REPORT OF THE EXPERTS MEETING ON CYBERSPACE LAW

(Monte-Carlo, Principality of Monaco, 29-30 September 1998)

OUTLINE

Source: The Experts’ Meeting on Cyberspace Law was convened by the Director-General in conformity with Resolution 36 adopted by the General Conference at its twenty-ninth session.

Background: Taking into account recent initiatives at national, regional and international levels, the Experts’ Meeting on Cyberspace Law, as per their discussions and deliberations, submits the present report to the consideration of the Director-General.

Purpose: On the basis of the consensus reached by the experts, the present report proposes to the Director-General a set of principles to be promoted by UNESCO. It recommends as well a number of activities to be undertaken by the Organization to facilitate the practical establishment of an appropriate legal and ethical framework for the new domain of cyberspace.
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REPORT TO THE DIRECTOR-GENERAL BY THE EXPERTS MEETING ON CYBERSPACE LAW

I. MANDATE AND COMPOSITION OF THE MEETING AND ORGANISATION OF ITS WORK

1. The Experts Meeting on Cyberspace Law (category VI of the UNESCO regulation on the classification of meetings) was convened by the Director-General of UNESCO, in conformity with Resolution 36 adopted by the General Conference at its 29th session, in order to advise him on the establishment at the international level of an ethical and legal framework for cyberspace and on the promotion of multilingualism and cultural diversity in this new environment.

2. Twenty-two experts, designated by the Director-General, participated in their individual capacity. Eighteen observers from Member States or international organisations participated as well (see Annex I, List of participants).

3. Mr. Jérôme Huet, Professor at the University of Paris II (France) and President of the review “Droit de l’informatique et des télécoms” and Mr. Suman Naresh, Professor at Tulane University School of Law (New Orleans, USA) were designated, respectively, Chairperson and Vice-Chairperson. Ms. Longworth (New Zealand) and Ms. Woo (Korea) were designated, respectively, Rapporteur and Vice-Rapporteur. Ms. Teresa Fuentes, Division of Information and Informatics of UNESCO, acted as the Secretary of the Meeting. Mr. Henrikas Yushkiavitchus, Assistant Director-General for Communication, Information and Informatics, and Mr. Philippe Quéau, Director of the Division of Information and Informatics, represented the Director-General.

4. The experts met on 29 and 30 September 1998 at Monte-Carlo (Principality of Monaco). They were guided in their debates by the Working Document established by the Secretariat and referenced CII-98/CONF-601.2 (see Annex II). At the close of the meeting, the experts adopted for consideration by the Director-General a set of principles to be promoted by UNESCO and a number of activities to be undertaken by the Organization.
II. PRINCIPLES AND ACTIONS PROPOSED BY THE EXPERTS

The Experts Meeting on Cyberspace Law:

1. Recognising the interest of UNESCO in the promotion of human rights and fundamental freedoms in cyberspace particularly in the fields of education, science and culture;

2. Recognising the mandate and the ethical and intellectual mission of UNESCO, its universal vocation and the transdisciplinary character of its fields of competence;

3. Recognising that current international discussions concerning cyberspace activities and digital works tend to emphasise economic matters rather than social and cultural interests;

4. Recognising that the global nature of the Internet raises issues of common concern for governments and peoples around the world;

5. Recognising the need to work in cooperation with other international organisations concerned with matters of cyberspace law and the need for international efforts on harmonisation and to resolve jurisdictional issues;

6. Recognising the open and decentralised character of "cyberspace" as well as its interactive and dynamic nature, system of electronic linkages, and the irrelevance of geographic and physical boundaries;

7. Recognising that cyberspace offers benefits and opportunities as well as undesirable consequences that raise complex issues for humanity.

A. Principles to be promoted by UNESCO:

The Experts Meeting on Cyberspace Law proposes to the Director-General that UNESCO promote the following principles:

1. **Communication Principle:**
   - The right of communication is a fundamental human right.

2. **Participation Principle:**
   - Every citizen should have the right to meaningful participation in the information society.
The above key principles embody the concept of every person’s right to access the new environment of cyberspace, in particular:

3. Universal Service Principle:
   - States should promote universal services where, to the extent possible given the different national and regional circumstances and resources, the new media shall be accessible at community level by all individuals, on a non-discriminatory basis regardless of geographic location.

4. Multiculturalism and Multilingualism Principle:
   - States and users should promote cultural and linguistic diversity in cyberspace by the promotion of regional and local participation in Internet activities, information collections, and new information services.

5. Ethics Principle:
   - States and users should promote efforts, at the local and international levels, to develop ethical guidelines for participation in the new cyberspace environment.

