
Leon Grundmann: Hello, and welcome to the 4th meeting of the Rights Protection Mechanism Implementation Review team on the 24th of May 2023 at 1530 UTC. My name is Leon Grundmann, and I am the remote participation manager for this session. Please note that this session is being recorded and is governed by the ICANN expected standards of behavior. During this session, questions or comments submitted in chat will only be read aloud if put in the proper form as noted in the chat. We will read your questions and comments aloud during the time set by the facilitator of the session. If you would like to ask your question or make your comment verbally, please raise your hand.

When called upon, kindly unmute your microphone and take the floor. Please state your name for the record and speak clearly at a reasonable pace. Mute your microphone when you are done speaking. To ensure the transparency of participation in ICANN's multistakeholder model, we ask that you sign in to Zoom sessions using your full name. For example, a first name and last name or surname. You may be removed from the session if you do not sign in using your full name. With that, I will hand the floor over to Lars. Thank you.

ANTONIETTA MANGIACOTTI: Actually, I will take it from here. Thank you, Leon. This is Antonietta Mangiacotti. I want to welcome you all for joining the call today. On the agenda today, we have a couple of items that we wanted to cover. We thought we would start off with a presentation and discussion around the six remaining open implementation items that are concerning some of the recommendations that you see here on the

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screen as well as what some of the proposed next steps are for these. I think Leon maybe can share the link to this document in the chat so that you all can have access to it. Thank you, Leon.

Then after that, we'll briefly review the new updates to the RPM requirements and the TM-PDDRP roles that were made post-ICANN76. I don't think there should be anything too concerning. Most of the updates were made by the IPT or based on IRT input proposed at the ICANN76 meeting, and then as mentioned in terms of next steps for those, the goal is to have the IRT do one final review of all the impact of procedural documents just to make sure there aren't any concerns or there isn't anything we've missed before we prepare those and then publish them for comments.

Okay. So, moving on to document that you see here on the screen. As you recall, based on discussions at the RPM/IRT meeting at ICANN76, we had agreed to put together a proposal on proposed next steps for several open implementation items. These items are highlighted in yellow here on the table and concern URS recommendations 4 and 14, TMCH Recommendation 4 and then implementation guidance related to URS Recommendations 3 and 6 and Trademark Claims Recommendation 5. So, in reviewing these items, we determined that some could possibly be implemented through this project. Others might maybe benefit from other policy work. If this is something that we agree on, then we'd need to reach out to the council to determine next steps.

Moving on to the first item here on the list is URS Recommendation 3. The recommendation itself calls for amending the URS rules to

incorporate in full Rule 11 of the UDRP. So, as you recall is something that that we revised in the rules to incorporate the text of Rule 11. However, the issue here is with the implementation guidance. So here, the working group recommends that the implementation team consider limiting preliminary submissions regarding the language of the proceeding to 250 words.

Secondly, the notice of complaint should contain a section explaining that the respondent may make a submission regarding the language of the proceedings. Thirdly, if the translation is ordered, the translation of the original submission may normally exceed the prescribed word limit of 250 words. And lastly, in the guidance, the implementation team should consider developing potential guidance assist URS examiners in deciding whether to deviate from the default language in the context of a particular proceeding and then it goes on to list some potential guidance to consider, or this point for.

So, regarding the items one through three in this implementation guidance, we thought in reaching out to providers to determine the feasibility of implementing these as best practices. In discussing this internally, we also know that there could be some concerns by providers associated with costs and resources. So, we took a first step here in reaching out to two providers at the end of last month and so far, we've only heard feedback from one. It didn't seem to be too concerned with implementing these one through three, but the goal here is to get all of the feedback first, compile that information and then share with the IRT and proceed from there.

And then for the last point here, number four, in the guidance, it calls for developing educational material. To us it appears more the recommendation or an add-on item rather than implementation guidance around the text of the recommendation. So, implementing this now through our project would likely impact the timeline. So, with that being said, maybe this was something that would maybe benefit from further policy work potential as part of Phase two of the PDP, and it could be put forth instead as a recommendation through that effort. So, this is what we're thinking about for the implementation guidance under URS Recommendation 3.

