
ICANN73 | Virtual Community Forum – NextGen Presentations
Monday, March 7, 2022 – 10:30 to 12:00 AST

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So, I’d like to welcome you to the ICANN73 presentations. I manage the NextGen at ICANN program. Please note that this session is being recorded and follows the ICANN Standards of Behavior.

We have three presenters this meeting: Jessica Starkey, Brian Leacock, and Luis Rolfo. Thank you for everybody for attending today. I’d also like to thank my mentors, Cherie Stubbs, Dessalegn Yehuala, and Roberto Gaetano who have been working with the students over the past several weeks preparing them for this meeting for ICANN73.

Welcome to ICANN73, by the way. We’re thrilled to have you. I hope that you’re excited for the upcoming meeting week as I am.

I'd also like to thank my colleague, Fernanda Lunes, who will be running the slides today, and of course I'd like to thank our interpreters and our meeting team who support us during this entire process.

So, with that, I'd like to hand over the floor to Jessica Starkey, who will be our first presenter. Jessica?

JESSICA STARKEY:

Hello. So, as I was saying at the slide show, I'm Jessica Starkey and this is a presentation on the Current Perspectives of International Domain Names. This is really for those who are being introduced to the topic and/or are wanting or needing a recap. So, let's begin. Next slide, please.

So, what is an IDN? An IDN is a non-Latin script for a domain name. So, Latin scripts, really think English, a little bit of the German and the Spanish language, those sorts of letters. It's not those.

There's already been IDNs that both top level and second level domain names, even third level if you want to go that far. And currently, there are 93 generic top-level domain names and 61 country code top-level domain names.

Now, one quick note. A top-level domain name has to be of a living language community. So, no historical text, no emojis, hearts, checkmarks, none of those can be part of an IDN. Next slide, please.

So, why do IDNs matter? It's because the Internet is for everyone and English currently, as of January 2020, English only represented about a

quarter of the Internet and the access to the Internet is constantly growing. There's approximately about one million new users to the Internet each day and having the users be able to use their scripts that they use in their day-to-day lives in their language will allow them to have more access to the Internet overall. Next slide, please.

So, the technical process for creating an IDN starts with the script already being in Unicode. So, Unicode is like a massive library of one single letter and the keystrokes that you need to use to get to that letter and that allows computers to be programmed in multiple scripts. So the script has to already be in Unicode, at which point a generation panel creates a proposed label generation rules.

These are rules that change per language because languages can be drastically different. Take, for example, the English language with 26 letters, there's only 675 different combinations of two letters in the English language. Compare that to the Chinese language with characters, it's vastly more than 675, which makes it make less sense for the Chinese language to limit the characters down to 24 only countries and requiring everybody else to use three or more characters for top-level domain names. So that's just one example of many for different languages.

So, once the proposed label generation rules exist, they are submitted to the integration panel and the integration panel will create the final label generation rules. Now, throughout this process, there are multiple times for open comment where the public can comment on these rules.

Once there is a final label generation rule, then the script can be integrated into the root zone which it has to be integrated to the root zone for domain names.

So, before we go into what are the current discussions you need to know what are label variants. Now, the label just means the name, so like a domain name, and for it to be a variant, it means that it visually looks the same or confusingly similar to another label, which becomes an issue with confusion and security.

Down below, you'll see a couple of examples. The first two are compared in English. These are not my examples, I borrowed them. Next slide, please.

this becomes important when looking at the recent variant policy history with IDNs. In March 2019, the ICANN Board adopted a set of recommendations for the allocation of IDN variants in top-level domain name labels. Some of these are... One important one I can think of is if a registry has a top-level domain and they find a variant, they can go through a process to claim that variant as their own, which means the same registry would have the original in the variant which will allow the registry to keep confusion down another registry from having the variant of their original. So that's an example of one of the rules that they were adopting.

However, in August 2019, the GNSO (the Generic Names Supporting Organization) requested that ICANN defer the adoption which the ICANN Board did. And in May 2020 21, the GNSO initiated the Expedited

Policy Development Process (EPDP) on IDNs. Below are the two main guidelines for the EPDP.

Number one is for them to define top-level domains, the variance in the management of the variance. And number two is the implementation of the guideline that needs to be updated to deal with IDNs. Next slide, please.

