



FREEDOM OF EXPRESSION AND THE INTERNET

Wolfgang **Benedek**
and Matthias C. **Kettemann**

Updated and revised
2nd edition

COUNCIL OF EUROPE



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Council of Europe Publishing

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List of abbreviations

A2K	Access to Knowledge
ACHPR	African Commission on Human and Peoples' Rights
ACPO	Association of Chief Police Officers
ACTA	Anti-Counterfeiting Trade Agreement
AFP	Agence France Press
APC	Association for Progressive Communications
ccTLD	country-code Top Level Domain
CDMC	Committee on the Media and New Communication Services
CJEU	Court of Justice of the European Union
CMPF	Centre for Media Pluralism and Media Freedom
CNIL	Commission Nationale de l'Informatique et des Libertés
the Convention	European Convention on Human Rights
the Court	European Court of Human Rights
DDoS	Distributed Denial of Service
DNS	Domain Name System
ECPA	Electronic Communications Privacy Act
ECRI	European Commission against Racism and Intolerance
ECSR	European Committee on Social Rights
EDRi	European Digital Rights
ESC	European Social Charter
ETS	European Treaty Series
EU	European Union
EuroDIG	European Dialogue on Internet Governance
FCNM	Framework Convention for the Protection of National Minorities
FoE	Freedom of Expression
FTC	Federal Trade Commission
GAC	Governmental Advisory Committee
GC	Grand Chamber
GNI	Global Network Initiative

gTLD	generic Top Level Domains
HRC	United Nations Human Rights Council
IBR	Internet Bill of Rights
ICANN	Internet Corporation for Assigned Names and Numbers
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IFEX	International Freedom of Expression Exchange
IGF	Internet Governance Forum
INHOPE	International Association of Internet Hotlines
IP	Internet Protocol
ISP	Internet Service Provider
IT	Information Technology
ITU	International Telecommunication Union
IWF	Internet Watch Foundation
NGOs	Non-Governmental Organisations
NTD	Notice and Take Down
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PDHRE	People's Movement for Human Rights Education
PIPA	Protect IP Act
Rec.	Recommendation
RevESC	Revised European Social Charter
RFoM	OSCE Special Representative for the Freedom of the Media
RWB	Reporters without Borders
SEC	US Securities and Exchange Commission
SOPA	Stop Online Piracy Act
TİB	Telekomünikasyon İletişim Başkanlığı (Turkish Telecommunications Directorate)
TLD	Top Level Domain
TMG	German Telemediengesetz (Telemedia Act)

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
URL	Uniform Resource Locator
US	United States
VPNs	Virtual Private Networks
WSIS	World Summit on the Information Society
www	World Wide Web

Table of cases

EUROPEAN COURT OF HUMAN RIGHTS

- Akdeniz v. Turkey* (11 March 2014), Application No. 20877/10
- Alekhina and Others v. Russia* (17 July 2018), Application No. 38004/12
- Anheuser-Busch Inc. v. Portugal* (11 October 2005), Application No. 73049/01
- Annen v. Germany (No. 2)* (20 September 2018), Application No. 3862/10
- Appleby and Others v. the United Kingdom* (6 May 2003), Application No. 44306/98
- Arslan and Bingöl v. Turkey* (18 June 2019), Application Nos. 47121/06, 13988/07 and 34750/07
- Ashby Donald and Others v. France*, Application No. 36769/08, Judgment of 10 January 2013 [Section V]
- Barbulescu v. Romania* (12 January 2016 (Chamber)), Application No. 61496/08, Dissenting Opinion by Judge Pinto de Albuquerque
- Barbulescu v. Romania* (5 September 2017 (GC)), Application No. 61496/08
- B.H.; M.W.; H.P.; G.K. v. Austria* (12 October 1989), Application No. 12774/87
- Bergens Tidende and Others v. Norway* (2 May 2000), Application No. 26132/95
- Big Brother Watch and Others v. the United Kingdom* (13 September 2018), Application Nos. 58170/13, 62322/14 and 24960/15
- Casado Coca v. Spain* (24 February 1994), Application No. 15450/89
- Cengiz and Others v. Turkey* (1 December 2015), Application Nos. 48226/10 and 14027/11
- Communist Party of Germany v. the Federal Republic of Germany* (20 July 1957), Application No. 250/57
- Copland v. the United Kingdom* (3 April 2007), Application No. 62617/00
- Delfi AS v. Estonia* (Court (First Section) 10 October 2013, Grand Chamber 16 June 2015), Application No. 64569/09
- Delfi AS v. Estonia* (16 June 2015), Application No. 64569/09
- Dink v. Turkey* (14 September 2010), Application Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09
- Editions Plon v. France* (18 May 2004), Application No. 58148/00
- Editorial Board of Pravoye Delo and Shtekel v. Ukraine* (5 May 2011), Application No. 33014/05

Erbakan v. Turkey (6 July 2006), Application No. 59405/00
Faruk Temel v. Turkey (1 February 2011), Application No. 16853/05
Fatullayev v. Azerbaijan (22 April 2010), Application No. 40984/07
Féret v. Belgium (16 July 2009), Application No. 15615/07
Fuentes Bobo v. Spain (29 February 2000), Application No. 39293/98
Garaudy v. France (24 June 2003), Application No. 65831/01
Guja v. Moldova (GC) (12 February 2008), Application No. 14277/04
Hachette Filipacchi Associés v. France (14 June 2007), Application No. 71111/01
Handyside v. the United Kingdom (7 December 1976), Application No. 5493/72
Heinisch v. Germany (21 July 2011), Application No. 28274/08
Honsik v. Austria (18 October 1995), Application No. 25062/94
Ismayilova v. Azerbaijan (10 January 2019), Application Nos. 65286/13 and 57270/14
Jankovskis v. Lithuania (17 January 2017), Application No. 21575/08
Jersild v. Denmark (23 September 1994), Application No. 15890/89
Kablis v. Russia (30 April 2019), Application Nos. 48310/16 and 59663/17
Kalda v. Estonia (10 January 2016), Application No. 17429/10
K.U. v. Finland (2 December 2008), Application No. 2872/02
Karakó v. Hungary (28 April 2009), Application No. 39311/05
Karatas v. Turkey (8 July 1999), Application No. 23168/94
Krone Verlag GmbH & Co KG v. Austria No. 3 (11 December 2003), Application No. 39069/97
Leroy v. France (2 October 2008), Application No. 36109/03
Lingens v. Austria (8 July 1986), Application No. 9815/82
Lombardi Vallourì v. Italy (20 October 2009), Application No. 39128/05
Magyar Jeti Zrt v. Hungary (4 December 2018), Application No. 11257/16
Mammadov v. Azerbaijan (29 May 2019), Application 15172/13
Megadat.com SRL v. Moldova (8 April 2008), Application No. 21151/04
MGN Limited v. the United Kingdom (18 January 2011), Application No. 39401/04
Mosley v. the United Kingdom (10 May 2011), Application No. 48009/08
Mouvement Raëlien Suisse v. Switzerland (13 July 2012), Application No. 16354/06
Müller and Others v. Switzerland (Commission 8 October 1986, Court 24 May 1988), Application No. 10737/84
MTE and Index.hu Zrt v. Hungary (2 February 2016), Application No. 22947/13.

Neij and Sunde Kolmisoppi v. Sweden (13 March 2013), Application No. 40397/12

Nix v. Germany (13 March 2018), Application No. 35285/16

Norwood v. the United Kingdom (16 November 2004), Application No. 23131/03

The Observer and Guardian v. the United Kingdom (26 November 1991), Application No. 13585/88

Otegi Mondragon v. Spain (15 March 2011), Application No. 2034/07

Otto-Preminger-Institut v. Austria (20 September 1994), Application No. 13470/87

Ovchinnikov v. Russia (16 December 2010), Application No. 24061/04

Paeffgen GmbH v. Germany (18 September 2007), Application Nos. 25379/04, 21688/05, 21722/05 and 21770/05

Pavel Ivanov v. Russia (20 February 2007), Application No. 35222/04, admissibility decision

Pérrin v. the the United Kingdom (18 October 2005), Application No. 5446/03

Pfeifer v. Austria (15 November 2007), Application No. 12556/03

Pihl v. Sweden (7 February 2017), Application No. 74742/14

Polanco Torres and Movilla Polanco v. Spain (21 September 2010), Application No. 34147/06

Refah Partisi (The Welfare Party) and Others v. Turkey (13 February 2003), Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98

Renaud v. France (25 February 2010), Application No. 13290/07

Savva Terentyev v. Russia (28 August 2018), Application No. 10692/09

Smajić v. Bosnia and Herzegovina (8 February 2018), Application No. 48657/16

Sorguc v. Turkey (23 June 2009), Application No. 17089/03

Axel Springer AG v. Germany (7 February 2012), Application No. 39954/08

Stoll v. Switzerland (10 December 2007), Application No. 69698/01

Sürek v. Turkey (8 July 1999), Application No. 26682/95

Társaság a Szabadságjogokért v. Hungary (14 April 2009), Application No. 37374/05

Times Newspapers Limited v. the United Kingdom (10 March 2009, final 10 June 2009), Nos. 1 and 2, Application Nos. 3002/03 and 23676/03

Tolstoy Miloslavsky v. the United Kingdom (13 July 1995), Application No. 18139/91

Vejdeland and Others v. Sweden (9 February 2012), Application No. 1813/07

VgT (Verein gegen Tierfabriken) v. Switzerland (28 June 2001), Application No. 24699/94

Von Hannover v. Germany (24 June 2004), Application No. 59320/00

Wille v. Liechtenstein (28 October 1999), Application No. 28396/95

Willem v. France (16 July 2009), Application No. 10883/05

X and Church of Scientology v. Sweden (5 May 1979), Application No. 7805/77

Ahmet Yildirim v. Turkey (18 December 2012), Application No. 3111/10

Youth Initiative on Human Rights v. Serbia (25 June 2013), Application No. 48135/06

Roman Zakharov v. Russia (4 December 2015 (Grand Chamber)), Application No. 47143/06

COURT OF JUSTICE OF THE EUROPEAN UNION

Google (Portée territoriale du déréférencement) (24 September 2019), ECJ C-507/17

Glawischnig-Piesczek v. Facebook Ireland Limited (3 October 2019), ECJ C-18/18

SABAM v. Netlog NV (16 February 2012), ECJ C-360/10

Scarlet Extended SA v. Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM) (24 November 2011), ECJ C-70/10

NATIONAL COURTS

Austria

OGH, 6Ob116/17b (25 October 2017)

OGH, 4Ob36/20b (30 March 2020)

France

Conseil constitutionnel (France), Decision of 10 June 2009 (Decision no. 2009-580 DC), *Loi favorisant la diffusion et la protection de la création sur internet*, www.conseil-constitutionnel.fr/decision/2009/2009580DC.htm

Germany

Bundesgerichtshof (Third Civil Senate) (24 January 2013), III ZR 98/12

Bundesverfassungsgericht (9 February 2010), 1 BvL 1/09

Schleswig-Holsteinisches Oberverwaltungsgericht (14 February 2013), 8 B 60/12 and 8 B 61/12

Higher Regional Court, Munich (OLG München), Decision of 24 August 2018 (Beschluss vom 24.8.2018 – 18 W 1294/18 (LG München II) [=MMR 2018, 753])

LG Frankfurt/M., Decision of 14 May 2018 (Beschluss vom 14.5.2018 – 2-03 O 182/18 [= MMR 2018, 545])

LG Frankfurt/M., Order of 19 July 2018 (B. v. 19.7.2018 – 2-03 O 265/18)

LG Frankfurt/M., Order of 23 July 2018 (B. v. 23.7.2018 – 2-03 O 238/18)

LG Frankfurt/M., Decision of 7 August 2018 (B. v. 7.8.2018 – 2-03 O 285/189)

LG Bonn, Judgment of 16 November 1999 (10 O 457/99 [= MMR 2000, 109]).

OLG Dresden, Decision of 8 August 2018 (Beschluss vom 8.8.2018 – 4 W 577/18 (LG Görlitz), MMR 2018, 756)

OLG Frankfurt/M., Judgment of 10 August 2017 (U. v. 10.8.2017 – 16 U 255/16 [= MMR 2018, 474])

Italy

Corte d'Appello di Milano (21 December 2011), first penal section, case 8611/12

Tribunale Ordinario di Milano (16 April 2010), penal section, case 1972/2010

Tribunale di Roma (12 July 2019), section XVII, case no. 24711/2012

UK

Chambers v. DPP (27 July 2012), High Court, [2012] EWHC 2157

Handyside v. UK (7 December 1976), application no. 5493/72

Payam Tamiz v. Google Inc. and Google UK Limited, High Court [2012] EWHC 449 (QB)

Payam Tamiz v. Google Inc., Court of Appeal, [2013] EWCA Civ 68

USA

New Jersey Coalition Against War in the Middle East v. J.M.B. Realty Corp. (1994), 138 NJ 326, 650 A.2d 757

The Green Party of New Jersey v. Hartz Mountain Industries, Inc., 2000 WL 758410 (N.J.)

Yahoo! Inc. v. LICRA and UEJF (12 January 2006), United States Court of Appeals, Ninth Circuit, 433 F.3d 1199

UN HUMAN RIGHTS COMMITTEE

Laptsevich v. Belarus, Comm. no. 780/1997

Mukong v. Cameroon, Comm. no. 458/1991

Park v. Korea, Comm. no. 628/1995

Preface

Dear readers,

The internet has changed the way we communicate, work and play. It has affected the way we live and learn, participate and protest. Freedom of expression on the internet is key to understanding the potential of information and communication technologies for increasing the level of human rights protection around the globe.

In the October 2018 judgment *E.S. v. Austria*, the European Court of Human Rights (the Court) confirmed once more the fundamental importance of freedom of expression.¹ The Strasbourg court argued that freedom of expression, as secured by Article 10 of the European Convention of Human Rights (the Convention), constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. The protective ambit of Article 10 extends not only to "information" or "ideas" that are favourably received or considered inoffensive, but (and particularly) to those that offend, shock or disturb.²

Freedom of expression by itself is a key enabling right, offline just as online.³ In one of its fundamental cases on the role of Article 10 in online environments, the 2015 *Cengiz and Others* case, the Strasbourg judges confirmed that

the Internet has now become one of the principal means by which individuals exercise their right to freedom to receive and impart information and ideas, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest.⁴

Just as freedom of expression in all its forms is widely considered to be the right that is essential to meaningful internet use,⁵ so also the evolution of the internet has

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1. *E.S. v. Austria* (25 October 2018), Application No. 38450/12, para. 42.
 2. See, for earlier similar statements, among many: European Court of Human Rights, *Handyside v. the United Kingdom* (7 December 1976, Series A No. 24), and *Fressoz and Roire v. France* ([GC], No. 29183/95, §45, ECHR 1999-I).
 3. This section draws from previous work of the authors, including Kettemann/Benedek, "Freedom of expression online", in Mart Susi (ed.), *Human rights, digital society and the law: a research companion* (London: Routledge, 2019), 58-74 and Kettemann, *The Normative Order of the Internet* (Oxford: Oxford University Press, 2020).
 4. *Cengiz and Others v. Turkey* (1 December 2015), Application Nos. 48226/10 and 14027/11, §49.
 5. Cf. Human Rights Council Resolution 20/8, The promotion, protection and enjoyment of human rights on the Internet, 5 July 2012, para. 1: "[The Human Rights Council] [a]ffirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights" (emphasis added). Biannual resolution with the same content followed.

become determinative for our communicative relations. The Court again in *Cengiz*: “user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression.”⁶ The internet today has become, as UN Special Rapporteur on Freedom of Expression, Frank La Rue, put in his 2011 report, a “vital communications medium which individuals can use to exercise their right to freedom of expression, or the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers”.⁷ Unlike any other medium in history, “the internet allows individuals to communicate instantaneously and inexpensively, and it has had a dramatic impact on the way information and ideas are shared and accessed”⁸.

From all these rights we can also derive a dual right to internet access, which is crucial for human rights protection: access to internet content (threatened, *inter alia*, by filtering) and access to the internet per se – threatened, *inter alia*, by under-deployment of information and communication technologies (ICTs). Physical access to the internet and access to content on the internet are both necessary to ensure freedom of expression online.⁹ Having the infrastructure (cables, computers, routers) necessary to access the internet in place is not enough. The right to internet access includes access to content “without any restrictions except in a few limited cases permitted under international human rights law”.¹⁰

The relevance of protecting online freedom of expression, and internet access, can hardly be overestimated in light of its importance for the realisation of other rights on the internet. The Court has developed a substantial and strong jurisprudence on the contours of freedom of expression online.

With the rise of the internet the opportunities to express oneself have grown exponentially. But so have the challenges to freedom of expression. Those challenges have a tendency to increase as can be seen from the 2018 report of Freedom House on Freedom on the Net, which found that internet freedom has decreased for the sixth consecutive year.¹¹ Current challenges to freedom of expression lie in the increased prevalence of online hate speech, the privatisation of online spaces, the monopolisation of online services, and political and legal fragmentation tendencies on the internet.

No wonder then that protecting freedom of expression on the internet has become an important task for international and non-governmental organisations. Declarations and recommendations building on the universal human rights commitments to

6. European Court of Human Rights, *Cengiz and Others v. Turkey* (1 December 2015), §52.

7. UN HRC (10 August 2011), Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/66/290, www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf, para. 10.

8. *Ibid.*

9. Cf. UN HRC (16 May 2011), Frank La Rue, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/17/27, para. 3 (and chapters IV, on access to content, and V, on availability of infrastructure, of the report).

10. *Ibid.*, para 3.

11. Freedom House, *Freedom on the Net 2018: The rise of digital authoritarianism*, October 2018, <https://freedomhouse.org/report/freedom-net/freedom-net-2018>.

freedom of expression – namely Article 10 of the Convention, as well as Article 19 of both the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights – abound. The practice, however, looks different. Violations of freedom of expression online by states, companies and individuals are a daily, and sad, reality.

This book sets out to answer key questions regarding the extent and limits of freedom of expression online. It seeks to shed light on the often obscure landscape of what we are allowed to say online and how our ideas, and the process of imparting and receiving information, are protected. It shows the large ambit of rights protected by freedom of expression, including freedom of the media and the right to access information, and confirms that all aspects of the communicative process, offline just as online, are protected by freedom of expression. The book makes an important point by making clear that freedom of expression online must be protected just like freedom of expression offline, taking into account the nature of the internet, its asynchronicity, ubiquity and speed.

This book also highlights the importance of the standard setting, monitoring and promotional activities of international and non-governmental organisations (NGOs). Freedom of expression online touches all aspects of society and does so in all societies. We have therefore included a chapter on relevant national practices to illustrate how different states deal with the challenge that the internet has brought to ensuring freedom of expression for all.

This publication makes another important point in showing that freedom of expression implies obligations for all actors on the internet. States must respect, protect and ensure freedom of expression online just as much as offline; internet companies have to respect and protect freedom of expression, implement it within their sphere and remedy violations. Civil society has an important watchdog function and the individuals it comprises must ensure that, in making use of their freedom of expression, they do not violate the rights of others.

The authors of this book together, and individually, have substantial experience in the protection of human rights, first offline and now on the internet. At the Institute of International Law and International Relations of the University of Graz, Austria, we have created a Focal Point on Internet Governance and Human Rights to look specifically at the principles and processes of protecting human rights online. Our team has been present and active during the most important moments of the evolution of the information society in the last decade: from the World Summit on the Information Society (WSIS) and meetings of the Internet Corporation for Assigned Names and Numbers (ICANN) to the NETMundial Summit and all Internet Governance Forums, which have so far taken place as well as several meetings of EuroDIG. This gives us a unique view of the challenges that freedom of expression online faces.

Our team has worked intensively with the Council of Europe, and in particular its Division on the Media and Information Society and its publication services. Wolfgang Benedek has contributed as an expert on the Committee on the Rights of Internet Users, which elaborated a Guide on Internet User Rights. Matthias C. Kettemann was *ad personam* expert member and rapporteur of the Council of

Europe Committee of Experts on Internet Intermediaries. He has also acted as rapporteur for a number of Council of Europe conferences related to human rights on the internet and internet governance.

Over the last 12 years we have published several books and studies that shed light on aspects of freedom of expression online. They inform our understanding of the challenges faced by the protection of freedom of expression online.¹² Among those publications was the first edition of *Freedom of expression and the internet*, which met with a lot of interest. However, since its publication in 2014 there have been a number of important developments which made a second edition mandatory. The first edition has been translated into Turkish, Ukrainian and French, and we hope that the second edition will be, too.

In conclusion, the authors would like to express their thanks to the Council of Europe for inviting them to produce and update this publication. The Council of Europe has been *the* international organisation most consistently supportive of human rights online. It has also enabled important insights into the topic by inviting the authors to participate in key events for freedom of expression on the internet. By publishing our analysis of the challenges to and the protection of freedom of expression online, the Council of Europe takes its commitment one step further.

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We have endeavoured to include online sources so as to ensure maximum information value. Yet the internet's very nature is dynamic – and so are, very often, website addresses (which raises its own questions regarding the right to access information). All websites in this book were last accessed in May 2020.

12. Benedek W. and Pekari C. (eds), *Menschenrechte in der Informationsgesellschaft* [Human rights in the information society], Hannover: Boorberg, 2007; Benedek W., Bauer V. and Kettemann M. (eds), *Internet governance and the information society. global perspectives and European dimensions*, Utrecht: Eleven International, 2008; Kettemann M. et al. (eds), *Menschenrechte und Internet. Zugang, Freiheit, Kontrolle* [Human rights and the Internet. access, freedom, control], Berlin: Internet & Society Co:laboratory, 2012; and Kettemann M., *The future of individuals in international law: lessons from international internet law*, Utrecht: Eleven International 2013; Kleinwächter, Kettemann and Senges (eds), *Towards a global framework for cyber peace and digital cooperation. an agenda for the 2020s*, Berlin: BMWi, Nov. 2019; Kettemann, *Völkerrecht in Zeiten des Netzes: Perspektiven auf den effektiven Schutz von Grund- und Menschenrechten in der Informationsgesellschaft zwischen Völkerrecht, Europarecht und Staatsrecht*, Bonn: Friedrich-Ebert-Stiftung, 2015, <http://library.fes.de/pdf-files/akademie/12068.pdf>; Mosene/Kettemann (eds), *Many worlds. Many nets. Many visions. Critical voices, visions and vectors for internet governance*, Berlin: HIIG, 2019.

The internet has a catalytic function for the exercise of all human rights. Just as Gutenberg's printing press helped to spread the Reformation, so the internet can support the respect, protection and implementation of all human rights for all people everywhere. In this emancipatory quest, freedom of expression is a key enabling right, not to mention an essential human right in itself. Ensuring freedom of expression online is not without its challenges. Read on and you will see how to meet them head on.

Wolfgang Benedek and Matthias C. Kettemann

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