Again, I know this is the first time the IRT is looking at this document. So, if additional time is needed to review and provide input, you may do so following the call as well. If not, we can move on to the next one. The next item on the list here is URS Recommendation 4. The recommendation calls for mending URS 4B or rule 4B in URS procedure paragraph 4.2 to require that the provider transmit the notice of complaint to the respondent in English and to translate it into the language of the registration agreement.

So, as you may recall, this is something that we also incorporated by amending the URS rules and procedure. However, in discussing the thoughts internally, some members pointed out that we need to come up with a solution regarding how the provider would determine what the language of the registration agreement is. The registration agreement is executed between the registrant and the register, so it is not known to the registry operator what the language of the agreement is, nor do they have a copy of the registration agreement. The

registration agreement is determined by the registrar, and noting it could be different also from the registrant's country or territory.

Also, some background here received during the RPMPDP, a public comment to the preliminary version of this recommendation. Some pointed out that registration agreement language is known. Even if the WHOIS redacted, and if it is redacted in the WHOIS because of the ending of the registrar, that the complainant deals with this moment at all times. Others also raised concerns regarding the cost of translation, but the working group didn't discuss further how that translation would be done. Also, as a reminder, the URS procedure is intended to be quick and low cost, so something to keep in mind when coming up with the solution here.

And so, we had proposed two options for how this could be dealt with. The first would be that the provider sends the notice of complaint in English, and then with a request to the registrar of the respondent to transmit to the provider within a certain amount of days or hours what the language of the registration agreement is.

The second option could be that instead of contacting the registry operator for that registration data, the provider would contact the registrar to request that registration data and also include a request for the language of the registration agreement. For both of these options, the URS provider would need to confirm the language of the registration agreement with registrar. So, for that, an obligation would possibly need to be added. And then if we would go with the first option, we'd also need to require registrars to respond within a certain amount of days or hours.

So, these are two options to consider regarding the issue encountered with URS Recommendation 4. No questions here. We'll move along to URS Recommendation 6. So here, the working group is recommending that Rule 6(a) be modified to clarify that each URS provider maintained and published a public available list of examiners and their qualifications through regular updating of their CVs. As you can see here, and as you may recall, we incorporated this language in URS Rules Section 6. The second part of this recommendation is also cause for amending paragraph seven of the URS procedure to add a requirement that the URS provider published their roster of examiners and so on and so forth and so that revision and language was also captured in the URS procedure.

Then the implementation guidance goes on to note that providers can compel examiners to provide updates or verify if there are any changes to examiner qualifications and professional affiliations. So, URS providers shall be required to request that examiners update their CVs as prescribed and keep their CVs current, and then it will be sufficient to satisfy the objective of providing public visibility of examiner rotations at the provider's web provides a mechanism of function where one can search for those URS decisions.

So, in reviewing both of these, it appears that the implementation guidance is consistent with the recommendation and it appears that we've incorporated both the recommendation and the guidance and the revisions there that are being proposed to the rules and procedure. But please feel free to take another look at this to see if there's any further language that needs to be captured in these two sections here

that has not been incorporated from the guidance and the recommendation.

And then no questions. We can move on to the next item here on the table is URS Recommendation 14. So, this one is if you recall, it requests that the implementations team consider reviewing implementation issues identified with respect to registry requirements then in the URS high level technical requirements and then amend this requirement if necessary. The working group goes on to note that a third of practitioners indicated problems with implementing the relief award following URS decision.

URS providers also reported that some registries and registrants are difficult to implementing the extension requests of the URS suspension as they might not understand the rules in the process and therefore, that the implementation team review issues regarding registry Requirement 10 and potentially also consider whether enhanced education is needed to help registries and registers understand how to implement the relief and gain better awareness of the URS process.

So, what we're proposing here, so this recommendation essentially calls for possible amending registry of Requirement 10, and in turn, also the URS rules and procedure by potentially adding or clarifying the domain name, suspension, extension of the one additional year, and/or has also developed educational materials to help registries and registrar. So again, this is another one of those where we think there could be maybe further policy work done here around with the issues, how to best address them, what revisions specifically need to be made, and that maybe could be addressed further as part of RPM Phase 2 PDP. So, this

is something that we also wanted to get your thoughts on the suggested approach. And again, if additional time is needed to review this document, your feedback is welcome following the call as well.