So what are some of the current issues that you might hear about ICANN 73? The GNSO EPDP just recently closed a public comment regarding which scripts from Unicode to integrate into the root zone. And if you're interested to listen from the horse's mouth from EPDP, there are recordings from the Prep Week. One recording is the IDN update and the other one, they discussed it in the Policy Update.

But a summary of it is that there are three categories of Unicode scripts that EPDP, how they want to separate the Unicode scripts. So the first one is recommended scripts, which this is what the EPDP is saying should go into the root zone. The excluded scripts are scripts that they're saying absolutely should not go into the root zone. A lot of these are historical or religious scripts with no living community or their endangered scripts. So the living language community is almost gone.

Then the limited use scripts are scripts that typically don't have rules for them. A lot of times they are either confusing to our already recommended scripts or they just don't have the rules from the generation panel which went to the integration panel. So there suggesting that limited use scripts be used as second level domain names but not top-level domain names. Next slide, please.

So, how can you be a part of the IDN conversation? Well, you can participate in EPDP deliberations or just being observer. You can work with the stakeholder group giving input to the EPDP deliberations. You can read and comment on proposals during public comment and that's not just for EPDP but that is also for when the rules are generated at the generation and integration panel because they are asking people who can speak or work with a certain script to read over the rules and make sure that they make sense within that script.

And then last but not least you can continue to learn. So keeping up with IDN updates, paying attention top-level domain name round and learning more about universal acceptance because IDNs are just the tip of the iceberg for language acceptance across the Internet. There's still a lot more that has to be done. Next slide, please.

So, are there any questions or comments?

DEBORAH ESCALERA: Any questions for Jessica? It looks like Roberto has his hand raised. Can we unmute Roberto so he can speak? I'm looking for Roberto here.

ROBERTO GAETANO: Hello. Can you hear me?

DEBORAH ESCALERA: There you go. Yes, go ahead.

ROBERTO GAETANO: Yeah. Just a small comment. This was an excellent presentation. I would like just to say that IDNs are not only scripts that are different. We have IDNs also in the so-called Latin script and that is because some of the languages that use the Latin script have accented vowels or a cedilla, or the tilde or other [inaudible]. And they fall also in the category of the IDN. It's just a note. But the presentation was really excellent. Thank you.

DEBORAH ESCALERA: Thank you, Roberto. There's also a comment in the chatroom from Dessalegn. "There are IDN and universal acceptance programs with several working groups under them under the umbrella of Universal Acceptance Steering Group which anyone is most welcome to join." Thank you, Dessalegn.

Are there any more questions or comments for Jessica? I do not see anymore hands.

JESSICA STARKEY: Thank you for having me.

DEBORAH ESCALERA: Thank you so much, Jessica. Great job. Well-presented. Thank you so much. Okay, we're going to move on to our next presenter, Brian Leacock. Brian?

BRIAN LEACOCK:

Okay. Yes. Thank you. So I will today be doing a presentation on the processing of personal data. So without any ado, I will commence.

Hello! Good afternoon, everyone. My name Brian Leacock. I am a 24-year-old Barbadian law graduate from the University of the West Indies Cavehill Campus. I am currently studying the Bar Practice Course at the University of Law Bloomsbury campus in London, England. And today I will be doing a presentation on how I believe that we, as a global Internet community, should app the issue of achieving a transnational approach to ensuring the individual’s privacy rights are upheld and that their personal data is processed lawfully, fairly, and transparently.

Canadian technologist and former Chief Executive Officer of AVG Technologies, Gary Kovacs, once stated that privacy is not an option and it shouldn’t be the price we accept for just getting on the Internet. However, he also stated that the long-term value proposition for cell phone companies isn’t voice conversation. It’s transfer of data.

The reality is we live in an age where personal data is becoming more valuable than gold and multinational Internet corporations are processing personal data to amass large profits. However, in many instances individuals’ personal data is being processed without their knowledge or consent and sensitive information about the data subject is being accessed by third parties, making the data subject susceptible to cyber bullying, mental distress. Identity theft, financial loss, reputational damage, or even extortion.

A known example of data subjects suffering from the misuse of data processing occurred in 2014 after the release of taxi data in New York.

