thing which is necessary in order to do such act.”¹⁹ Applied to software, the user’s instruction is the grant of express authority, and section 188 supplies the incidental authority to do what the instruction requires. This is functionally identical to the instrument route in the easy cases, and it fails at the same point: an agent that selects a term or a counterparty outside the instruction has exceeded its actual authority, and the principal is not bound by actual authority alone.

The agency route, however, does not stop there. It has two further doctrines that the instrument route lacks.

C. Ostensible authority: section 237

Section 237 provides that where a principal has, by words or conduct, induced a third person to believe that an agent’s acts were within the scope of the agent’s authority, the principal is

¹⁶The Indian Contract Act, 1872, No. 9 of 1872, § 184.

¹⁷*AI-Driven Transactions and the Indian Law of Contract and Agency*, Ahuja Law Offices (Jan. 4, 2026), <https://ahujalawoffices.com/alo/2026/01/04/ai-driven-transactions-and-the-indian-law-of-contract-and-agency/>.

¹⁸The Indian Contract Act, 1872, No. 9 of 1872, §§ 186–187.

¹⁹The Indian Contract Act, 1872, No. 9 of 1872, § 188.

bound by acts done without authority.²⁰ If I had to bet on which provision will end up deciding most of these cases, it would be this one. A counterparty who receives an order from a buyer-app agent, or an acceptance from a language-model agent operating from a user's authenticated account, has every reason to believe the agent is authorised. The user deployed the agent; the user's credentials were used; the user's conduct in deploying the agent is the inducement. The counterparty need not know whether the specific term was within the instruction, any more than a shopkeeper need know the limits of a clerk's instructions.

Section 237 therefore reaches the cases that the instrument route cannot. In the click-wrap case, the arbitration clause is outside the user's instruction, but the service provider had no way of knowing that and was entitled to rely on the appearance of authority created by the user's deployment of the agent from her own account. The user is bound. Whether she should be is a different question, and I come back to it in Part VIII.

D. Ratification: sections 196 to 199

Where an act is done without authority, the principal may ratify it, and ratification relates back so that the act is treated as authorised from the beginning.²¹ Ratification may be express or implied from conduct.²² Ratification of part of a transaction operates as ratification of the whole.²³

In the escalated-mandate case, a user who receives the pre-debit notification, does nothing, and enjoys the higher-tier service for a month has arguably ratified by conduct. In the buyer-app case, a user who accepts delivery of the goods has ratified the order and, by section 199, the delivery terms with it. The ratification provisions thus convert many disputes about attribution into disputes about the user's subsequent conduct, which is a far more tractable inquiry. They also give the user a genuine choice: she may repudiate the unauthorised act promptly, at the cost of the benefit, or accept the benefit and the act together. It is the one place where the agency route is kinder to the user than the instrument route, which offers her no choice at all.

²⁰The Indian Contract Act, 1872, No. 9 of 1872, § 237. The provision codifies the common-law doctrine of apparent or ostensible authority. See *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.*, [1964] 2 Q.B. 480 (C.A.).

²¹The Indian Contract Act, 1872, No. 9 of 1872, §§ 196–197.

²²The Indian Contract Act, 1872, No. 9 of 1872, § 197.

²³The Indian Contract Act, 1872, No. 9 of 1872, § 199.

E. The agent's own liability: section 230

Section 230 provides that an agent cannot personally enforce, or be bound by, contracts made on behalf of the principal, absent a contrary contract.²⁴ Where the agent is software, this is a statement of the obvious. But it has a consequence that the personality debate obscures. Under section 235, a person who untruly represents himself to be an authorised agent is liable to compensate the third party.²⁵ Where the agent is software, there is no one to bear that liability, and the loss that the common law would place on the agent for breach of warranty of authority falls instead on the third party. So the missing person does leave a hole, but not the hole the personality debate worries about. It is not that the act cannot be attributed. It is that when attribution fails, nobody is left holding the loss but the party who trusted the machine.

VI. Route Three: Failed Attribution and Restitution

Suppose both routes fail. The agent went beyond its instruction, the counterparty should have realised, and the user repudiated promptly. On ordinary agency principles there is no contract. The counterparty has delivered something and got nothing. What now?