The next item we also have on this list is the Trademark Claims Recommendation 5. So, this recommendation essentially recommends the status quo that sending the claims notice before registration is completed be maintained. The issue here is with the implementation guidance. So, the guidance notes that they're operational issues with presenting the claims notice to registrants on super registered domain names because of the 48-hour expiration period of the notice. The working group asked the implementation team consider ways in which Org can work with registers to address these issues, possibly altering the 48-hour expiration period, but to continue to allow legitimate pre-registrations of domain names.

So, this is another one that we thought the guidance appeared to be more of a recommendation than the guidance, and discussing this internally, it became apparent this is quite a complex issue to implement, particularly from a technical standpoint. Some in the IPT also noted potential issues related to TLDs that go to auctions and so based on some of the discussion that we had internally, it seemed that further policy work would need to take place here, potentially as part of Phase 2 of the PDP.

I know that some others on the equity are more familiar with this issue and we were involved in the conversations in the past around this topic, so if there's anything that other IPT members would like to add here to

help with the discussion, please feel free to chime in. Jody, I see your hand is up.

JODY KOLKER: Hi. Just making sure you can hear me. Can you?

ANTONIETTA MANGIACOTTI: Yes, I can hear you.

JODY KOLKER: Hi. This is Jody Kolker from GoDaddy. We have concerns about this. This is something definitely that we like to see addressed as this is an operational issue for registrars that are doing pre-registrations of domain names possibly months in advance of the domain or the TLD actually going live. The 48-hour period, trying to get a customer, a registrant, potential registrant to approve that just to take you on the timeline. They may pre-register the domain name or request that they would like to register the domain name before the TLD goes live, up to six months before the TLD actually goes live.

Asking them to come in 48 hours after they've been waiting six months for the TLD to go live in order to accept this registrant agreement or, I'm sorry, the TMCH agreement is rough. Let's just put it that way. Especially if that TMCH hasn't changed in six months. From a registrar standpoint, we would like to actually ask the person, the potential registrant at the time that they are pre-registering the domain name to actually accept the TMCH at that time. If the TMCH doesn't change for six months, registrars would like to be able to use that agreement or

however you want to say that they've actually accepted the TMCH from six months ago to register that domain name.

The TMCH does not change that often within six months. If it does change, we are more than happy as registrars to go back to the registrant to say you need to accept this again. But we want the ability to be able to accept that more than 48 hours before the TLD goes live. I'm just curious if anyone else has any questions about that. Thanks.

ANTONIETTA MANGIACOTTI: Thank you, Jody. Yeah, this is some of the issues that I know we also discussed. And it's definitely not a simple solution in terms of how to handle this and so it's clear that maybe further work needs to be done. I see other hands up. I think Susan is next.

SUSAN PAYNE: Actually, I think Roger is ahead of me.

LEON GRUNDMANN: Oh, Roger. Sorry. Please, Roger, go ahead.

ROGER CARNEY: No worries. Thank you. I was just going to add on. Actually, I think that there is a simple solution. During the PDP, we actually asked where the 48 hours came from and I don't think anyone was able to define where that came from. I think it was just an arbitrary number that someone picked, and I'm assuming it was IBM or whoever built the TMCH, and I

think the simple solution is just to remove the 48 hours and only invalidate claims when they change. So, the claim idea is valid until it actually changes and that solves the problem, and it's fairly simple to do. And again, I don't think anyone has the right work except for the TMCH to make that happen. So, I think it is a simple solution. Thanks.

ANTONIETTA MANGIACOTTI: Thank you, Roger. Susan.

SUSAN PAYNE: Thanks. Hi. Sorry. It's Susan Payne here. So, I can't comment on Roger's suggested solution. It makes sense to me, but without me having any of that kind of technical knowledge, but I think this is exactly why the PDP working group thought that this was an implementation issue. The point is, and we discussed this extensively, the point was really that it's important that a registrant has seen the claims notice and made the necessary acknowledgement and that has to happen at the time when registration happens, but I don't think we were strict about when that timing is.

And these comments about if the TMCH records haven't changed, and so there's no new mark in the TMCH over the last six months or whatever it is, has changed the situation. Then I don't think anyone wanted to prohibit pre-registration. What we wanted to ensure was that in performing a pre-registration service, that the requirement for claims notice to be given and acknowledged was maintained and that's why we did feel that this was absolutely an operation issue for Org and registrars to work out how to meet the two needs.