6. Education Principle:
   - All persons should have a right to appropriate education in order to read, write and work in cyberspace. There should be specific initiatives to educate parents, children, teachers and other Internet users on the implications of their participation in cyberspace and on how to maximise the opportunities presented by the new media.

7. Free Expression Principle:
   - States should promote the right to free expression and the right to receive information regardless of frontiers.

8. Privacy and Encryption Principles:
   - The fundamental right of individuals to privacy, including secrecy of communication and protection of personal data, should be respected in national law and in the implementation and use of technical methods as well as private legal remedies and other self-regulatory measures.

9. Access to Information Principle:
   - Public bodies should have an affirmative responsibility to make public information widely available on the Internet and to ensure the accuracy and timeliness of the information. This information could include government information, information concerning cultural heritage, and archival and historical information.
   - The traditional balance between the rights of authors and limitations on these rights, including the free use of ideas in published works, should be maintained in cyberspace in the interests of the public and of the authors.
   - States should preserve and expand the public domain in cyberspace.
10. Training Principle:
   • *Job training in electronic media should be encouraged to enable people to communicate in the new media and to create new opportunities in employment.*

11. International Co-operation Principle:
   • *States shall co-operate at an international level and seek to harmonise national law to resolve jurisdictional or conflict of laws differences.*

B. Activities to be undertaken by UNESCO:

The Experts Meeting on Cyberspace Law Proposes to the Director-General that UNESCO undertake, *inter alia*, the following activities:

1. Pursue the on-going publication of the collective work on the "*International Dimensions of Cyberspace Law*".

2. Study the application to cyberspace of each article of the Universal Declaration of Human Rights.

3. Conduct an empirical study of the realities, significance and consequences of all barriers to access, whether publicly or privately created, and in particular an investigation of barriers to access, such as:
   • *The blocking of information and transactions due to practices of blacklisting and barring from discussion groups.*
   • *The use of filtering devices.*
   • *The requirements of standardisation which may preclude information in non-standardised forms.*

4. Assess the adequacy of translation software and take steps to increase the availability and the development of improved versions.

5. Promote specific initiatives for the education of parents, children, teachers and other Internet users on reading, writing and working in cyberspace, on the implications of participation in cyberspace, and on the maximisation of the positive benefits presented by the technologies.

6. Represent, in international debates on intellectual property law, all interests concerned with the need to expand the public domain.

7. Conduct an independent study of the actual economic cost of piracy on the Internet and the degree to which the resulting disincentive has reduced the supply of works desired by the public.

8. Study the significance of jurisdictional issues and conflicts of law and promote harmonisation of national laws.
C. **Task forces and advisory committee to be established by UNESCO:**

Invites the Director-General, for undertaking these activities, to:

9. Establish a small Group of Experts designated by the Director-General and acting on their own capacity, on the basis of two from each region and one from each international organisation directly concerned, to propose and monitor the activities to be conducted by UNESCO in the area of cyberspace law.

10. Establish global and regional study groups or task forces to carry out or commission the studies in these recommendations.

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EXPERTS MEETING ON CYBERSPACE LAW
Monte Carlo, Principality of Monaco
(29-30 September, 1998)
LIST OF PARTICIPANTS

REUNION D'EXPERTS SUR LE DROIT DU CYBERESPACE
Monte-Carlo, Principauté de Monaco
(29-30 septembre 1998)
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REUNION DE EXPERTOS SOBRE EL DERECHO DEL CIBERESPACIO
Monte-Carlo, Principado de Mónaco
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EXPERTS MEETING ON CYBERSPACE LAW

WORKING DOCUMENT

Monte Carlo, Principality of Monaco
29 and 30 September 1998
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I. INTRODUCTION

1. The expert meeting on cyberspace law, hereinafter referred to as ‘the Meeting’, has been organized pursuant to Resolution 36, adopted by the General Conference at its 29th session in November 1997. That resolution was the corollary to discussions among UNESCO Member States in connection with the preliminary report by the Director-General on the feasibility of an international instrument on the establishment of a legal framework relating to cyberspace and of a recommendation on the preservation of a balanced use of languages in cyberspace.

2. This working document outlines a series of ethical and legal issues relative to cyberspace and proposes a strategy to facilitate international co-operation in these areas. It also provides a preliminary overview of the international dimensions of the emerging information society, which fall within UNESCO’s fields of competence and may be the focus of a study of comparative law. The Meeting itself forms part of this strategy and represents the first stage in this process.