Due to the release of this data, taxi driver salaries were made public. The home addresses of certain passengers became available and the movement patterns of various celebrities and public figures were published, leaving them susceptible to a potential robbery or attack. Instances such as this is evidence why the right to privacy must not be diminished or infringed.

It is a well-recognized notion that the right to privacy is sacrosanct as over 150 jurisdictions around the world have enshrined the right to privacy within their constitutions. The right is guaranteed in section 11 of the Barbados Constitution. The right is guaranteed under Article 53, Chapter 57 of the Constitution of Egypt. And also the right is guaranteed under Article 102 of the Norwegian Constitution.

Accordingly, in a contemporary society, it must be said that the protection of the right to privacy must include the right for one's personal data to be protected. Some countries have indeed recognized this fact, as Albania has been so progressive as to specifically provide in Article 35 of their Constitution expressed provisions for the protection, not just of people's privacy but also for their personal data as well.

In an ideal scenario, perhaps every country in the world would enact constitutional provisions similar to Albania's to ensure that people's personal data was not unethically processed. However, impracticality this is unlikely to happen, given the drastically different norms and values of all the countries around the world. Therefore, a trans-constitutional approach to the protection of personal data does not seem to be practical.

Some attempts have been made to achieve a trans-national approach to the protecting of people's personal data as evidenced through the introduction of international treaties, like the General Data Protection Regulation or also known as the GDPR.

Article 4(1) of the GDPR defines personal data as any information relating to an identified or identifiable natural person. So essentially any information that relates to a human being may be considered as personal data.

Article 4(2) of the GDPR goes on to define processing as any operation or set of operations which is performed on personal data, such as recording, altering, or destroying such data.

As mentioned earlier, there are several risks involved in allowing an individual's personal data to fall into the wrong hands in the GDPR appropriately attempts to legislate when the processing of personal data will be considered lawful.

Correspondingly, Article 5 of the GDPR states that personal data shall be processed lawfully, barely, and in a transparent manner. In determining whether the processing of personal data is lawful, Article 6 lists six grounds upon which data may be processed lawfully. However, Article 6 only requires one of these grounds to be present.

Consequently, since consent is one of these grounds, once a data subject has given their consent to the processing of their data for one or more specific purposes, their data may be processed lawfully under the GDPR.

Obtaining the consent of the data subject is perhaps the most popular means by which websites circumvent unlawful data processing accusations and that nearly every single time we visit a website, we are asked to accept the cookies for that website. However, many people only know cookies as trees we leave for Santa Claus when he visits us on Christmas Eve night. Cookies are small files that websites send to your device that the website then uses, meaning that cookies are used for data processing.

And very often, when you agree to accept cookies, you may not know how your data is being processed and could be giving a website permission to access very sensitive information.

Now, this issue is particularly concerning when it comes to artificial intelligence systems that carry out biometric identification, as these systems process information about people's facial recognition, fingerprints, and even retina scans. And for individuals to be unaware as to how this information is being processed is a blatant breach of the right to privacy.

It is therefore submitted that current rules. Thus, we as a global Internet community must formulate a trans-national approach to ensure privacy rights are upheld all throughout the world.

Perhaps the main issue with achieving a trans-national approach to the protection of the individual's privacy rights and the prevention of unethical processing of personal data is the drastic difference between the regulations governing the processing and surveillance of people's personal data around the world.

For example, how does one reconcile the mass level of government surveillance of people’s personal data that occurs in the United States with the limited level of surveillance permitted on individuals in the United Kingdom.

Furthermore, not only other differing laws governing surveillance in countries like the United States and the United Kingdom, but also a drastically different approach is taken with regards to the right of freedom of expression and the laws of defamation.

Therefore, it simply would not be practical to contend that a trans-national approach to protecting individuals’ right to privacy and preventing unethical processing of personal data could be achieved by encouraging every country around the world to change the domestic laws.

And despite the right to privacy being enshrined in several constitutions around the world, many of the provisions still fall short of offering adequate protection against unlawful and unethical processing of personal data.

Despite the myriad of issues associated with the unlawful and unethical processing of personal data, small steps have been made in recent years to combat the issue. One of these steps being search engine Google recently expanding data trafficking limits for advertisers. Now there will be limits not only on how much data can be tracked by advertisers over its Internet platform, Google Chrome, but limits on how much data can be tracked on apps used on Android-based smartphones.