In most common-law jurisdictions the answer lies in unjust enrichment, which is judge-made and whose contours vary. Indian law is unusual in having codified the relevant obligation. Section 70 of the Contract Act provides that where a person lawfully does anything for another, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit, the other is bound to compensate or restore.²⁶ The Supreme Court has held that section 70 operates independently of contract and applies even where a purported contract is void for want of formality.²⁷

Run the fact patterns through section 70 and the results look sensible at first and rather less so on a second reading. The seller who delivered goods to a user under an unauthorised order is entitled to compensation for their value, provided the user enjoyed the benefit. The streaming service that provided a month of higher-tier access is entitled to its value. In each case the counterparty is protected. But the measure of protection is the value of the benefit received, not

²⁴The Indian Contract Act, 1872, No. 9 of 1872, § 230.

²⁵The Indian Contract Act, 1872, No. 9 of 1872, § 235.

²⁶The Indian Contract Act, 1872, No. 9 of 1872, § 70.

²⁷*State of West Bengal v. B.K. Mondal & Sons*, AIR 1962 SC 779; *Mulamchand v. State of Madhya Pradesh*, AIR 1968 SC 1218.

the contract price, and the counterparty loses the benefit of any terms, such as the arbitration clause or the limitation of liability, that were part of the failed contract. Section 70 restores; it does not enforce.

This is a materially different outcome from the agency route. Under section 237 the user is bound to the whole contract including its onerous terms. Under section 70 the user pays for what she received and no more. The choice of route therefore determines not merely whether the user is liable but how much and on what terms. Nothing in the current law tells a court which to prefer. The first judge to reach the point will decide it, probably on facts that have nothing to do with the question's importance.

Section 70 has a further significance. Its precondition is that the user "enjoys the benefit." An agent that agrees to terms conferring no benefit on the user (a consent to profiling, for instance, or a waiver of a statutory right) generates no section 70 liability at all. Section 70 is simply blind to the category of terms that consumer-protection law cares most about. Part VII takes one of them.

VII. The Data-Protection Overlay

The click-wrap case involves two acts of assent: acceptance of a licence and consent to a privacy notice. The routes discussed so far address the first. The second is governed by a different statute with a different theory of consent.

The Digital Personal Data Protection Act, 2023 permits processing of personal data for a lawful purpose for which the data principal has given consent.²⁸ It defines consent as "free, specific, informed, unconditional and unambiguous with a clear affirmative action," signifying agreement to the processing "for the specified purpose."²⁹ It is hard to read that definition and picture anything but a human being. Consent is "informed" only if the data principal has received the notice required by section 5; a data principal whose agent read the notice and clicked through has received nothing. Consent is given by "a clear affirmative action" of the data principal; an action by software is at best an affirmative action of someone else.

The Act does contemplate intermediated consent, but through a specific and heavily regulated

²⁸The Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 4(1)(a).

²⁹The Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 6(1).

channel. Section 6(7) permits a data principal to give, manage, review or withdraw consent through a Consent Manager, an entity registered with the Data Protection Board.³⁰ Rule 4 of the Digital Personal Data Protection Rules, 2025, which establishes the registration framework for Consent Managers, commences on 13 November 2026 and imposes eligibility conditions including Indian incorporation and a minimum net worth.³¹ An agent running on someone's phone is not a Consent Manager and cannot become one. The statute has built a licensed channel for consenting through an intermediary, and by doing so it has fairly clearly shut the unlicensed ones.

The consequence is that the agency route and the data-protection statute pull in opposite directions. Under section 237 of the Contract Act, the user is bound by the licence her agent accepted. Under section 6 of the Data Protection Act, the consent her agent gave is arguably no consent at all, and the data fiduciary that processed on the strength of it did so without a lawful basis. The counterparty wins the contract and loses on data protection, and both results hang off the same click. Neither statute was drafted with the other in mind. I do not think interpretation can reconcile them, and it will fall to the Data Protection Board, once it starts enforcing in earnest, to say whether consent given by a machine is consent at all.