ANTONIETTA MANGIACOTTI: Thank you, Susan, for that input. Very helpful. It clearly sounds like further discussions are needed around this. Jeffrey, I see your hand is up.

JEFFREY NEUMAN: Yeah. Thanks. Jeff Neuman. Yeah, I think the 48 hours came from, originally it came from an issue that I don't think we have now, that it's been in place for a decade or whatever. The 48 hours was really at a time when you were going to have the launch of a huge number of TLDs, and they were going to announce their launch on the main site and everyone would see it, and then you'd give a certain amount of time for all these trademark owners that were going to come in to make sure that their mark was in the TMCH, and so the fear was that pre-registrations, if it was taken six months in advance, they would only look at the claims that were in place six months in advance and not in between.

So, I don't think that exists anymore. And I think what Jody and Roger were saying is that, if they take a pre-registration six months in advance and anything changes, meaning that there's now a new application or in TMCH or that it's changed and there is no more claim, I guess, then that's when if I'm hearing Jody and Roger correctly, that they'll, of course, then run that by the registrant. So, I do agree with Susan and Roger and Jody this is not really a policy issue at all. This is purely implementation, and the rationale for the 48 hours just doesn't exist right now. Thanks.

ANTONIETTA MANGIACOTTI: Thanks, Jeff. So, what I'm hearing is, maybe this is something that we should continue to discuss and address further through this implementation project again. We also don't want to hold up the timeline for this. Maybe this is an issue we can again revisit down the line, but to implement it during our project if this is what we are going on. Gustavo, I see your hand is up, and I know you also have some more background and information on this issue.

GUSTAVO LOZANO IBARRA: Yeah. I don't want to enter into the woods. It's just a question to Roger and Jody, as implementers. How do you envision this working in the future? Will you expect a signal from the TMCH of when was the last time that the primary notice changed because a mark was added or removed? Or were thinking of having like a local catch of those primary notice and compare them in the future to see if they changed? Yeah, that's the question, basically. Yes, Jody.

JODY KOLKER: Sure. This is Jody. I'll respond right away. Gustavo, what we've done in the past is that we would run through each of the domain names to determine that we had a pre-registration on to determine if they did have a TMCH on them. So, we would start that 48 hours before it's about ready to go live. We would determine if in the future this is what we'd like to do. When the registration has taken months in advance, we would determine if there is a TMCH on the domain. If there is, we will

display that to the customer. We would also display an ID basically for that mark, I guess is what I want to say.

When it comes down to be 48 hours away, we would check that again to see if that mark had changed. We would need to know or we would need some way an indicator to know whether it's changed and I believe it does return some kind of ID for the mark. If the mark hasn't changed or if the ID hasn't changed for the mark, then we would not ask the customer again. If it had, we would notify the customer to say they need to come back in and they need to reaccept the TMCH. Does that make sense?

GUSTAVO LOZANO IBARRA: Yeah, it makes sense. I'm thinking more on the lines on how can we make life for you easier. So, for example, we could add to the domain name label list like a new field saying when was the last time that the notice changed or something along those lines, even a badge or something so that you can compare. But I think that I understand your point. And let me --

JODY KOLKER: Yeah, that would work also. I mean, if we had a last change data on that, that would be great. Then we wouldn't have to mess with the IDs. We could just look to see when they accepted it, and if it hadn't changed since then, we wouldn't ask them again. But I think we have to have some type of an ID to be able to send in to say, here's the ID related to that string, basically.

GUSTAVO LOZANO IBARRA: Yeah, that makes sense. Roger?

ROGER CARNEY: Thanks, Gustavo. And just to add some, maybe, a little clarity. And, obviously, a new claim could be put into the TMCH in between pre-reg and actually going live. So, we would actually check all of our pre-reg. And in today's world, that claim ID actually changes every 48 hours, and that's really the way [inaudible - 00:29:22], is the claim ID becomes invalid because it changes. But if the simple solution is not to change that ID unless actually the claim changed, then that ID would still be valid at any point up until it actually gets registered. So, I think that the simple thing is you query the TMCH for the ID, and if it doesn't exist, then you know you had to present a new one. So, you go get the new one for it.