Additionally, one of Google’s rival tech companies, Apple, will now require app developers to ask permission from Internet users before tracking their personal data. Accordingly, these measures were not achieved through the changing of any domestic law or the implementation of an international treaty but by multi-national corporations themselves changing their own domestic policies.

Therefore, the Internet community should be invested into compelling multi-national Internet platforms to change their internal policies as this is the most practical means of effecting real change.

Therefore, in conclusion, a uniform de jure trans-constitutional approach to sufficiently protect individual’s personal data may never be achieved.

However, a de facto trans-national approach for such protection may be achieved if efforts are invested into encouraging Internet platforms themselves to amend their own internal laws to achieve the desired outcome. Thank you very much.

DEBORAH ESCALERA: Thank you, Brian. Very well done. And I appreciate your humor about the cookies.

BRIAN LEACOCK: Thank you.

DEBORAH ESCALERA: Okay. So, are there any questions for Brian? I don't see any hands raised. Any questions from the other NextGen?

Okay. So it looks like Roberto has his hand raised.

ROBERTO GAETANO: Sorry. I forgot. It was an old hand.

DEBORAH ESCALERA: Oh, old hand. Okay. Thanks, Roberto. Okay. So, keep in mind that these presentations will be posted on the website, so if you have any further questions or want to refer back to them, you're welcome to do so.

Okay. So let's move on to our final presenter, Luis Rolfo. Luis, you're welcome to begin when your slides are put up. Thank you very much.

LUIS ROLFO: Thank you very much. While I wait, I want to begin just by saying how excited I am to be here at ICANN73. I want to begin by thanking Roberto, my mentor. One thing he said that stood out was that this is the first step in my ICANN journey, not the last. I hope that's true.

Second, I want to also thank Deborah and everyone else who makes this phenomenal conference happen, especially in the virtual world. We understand there's many challenges to it.

Now, for my presentation today, I want to be very clear. I'm going to try to distill a few things and not offer a solution. And this is because ICANN

has a beautiful solution and that is a multi-stakeholder model and the idea of consensus building before anything is regulated.

Further, I want to say that because the United States was the pioneer when it came to the Internet, a lot of my presentation is based on US law. But please keep in mind this is not consistent with the law of other countries because the United States has to adhere to treaties when legislating trademarks and with [inaudible]. Next.

ICANN is an organization of principles and these principles were tested, what we saw recently with Ukraine, and they're continuously tested every day through trademark litigation and [inaudible] the bylaws in the very beginning that says that we must ensure a stable and secure operation, not act outside the mission, and will not be a regulator.

To be clear, ICANN is not a governing body. And this is very important because we want to keep it this way. At the same time, there are some things that are going on right now such as intellectual property rights and speech that might force ICANN to dip their toes into the water and become regulators, if they are not already.

Now, a little bit of backdrop as to how ICANN began and the fundamental principles. Next, please.

ICANN is, of course, international but there are US rules and statutes that are paramount to understand. The first—an Americans love this one—is free speech. Let's be honest, trademarks are speech. Further, the Lanham Act is what regulates trademarks and the standard here for infringement is the "likelihood of confusion" as to several factors.

Additionally, in 2021, the Trademark Modernization Act increased trademark protections by creating a rebuttable presumption of irreparable harm. This means that it's assumed that an infringing party against a trademark is said to have caused harm to that trademark owner. Of course, the burden would then shift and they would have to rebut that presumption.

There's also other things relevant to the Internet, such as the Cybersquatting Statute, and that's something that's paramount because it's a really a response to the Internet. And if you go back to the beginning—next, please.

We can see that there were things from the beginning that really focused on some dilemmas we're seeing. The original green paper and the white paper that followed as a response that was issued by the Department of Commerce in the late 1990s stated that this was a trademark dilemma and offered solutions to solve it by creating a centralized system which was going to be governed by WIPO (World Intellectual Property Organization). It was very clear that there was going to be speech protections and there was a debate about registries and whether or not they should be the ones implementing protections or if it was going to be centralized. Ultimately, that's always a debate that seems to be ongoing, while a lot of you obviously know more about this than I am, as I am NextGen and some of you all are more established.

Some registries are allowed to create their own rules when it comes to certain things—and we see this later on down the line—as long as we're

not inconsistent with ICANN. But ultimately, the debate is between centralized policy, and if this were a governing body, it would be a federated policy. Next, please.