3. By various resolutions and decisions the General Conference and the Executive Board of UNESCO have approved the Organization’s role in harmonising future cyberspace law and in the preparatory work for drawing up an international instrument taking proper account of education, science and culture, respect for privacy and the free flow of information. During the most recent discussions, Member States of the Organization have urged that, in keeping with its mandate within the United Nations common system, and in order to fulfil the truly ethical nature of its mission, UNESCO should take the intellectual lead in this new area and play an active role in international attempts to address the global dimensions of cyberspace.

4. The Meeting precedes the international INFOethics 98 Congress to be held in Monaco from 1st to 3 October 1998 and will serve as a preliminary session to provide guidance for the Director-General in preparing his forthcoming report on the establishment of a legal framework for cyberspace, to be submitted to the General Conference at its 30th session.

5. The present document consists of the provisional agenda and programme for the Meeting, together with other items on matters affecting its successful organization.
II. PROVISIONAL AGENDA

The Meeting will take place on 29 and 30 September 1998. There will thus be two working days to consider the items on the agenda. Plenary meetings will be held from 9.30 a.m. to 12.30 p.m. and from 2 p.m. to 6 p.m., although the opening meeting on Tuesday, 29 September 1998, will start at 10 a.m.

The provisional agenda is as follows:

1. Opening of the Meeting
2. Chairperson’s election and address
3. Adoption of the agenda
4. Setting up of two working groups
   4.1 Working Group I on the international dimensions of cyberspace law and the establishment of guidelines on educational, scientific and cultural principles for cyberspace
   4.2 Working Group II on the establishment of guidelines on the promotion and use of multilingualism and universal access to cyberspace
4. Setting up of two working groups
   4.1 Working Group I on the international dimensions of cyberspace law
   4.2 Working Group II on the establishment of guidelines on the promotion and use of multilingualism and universal access to cyberspace
5. Future work and follow-up
6. Closing meeting and approval of report and recommendations

At the closing plenary meeting, experts may wish to approve a report for submission to the Director-General.
III. THE POINT AT ISSUE: An international legal instrument for cyberspace under the aegis of UNESCO?

6. Article I, paragraph 2(a) of UNESCO’s Constitution provides that the Organization shall ‘collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image’.

7. What precise role should UNESCO play in bringing about an international agreement of this sort on cyberspace? How can UNESCO today promote human rights and fundamental freedoms in cyberspace in the fields of education, science and culture?

8. The progression of international law in the electronic age is one of the United Nations’ main responsibilities. The new environment of electronic information, which constitutes cyberspace, is an important field for the United Nations to exercise its responsibilities, and UNESCO is in the forefront. Because of its responsibility under its Constitution for the free flow of information, freedom of expression, development of communication, and questions of intellectual property, UNESCO is the most appropriate United Nations agency to guide the preparation of a flexible ethical and legal framework for cyberspace designed for the international community and involving all players.

9. Could the Director-General of UNESCO propose that the United Nations General Assembly affirm the principle of regarding cyberspace as ‘the common heritage of humanity’? Could the United Nations General Assembly approve the establishment of an international legal framework or system for cyberspace under the aegis of UNESCO? Could it propose that cyberspace be used in the higher interests of humanity?

10. Cyberspace is emerging as a new environment of globally networked multicultural and multilingual information, a perpetually changing area with infinite possibilities. 

   **Cyberspace calls into question frontiers, which it bypasses, and the state laws, which it challenges.**

11. The new environment’s main resource, information, has proved difficult to pin down in legal terms. This is nothing new in the history of law, however, since in comparison with other elements of the legal corpus, the right to information has received relatively little attention from the international community in the sense that it does not enjoy international protection. The unprecedented growth in information and communication technologies therefore entails the need to explore further and to consolidate traditional legal concepts and values.

12. In this respect, the most authoritative legal writers admit that today’s Internet revolution, which will be confirmed by tomorrow’s information society, must in any case be matched by a revolution in the law in the broad sense of the term. Can
this exciting revolution in human relations radically transform the current environment of international relations?

13. Evidence from around the world reveals the inadequacies of existing national legislation and other domestic regulations in relation to the new realities of cyberspace. The latter are posing increasingly complex questions for international law by confronting all countries with profound upheavals both within their jurisdiction and beyond it, creating new legal requirements. These multijurisdictional problems may become a source of international conflict or dispute if they are not dealt with appropriately in good time. With the dawning of the electronic age and use of the Internet spreading throughout the world, the need for an international legal framework for cyberspace, which would allow these new realities to be tackled in a consistent and co-ordinated manner, is beginning to be felt.

14. After requesting UNESCO to examine the feasibility of an international instrument on the establishment of a legal framework for cyberspace, some Member States have since expressed anxieties concerning the possibly prescriptive or binding nature of the proposed instrument. Under the Organization’s intellectual terms of reference, such a framework could under no circumstances be purely national, authoritarian or inflexible. Consequently, this legal instrument would have to be international, ethical and flexible.

