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HOW TO PURCHASE A MOBILE APP

**KEY CONSIDERATIONS
FOR APPLICATION ACQUISITION AGREEMENTS**

Presenters



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What We Will Talk About Today

- Structuring app acquisition agreements: top-5 common mistakes to watch out
- Transferring core elements: IP rights, data and IT systems
- Migrating users and employees
- Transferring contracts, licenses, social media accounts and publishing rights

This is Ben,
he wants to buy an app





Top 5 Mistakes When Structuring App Acquisition Agreements

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Mistake No.1:

Ben is not sure what exactly he wants to buy

- Here is what you need to operate a mobile application:
 - **software** (proprietary and open source), databases, designs, content, logos and brands commercially sensitive information, and other types of data
 - **equipment** and IT services contracts
 - **employees** who keep the application up and running
 - advertising, content, information, business intelligence and other **third party services**
 - ... and **users**
- **How to avoid:** **run an IT audit** in addition to standard legal and commercial due diligence. Identify all key elements of application

Mistake No.2: Ben did not realize that the asset is not yet ready for transfer

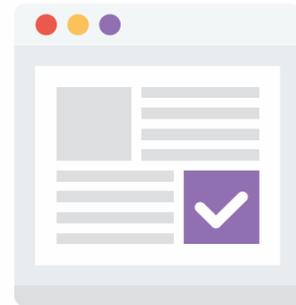
- If mobile app is being developed within the seller's ecosystem **it may take time to prepare it for the transfer:**
 - employees must be transferred to a separate department and should not assist with seller's other projects
 - seller must identify all equipment and services relevant for the asset and separate it from seller's other equipment
 - where possible, relevant portion of third party services should be spun off to separate agreements
- **How to avoid:**
 - **Agree to pre-completion restructuring process.** It will likely be a condition precedent to acquisition

Mistake No.3: Ben hasn't thought through the transfer process

- **Different elements** of mobile apps **will be transferred differently**:
 - some IP transfers may require registration (which may take up to few months)
 - transfer of equipment or change of IT service providers may result in disruption of service
 - it is not possible to “sell” employees and users: parties need to agree special mechanisms to ensure successful transfer
- **How to avoid**: develop **detailed roadmap** outlining both parties obligations in respect of the transfer

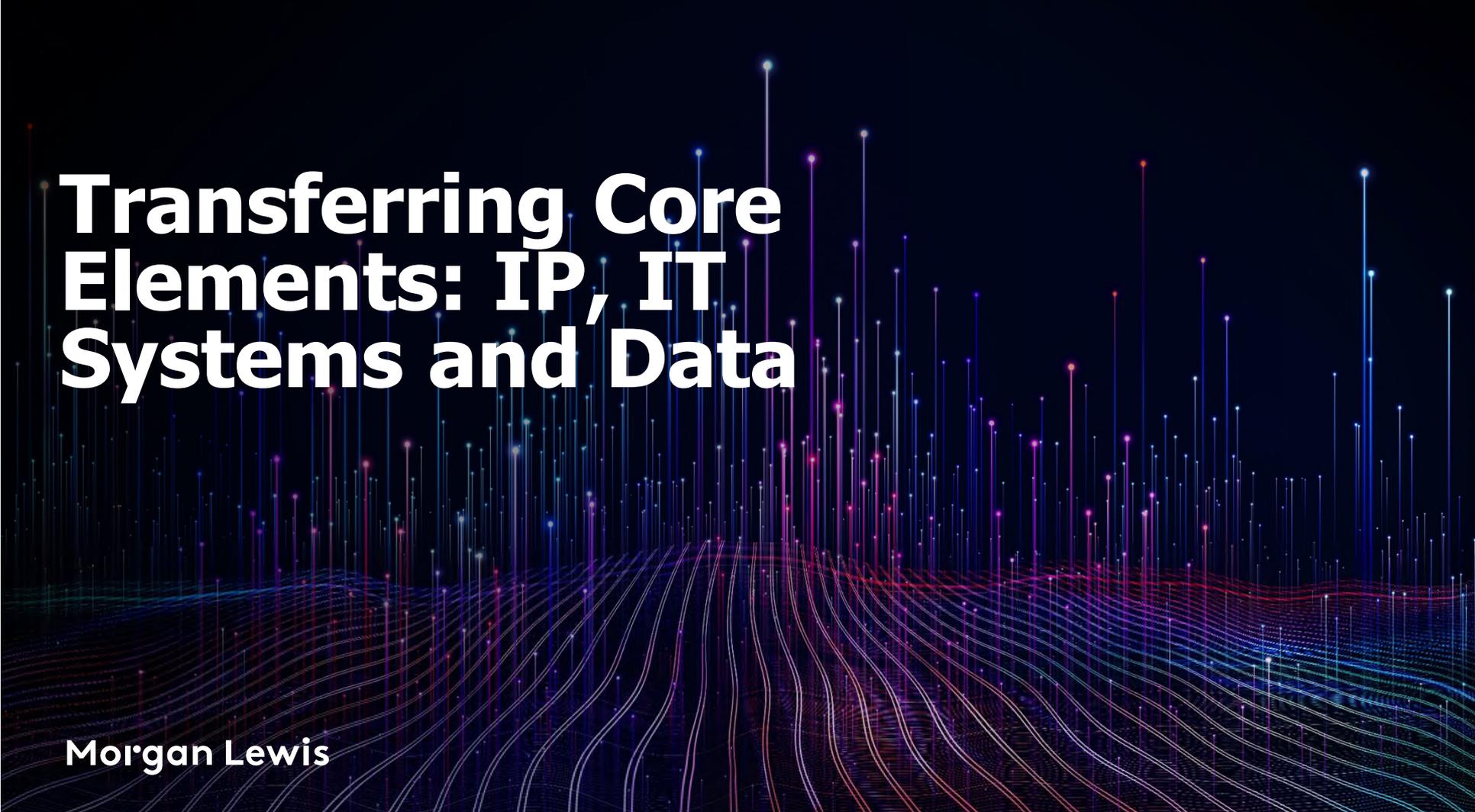
Mistake No.4: Ben hasn't agreed with seller when the transfer is deemed complete