Trademarks enjoy very strong protections and just recently in 2000, the Supreme Court increased these protections by allowing a generic top-level domain we have afforded trademark protections on the principle registry. The case involved Booking.com and there was a lot of blowback, specifically just [inaudible] minority dissent stating that this would provide very strong protections and some articles have been written to say that this would limit competition. So, we see that trademark protection has been strong. [inaudible] Supreme Court.

And if you look at the opposite side of trademark law, which is speech rights, these are also strong and they are often—next please—trademark defenses.

So, there's two cases that we're going to point out something that's engrained in our policy that is followed by WIPO and other arbitrators which anyone who has a domain name or a registry, a registrant, or a registry would have to go ahead and enter a contract, and that is that generally infringement does require [inaudible] bad faith. And there's two cases.

The first was a PETA case in which PETA was found to be cybersquatting. A gentleman tried to register PETA.org and about 30 other websites. So, when the consumer—or the end user, the user of the Internet—went to PETA.org or similar websites, they were directed to a satirical website that specifically stated, “We are not affiliated with

People for the Ethical Treatment for Animals. Rather, we are making fun of them and saying that we are People Eating Tasty Animals.” Because they had many registrations, about 37 in this case, and along with other factors such as the fact that this was perhaps not their first offense, it was found that they had bad faith, and therefore were infringing.

Let’s compare that to FALLWELL.com as an illustration of where there was good faith to counter the bad faith. Now, Reverend Jerry Falwell, Jr. is a controversial yet [inaudible] figure in American politics for about the past three decades. He’s a Christian—Evangelical Christian—and he’s not necessarily within the mainstream of American politics.

One person registered FALLWELL. Falwell is spelled with one L, the website is spelled with two. And here it was found that there was actually good faith as opposed to PETA, because even though he diverted users to a book that criticized Falwell on Amazon, it was protected speech because he did not purchase multiple domains. He did not try to ... He didn’t have a history of this. And other factors.

So what I want to be clear about this is that there is an element of good faith or bad faith in infringement. Generally, infringement happens when there is bad faith but speech protections are strong when there’s good faith. And to show this, we have to realize that the first case, PETA, was found to have multiple registries.

Now, apply this with data protection laws and we see that it would be much harder for people to understand where there is good or bad faith because it’s much harder to find how many sites someone registered and how many registrars they may have used for this. But we do have a

resolution [inaudible] process and generally just some basic rules. Next, please.

So in any lawsuit, along with UDRP and along with the US courts, in most courts the complainant can pick the forum and the jurisdiction. This means that if I believe that you are infringing on my trademark, I can sue you in US court, some other court, or go through the Uniform Domain Name Dispute Resolution Policy, which is a centralized and universal dispute policy quasi-governed by ICANN. Next, please.

And this is going [to meet] the second thing, which is the Global Data Protection Regulation. Like trademarks, data is also a form of speech, and in 2018, about two weeks before GDPR was put into effect, WHOIS became mostly anonymized by a policy that allowed this to happen set by ICANN.

As stated previously, this made it harder to find respondents if you are complainant and also more difficult to show good or bad faith. This has effects on speech defenses because it will be hard to put forward affirmative evidence of good faith when the respondent does not reply. And it will also be hard to find bad faith [inaudible] trademark owners are not necessarily the happiest people about this. Next.

There is currently some policy being created by WHOIS—by registries and registrars as well because they are able to have more flexibility when it comes to WHOIS policy.

In addition, I want to point out that the TTAB recently won this in court. The TTAB, of course is the United States office that would go ahead and

hear some trademark disputes. They stated that GDPR does not apply in the United States and they applied several tests [when seeing] when foreign laws would apply to the United States.

So, I'm a trademark holder. Even though there are some costs affiliated by circumventing the UDRP, I might want to go to the United States because I don't have the strongest protections that are afforded by GDPR or by other regulations.

Now, this brings us to how we're going to move forward and regulate this. How are we going to make sure the Internet is available in states that have very strong data protections and states that necessarily don't have that culture yet. So, next please.

And there's really always been two ways that I can see this happening. The first of course is centralized, such as the Uniform Domain Name Resolution Policy. It's enforced through contract. And really here we're seeing ICANN be a policy maker or at least allow policy makers to control everyone who is on the Internet.