15. The establishment of this framework is undoubtedly a long-term undertaking, implying a collective effort to reach a consensus in a relatively new and particularly sensitive field characterized by many diverging interests, ideas and practices. In order to succeed, this effort must take equally into account the requirements of civil society, governments and the international community as expressed in the course of multilateral and bilateral discussions within UNESCO and other international or regional bodies. Promotion of universal multilingual access to information and knowledge while respecting the rights of users will be fundamental to this process. In the electronic age, defence of the public interest should be guaranteed as a fundamental value geared to improving governance and promoting democracy at all levels of society.

16. By virtue of its ethical mission, UNESCO must warn of the dangers of a purely economic and commercial approach. Such an approach underlies the global legal framework for electronic commerce which is likely to be the only international legal reference for cyberspace in the years ahead, since electronic commerce law has already become an incontrovertible regional, national and international reality designed to guarantee a more reliable environment. UNESCO’s work to prepare an international legal framework for cyberspace that is both flexible and ethical must ensure that this environment has a greater degree of security, responsibility and interdependence for future generations.

17. Can the electronic age be likened to a new Renaissance, in which human rights and fundamental freedoms will be reaffirmed and strengthened through the information society? What values and principles should international law be encouraging in order for the emerging global information society may be, first and foremost, a democratic society for all?
18. Contemplating with admiration the remarkable scientific and technological advances made this century, while at the same time horrified by an appalling growth in violence and uncertainty, how can we fail to ponder the fate of tomorrow’s information society? Rereading the Universal Declaration of Human Rights on its fiftieth anniversary, how can we fail to wonder about the role of international law in cyberspace? Is the Declaration not the hallowed work of international law, a pre-eminently supranational legal project as much as a supreme ethical ambition born of the political determination of all the peoples of the United Nations without distinction?

19. Undoubtedly, discussion within UNESCO of the legal framework for cyberspace must be based on all these disturbing facts and questions and must broaden the scope of the debate if an appropriately balanced strategy, which will be valid for everyone across the globe, is to be developed. At this preliminary stage of discussion, the Organization has sought to involve legal and linguistic specialists and representatives of relevant bodies, which will enable us to answer all these questions and thus propose a number of guidelines for the international community as a whole within UNESCO’s field of competence.

**IV. PROGRAMME OF THE MEETING**

A. Terms of reference and membership

20. Taking into account the complexity and diversity of legal, ethical and societal issues raised by the global information infrastructure and the emerging information society, the 186 Member States of UNESCO have recognized the importance of establishing an international framework for cyberspace as a matter of urgency and have requested the Director-General to formulate a set of guidelines on educational, scientific and cultural principles. They are convinced that UNESCO is the right organization in the United Nations system to take the intellectual lead in this area by undertaking an exhaustive review of all the relevant aspects.

21. The drawing up of international guidelines relating to cyberspace is a long-term transborder undertaking and therefore requires a collective effort by the international community to reach agreement in a particularly sensitive field marked by numerous divergences of interest, philosophy and practice. Rights of users, promotion of multilingual education and universal access to information are fundamental to this process. Essential values such as freedom of expression, protection of privacy and respect for the public good should also be strengthened so as to promote democracy at all levels of society. From small villages to major cities, the new electronic environment offers possibilities to empower citizens worldwide. Public access to information increases the participation of civil society in decision-making at community, local and national levels. The timely provision of information to a larger public may also be used to avert or minimize human and natural disasters so that the flow of information in both directions may contribute to improved governance.
22. In order that UNESCO may fulfill its mandate within the United Nations, its Member States have requested the UNESCO Secretariat to prepare and organize regional and international meetings of experts to clarify policy priorities in line with their needs. Accordingly, within the framework of the new intersectoral project on the information society and cyberspace, UNESCO is organizing this Meeting in Monte Carlo on 29 and 30 September in conjunction with the Principality of Monaco. The Meeting will take the form of a symposium convened by the Director-General in pursuance of the Programme and Budget approved by the General Conference, and participants will be legal specialists invited by the Director-General to attend in a personal capacity.

23. Given the importance and complexity of the issue, UNESCO has called on the expertise of internationally renowned figures and institutions of unquestionable independence. Thus, ethical and legal aspects of the application of international law in cyberspace and the formulation of special new legal provisions for cyberspace will be studied and discussed by top-level legal experts from UNESCO Member States, the academic world, relevant international organizations inside and outside the United Nations system, and interested bodies, including the private sector.