- Mobile app elements will be transferred at a **different time**:
 - what if some, but not all elements are transferred?
 - will part of the purchase price be deferred until the transfer is complete?
 - will the parties conduct operational tests after the transfer?
 - **How to avoid:**
 - include **definition of Transfer**
 - include **test procedures** (if relevant)
 - agree on **purchase price reduction or alternative mechanism** if not all elements are transferred.
- TIP:** Ben would also benefit from an obligation of the seller to transfer missing elements when/if it becomes possible and prohibition of the seller to use such elements



Mistake No.5: Ben hasn't agreed transitional services agreement with the seller

- Buyers usually need the sellers to continue provide certain services:
 - some modules within the application may **rely on seller's systems**, which are outside the scope of the deal
 - services provided by **employees that were not transferred** to the buyer
 - advertising, business intelligence and other services where the **seller still holds relevant contracts**
- **How to avoid:**
 - during due diligence identify all instances where the application depends on seller's systems and services
 - **agree transitional services agreement** to cover missing services

The background is a dark, abstract digital landscape. It features a grid of glowing lines that recede into the distance, creating a sense of depth. The lines are primarily blue and purple, with some red and white highlights. At the end of many of these lines are small, bright dots, resembling data points or nodes in a network. The overall effect is that of a futuristic, high-tech environment.

Transferring Core Elements: IP, IT Systems and Data

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Transferring IP Rights

- **Identify all IP** that is relevant to the application
- Describe transferred IP in **as much details as possible**
- Will the seller **transfer** all rights in such IP **or** some part will be **licensed**?
- Will you need to **register any of the transfers** in any jurisdiction? If yes, who will be responsible for it?



Transferring IT Systems

- Identify all equipment and IT systems that will be transferred
- Agree migration schedule:
 - Who will be responsible for different parts of migration?
 - If the seller is responsible for migration, agree SLA for migration to reduce the level of disruption
- Third party IT services:
 - Who is responsible for liaising with third parties to ensure transfer of accounts, etc.?
 - Who has better service terms with third party provider: the seller or the buyer?

