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PROBLEMS OF CONCLUDING CROSS-BORDER ELECTRONIC CONTRACTS IN MARKETPLACES AND WAYS OF THEIR SOLUTION

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Abstract: *This article examines the legal problems that arise when a contract of sale is concluded across state borders through a digital marketplace rather than directly between a seller and a buyer. We proceed from the premise that the marketplace is not a neutral technical intermediary but a distinct legal actor whose presence complicates every classical stage of contract law: offer and acceptance, the determination of the applicable law, the identification of the proper defendant, and the recognition of the electronic signature or other means of identification used to conclude the transaction. Relying on the instruments of the United Nations Commission on International Trade Law, the regulatory framework of the European Union, the case law of the Court of Justice of the European Union and of United States federal courts, as well as the legislation of the Republic of Uzbekistan, we identify five groups of problems — conceptual, jurisdictional, protective, technical-legal and national — and, for each of them, we propose concrete legislative and doctrinal solutions. We argue that the platform-mediated nature of contemporary cross-border trade requires a departure from the bilateral model of contract formation embedded in most national civil codes, including the Civil Code of the Republic of Uzbekistan, toward a trilateral model that expressly regulates the marketplace operator as a participant with independent obligations of information, verification and, in defined circumstances, liability.*

Keywords: *cross-border electronic contract, marketplace, electronic commerce, applicable law, jurisdiction, electronic signature, consumer protection, platform liability, UNCITRAL, Republic of Uzbekistan*

1. Introduction: Why the Marketplace Changes the Legal Picture

Electronic commerce has long ceased to be an exotic subject for legal scholarship. What is genuinely new, and what in our view has not yet received an adequate doctrinal response, is the shift from bilateral electronic contracting — a seller's website and a buyer's browser — to contracting mediated by a marketplace: Amazon, Alibaba, eBay, Wildberries, Uzum Market and hundreds of comparable platforms that host millions of independent sellers and route billions of transactions to buyers in other countries. We consider that this shift is not merely technological. It is structural, because a marketplace inserts a third, commercially interested party between the two parties whom classical contract law was built to regulate.

When a consumer in Tashkent purchases goods from a seller registered in Guangzhou through an intermediary platform incorporated in Delaware or Luxembourg, at least four separate legal systems may claim relevance to a single transaction: the law of the buyer's habitual residence, the law of the seller's place of business, the law chosen (often unilaterally, through standard terms) by the platform, and the law of the place where the servers, payment processor or logistics operator are located. Professor Amelia H. Boss, an American scholar who has been one of the principal architects of UNCITRAL's work on electronic commerce, observed already at an early stage of this debate that electronic transactions dissolve the territorial assumptions on which private international law was constructed, because the place of contracting becomes, in a meaningful sense, unlocatable [3]. We share this assessment, and we would add that the marketplace intensifies rather than resolves the problem, because it supplies a single technical interface behind which several distinct legal relationships are concealed: platform-to-seller, platform-to-buyer, and seller-to-buyer.

This article proceeds from the conviction, which we hold on the basis of the sources examined below, that the existing international instruments — the United Nations Convention on the Use of Electronic Communications in International Contracts [1] and the UNCITRAL Model Law on Electronic Commerce [2] chief among them — were drafted with a two-party model in mind and therefore answer only part of the questions that marketplace transactions raise. The purpose of this article is not simply descriptive. We seek, in each of the sections that follow, first to state the problem, then to present how leading scholars and courts in different legal systems have approached it, and finally to formulate, in our own voice, a proposed solution, including for the legislation of the Republic of Uzbekistan, whose Law "On Electronic Commerce" [22] and Civil Code [21] were, in our assessment, not designed with the multi-party marketplace model in view.

We have organised the article into five substantive sections, corresponding to five groups of problems that we regard as analytically distinct even though, in practice, they interact constantly: the conceptual problem of characterising the marketplace-mediated contract; the jurisdictional and choice-of-law problem; the problem of protecting the weaker party and allocating liability among platform, seller and buyer; the technical-legal problem of recognising electronic signatures and identity across borders; and the specifically national problem of adapting Uzbek legislation to this reality. Each section closes with our proposed direction of

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reform, and the article as a whole closes with a consolidated set of recommendations that we believe deserve the attention of the legislator, of arbitral institutions and of the judiciary alike.

2. The Legal Nature of the Cross-Border Electronic Contract Concluded via a Marketplace

Before any problem of jurisdiction or liability can be meaningfully discussed, one must first settle a preliminary question: what, in legal terms, is actually formed when a buyer clicks "buy" on a marketplace page? We consider this question to be far from academic, because the answer determines who is bound, from what moment, and under which legal regime.

Under the classical doctrine of offer and acceptance, reproduced with local variations in most civil codes, including Articles 367-372 of the Civil Code of the Republic of Uzbekistan [21], a contract is concluded at the moment and the place where the acceptance reaches the offeror. The UNCITRAL Model Law on Electronic Commerce departs from a purely postal analogy and instead ties the moment of receipt of an electronic communication to the moment it enters an information system designated by the addressee, or, absent such designation, to the moment the addressee retrieves it [2]. The United Nations Convention on the Use of Electronic Communications in International Contracts extends this logic specifically to international contracts and adds the important rule that a party's location is presumed to be its place of business, unless another place is disclosed, which is meant to prevent parties from relying on the physical location of a server to escape the application of a particular legal regime [1].

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These rules were designed for a world of two contracting parties. On a marketplace, the picture is genuinely triangular. The platform operator publishes a catalogue on behalf of the seller, receives the buyer's order, frequently manages payment and, in "fulfilled-by-platform" schemes, also stores and dispatches the goods, while the underlying contract of sale is, formally, concluded between seller and buyer alone. Professor Henry D. Gabriel, an American comparativist whose work on the unification of international sales law is widely cited in the literature on electronic commerce, has argued that the essential function of sales law is to allocate risk predictably between two identifiable parties, and that any third actor inserted into that relationship must be accounted for expressly, or the allocation of risk becomes indeterminate [31]. We agree with this diagnosis and would go further: indeterminacy of risk allocation is not a marginal inconvenience but the central legal pathology of marketplace contracting, because it is precisely the uncertainty about who bears responsibility for non-conformity, late delivery or fraud that erodes consumer trust in cross-border trade.

A second, closely related conceptual difficulty concerns the qualification of the marketplace operator itself. Is it an agent, a broker, a commission agent (комиссионер, a figure well developed in the civil law tradition, including in Uzbek civil law), a mere hosting provider, or something genuinely new that existing categories fail to capture? The Court of Justice of the European Union addressed a structurally similar question, albeit outside the digital sphere, in Wathelet v. Garage Bietheres & Fils SPRL (Case C-149/15), where a car dealer had sold a vehicle on behalf of a private individual without disclosing that it was acting as an intermediary. The Court held that, for the purposes of the Consumer Sales Directive, an intermediary who presents itself to the consumer in a manner that creates the impression that it is itself the seller must be treated as the seller, regardless of whether it received remuneration for the intermediation [12]. We consider this reasoning to be directly transposable to digital marketplaces: where the platform's interface does not clearly and prominently disclose that the contracting party is a third-party seller and not the platform itself, the platform should, in our view, bear the legal consequences of the appearance it has created. Some scholars go further still. Professor Christoph Busch, whose research concentrates on the regulation of digital platforms and marketplaces, has proposed that platform operators be treated as bearing an autonomous set of duties of care toward consumers, independent of the classification of their relationship with the seller as agency, brokerage or mere hosting [35]. Other authors, more cautious, warn that imposing seller-like duties on platforms indiscriminately risks discouraging the very intermediation that makes cross-border trade accessible to small sellers in developing economies, a concern raised repeatedly in reports of the United Nations Conference on Trade and Development on the digital economy [37]. We find both positions partly persuasive, and we return to this tension in Section 4, where we propose a differentiated liability regime rather than a uniform one.

A third conceptual problem, less discussed but in our estimation equally significant, concerns the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to marketplace transactions. The CISG applies to contracts of sale of goods between parties whose places of business are in different Contracting States, and it expressly excludes consumer sales made for personal, family or household use [5]. Marketplace transactions frequently mix consumer and business-to-business elements within the same

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platform, and the seller's "place of business" for the purposes of the Convention is often obscured by the platform's own branding, fulfilment infrastructure and payment routing. Alan Davidson, an Australian scholar and author of a leading treatise on the law of electronic commerce, has noted that the Convention's silence on electronic intermediaries leaves courts and arbitrators to import solutions from general contract doctrine on a case-by-case basis, which in turn produces a fragmentation of outcomes that undermines the uniformity the Convention was meant to achieve [4]. We consider that this gap is one of the clearest examples of a rule written for a bilateral world being stretched, not always successfully, to cover a triangular one.

For these reasons, we propose, as a first conclusion, that the moment has come to recognise the marketplace-mediated contract as a distinct legal construct — not a new type of contract in the strict doctrinal sense, but a contract of sale accompanied by a mandatory disclosure and allocation regime that operates regardless of how the platform chooses to characterise its own role in its terms of service. We develop this proposal further in Section 6.

3. Jurisdiction and Applicable Law: The Problem of an Unlocatable Forum

If the conceptual uncertainty described above were purely theoretical, it would be of limited practical concern. It is not. It produces, in real disputes, a genuine difficulty in identifying which court may hear a claim and which law that court should apply, and this difficulty falls hardest on the party least equipped to bear it — ordinarily the individual buyer.

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Within the European Union, the leading authority remains the joined judgment of the Court of Justice of the European Union in Pammer v. Reederei Karl Schlüter GmbH & Co. KG and Hotel Alpenhof GesmbH v. Heller (Joined Cases C-585/08 and C-144/09). The Court was asked whether the mere accessibility of a trader's website in the consumer's home state was sufficient to establish that the trader had "directed" its activity there for the purposes of the special consumer-protective jurisdiction rules then found in the Brussels I Regulation. The Court answered that mere accessibility is not enough, and it listed a non-exhaustive set of indicators — the international character of the activity, the use of a language or currency other than that of the trader's own state, the mention of an international clientele, expenditure on search engine referencing aimed at other states, and similar factors — from which a national court may infer that the trader intended to do business with consumers of a particular state [7]. We regard this judgment as sound in principle, since it protects traders from being haled into every jurisdiction from which their website happens to be technically reachable, yet we also consider that it was decided in relation to a single trader's own website, not in relation to a global marketplace that by its very design and business model directs its activity to essentially every jurisdiction its logistics network can reach. Applying the Pammer/Alpenhof indicators mechanically to a marketplace such as Amazon or Alibaba would, in our view, almost always yield a finding of "directed activity", because multilingual interfaces, multi-currency pricing and cross-border delivery are not incidental features of such platforms but their entire commercial proposition. The harder question the courts have not yet resolved is whether that same conclusion should automatically be imputed to each individual third-party seller who lists goods on the platform, or only to the platform operator itself. We believe the honest answer is that it should not be imputed automatically to the seller, and that a rule is needed to say so expressly, because a small seller who merely lists a product on a global platform has not, by that act alone, necessarily formed the intention to litigate in every consumer's home jurisdiction.

Once jurisdiction is settled, the question of applicable law follows a separate, though related, logic. Within the European Union this is governed by the Rome I Regulation on the law applicable to contractual obligations, under which a consumer contract is, subject to certain conditions, governed by the law of the consumer's habitual residence, again where the trader "directs" its activity to that state. Professor Peter Stone, a British scholar whose treatise on EU private international law is a standard reference in this field, has observed that the Rome I consumer-protection provision was drafted on the assumption that a court could identify a single trader against whom the rule should operate, and that the rule sits awkwardly with a marketplace structure in which the buyer may not even be certain, at the time of contracting, whether it is dealing with the platform or with an undisclosed third party [10]. This observation, in our judgment, exposes a structural weakness rather than a mere drafting imperfection, because the protective purpose of the rule — ensuring that a consumer is not deprived of the mandatory protections of their home law by a foreign trader's choice-of-law clause — can be defeated simply by the platform's failure to identify the true contracting party clearly, an outcome the drafters of Rome I plainly did not intend.

Outside the European Union, the position is considerably less harmonised. The Convention on Contracts for the International Sale of Goods contains no jurisdiction rules of its own and depends entirely on the private international law of

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the forum, or on an arbitration clause governed by the UNCITRAL Model Law on International Commercial Arbitration [33]. In the absence of a uniform instrument, marketplace operators, as a matter of contractual practice, routinely impose their own choice-of-forum and choice-of-law clauses in their standard terms, most commonly designating the courts and law of the state where the platform is incorporated — frequently the United States, Ireland, Luxembourg or Singapore — regardless of where the buyer or the seller is actually located. Professor Roy Goode, together with Herbert Kronke and Ewan McKendrick, writing on transnational commercial law, note that such clauses are, in commercial contracts between sophisticated parties, generally enforceable and indeed desirable for predictability, but that their extension to consumer contracts through standard-form acceptance raises a distinct fairness concern that transnational commercial law scholarship has not fully resolved [32]. We endorse this distinction between commercial and consumer contexts and consider it essential to any coherent reform: predictability is a legitimate value for business-to-business marketplace trade, but it cannot be allowed, in our view, to displace the protective function of consumer law simply because the transaction happens to be routed through a standardised digital interface.

The American experience offers a further, instructive angle on this same family of problems, this time concerning not choice of forum in the strict sense but the manner in which a party's consent to a forum-selection or arbitration clause is established in a mobile application. In Meyer v. Uber Technologies, Inc., the United States Court of Appeals for the Second Circuit held that an arbitration clause embedded, via hyperlink, in Uber's terms of service was enforceable against a user who registered through the mobile application, because the registration screen gave the user reasonably conspicuous notice of the terms and required an unambiguous act — clicking "Register" — that the court treated as manifesting assent to those terms [14]. We consider this decision to be of direct relevance to cross-border marketplace contracting, even though it did not itself concern a sale of goods, because the reasoning it develops — a graduated standard distinguishing "clickwrap", "browsewrap" and "sign-in-wrap" agreements according to the conspicuousness of notice and the clarity of the assenting act — is exactly the doctrinal tool needed to assess whether a buyer on a marketplace has genuinely agreed to a foreign choice-of-forum clause buried in standard terms that few users ever read. We note, however, that subsequent American case law has not applied this reasoning uniformly: the First Circuit, in Cullinane v. Uber Technologies, Inc., reached the opposite conclusion on materially similar facts, holding that the hyperlink in question was not sufficiently conspicuous, and a Pennsylvania appellate court reached a similar result in Chilutti v. Uber Technologies. This divergence, in our assessment, demonstrates that even within a single legal system the enforceability of marketplace standard terms against ordinary buyers remains unsettled, which is precisely the kind of legal uncertainty that a cross-border transaction, layered with an additional question of which country's courts should even decide the matter, can least afford.

Drawing these strands together, we propose that any reform of this area should rest on three principles. First, jurisdiction and applicable-law rules addressed to marketplace transactions should distinguish clearly between the platform operator and the individual seller, so that the platform's evidently global activity is not mechanically imputed to every seller who uses its infrastructure. Second, a mandatory floor of consumer protection — comparable to the Rome I consumer rule, but adapted expressly to platform intermediation — should apply irrespective of the platform's own choice-of-law clause, whenever the buyer is acting outside the scope of a trade or profession. Third, the enforceability of a marketplace's standard choice-of-forum or arbitration clause against a consumer should depend, as the Second Circuit's reasoning in Meyer suggests, on demonstrable, conspicuous and unambiguous notice, verified at the moment of contracting rather than reconstructed after the fact from generic terms-of-service metadata.

4. The Weaker Party and the Marketplace: Consumer Protection and the Allocation of Liability

The problems of jurisdiction and applicable law discussed above are, ultimately, problems of process: they determine where and under what law a dispute is resolved. The problems addressed in this section are problems of substance: who, among the platform, the seller and any logistics or payment intermediary, actually bears responsibility when something goes wrong — counterfeit goods, non-conforming merchandise, non-delivery, or a fraudulent seller who disappears after receiving payment.

The starting point in most legal systems, including that of the Republic of Uzbekistan, is that liability for the conformity of goods and for the performance of the contract of sale rests with the seller, and the Law "On Consumer Rights Protection" [26] follows this classical model. The difficulty is that, on a global marketplace, the seller may be a natural person operating from a jurisdiction with no meaningful enforcement mechanism reachable by a foreign consumer, may operate under a trade name that conceals its true identity, or may simply cease trading once a dispute arises. In these circumstances, the platform — well capitalised, subject to the jurisdiction of a recognisable state, and in practical control of payment, listing and, frequently, fulfilment — is the only party against whom an effective remedy is realistically available. The question, then, is under what conditions the law should allow, or require, that remedy to be directed against the platform itself.

The Court of Justice of the European Union has approached this question narrowly, at least so far as intellectual property liability is concerned. In Coty Germany GmbH v. Amazon Services Europe Sàrl (Case C-567/18), a licensee of the trade mark "Davidoff" sued Amazon after discovering that perfumes infringing its rights were being stored, under the "Fulfilled by Amazon" scheme, on behalf of a third-party seller. The Court held that the mere storage of goods on behalf of a seller, without the platform itself intending to offer those goods or place them on the market, does not amount to "use" of the trade mark by the platform and therefore does not, by itself, establish trade mark infringement on the platform's part [11]. The Advocate General, in his opinion in the same case, had taken a considerably more critical view of Amazon's role, observing that a platform which markets itself with the slogan "send us the goods, we take care of the rest" performs an active function in the sales process that goes well beyond passive storage, and suggesting that such active involvement could, in principle, amount to "use" of the mark. The Court did not adopt this broader reasoning, confining itself strictly to the narrow question referred by the German Federal Court of Justice. We consider the Court's caution understandable as a matter of judicial method, since it is bound by the terms of the reference before it, but we regard the outcome as unsatisfactory as a matter of policy, because it leaves the platform's liability turning on a formal distinction — storage versus active marketing — that does not track the platform's actual economic role or the level of control it exercises over the transaction as a whole. Notably, the judgment itself leaves the door open on this very point, since it expressly reserves the question of liability where the platform is unable to identify the underlying seller, a situation that, in our experience of the commercial reality of these platforms, is far from rare.

By contrast, the Wathelet judgment discussed in Section 2, though decided outside the digital sphere and in relation to a different EU directive, points, in our view, toward a more workable principle: liability should follow the appearance the intermediary has created for the consumer, not the intermediary's own private characterisation of its role [12]. The European Commission's later guidance on the application of the Consumer Rights Directive has drawn precisely this connection, noting that online marketplaces that fail to clearly identify the actual seller may themselves incur liability for having created the impression that they are the contracting party, and this concern is one of the reasons behind the additional disclosure obligations that EU consumer law now imposes on marketplace operators. The Digital Services Act, adopted at Union level, pursues a related but distinct objective, imposing due-diligence obligations on "online platforms allowing consumers to conclude distance contracts with traders", including an obligation to make reasonable efforts to verify the identity, address and contact details of third-party sellers before allowing them to list products, and to design the interface in a way that allows the trader's information to be traced [13]. We regard this "traceability of traders" obligation as one of the more promising regulatory innovations of recent years, precisely because it does not attempt to resolve the difficult question of platform liability for the substance of every transaction, but instead attacks the anonymity problem that makes cross-border enforcement against individual sellers so often illusory in practice.

Scholarly opinion on the appropriate model of platform liability remains genuinely divided, and we think it important to present that division honestly rather than to flatten it. Professor Christoph Busch has argued for what might be called a "gatekeeper" model, under which platforms that exercise significant control over pricing, listing, payment or fulfilment should bear a correspondingly significant share of liability toward consumers, on the reasoning that control and responsibility ought to travel together in platform economics [35]. Orla Lynskey, whose research addresses data protection and the regulation of digital markets, has warned, from a related but distinct angle, that concentrating both data control and legal responsibility in the hands of a small number of dominant marketplaces risks entrenching their market power still further, since only the largest platforms can absorb the compliance costs of a strict liability regime, while smaller or regional platforms — including those that might otherwise compete for business from sellers in Central Asia — would struggle to do so [36]. Jane K. Winn, an American scholar whose work spans commercial law and the regulation of electronic commerce, has taken an intermediate position, suggesting that liability should be calibrated to the specific service the platform performs in a given transaction — payment processing, fulfilment, or mere listing — rather than imposed as a single undifferentiated rule for all platforms and all transactions [34]. Having weighed these positions against the case law discussed above, we align ourselves, on balance, with Winn's calibrated approach, but we would add a threshold safeguard drawn from our own reading of Coty and the Digital Services Act together: a platform that has genuinely and verifiably identified the true seller to the consumer, in a conspicuous and unambiguous manner, should be entitled to a liability shield analogous to the "safe harbour" long recognised for passive hosting providers; a platform that has not done so — whether through negligence or design — should not.

On this basis, we propose a three-tier liability structure for cross-border marketplace transactions: first, primary liability for non-conformity and non-performance remains with the identified seller; second, subsidiary liability attaches to the platform operator whenever it has failed to disclose, verify or maintain traceable identification of the seller, drawing on the logic already embodied in the EU's traceability-of-traders obligation [13]; and third, direct liability attaches to the platform for its own conduct wherever it exercises an active, controlling role in the transaction — setting the price, handling the payment, or fulfilling the order under its own branding — regardless of how its terms of service choose to describe that role, an approach we consider consistent with, even if slightly more protective than, the reasoning left open by the Court of Justice in Coty.

5. Electronic Identification, Signatures and Trust Services: The Problem of Cross-Border Recognition

A contract, however carefully allocated between the parties in substantive terms, is only as reliable as the mechanism used to identify who actually concluded it. This is the fourth group of problems we wish to examine, and it is, in our assessment, the one where the gap between the sophistication of international soft-law instruments and the reality of national implementation is widest.

The starting instrument is the UNCITRAL Model Law on Electronic Signatures, which establishes a functional-equivalence approach: an electronic signature satisfies a legal requirement for a signature if it is as reliable as was appropriate for the purpose for which the record was generated, having regard to a set of technology-neutral criteria [17]. Stephen Mason, a British barrister and the author of what is widely regarded as the leading practitioner treatise on the law of electronic signatures, has repeatedly cautioned against legislative schemes that privilege a single technology — most commonly qualified digital signatures based on public-key infrastructure — over this functional standard, on the ground that rigid technological mandates age poorly and create friction precisely where cross-border recognition is most needed [15]. We share this concern, and we think the concern is amply illustrated by the European Union's own eIDAS Regulation, which, notwithstanding its stated technology-neutral aspiration, in practice establishes a hierarchy of "simple", "advanced" and "qualified" electronic signatures, with only the last category benefiting from automatic legal equivalence to a handwritten signature across all Member States [16]. A marketplace transaction between a seller in Tashkent and a buyer in Berlin may therefore involve, on the Uzbek side, an electronic digital signature issued and certified under the Uzbek Law "On Electronic Digital Signature" [24], and, on the German side, an expectation shaped by the eIDAS qualified-signature standard — two systems that are technically sound in isolation but not mutually interoperable in any automatic sense, because Uzbekistan is not a party to the EU's mutual-recognition architecture and no bilateral or multilateral instrument currently bridges the two regimes for private commercial transactions of this kind.

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UNCITRAL has, in recent years, tried directly to close this gap. The 2022 Model Law on the Use and Cross-Border Recognition of Identity Management and Trust Services was adopted precisely to provide states with a template for recognising foreign-issued electronic identities and trust services without requiring wholesale harmonisation of underlying technical standards [18]. Luca G. Castellani, an UNCITRAL Secretariat officer whose 2025 monograph on UNCITRAL's model laws on digital trade offers, in our reading, the most systematic account currently available of how these instruments interlock, argues that the 2022 Model Law's principal contribution is to separate the question "is this identification method reliable" from the question "was it issued in a foreign jurisdiction", so that reliability, rather than territorial origin, becomes the operative test for cross-border recognition [19]. We regard this as the correct conceptual move, and we would add that its practical value depends entirely on adoption: as of the time of writing, uptake of the 2022 Model Law remains at an early stage worldwide, and neither Uzbekistan nor most of its principal trading partners in the region have yet enacted implementing legislation. This is, in our judgment, a missed opportunity, because Uzbekistan's Law "On Electronic Digital Signature" [24] could be amended relatively economically, in comparison with the alternative of negotiating a web of bilateral mutual-recognition treaties, to incorporate the 2022 Model Law's reliability-based recognition standard for foreign trust services used in cross-border marketplace transactions.

A related but conceptually separate problem concerns not the signature itself but the broader question of automated and "smart" contract formation on marketplace platforms, where increasingly the buyer's "acceptance" is not a deliberate signing act at all but a single click, a biometric confirmation, or, in the

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most advanced platforms, an entirely automated re-ordering triggered by an algorithm without any contemporaneous human decision. The UNCITRAL Model Law on Automated Contracting, adopted in 2024, addresses this directly, clarifying that a contract may be validly concluded through the automated interaction of two or more electronic agents, and allocating responsibility for the agent's "actions" to the person on whose behalf it operates [30]. We consider this instrument well-timed and analytically sound, but we note that it, too, presupposes a legal environment in which electronic signature and trust-service recognition already function smoothly across borders; automating contract formation without first solving the underlying identification problem risks simply automating the uncertainty rather than removing it.

We therefore propose, as our position on this group of problems, a two-step reform. First, at the level of international policy, states in our region, including Uzbekistan, should prioritise the accession to, or the domestic enactment of legislation modelled on, the 2022 UNCITRAL Model Law on Identity Management and Trust Services, precisely because it offers a reliability-based rather than technology-mandated path to mutual recognition, and is markedly less burdensome to negotiate than a network of bilateral agreements. Second, at the level of national legislative drafting, the Uzbek Law "On Electronic Digital Signature" [24] should be amended to define expressly the conditions under which a foreign electronic signature or trust service, including one used on a foreign-incorporated marketplace, will be recognised as legally equivalent to a domestic one for the purposes of concluding a contract of sale, rather than leaving this question, as it currently does, to be resolved indirectly through general rules on the recognition of foreign documents.

6. The National Dimension: Gaps in the Legislation of the Republic of Uzbekistan

The problems described in the preceding sections are, for the most part, problems shared across legal systems. In this section we turn to the question that, in our view, deserves particular attention from an Uzbek readership: how well is the current legislative framework of the Republic of Uzbekistan adapted to the marketplace-mediated model of cross-border contracting described above, and what, concretely, is missing?

The core private-law framework is supplied by the Civil Code of the Republic of Uzbekistan, whose provisions on the conclusion of contracts follow, as noted in Section 2, the classical bilateral offer-and-acceptance model [21]. This model is entirely serviceable for a direct sale between two identified parties, but it does not, in its current form, expressly address the situation in which an intermediary platform mediates the exchange of offer and acceptance, receives payment on the seller's behalf, or controls the interface through which the buyer's assent is expressed. The Law "On Electronic Commerce" supplies the sector-specific rules on electronic transactions, and the Law "On Electronic Document Management" [23] and the Law "On Electronic Digital Signature" [24] supply the supporting technical-legal infrastructure, yet none of these three instruments, as we read them, contains a definition of the marketplace operator as a category distinct from the "seller" on one hand and a mere information intermediary on the other. We consider this absence of a legal definition to be the single most consequential gap in the current framework, because everything discussed in Sections 3 and 4 above — the allocation of jurisdiction, the calibration of liability, the disclosure of the true seller's identity — depends on first being able to say, in the text of the law itself, what a marketplace operator is and what it is not.

This gap is not merely theoretical. We would point, by way of illustration, to the practical difficulty faced by an Uzbek consumer who purchases goods through a foreign-incorporated marketplace and receives either counterfeit or non-conforming goods, or no goods at all. The Law "On Consumer Rights Protection" [26] gives that consumer a set of remedies against the "seller", a term that, absent a specific marketplace provision, will ordinarily be construed to mean the underlying third-party trader rather than the platform. Where that trader is located abroad, operates under a name that cannot readily be traced, or has ceased operating altogether, the Uzbek consumer is, in practice, left without an effective remedy, notwithstanding the existence of a well-capitalised, identifiable platform that facilitated, processed payment for, and in many cases physically delivered, the very transaction in dispute. We regard this outcome as inconsistent with the protective purpose that consumer legislation is meant to serve, and we do not think it is a fanciful hypothesis: it mirrors, closely, the type of dispute that gave rise to the Wathelet litigation in Belgium and that continues to generate a substantial share of cross-border e-commerce complaints recorded by international consumer protection networks.

A further, related gap concerns the cross-border recognition of electronic signatures and identification methods discussed in Section 5. The Law "On Electronic Digital Signature" [24] establishes a domestic certification regime but does not, in our reading, set out a clear standard for recognising foreign electronic signatures used in transactions concluded through foreign marketplaces, leaving

Uzbek courts and arbitral tribunals to resolve the question, if it arises, through general conflict-of-laws reasoning rather than through a dedicated statutory rule. Given the volume of cross-border marketplace commerce already flowing through Uzbekistan — much of it involving marketplaces headquartered in China, Russia, Turkey and the European Union, each operating under its own signature and trust-service regime — we consider this a gap that will only grow more consequential with time, not less.

The Uzbek doctrinal literature has begun to engage with these questions, though, in our assessment, not yet at the depth the subject deserves. Among domestic authors, D. B. Bazarov's work on electronic justice and digital law addresses the procedural side of these disputes — how an Uzbek court is to receive and evaluate electronic evidence of a cross-border transaction — and we consider this a necessary complement to the substantive reforms proposed in this article, since a well-drafted marketplace liability rule is of limited value if the courts applying it lack a settled procedural framework for admitting the platform's own transaction logs, payment records and communications as evidence [27]. Sh. Sh. Sharakhmetov's research on civil and business law situates the marketplace problem within the broader modernisation of Uzbek contract law, and we regard the digitalisation-of-civil-turnover scholarship associated with this and related work at the Tashkent State University of Law as a valuable foundation on which the specific marketplace-oriented reforms we propose here could be built [28]. We note, at the same time, that this domestic literature has understandably focused to date on electronic document management and digital signatures as discrete technical-legal topics, rather than on the marketplace operator's status as an independent legal actor, which is precisely the gap this article seeks to help fill.

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On the basis of this analysis, we propose four concrete legislative amendments for the Republic of Uzbekistan. First, the Law "On Electronic Commerce" should be amended to introduce a statutory definition of the "marketplace operator" (оператор торговой площадки/маркетплейса), distinguishing it expressly from the "seller" and from a passive information-society service provider, along lines broadly comparable to the approach taken in the EU's Digital Services Act [13]. Second, the Law "On Consumer Rights Protection" [26] should be amended to introduce a subsidiary liability rule for marketplace operators that fail to disclose or maintain traceable identification of the underlying seller, mirroring the traceability-of-traders logic discussed in Section 4. Third, the Law "On Electronic Digital Signature" [24] should be amended to incorporate a reliability-based recognition standard for foreign electronic signatures and trust services, drawing on the 2022 UNCITRAL Model Law [18], rather than leaving cross-border recognition to general conflict-of-laws principles. Fourth, and finally, we consider that Uzbekistan should evaluate accession to, or the enactment of implementing legislation modelled on, the United Nations Convention on the Use of Electronic Communications in International Contracts [1], which would give Uzbek courts a directly applicable, internationally recognised set of default rules for exactly the kind of cross-border contract-formation disputes this article has examined.

7. Ways of Solution: A Consolidated Set of Proposals

Having examined, in turn, the conceptual, jurisdictional, protective, technical-legal and national dimensions of the problem, we consider it useful to draw the separate proposals made above into a single, consolidated set of

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recommendations, addressed to three distinct audiences: the international legislator (understood broadly, to include UNCITRAL and regional organisations), the national legislator, and arbitral and judicial institutions that must resolve disputes under the law as it currently stands, pending any of the reforms we propose.

At the international level, we propose, first, that UNCITRAL consider supplementing its existing instruments with a dedicated set of provisions, whether as a protocol to the 2005 Electronic Communications Convention [1] or as a freestanding model law, addressed specifically to the triangular structure of marketplace-mediated contracts, since none of the existing instruments — the 1996 Model Law on Electronic Commerce [2], the 2001 Model Law on Electronic Signatures [17], the 2017 Model Law on Electronic Transferable Records [20], the 2022 Model Law on Identity Management and Trust Services [18], or the 2024 Model Law on Automated Contracting [30] — was drafted with the marketplace operator as a distinct legal actor in view. We propose, second, that states accelerate the domestic enactment of the 2022 Model Law's reliability-based recognition standard for foreign electronic signatures and trust services, which we regard, for the reasons given in Section 5, as offering a more realistic path to cross-border interoperability than a technology-mandated approach such as the hierarchy embedded in the EU's eIDAS Regulation [16].

At the national level, and drawing together the four amendments proposed in Section 6, we recommend that the Republic of Uzbekistan introduce a statutory definition of the marketplace operator in the Law "On Electronic Commerce", a subsidiary liability rule tied to seller-traceability in the Law "On Consumer Rights Protection" [26], a reliability-based foreign-signature recognition standard in the

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Law "On Electronic Digital Signature" [24], and an evaluation of accession to the 2005 UNCITRAL Convention. We consider this package coherent because each element supports the others: a clear definition of the marketplace operator is a precondition for a workable liability rule, and a workable liability rule is of little use to a consumer if the electronic evidence of the transaction — including the seller's identity and the buyer's assent — cannot be reliably established across borders in the first place.

At the level of adjudication, and pending legislative reform, we propose that courts and arbitral tribunals seised of cross-border marketplace disputes apply three interpretive presumptions that we believe are already latent in, even if not always explicitly stated by, the case law examined in this article. First, drawing on Wathelet [12], a marketplace that has not clearly and prominently disclosed the identity of the underlying seller should be presumed, for the purposes of consumer protection, to have assumed the seller's obligations itself, unless it can demonstrate that the consumer was in fact aware of the true seller's identity. Second, drawing on Pammer and Alpenhof [7], the global, multilingual and multi-currency character of a marketplace's own operation should not, without more, be imputed to an individual seller for the purpose of establishing that the seller "directed" its activity to the consumer's state, so that jurisdiction over the seller and jurisdiction over the platform are assessed separately rather than collapsed into one. Third, drawing on the graduated notice standard developed in Meyer v. Uber Technologies, Inc. [14] and refined, in a more consumer-protective direction, by Cullinane v. Uber Technologies, Inc. and Chilutti v. Uber Technologies, a marketplace's standard choice-of-forum or arbitration clause should be enforced against a consumer only where the platform can demonstrate conspicuous notice and an unambiguous act of

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assent specific to that clause, rather than mere inclusion of the clause somewhere within lengthy terms of service.

We are aware that these proposals, taken together, shift a meaningful share of legal and economic risk toward marketplace operators, and we recognise the force of the concern, articulated by Orla Lynskey among others, that such a shift could disproportionately burden smaller platforms relative to dominant global players who can more easily absorb compliance costs [36]. We do not think this concern outweighs the case for reform, but we do think it counsels a differentiated, proportionate approach — for instance, calibrating the traceability and disclosure obligations proposed above to platform size or transaction volume — rather than a single undifferentiated rule applied identically to every marketplace regardless of its scale. This is, in our view, an area where further empirical and doctrinal research, including comparative research grounded in the experience of smaller and mid-sized marketplaces operating in Central Asia, would be of considerable value, and we regard the present article as a contribution to, rather than a conclusion of, that research agenda.

8. Conclusion

We set out, in this article, from the observation that the marketplace is not a neutral conduit through which a classical bilateral contract of sale simply happens to pass, but an independent legal actor whose presence disturbs, at every stage, the assumptions on which contract law, private international law and the law of electronic signatures were built. We have tried to show that this disturbance is not merely inconvenient but systematically traceable through five distinct groups of problems: the conceptual difficulty of characterising the marketplace-mediated

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contract; the jurisdictional and choice-of-law difficulty of locating a forum and a governing law in a transaction that may touch four or more legal systems at once; the substantive difficulty of allocating liability fairly among platform, seller and any intermediary once something goes wrong; the technical-legal difficulty of achieving cross-border recognition of the electronic signatures and identification methods on which the entire transaction ultimately rests; and, specifically for our own jurisdiction, the difficulty that the Uzbek legislative framework, sound as it is for direct bilateral electronic sales, has not yet caught up with the triangular reality of marketplace commerce.

In each of these areas, we have sought not merely to catalogue the views of others but to state, plainly and in our own voice, where we stand: in favour of a functionally-defined, distinct legal status for the marketplace operator; in favour of separating the jurisdictional treatment of the platform from that of the individual seller; in favour of a calibrated, three-tier liability structure that rewards genuine seller-disclosure and penalises its absence; in favour of a reliability-based rather than technology-mandated standard for cross-border recognition of electronic signatures; and, for Uzbekistan specifically, in favour of four concrete legislative amendments that we believe could be adopted without disproportionate cost and that would bring the domestic framework substantially closer to the international instruments on which we have relied throughout this article.

We do not present these proposals as a final or exhaustive solution. The law of cross-border electronic commerce is, by its nature, a moving target, and the UNCITRAL Model Law on Automated Contracting of 2024 is a reminder that the underlying technology of contract formation itself continues to evolve, most

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recently toward forms of automated and algorithmic agreement that will, in due course, raise a further set of questions beyond the scope of the present article. What we have sought to offer instead is a structured account of where the principal difficulties currently lie, grounded in the actual case law and legislative instruments that courts, legislators and practitioners are already working with, together with a set of proposals that we believe are realistic, proportionate and, in the case of Uzbekistan, actionable in the near term. We hope that this account will be of use to legislators, to the judiciary, and to fellow researchers who share our conviction that the marketplace, as a legal phenomenon, deserves to be studied on its own terms rather than folded, by default, into doctrines designed for a simpler, bilateral world.

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