

Welcome to the Morgan Lewis Technology May-rathon ...Before We Begin

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Morgan Lewis

TECHNOLOGY MAY-RATHON

USER AGREEMENTS:
BEST PRACTICES FOR RUSSIA

Anastasia Dergacheva
Ksenia Andreeva

Morgan Lewis Technology May-rathon

Thank you for joining Morgan Lewis as we present our 9th annual Technology May-rathon.

This year we are offering over 30 in-person and virtual events related to the 21st Century Workplace; Artificial Intelligence and Automation; Fintech, Global Commerce; Medtech, Digital Health, and Life Sciences; Privacy, Cybersecurity, and Big Data; and Regulating Tech.

A full listing and any recordings of our tech May-rathon events can be found via the link on our front page at www.morganlewis.com

Please be sure to Tweet [#TechMayRathon](https://twitter.com/MLTechMayRathon)

What we will discuss today

- Regulatory framework
- User agreements: where to start
- Privacy considerations
- Russian consumer protection laws
- Modification and termination of user agreements

Regulatory Framework

- **Russian law requirements for contracts**

- Contracts between companies and individuals must be in writing
- **1 October 2019**: new Civil Code rules on contracts concluded via electronic means
 - ✓ reproduction of contract contents
 - ✓ counterparty identification

- **Will this work?**

- registration with confirmation by email or sms
- «I accept the terms and conditions of the User Agreement» button ?
- pop-ups and use (continuance of use) of a website ?

Reproduction and Identification

- **Reproduction of contract contents**
 - allow users to print and save Terms of Use
 - include a link or attach Terms of Use to registration confirmation
- **Identification of users**
 - do I now have to request user names, ID and contact details to comply with new Civil Code rules?
 - note special identification requirements for messaging apps



Minors and Foreign Citizens

- **Minors**

- do I need guardian's consent?
- feedback mechanism for guardians
- note age rating requirements: 0+, 6+, 12+, 16+, 18+

- **Foreign citizens**

- Terms of Use in local language?
- Governing law vs. local consumer protection laws

Russian Privacy Law Considerations

- **Key requirements**

- publication of privacy policy on a website
- registration with the Russian DPA (Roskomnadzor) as data operator
- storage of Russian citizens' data on servers located in Russia

- **Consent for data processing**

- define data collection goals in the Terms of Use (then you do not need separate consent)
- use of data for other goals requires separate consent (may be obtained by email or in a pop-up window)
- processing of sensitive and biometric data requires wet-ink consent



Cross-Border Transfer of Personal Data

- **Cross-border transfer of personal data**
 - “safe” countries: e.g. Australia, Canada, Singapore, Chile
 - “non-safe” countries: e.g. Belarus, Kyrgyzstan, China, USA
- **Transfer of data to “non-safe” countries**
 - to perform a contract (Terms of Use counts!)
 - based on wet-ink consent
- **What about GDPR?**
 - if the service is directed or adapted for users from the EU, the requirements of GDPR may be applicable

Russian Consumer Protection Law Considerations

- **Key requirements**

- a service must provide the possibility of **cash payments** and payments via national payment systems (MIR)
 - you are not allowed to **condition the sale** of any goods or services on the purchase of other goods or services
 - terms and conditions impairing the **consumer's rights** are prohibited
 - limitation of the **service provider's liability** as compared to Consumer Protection Law (e.g., limitation of liability for the unavailability of the service or accuracy of information) is prohibited
- Requirements of the Consumer Protection Law **do not apply** to relations with users under agreements with no consideration

Modification and Termination of User Agreements

- **Best practices**

- indicate the date of each version of Terms of Use and provide access to previous versions
- notify users about significant amendments (can I rely on the provisions on the right to modify the terms of use at any time?)
- provide users with an opportunity to opt-out easily and at no cost if a user agreement is significantly amended

- **Termination of user agreements**

- allow user to withdraw from a user agreement **at any time** and request deletion of the account
- provide for the right of the service operator to unilaterally terminate a user agreement at any time for any and/or no reason



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 - Questions? Please email **Erik Scott at erik.scott@morganlewis.com**

Q&A

Thank you for participating in the 2019 Technology May-rathon with us.

We would be pleased to answer your questions.

The Q&A tab is located near the bottom right hand side of your screen; choose “All Panelists” before clicking “Send.”

Morgan Lewis Technology May-rathon 2019

A full listing and of our tech May-rathon programs can be found at

<https://www.morganlewis.com/topics/technology-may-rathon>

Please be sure to tweet **#TechMayRathon**

Thank you.

Biography



Anastasia Dergacheva

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Anastasia Dergacheva counsels major Russian and international companies across multiple industries, including telecommunications, media and entertainment, and technology. Anastasia's practice focuses on mergers and acquisitions, licensing, outsourcing, and general commercial transactions. Anastasia also advises clients on various regulatory aspects of mass media, IT business, ecommerce, and data transfers. As a part of her pro bono practice, Anastasia regularly counsels charities and individuals on various aspects of nonprofit laws.

Biography



Ksenia Andreeva

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Ksenia Andreeva specializes in intellectual property (IP) matters. She advises on a wide range of transactional, regulatory, and commercial IP matters as well as disputes and enforcement of IP rights. Ksenia is a registered trademark lawyer and is admitted to represent clients before the Russian Patent and Trademark Office (Rospatent). She also has experience with IP disputes in the Chamber for Patent and Disputes and the Russian commercial courts. Her clients include companies in media, technology, telecommunications, and many other industries.

Ksenia has experience with licensing, franchising, and handling commercial transactions that involve IP, including complex outsourcing matters. She also assists with the IP aspects of mergers, acquisitions, and joint ventures and advises on personal data protection and related regulatory matters. Recently, she focused on the use and protection of IP in websites and online commerce and on compliance with Russian laws and regulations that govern the Internet.

Ksenia is a member of the Licensing Executives Society of Russia, the Association of European Businesses, and the Chamber of Patent Attorneys. Prior to joining Morgan Lewis, she worked in the IP practice of another international law firm in Moscow.

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