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**DISPOSAL OF NEW TECHNOLOGIES AND
COMPLEX OBJECTS:
CHALLENGES FOR "CLASSIC" CONTRACT LAW**

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Agenda

- Development trends in the technology sector
- New technologies and complex objects in Russian law
- Disposal of new technologies and complex objects: basic models and challenges



SECTION 1

DEVELOPMENT TRENDS IN THE TECHNOLOGY SECTOR

Data is the “new oil”

- In 2020, the amount of information created, recorded, copied and consumed will reach 59 Zettabytes (59 Trillion Gigabytes)
- People create 2.5 quintillion bytes daily
- Almost 90% of all data has been generated in the last two years
- 95% of companies do not sort or structure data
- The successful use of "big data" depends entirely on the possibility of its automated analysis

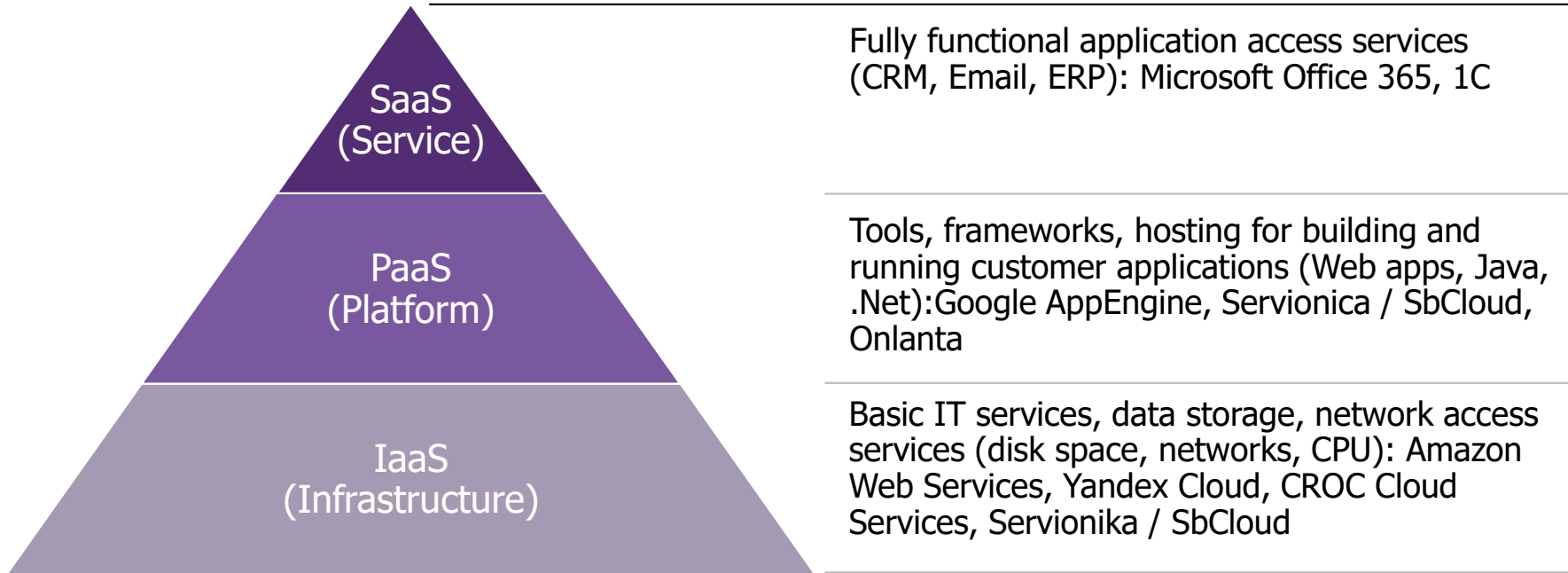
Source: <https://kommandotech.com/statistics/big-data-statistics/>

Digitalization and automation

- Technological outsourcing of business functions (both main and auxiliary):
 - specialized product development
 - cloud technologies
 - data management
- Artificial intelligence and robotization
- Multi-platform and integration:
 - mobile applications
 - Internet platforms and portals
 - social networks, chats, bots
 - IoT, "smart" technology
- Search for a synergistic effect:
 - ecosystems
 - technology partnerships



Transformation of licenses into services



NB! increased dependence on the provider and the complicated process of transition to a new provider

SECTION 2

NEW TECHNOLOGIES AND COMPLEX OBJECTS IN RUSSIAN LAW

New technologies and complex objects under RCC

- What is the legal nature of the new technologies under the Russian Civil Code, e.g. websites, internet platforms, mobile services, computer games?
- Are these complex object (Article 1240 of the RCC)?
 - **NB!** there is an exhaustive list in the RCC
 - Databases and multimedia products
- What is “integrated technology” (Article 1542 of the RCC)?
- New technologies comprise a combination of different IP rights:
 - objects of copyright and related rights
 - know-how and confidential information
 - trademarks
 - objects of patent rights
 - information assets
 - unnamed objects



Unnamed objects

- Objects that are not objects of civil rights:
 - domain names
 - information that is not protected
 - accounts: in social networks, app stores
 - users / subscribers
- Information, unstructured data arrays as an object of civil law?
- “Big data”?
- Results of "intellectual work" of robots?



Practical issues in the transfer of rights to complex objects and technology

- **Case study: Acquisition of internet platform**
- Consisting of: content, design, software, trademark, equipment, business information and clients' database, domain rights
- Structure:
 - framework agreement with detailed description of objects
 - schedules with detailed description of the parties obligations and actions on completion in relation to each type of object: acts of acceptance, separate agreements (trademarks), letters/notifications to registrars (domains), separate procedure for transfer of passwords and user accounts
 - separate advertising services agreement

SECTION 3

DISPOSAL OF RIGHTS TO NEW TECHNOLOGIES AND COMPLEX OBJECTS: BASIC MODELS AND CHALLENGES

Development of an IT product by customer order

- As a rule, an agreement for the development of an IT product is a complex agreement containing the elements of the following agreements:
 - for provision of services
 - for performance of research and development (R&D) and technological work
 - for transfer of the rights to intellectual property
- Challenges:
 - The technology does not exist yet, there is a risk that the technology will not be created or will not justify itself
 - The customer acquires the rights to the technology in full, but as a rule, subsequent support (improvement, fine-tuning) from the developer is required
 - Registration of the transfer of non-registrable rights?



Development of an IT product by customer order

- Turnkey development or hypotheses testing??
 - criteria for acceptance of work results
- Liability:
 - How one calculates the amount of losses?
 - Can one count on compensation for pecuniary losses under Article 406.1 of the Civil Code?
- Challenges connected with contract termination:
 - The right to withdraw from contract and consequences of termination
 - IT solution support after acceptance



Development of an IT product by customer order: results of intellectual work

- General rule – Articles 1296 – 1297 of the Civil Code - for objects created by contractor (unless otherwise provided by contract):
 - the contractor (doer) has the right to use the work for his own needs on the terms of a royalty-free simple (non-exclusive) license for the entire duration of the exclusive right
 - If a work was created by a contractor as part of his work under a contract, the contractor (doer) has the right to use the work created by him for his own needs on the terms of a royalty-free simple (non-exclusive) license for the entire duration of the exclusive right
- Challenges:
 - Who will apply for registration (for patents, software)?
 - Ensuring confidentiality (e.g., developer’s “residual knowledge” and received know-how)?
 - If development is not successful, then who owns the unfinished object and the created materials?

Acquisition of an IT solution as an asset or a ready-made business

- Agreement on the transfer of a complex of exclusive rights:
 - Software and databases; copyright to design, content
 - Know-how, confidential information
 - Trademarks, domain names
 - Technological equipment, contracts with third-party contractors
- Challenges:
 - Individual components may not qualify as results of intellectual activity or as objects of civil law
 - “Clearing” of acquired rights
 - As a rule, there is no post-purchase support for the solution, but it is necessary to secure involvement of competent personnel
 - In case of acquisition of a ready-made business, it is necessary to ensure the transfer of contracts and regulatory obligations
 - Ensuring confidentiality and non-compete obligations



Acquisition of an IT solution as an asset or a ready-made business: basic contract conditions

- Solution description:
 - risks associated with incomplete description and inability to transfer individual objects
- Customer protection:
 - representations regarding the circumstances;
 - compensation for pecuniary losses
- Non-Competition Provisions
 - **NB!** Requirements of the Law on competition
 - Possibility of structuring through imposition of a ban on the use of confidential information, payment of a bonus for non-competing
- Limitation of seller's liability?



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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.

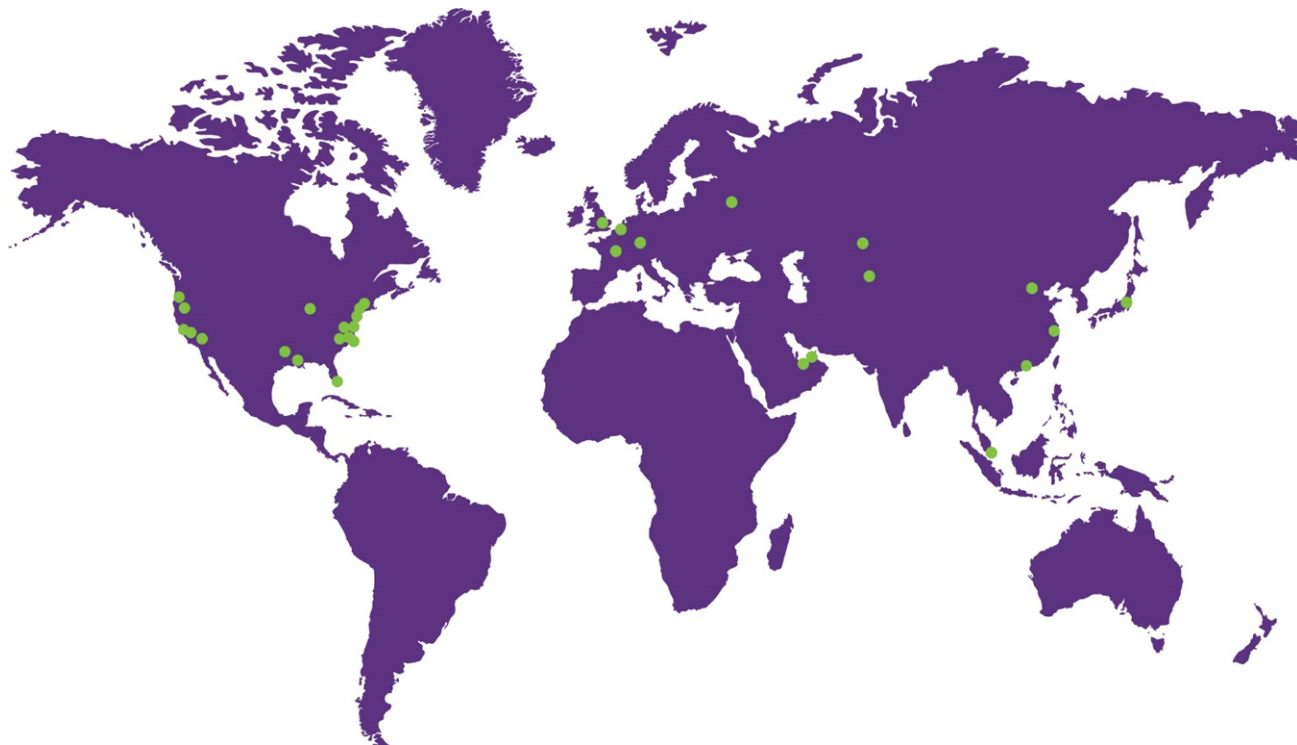
Ksenia is a registered trademark lawyer and is admitted to represent clients before the Russian Patent and Trademark Office (Rospatent). She also has experience with IP disputes in the Chamber for Patent and Disputes and the Russian commercial courts. Her clients include companies in media, technology, telecommunications, and many other industries.

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