B. Purpose and scope

24. The purpose of the Meeting is to facilitate an exchange of views among legal specialists and to submit suggestions and advice to the Organization on the implementation of its programme in the field of the information society and cyberspace.

25. Member States have requested the Director-General to prepare a report on the Organization’s work aimed at the establishment of this international framework for cyberspace and of a draft recommendation on the promotion and use of multilingualism and universal access to cyberspace, both to be submitted for consideration by the General Conference at its 30th session, in 1999.

26. In the context of the United Nations Decade of International Law (1989-1999) and the celebration of the fiftieth anniversary of the Declaration of Human Rights, the Meeting will provide a unique opportunity to clarify the international dimensions and discuss the issues raised by the elaboration of an ethical and legal framework for cyberspace.

27. The main objective is to reach a consensus on legal principles and guidelines intended for the international community within UNESCO’s purview and to make all Member States in the United Nations system more aware of the United Nations Charter and more active in implementing it. This consensus should be of the high standard required by UNESCO’s mandate within the United Nations. The Meeting will thus be international in scope.
C. Organization and topics for discussion

28. Within UNESCO’s field of competence, issues raised by the elaboration of an international framework for cyberspace will be studied and discussed in depth by some fifty legal and linguistic experts, together with representatives of interested bodies and competent international organizations. The Meeting will elect the Chairperson, and UNESCO staff will provide the secretariat for the Meeting.

29. Following the preparatory studies which resulted in the Director-General’s preliminary report on the feasibility of an international instrument on the establishment of a legal framework for cyberspace, the main topics of the meeting will be structured along two lines of debate: What are the international dimensions of cyberspace law, and how can multilingualism and universal access to cyberspace be guaranteed?

30. Following these two lines of debate, the Meeting will chiefly address the ethical and legal issues of international law arising in cyberspace, especially those of human rights and fundamental freedoms. The following themes have been selected:

- The legal precedent of the law on outer space.
- Preservation of cultural and linguistic diversity in cyberspace through promotion of multilingualism.
- Democracy in the electronic age and universal access to cyberspace.
- Freedom of expression, censorship and integrity in cyberspace.
- Protection of privacy and human rights in the electronic age.
- Protection of confidentiality through encryption policy in cyberspace.
- Debate on the applicability of intellectual property law to the global information infrastructure.
- Safeguards for safety and morality in cyberspace (violence, obscenity, and pornography in general, and child pornography in particular).
- Criminality and crime prevention in cyberspace.
- Electronic commerce.
- Labour law in cyberspace.

31. In this connection, the preparation of a collective work on cyberspace law has already begun under the aegis of UNESCO. A number of distinguished jurists together with interested international organizations have already agreed to participate in this collective work and have been invited to attend the Meeting to present their respective papers.

32. In view of the international scope of the issues, the purpose of the Meeting and the collective work (to be published after the Meeting) is to elucidate the international ethical dimensions of cyberspace law and to propose a number of educational, scientific and cultural guidelines as a basis for the report and recommendations to be submitted to the Director-General for consideration by Member States.
33. To that end, the Meeting secretariat will pursue consultations with Member States, interested bodies and competent international organizations inside and outside the United Nations system, including the private sector.

34. The working languages of the Meeting and the documents will be English and French.

35. On the basis of this working document prepared by the secretariat and of the preliminary work for the above-mentioned collective work, the Meeting will conduct its work in plenary and in two working groups (as shown in the agenda above). One working group will consider the establishment of guidelines - in the fields of education, science and culture - on existing principles of international law applicable to cyberspace and on new principles to be introduced, which will be included in the report by the Director-General to the General Conference at its 30th session. The other group is to propose guidelines on the promotion and use of multilingualism and universal access to cyberspace as the first step towards a draft resolution for submission to the General Conference at the same session. The latter group will thus be continuing the work on multilingualism in the information society begun in December 1997 by the Forum International des Sciences Humaines, the European Commission, France and UNESCO.

D. Outcome and follow-up

36. A report on the results of the Meeting, to be prepared by the Chairperson and the secretariat, will be submitted to the Director-General. It will record the deliberations and decisions of the two working groups.

37. Pursuant to 29 C/Resolution 36, the Director-General must report to the General Conference on this matter at its 30th session, in 1999, the final year of the United Nations Decade of International Law. The results of this expert meeting will therefore be extremely important for the implementation of this resolution and the progression of international law. The conclusions yielded by these discussions will also highlight the importance of UNESCO’s role in establishing a legal framework for cyberspace by providing a forum for debate on legal issues raised by the emerging information society within the Organization’s fields of competence, in order to ensure a free exchange of ideas and knowledge.

38. