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UNKNOWN SPEAKER: This meeting is now being recorded.

BRENDA BREWER: Hello everyone, this is Brenda speaking. Welcome to RDS WHOIS 2 sub group number 3, law enforcement needs. This is call number 3. Call takes place on July 11th 2018, at 15:00 UTC. Attending the call today is Thomas Walden, Alan Greenberg, Cathrin Bauer-Bulst, Lili Sun, Stephanie Perrin. From ICANN Org is Lisa Phifer, Brenda Brewer, Steve Conte, Alice Jansen, and Jean-Baptiste Deroulez. I would like to remind everyone that the call is being recorded, please state your name for the transcript, and I'll turn the call over to Cathrin.

CATHRIN BAUER-BULST: Thank you very much Brenda, thank you all for making time on such short notice to join this call. The main aim of this call, of course, is to discuss how we can quickly make progress on the law enforcement sub group work, and in particular on the law enforcement needs survey. You will recall that while we were still discussing elements of the survey, we were sort of overtaken by events and in particular by the change in access to the WHOIS, which already took today's, well as expected at the end of May, and which has already affected law enforcement investigations. So the idea of doing a two part survey with identical questions, that would be repeated, that would first be run before the changes to the WHOIS were made, and would be re-run once more after the changes to the WHOIS have been implemented for a certain period of time, no longer works... quite obviously, because now we're

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already dealing with the new status quo and so I wanted to see where we can, basically take this from here and whether, in particular, we can consider adjusting the survey a bit further to make sure that we capture what is happening now to law enforcement and whether law enforcement can reflect on the changes that have happened between May or between April, when they first started implementing and now. That we could adjust a couple of the questions, but this principle, I wanted to discuss with you and my apologies, first of all, for not doing this any earlier. I've been completely drowning in other work and I wanted to make sure that I do not further hold up this process, so let's see what your take is on this approach and whether you see a need to adjust the survey and whether you had any other comments on where we stand right now and ideas on how we can progress this quickly. I can see Stephanie cannot hear us at the moment, let's see whether anybody has any input. Either via the chat or via the phone. Thomas, Lili, would you like to share any thoughts on this? Does this make sense to you, would you suggest? Yes, please Lili, go ahead.

LILI SUN:

This is Lili speaking for the record. Yeah I agree Cathrin, I quickly went through the survey we drafted before, so at least we need to fine tune the words since the survey was designed to be delivered before GDPR come into effect. So at least we need to fine tune the words for some of the questions. Second, regarding the impact of GDPR, I am not quite sure what will be reflected for the front line officer. Maybe it just affect, bring their attention that, OK, the personal information is no longer available. To where and how they can get the personal information, maybe they just don't have any idea. That's my personal understanding.

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Regarding how to launch the survey, I think we can... once we're finished and have fine tuned the words of the survey, we can quick launch the survey to some [inaudible] contacts, not to all of them. We can just testify whether the survey is well designed, whether we can get the feedback we want, our intention to get from the participants, and also from my perspective, I already prepared a list of intended point of contacts from the different member countries and I remember you mentioned, so for US, Thomas will take care of. For the member countries of European region, so you can cover that. I can help for the rest, as much as possible, for the rest of the world. I already compiled a list of point of contacts and maybe I'll seek my colleagues help to further identify some suitable points of contact. One issue is that I realized for some of my point of contacts, they don't have the government domain email address, like Gmail, or hotmail address. I think this shouldn't be an issue from ICANN perspective, right? That's all from my side.

CATHRIN BAUER-BULST: Thank you very much Lili, this is Cathrin speaking for the record. I am not sure whether it would be an issue, in fact, that there is no official email address, I mean it might make it harder to verify that the people are in fact law enforcement, but if we proceed by invite only basis and you can vouch for the entities being law enforcement, then my assumption is that that should be fine, let's turn this to ICANN staff to possibly provide feedback on this, if they see any issue with this. Then I see we have Alan in the queue.

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ALAN GREENBERG:

Thank you, Alan Greenberg speaking. On that issue, I don't see a real problem, we will identify them as law enforcement, and although we're not going to publish who it is that submitted it, we will have records of who we believe submitted. I wouldn't view that as a problem at all. The reason I put my hand up is I looked through the survey and I think, in fact, for most of the questions there may be one or two that it doesn't apply, I think if we ask them to answer this from a perspective of pre-GDPR, so before May 25th or whatever date we want to use, to try to gauge how much they have used WHOIS in the past and then add one or two questions at the end saying based on your experiences since the implementation of GDPR, and we can phrase it the right way, to what extent do you believe your uses are going to be impacted, or you will have problems. Again, I am not trying to phrase it on the fly, but most of the questions, I think are still particularly valid because that will tell us to what extent they have been using WHOIS and will therefore be impacted and we can ask them for an initial assessment but it's just clearly a very initial one. I don't think we need to make a lot of changes, there may be a few questions where the wording has to be refined, but I think generally we're still in good shape. Thank you.

CATHRIN BAUER-BULST:

Thank you Alan, I agree... sorry Jean-Baptiste, is that you?

THOMAS WALDEN:

No, this Thomas for the record. I wanted to kind of ride a little bit on what Alan just said. I totally agree, as we were discussing this and trying to formulate it, and I spoke of people within my agency. They looked at

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it as how it was impacted on the policy we were doing at this time. I think by that little delay, we may be able to even gauge if there has been any change between that initial... it may even reflect that in some of their responses, for one. Then, [inaudible], it benefited my agency some, because there were people who weren't even aware of everything that was occurring to GDPR because they weren't as engaged in it as the ICANN participants are, and when they became aware of it, they started looking at WHOIS a little more closely, as how this would definitely impact upon what they can and can't do and [inaudible].

CATHRIN BAUER-BULST:

Thank you Thomas for that. I see Lisa has her hand up, to react to this quickly. It matches exactly what we heard from law enforcement informally in silence of a expert meeting that I hosted yesterday, where basically they told us that they're looking at investigations that relate to crimes that were committed a couple of months back, and they're using domain tools or other such tools where the data is, of course, becoming outdated but still perfectly well reflects the data they would need to deal with their cases from 6 months ago. So, they're not yet feeling the pain in many areas, because they don't actually make the fresh lookups. They just look at what the data was 6 months ago, and that data is still available, but of course it will become outdated. So, in this questionnaire, we might inadvertently also having some sort of outreach function. I guess what that brings us to, and Alan's comment already referred to this, is something Lisa also mentioned in the chat, which is can we work out which questions need to change and I actually agree with Alan that there's not many changes we need to make. I've written down for myself that I would like to get a perspective before



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CATHRIN BAUER-BULST:           Excellent, let's do that, very good idea. Let's quickly hear from Alan before we turn to that.

ALAN GREENBERG:           Thank you very much. I would strongly suggest that you prefix all of the questions or most of them with, we're doing this from a pre-GDPR perspective. Then at the end, ask the questions appropriately for, who has the following things... how do you believe the following things are changing because of it. If you switch back and forth, you're going to end up... I won't say confusing people, but people are going... we're not going to be sure if they're answering pre or post. I would mass together the ones that are pre, essentially to assess how much has WHOIS been used. Then try to assess, to what extent they believe things are changing from it. If you flip back and forth, I think we're going to be asking for trouble. Thank you.

CATHRIN BAUER-BULST:           OK. Alan, I think that's a really good idea and I do see Lili agreeing in the chat already. What you are saying basically is, leave things as they are and we add text at the beginning, this survey aims to obtain your views on your user experience as of, say April, of this year, please disregard any changes that might have affected your possibility to make lookups that came about as of end of May. That type of language, and then at the end we add one or two questions on the impact of GDPR, is that what you're suggesting?

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ALAN GREENBERG:

I'd say question 1 through X are implying before, and then another nice big bold heading saying the following questions are applied to your experiences since GDPR, or how are you predicting it, something like that. The exact wording will depend on what the questions are. I suspect there may be a few of the questions right now that are in the body of it that we may want to move to the end, as we do the one by one I think that will become obvious.

CATHRIN BAUER-BULST:

The one I wanted to get statistics on was the lookups, 4, 5, and 6. Maybe let's start sifting through the questions and as we do so, Stephanie has suggested that we also read the language for bias. That they've used WHOIS might not mean that they were negatively impacted. Stephanie, I know you already suggested a number of changes to the text in the previous version, I hope you can hear me by the way, and those changes have all been integrated to this text. Indeed, we should not presume in whatever language we formulate that any impact on an investigation is not necessarily negative in that nature. OK, so let's step through the text. The first two won;t really change. Question 3 for those who are not on Adobe is, by which means do you or your agency look up WHOIS data, direct look up or third party commercial service, or such like. I guess that can remain the same. In fact, maybe the easiest way is, to go through them and you just flag which questions you think should either be repeated at the end or moved to the end. Does that make sense to everyone?

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UNKNOWN SPEAKER: Yes.

CATHRIN BAUER-BULST: OK, not hearing any objections. So we have questions 4, 5, and 6 which basically question how many WHOIS lookups are made, and what percentage of lookup results actually help the investigation. That, of course, would be useful to have from the pre-GDPR perspective, and I'm also wondering whether it wouldn't be good to get that information also today, because what I heard from law enforcement yesterday, and also anecdotally in Panama was that many of them have just stopped making lookups as they are not getting any data. At least when it comes to the gTLDs, of course, for law enforcement the ccTLDs are also a force and they continue to make the ccTLD lookups. Excellent, Stephanie confirms that she can hear, that's good. What do you guys think on questions 4, 5, and 6? Do you see a need to repeat them, to move them? I see Lisa has her hand up, Lisa please go ahead.

LISA PHIFER: Thank you Cathrin. It actually occurred to me that question 3 assumes that they use WHOIS, because it asks by what means does your agency lookup WHOIS data? You might want to ask that, if you use WHOIS data, by what means do you or your agency use the lookup?

ALAN GREENBERG: I think we can just cover that by having a first option saying we don't use it.

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LISA PHIFER: Exactly, you could do that. Yeah.

CATHRIN BAUER-BULST: I think it's sort of beyond the purpose, it's Cathrin by the way. Beyond the purpose of the survey if they don't use WHOIS, so that should be in the text of the email even that we send out, that you should only ask Jean-Baptiste to send the link to you, to respond, if you actually use the WHOIS, because otherwise... I mean that person not using the WHOIS can not help us assess whether the WHOIS meets user needs, unless they stopped using WHOIS because they're intensely frustrated by the way it works.

LISA PHIFER: Right, and that's actually what brought that to mind, for me, is that perhaps you don't want to leave those people out before they even take the survey, that you want to hear from them that they've stopped using WHOIS, if that's the case.

ALAN GREENBERG: It's Alan. I thought we said these first questions are your experience prior to GDPR, I think we want to be careful not to mix them because otherwise we can't rely on the answers.

LISA PHIFER: My point really was, if you, and you're sending your invitation say if you use WHOIS, would you participate in our survey. You may get some people not participating because they've just recently stopped using it

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and you won't get this background information. You may want, whatever your invitees are, if they're willing to participate in the survey, give them that opportunity to upfront say they haven't used WHOIS in the past. Just a suggestion. In reference to questions 4, 5, and 6, if you just qualify those with prior to May of 2018, how many WHOIS lookups did you make per month, etc, that time bounds those questions and then allows you to talk about what's happened since May in later questions that you'll add.

CATHRIN BAUER-BULST:

Right, that makes sense. I'm still struggling with this idea of inviting people who don't use the WHOIS at all, maybe we should at least assume some [inaudible] because otherwise, I don't really see what else we'd be asking them, we would then have a question at the beginning of this, do you use WHOIS, yes/no, and when they say no, we say thank you very much, you're done. I am sorry, I don't mean to be funny, I am wondering what else we want to ask them because if they don't make lookups we don't have to ask them by which means they make lookups and whether they think it meets their needs.

LISA PHIFER:

I agree with you Cathrin, I am just wondering if you tell people not to even try to participate in the survey because they don't use WHOIS, you're missing the opportunity for them to come and give you information about past usage and then indicate if, in fact, their usage has changed because of GDPR, to indicate that.

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CATHRIN BAUER-BULST: Right sorry. I think, I fully agree with you there, so the idea is not to exclude anyone who has stopped using it just now, I just mean that we should make sure that at some point in time they used it and if they stopped using it because they were frustrated, then that's important information, I fully agree. So, maybe we can propose some language to this extent in the cover email.

LISA PHIFER: Perhaps in your invitation if you say, if you now or have ever used WHOIS in performance of your duties and then continue on with your survey invite. That makes it clear that you're not looking for people who only use it currently, because it is useful to find out why they may have stopped.

CATHRIN BAUER-BULST: Yeah indeed, that's good wording and we can already take that down. OK, so we have this and then what you are asking again on the wording in 4, 5, and 6, does it need to be repeated? Sorry I am just reading also the chat. Yes, true but you may be collecting... Stephanie says that you may be collecting a lot of garbage that is going to skew your survey results, in response to suggestions that past use would be interesting.

ALAN GREENBERG: It's Alan. Again the wording of the actual question says, do you, which is present, but... again, I don't know if we have to change each question but clearly we want to indicate that we're looking at a past world and as you point out, if most people are using domain tools, then the past

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world still applies to a large extent. But... I think here we're interested in, to what extent has WHOIS been useful and then we will try to assess to what extent they believe it has changed, or we may simply extrapolate ourselves.

CATHRIN BAUER-BULST: Yeah.

ALAN GREENBERG: I don't know if we need to change the tense in the question if we make it really clear at the beginning that we're looking at the pre-GDPR world. Of course, we never specify here whether we're talking about gTLDs or ccTLDs, which are completely different animals on some level, I guess I don't really want to mess up the question by introducing that now, so I think we're looking at WHOIS in general and assuming that it's a combination of cc and gTLD, we know much of the abuse is in the gTLD world.

CATHRIN BAUER-BULST: Yes, good call, and it takes so long to explain to anybody what the difference is, with those people who use it a lot, I mean, I realized again yesterday with law enforcement who were like, our registry responds just fine, and I'm like that's not the one that's affected. Anyway, I think that's a very good point, we could add a question or two. Shall we continue to go through the questions and I'm still fishing for feedback on 4, 5, and 6.

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ALAN GREENBERG: I am happy with them as long as we've made a very clear statement up ahead that these questions apply to the old world, not necessarily today.

CATHRIN BAUER-BULST: Right. What would you say to having a similar type of question on the new world, or would that really just be sort of a generic, have you noticed any changes kind of question? What I am trying to see is whether we can get anything more specific on the new situation which was my understanding, I take your point about creating confusion Alan, I was just wondering whether there is a possibility of being a bit more specific on the post-GDPR questions? I see Lisa has her hand up, please.

LISA PHIFER: Thanks Cathrin. I was going to suggest that one might handle this would be, before the actual question post in 3, if you have a paragraph indicating that the next few questions deal with your use of WHOIS prior to May 2018, please answer those questions with that in mind. Once you get to the point where you want to ask additional questions that's going to be towards the end, you can ask the question that says has your use changed since GDPR enforcement... or however you want to indicate what happened in May, but has your usage changed? If they say yes, then you could post the same questions, 4, 5, and 6 to gather that data. If they say no, obviously the questions wouldn't be relevant and wouldn't be displayed on the survey tool.

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CATHRIN BAUER-BULST: Yes, I think that's a really good way of handling this because then I think the risk of confusion is minimal, because they will already have reflected on whether there has been a change and maybe those questions could be supplemented by an additional, more general one, do you have any further comments about how the situation has evolved? In my view, what I would like to include in this sort of dropdown, if they say their use has changed would be questions 4, 5, and 6, and then possibly also, I am just thinking about the third party services one. Are there other questions that should be included in the dropdown that you would see. I see Lisa has her hand up again.

LISA PHIFER: Sorry, old hand.

CATHRIN BAUER-BULST: OK. What we could still consider is to have 4, 5, and 6 only plus a general comment box, or to do 4, 5, and 6, and then the questions on the meeting your needs for law enforcement investigations, so 10 then following. Do people have views on this?

THOMAS WALDEN: This is Thomas, Cathrin, could you repeat that again, my phone kind of lost you a little.

CATHRIN BAUER-BULST: Yes, sorry Thomas. I was suggesting that we could also think about asking respondents who say that their use has changed post-GDPR, that

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we could also ask them questions 10, 11, and 12, which refer to whether the WHOIS meets law enforcement needs. Then we'll get a perspective on whether that met their needs beforehand, and then a perspective on whether it meets their needs in the current incarnation.

THOMAS WALDEN: That makes perfect sense, because that's the base of what we're trying to acquire. Yes, I agree with that.

CATHRIN BAUER-BULST: OK. Then for the remaining questions, my take is that could stay the same, because that really refers to if you such as privacy and proxy services, or alternative data [inaudible], that is independent of the changes made by the GDPR, and then there is also some more general questions about relevant issues or experience using gated access systems, which I think would also be fine to keep. So, here I would not see any need to provide further changes. Let's see anybody... Lisa, you have your hand up.

LISA PHIFER: Yes, I was wondering the wording of questions 10, 11, or 12, refer to the current WHOIS, would it make sense to refer to the WHOIS lookup functionality prior to May 2018, so that you're not confusing the respondents the first time asking that question? Make it clear that you're asking about WHOIS as it existed prior to May, and then when you repeat those questions, 10, 11, 12, you can refer to WHOIS since

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May 2018, to make it very clear that you're now asking about the new and improved, but not really improved.

CATHRIN BAUER-BULST: Yes, I think that makes perfect sense.

LISA PHIFER: I wonder if question 13, I think you said 10, 11, 12, but I wonder if question 13 wouldn't also be useful to repeat since [inaudible] information that's available for the contacts is significantly changed.

CATHRIN BAUER-BULST: Yes. I mean, I thought that one wasn't necessary because it doesn't... it's just simply not available so, many of the fields are... I mean, everything except for registrar creation and updated name server will not be available. Lisa please, sorry.

LISA PHIFER: I'm sorry, I am doing a bad job of putting my hand down. I see your point about question 13.

CATHRIN BAUER-BULST: I would propose to just stick with 4, 5, and 6, and then 10, 11, 12, and then a more general one that says, have you noticed any other changes to for the better or for the worse, to make sure we stay neutral, have you noticed any other changes to the WHOIS, or how it has affected you.

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ALAN GREENBERG: It's Alan. Just a point of information, do we have any feeling for how many law enforcement organizations subscribe to things like domain tools with the past data. I mean, if you go to the domain tools website, you'll get current data but they store all the historical data. Do we have any idea to what extent that's actively used?

CATHRIN BAUER-BULST: So, my understanding is that there is a very active use of domain tools in the richer countries, because it's actually quite an expensive registration and there are member states that use it quite actively among the European Union ones, basically those who have the pockets to pay for it, and those heavily rely on domain tools. But the others are still... are basically stuck now or use other providers, so I don't have a perfect understanding of where we stand.

ALAN GREENBERG: OK. Of course, there will obviously be enticements in the future to use those tools, even if you didn't in the past because the old data may be the only data that has information that you need. But that's nothing that we really can forecast at this point.

CATHRIN BAUER-BULST: Indeed, and [inaudible] will just away, so, I mean it will become outdated and then we're stuck. Just so you know, I just switched to another phone and I have to drop off the Adobe because we have a train strike and I have to start my way home a bit earlier than usual

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because I've just realized that my normal train is not running. I am still on the call but I won't be able to see the Adobe, so please just speak up so that we can follow the discussion without you waiting for me to give you the word when I don't see the hand in Adobe, apologies or that.

ALAN GREENBERG: I am going to have to drop off in probably about 15 minutes anyway, I have somebody else wanting to see me.

CATHRIN BAUER-BULST: I think we are making good progress here, so let's see whether we can conclude this in those 15 minutes because that might still be possible. At least for me now, it seems fairly clear what we want to do, which is to have the [inaudible] to reflect the current work, or the current status quo, and then go back to just a more... close with a more general box set that allows the introduction of any further comments that people might have on the current status quo. Does that make sense to everyone?

ALAN GREENBERG: Yeah, makes sense to me and if we send out a revised version soon, certainly I'll try to turn it around quickly.

CATHRIN BAUER-BULST: Excellent.

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UNKNOWN SPEAKER: Yes Cathrin.

CATHRIN BAUER-BULST: Excellent. Thomas are you also fine with this?

THOMAS WALDEN: Yes mam.

CATHRIN BAUER-BULST: That's great. Lisa, could I possibly ask for your and Alice's help in trying to turn this around and putting it back into the survey tool.

LISA PHIFER: Of course.

CATHRIN BAUER-BULST: That would be brilliant. Maybe what we could do, if you could send out the new link, the new version, we could comment on it within the next day or so, is that feasible for people? [inaudible] Alan, please.

ALAN GREENBERG: Sorry, I didn't think my hand was up, but that's fine with me.

CATHRIN BAUER-BULST: OK. I just thought I heard you speaking. Maybe I am just having visions at this point.

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ALAN GREENBERG: I hope I was on mute.

THOMAS WALDEN: That may have been me, this is Thomas. That would be fine, if we can get something out sooner opposed to later. [inaudible] next week at a meeting and a conference for the whole week and I'm kind of in and out, so I would rather, if we can get something out I can give my input on it prior to that, I'd really appreciate it.

CATHRIN BAUER-BULST: Excellent. I know that staff have usually not been the hindrance in terms of delivering things quickly. Let's hope that continues. Lisa, Alice, is that OK for you? You just let us know whenever there is text for us to look at, and then we try and turn it around within the next day or so afterwards.

LISA PHIFER: Yes, so just to be clear on a timeline, if you were to receive new text tomorrow, you would be looking for response from sub group members by Monday?

CATHRIN BAUER-BULST: Tomorrow is Thursday, so I would be looking for a response by Friday.

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LISA PHIFER: I will say by Friday, close of business, and I don't want to be presumptuous, I note that late in the day for Alice but Friday close of business for sub group members to react assumes that you will get new text tomorrow.

CATHRIN BAUER-BULST: OK. I also don't want to presume on Alice, but if we don't manage by... I mean if you can [inaudible] together something by close of business tomorrow, so that Alice wouldn't have to do it today or anything, that would already be a very fast turnaround. Then we could look at that on Friday.

LISA PHIFER: Alright, very good. Then you had raised also a question of if the email addresses were not the agency addresses but actually another personal email address would that pose any problems, we'll take an action to verify that, it's not a problem. Presumably if you share your list with ICANN, Jean-Baptiste will be able to line up the responses that he received with your list and know that it's someone you intended to invite.

CATHRIN BAUER-BULST: OK, perfect. Excellent. Well then I think we had a very productive call and I'm probably good to go. Unless there is any further comments, thanks everyone, and talk to you soon.

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ALAN GREENBERG: Thanks all, bye-bye.

CATHRIN BAUER-BULST: Bye.

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