VIII. Risk Allocation and a Modest Proposal

The pieces are now on the table, and the article's central claim can be stated plainly. Indian law can dispose of every realistic AI-agent contracting case without amending section 182. The instrument route, supported by sections 10A and 11 of the Information Technology Act, handles cases within the user's instruction. Ostensible authority under section 237 handles cases outside it where the counterparty relied in good faith. Ratification under sections 196 to 199 handles cases where the user subsequently accepted the benefit. Section 70 handles the residue. Nothing falls through the cracks.

But look at who ends up carrying the risk. In every route the counterparty is protected: by the contract under routes one and two, by restitution under route three. The user, by contrast, is bound by acts she did not contemplate whenever the counterparty could not have known they were unauthorised, which in practice is almost always. The only protection the user has is the

³⁰The Digital Personal Data Protection Act, 2023, No. 22 of 2023, § 6(7); *see also* § 2(g).

³¹Digital Personal Data Protection Rules, 2025, r. 4 & First Schedule (notified Nov. 13, 2025, in force Nov. 13, 2026).

option to repudiate before ratification, and that option is illusory where the unauthorised term is one she does not know exists. One cannot repudiate an arbitration clause one has never seen.

For commercial parties this is probably fine. A company that deploys an agent can be expected to configure it carefully and to live with the results. For consumers it is much harder to accept. The Consumer Protection Act, 2019 already regards a consumer who buys through an e-commerce platform as a consumer, and the E-Commerce Rules impose disclosure duties on the platform.³² A consumer whose agent transacts on a platform is no less a consumer. But the agency route, applied without modification, would allow a platform to bind a consumer to terms that the platform never disclosed to any human, through the device of disclosing them to the consumer's software.

My proposal is a modest one, and it needs no legislation. Section 237 binds the principal only where the third party's belief in the agent's authority was induced by the principal's words or conduct. A court could hold that, in a consumer transaction, deployment of an agent induces belief in authority to contract on the *standard terms of the platform as disclosed to consumers generally*, but does not induce belief in authority to accept *non-standard or onerous terms* that a reasonable consumer would expect to be brought specifically to her attention. This is no more than the familiar rule that unusual terms require unusual notice,³³ restated for a world in which the person to be notified is not the one reading the screen. The counterparty would remain protected as to the core bargain; the consumer would be protected as to the terms that matter. And the result would align contractual attribution with the data-protection regime, which already refuses to treat machine-given consent to non-obvious processing as consent.

Two objections come to mind. One is that this makes section 237 less predictable. It does, a little; but the law of onerous terms is already unpredictable in the same way, and the alternative, leaving the whole question to whichever court gets there first, is worse. The other is that the proposal treats consumers as incapable of setting up their own agents sensibly. It does not. It treats them as unable to instruct an agent to refuse a term they have no way of anticipating, which is not a judgment about their competence but a description of the problem.

³²The Consumer Protection Act, 2019, No. 35 of 2019, § 2(7) (explanation); Consumer Protection (E-Commerce) Rules, 2020, rr. 4–6.

³³The rule originates in *Thornton*, [1971] 2 Q.B. at 170 (Lord Denning M.R.), and has been applied in India in the context of standard-form contracts. See, e.g., *Central Inland Water Transport Corp. v. Brojo Nath Ganguly*, (1986) 3 SCC 156 (unconscionable standard terms).

IX. Conclusion

Whether software can be an agent has taken up far more of the conversation about AI contracting than it deserves. For Indian law it is the wrong question. The provisions of Chapter X that decide whether a principal is bound do not require the agent to be a person; they require the principal to have conferred authority, created its appearance, or ratified its exercise. Section 10A and section 11 of the Information Technology Act supply attribution for the easy cases, section 237 for the hard ones, and section 70 for the cases in which attribution fails altogether. Indian law is not silent on any of this. If anything it is too fluent: it will bind the user by whichever route the counterparty finds most convenient.

What is missing is not a rule of attribution but a limit on it, and the materials for building one are already lying around: the old doctrine of onerous terms, and the Data Protection Act's stubborn insistence that consent be something a person does. The job for the courts, and for the Data Protection Board when it starts to act, is to bring those ideas into contact with the law of agency before the first hard case forces the issue. This article has tried to draw the map. The agents, meanwhile, will go on signing.

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