And again, just to be open and transparent, you would have to do that for every pre-reg because a claim could come in after you took the pre-reg even before registration opened. So, it's a balancing act. And I'm guessing, Jody, we would probably get rid of high 90% of our reach outs back to registrants because of that 48-hour window. We take it a month or two months in advance, and then we always have to contact them back in the last 48 hours, and they always have to accept it in that last 48 hours or they won't get it. So, I think that again, that 90-some percent of those people at pre-reg, we have to contact today that we wouldn't have to in the future. Thanks.

GUSTAVO LOZANO IBARRA: Sounds good. I mean, we can discuss the solution also with the TMCH operators and came up with some ideas. My next question is, what group or team do you think will be the best to discuss these technical issues. Would that be this group? I don't know if we have enough operators here. Maybe TechOps? It's just one question that I have.

ROGER CARNEY: Thanks, Gustavo. That's a very good. I think that was a similar question we had in the PDP as where is best to handle that discussion. And maybe you're right, maybe TechOps make the best spot. It involves all the people on the one side of the equation. So, I think that that may be a good spot to have that discussion. Thanks.

ANTONIETTA MANGIACOTTI: And, Jody?

JODY KOLKER: Hi. This is Jody again. Yeah, I think Tech Ops is the best place to have this. That way we can have registries and registrars together. I think the last time this was implemented probably only included registries and I think you definitely need a registrar there to talk and TechOps would be the best place to do it. And I was just following up on what Roger said too. We would get rid of a significant number of contacts to the registrant when we're within that 48-hour window if the claim ID did not change every 48 hours, but only when the actual claim ID did change, or when the claim actually changed. Thanks.

ANTONIETTA MANGIACOTTI: Okay. Thank you. No further comments here. We can move to the last item on this table is regarding TMCH Recommendation 4. So, this is one where the working group recommends that the TMCH database provider or IBM be contractually bound maintain at a minimum, and this is standard levels of redundancy and uptime. The implementation guidance goes on to note that implementation team should consider the advisability of requiring and that one or more provider be appointed.

So, as background here, the Org extended the agreement with the TMCH providers at least for three years or until the launch of the next round. We determine that in order to minimize disruptions to users of the TMCH, maintaining the status quo is recommended while the community works to implement the next round recommendations. And so, the proposal here is that this be implemented through the work track of next SubPro project.

Noting also that in the agreement Org has with IBM, there are service level objectives that they're required to meet, but how we would then implement this in the future if and when we select a new provider or extend or renew with the current ones that we would strengthen the contract length language and potentially adding a clause that captures what is being recommended. Maybe language on penalties as well if those requirements are not met. So, this is the proposal for TMCH Recommendation 4. Aaron, I don't know if there's anything else you would like to add or clarify. As I know you're sort of the providers. Thank you.

AARON HICKMANN: This is Aaron Hickmann here from Staff. Yeah, I mean, I think the proposal listed, well, there actually are service levels within the agreement now. And I think we know we would certainly expect to for future rounds conducting RFP and of course that RFP can be subject to whatever requirements we need to put in there. And I think, yeah, as with anything after you do it for a while, you get better at it, so we certainly would have some ideas about the things to put in future agreements for all of our providers for that sort of thing. So, we look forward to doing that within the next couple of [inaudible - 00:35:14].

ANTONIETTA MANGIACOTTI: Thanks, Aaron. Susan, I see your hand is up.

SUSAN PAYNE: Yes. Thanks. Hi. I just wanted to clarify or understand. You say the agreement has been extended for at least three years or until the launch of the next subsequent round. What does that mean? I mean, does that mean until after the next subsequent round has taken place? It's been extended until then? Or does it mean that once you start the work on the next subsequent round, you will be looking for a new or potentially seeking a new provider? It's just not very clear. I imagine it doesn't actually say that in your contract. So, I just wasn't quite clear what the timing was on looking for a new provider. Thank you so much.

ANTONIETTA MANGIACOTTI: Thank you, Susan. Go ahead, Aaron.

AARON HICKMANN: Okay. This is Aaron Hickmann again. Thanks, Susan, for the question. So honestly, it's whatever we need to do. We provisionally said we think it'll be about three years when we last had to renew it, which I think was at the end of last calendar year and so we thought it would be around that time, but obviously that was before all the planning that's occurring for subsequent rounds. So, we would do whatever it takes to be prepared for subsequent rounds. We obviously need to maintain the platform because registry operators have obligations throughout this, and we do have a few TLDs that are still launching. So, we have to keep the existing mechanisms in place, but we'll get it updated whenever we need to support the requirements for future rounds.

ANTONIETTA MANGIACOTTI: Thanks, Aaron. All right. So, these are the remaining items from the first bucket of work. Again, please feel free to take another look at this to provide any other input to the other list or adding comments on this document if you haven't been able to share it during the call and we'll review and then figure out next steps.

Next, we wanted to just go over some of new revisions post-ICANN76 on the TM-PDDRP rules and RPM requirements made by either IRT members or IPT based on the input we received during the meeting. I thought we could first start off with the TM-PDDRP rules. The updates here are concerning Rule 3(g), which is connected with the recommendation from the RPM final report. So, there was a comment that was raised during the ICANN meeting about the same conduct by registry and it was clarified to mean that it was a conduct that has affect the complainant rights in a similar way.

That was stated here. Following that, we also had a comment about-- Basically this has been revised from, it was changed from passive voice to active voice, so minor change there as well. And lastly, based on a question shared by Griffin here, we added a sentence to state that providers must [inaudible 00:39:04] consolidation in their supplemental rules.

So, these were the updates that have been made to the TM-PDDRP. No questions or issues. And again, we will be sharing these documents again, they're also available for the IRT to review at any time, but before we go to public comment. The team will be able to provide any other input that they may have.

And last was the RPM requirements. The updates here are mainly related to the claims notice. Based on ICANN76, we had a comment to move the part about the notice available in the six UN languages. That was moved to the top, that will also be translated into the six languages. There was also specified here that the marks that accepted into the clearing house. So, of course, be registered trademarks. So that was clarified in the second sentence here.

And then the sentence about the trademark clearing house and what the trademark is, those were switched around based on feedback also that we received. There was a point here about fair use, the language there was changed to non-infringing or otherwise permitted under use under the laws. This was also edits made by the IRT.

And then I think lastly here we wanted to also draw your attention-- Sorry, I'm moving the screen too much, making you dizzy, but the data

elements, proposed data elements that were added, which are the type of mark, registration number, registration date, and status of the trademark holder. So, as you know, this was revised in accordance to the Trademark Claims Recommendations 6, where it would reflect more specific information about the trademarks for which it is being issued.

And so, what we wanted to do is to get IRT agreement on these proposed data elements so that Gustavo and his team can begin working on an updated technical specification and that would be required to support these data elements. From what I understand, it would take some time to develop and publish that. So, the sooner we can get started on it, the better. So, if there aren't any concerns with this, then we will proceed to get that work going.

So, if there aren't any questions on the RPM requirement and TM-PDDRP revisions, we can go to AOB. Noting that we do have a session at ICANN77 on Thursday June 15 at 1300 UTC. You may have received an invite for that already. And the agenda is still TBD, but will be shared prior to the session. Okay. Well, if there aren't any questions-- Oh, Susan, your hand is up.

SUSAN PAYNE:

Yeah. Sorry. If it all possible, could we have whatever documents we'll be reviewing at least a couple of days before? I do appreciate it can be hard to get stuff out to the group when one's working to a deadline and there's a meeting coming up, but at the same time, I feel like none of us have really been able to provide you much input on this call because we're reading this for the first time as you're going through it. So

maybe when we meet for ICANN77, if we could have just a little bit of notice so that we can read through things first, it would be really helpful.

ANTONIETTA MANGIACOTTI: Sure, yeah. So, the impact of procedural documents, the URS, TM-PDDRP, RPM requirements, those have been shared and we've continued to work with the team on making revisions as the work moves along with the proposal. We will make sure that you have access to it if you don't already and share the link as well by following the call. Again, feel free to provide input for the meeting at ICANN77 ideas.

I don't believe there will be any new documentation that will require review. The only thing would be that we would want the IRT to take a look at all of the procedural documents. Like I said, the URS, RPM, and TM-PDDRP prior to going out to public comment, and we will be sure to reshare the links in advance and the timing for when those reviews by the IRT. Okay. Yeah, of course. All right. If there's nothing else, we can end the call and give everybody some time back. So, thanks. Thanks all for joining and providing inputs.

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