The second is modular regulations or registries or registrars create policies that are consistent with ICANN. They're fragmented. But this creates a higher compliance cost for trademark holders and for generally people who control the Internet because they have to abide by different rules and regulations according to the registry or registrar that is being used. And as we know, there's over thousands of registrars and each one could have separate contracts that would govern how they use WHOIS, how to use data privacy, how to respond to subpoenas

on trademark protections. What this is, is a slippery slope. Next slide, please.

So, because trademarks and data are both speech, we can see that there's currently some companies in the private sector regulating speech. Not all of them doing well. Meta, formerly known as Facebook, has been doing this in the United States by deferring to "authoritative sources". Their shares just dropped about 30% if you want to see how that reaction was. Twitter is doing this. YouTube has been doing this to some extent. And of course these are not government actors, necessarily. These are private actors. But there are lawsuits, including one by former President Donald Trump against Facebook that are alleging that they are doing this on behalf of governments.

We are also starting to see—and once again I am very surprised. This is just shows how durable ICANN is and our principles are because when I made this slide, Ukraine had just asked ICANN to take Russia out of the Internet—a seemingly unprecedented move. And we pushed back and upheld our principles.

The question is: is this going to be a slippery slope as we start seeing more of this? And although ICANN said no, Namecheap went ahead and took off certain Russian sites on the Internet and we're seeing other actors [inaudible] doing similar things. We're private actors [inaudible] have to have a [inaudible] to adhere by, a way that consumers enjoy values might start creating a somewhat fragmented Internet based on speech regulations, just like some registries and registrars in China or other countries have to adhere by their government, we might see the

private sector create a fragmented system where not everyone globally can go to Namecheap or GoDaddy or someone else.

Also, in order to adhere to this, to these privacy regulations, it may be necessary to have a fragmented system. For example, GDPR does not allow data to be processed in the United States, as Brian stated, because the United States does not have these data protections and there is a risk of the national security agency looking at our data, even though they would require a warrant under certain courts.

But if this does exist, how would a registrar be able to adhere to GDPR in the European Union economic area while also providing the same service to the United States and remaining compliant with trademark regulations and other regulations that may follow. Additionally, we have the market.

Now, once again, I want to say that I'm not offering a solution because the solution already exists. I saw it work in a very short amount of time, as I stated, with Ukraine and that is that we have to continue to adhere to our principles. That is that what works is our multi-stakeholder model and building consensus. And I want to make sure that we all stay there because, let's be honest, there are going to be more calls for us to regulate certain types of speech. But with our models moving forward, we won't become the [accidental speech regulators] and we will adhere to an open Internet.

So, any questions? I want to thank everyone involved, again, and I'm looking forward to the week of ICANN73.

DEBORAH ESCALERA: Thank you so much, Luis. Okay. Do we have questions for Luis? Very well-presented, by the way.

LUIS ROLFO: Thank you.

DEBORAH ESCALERA: Any hands? Any questions? Very quiet group this round. Okay, there is a raised hand. Okay, go ahead with your question.

LUIS ROLFO: I can also drop my email in the chat and anyone can email me directly.

DEBORAH ESCALERA: Okay, I've allowed you to talk, RC. You can go ahead and speak. Do you want to move forward with your question?

Okay, it looks like they're not speaking, so we'll move forward.

Okay. So, you were our last presenter. If there's no more questions, we will go ahead and end the session. I just put a note in the chat. If you have any follow-up questions, please reach out to us at [engagement.org](https://www.engagement.org).

Thank you so much for all of our presenters today. You did a fabulous job, every single one of you. It shows because the interpreters did not

have to interrupt me once to interrupt you. So that's wonderful. Thank you so much. You did a wonderful job. Congratulations to all of you.

And I just want to encourage you moving forward during ICANN73 to attend as many sessions as you possibly can. I encourage you to ask questions during all of these sessions. Do not hesitate to ask questions. As you are a newcomer, people want to hear from you.

Thank you to all of our participants today and all of those who attended today's session and a special thanks to our meetings team and our interpreters and thank you to Fernanda for running our slides.

With that, I will end the session and wish all of you a fantastic and successful ICANN73. Thank you so much. We can end the recording.

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