Data Transfers

- Consider privacy issues upfront:
 - seller must ensure that the **terms of service** with its users allow the seller to transfer data to the buyer. If not, update terms of service
 - **check regulatory requirements** in key jurisdictions where most of users are located. Some of them may prohibit transfer of user data without specific consent or require that user data is stored locally (examples: Russia, EU)
- Address historical data ownership with the seller
 - Will the seller transfer all historic data to the buyer or will keep it?
 - How the data will be transferred?
 - Note that some online advertising and business intelligence tools would allow you to download historic data, but not import the data to new account

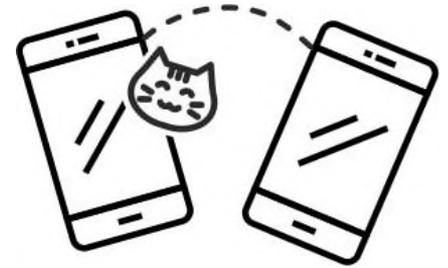
Migrating Users and Employees

The background is a dark blue space filled with a complex network of glowing lines and dots. The lines are thin and colorful, ranging from light blue to magenta. They form a grid-like pattern that recedes into the distance, creating a sense of depth. The dots are small, bright spheres of light, some in blue and some in magenta, scattered throughout the scene. The overall effect is that of a digital landscape or a data visualization.

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User Migration

- Users, same as employees, cannot be 'sold'
- How to transfer user contracts:
 - release version of the app with new terms of use
 - list the buyer as service provider instead of seller
 - notify users by appropriate means (emails, push-up notices, SMS)
 - make the user acknowledge new terms of use before it can proceed to the use of the application
- Consider privacy issues upfront!
- Can the seller transfer historic data of users who did not accept new terms of use?



Employee Transfer

- Same as with users, you cannot 'sell' employees
- ... but you can provide in the contract that:
 - sellers pay transfer bonuses to employees (or buyer deducts sign up bonuses from purchase price)
 - purchase price is reduced if not all employees are transferred (=> create an incentive for the seller to assist with the transfer)
- If you have development team based abroad, check with your local counsel: sometimes transfers of personnel are required by law
- Consider entering into a transitional services agreement to fill in the function of non-transferred employees for an interim period



Transferring Contracts, Licenses, and Publishing Rights

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Transfer of Contracts Related to Business

- Contracts:
 - revenue-generating contracts,
 - supply of content and services,
 - distribution and promotion contracts
- If the existing terms are acceptable, the buyer may require the seller to procure the **assignment of contracts** to the buyer as is.
- However, if significant issues were identified during the due diligence, then **termination of existing arrangements** and entering into new contracts may be more appropriate

Transfer of Publishing Rights, Accounts

What else we need to transfer?

- Publishing rights in application stores
- Social media accounts
- Third party services provided based on standard Terms of Use

Be prepared for:

- KYC procedures
- Different commission rules
- Some accounts configurations may be non-transferable

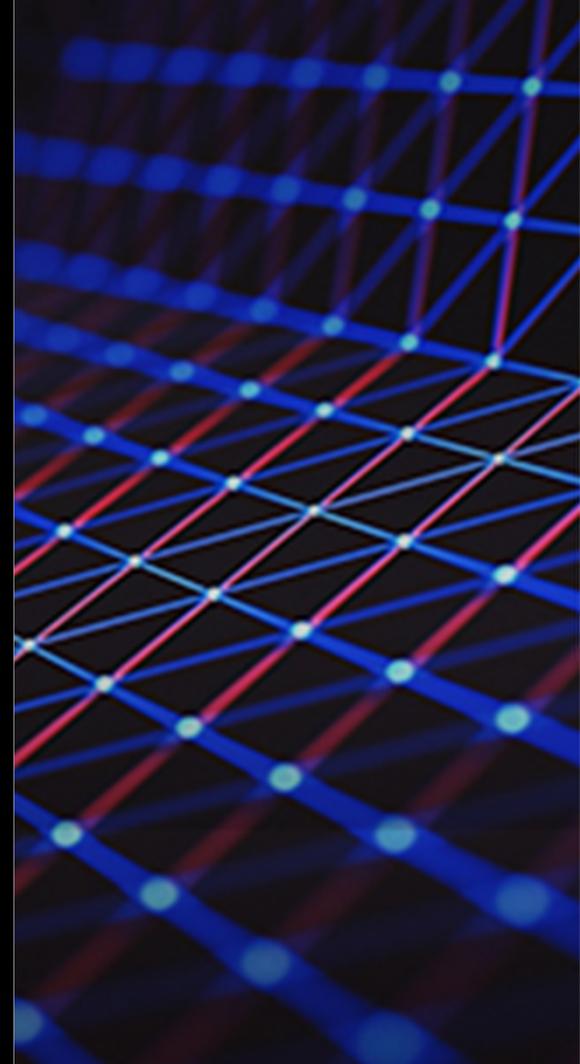
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We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

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To help keep you on top of developments as they unfold, we also have launched a resource page on our website at www.morganlewis.com/topics/coronavirus-covid-19

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Biography



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Ksenia 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.

Biography



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Anastasia counsels major Russian and international companies across multiple industries, including telecommunications, media and entertainment, and technology. Anastasia's practice focuses on mergers and acquisitions and technology transfer transactions, as well as licensing, outsourcing, and professional services deals. Anastasia also advises clients on various regulatory aspects of mass media, IT business, e-commerce, and data transfers.

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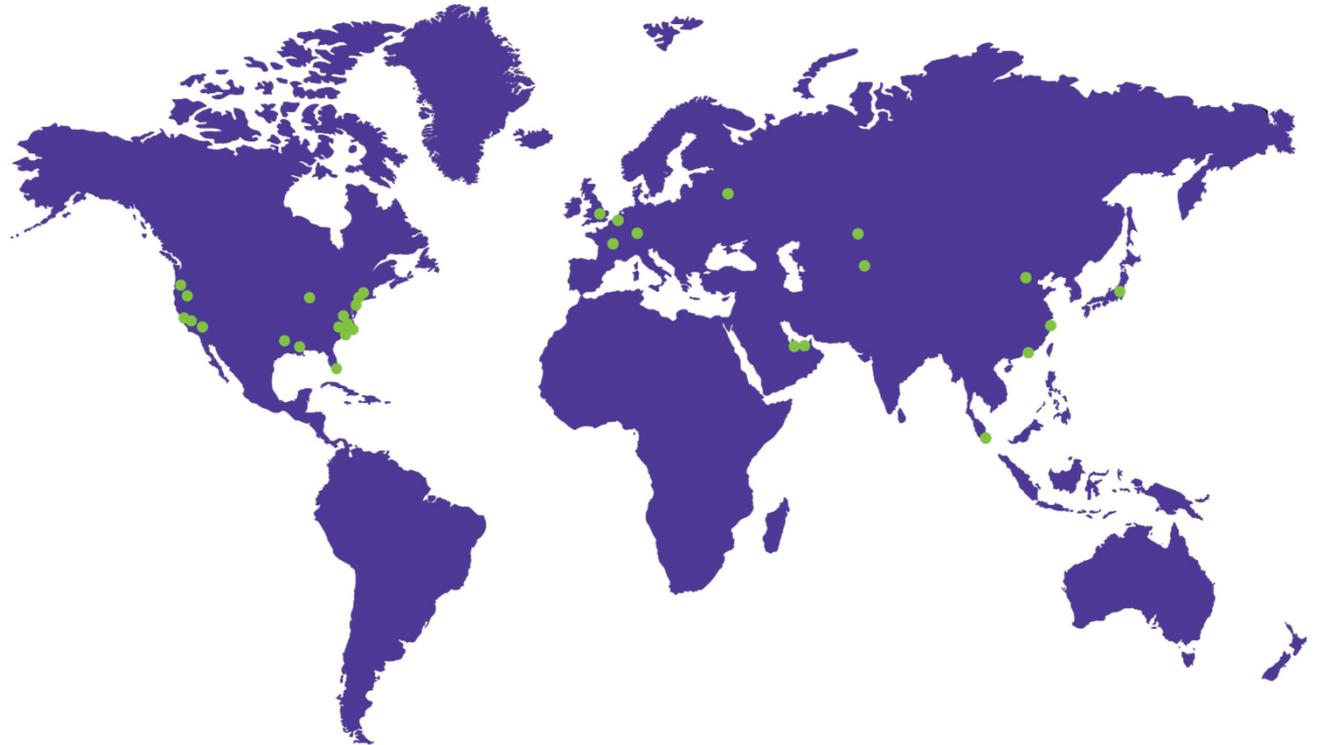
Don represents clients in global outsourcing, commercial contracts, and licensing matters, with a particular focus on the e-commerce and electronics entertainment industries. Doneld assists in the negotiation of commercial transactions for domestic and international manufacturers, technology innovators, and retailers, and counsels clients in the e-commerce and electronics entertainment industries on consumer licensing and virtual property matters.

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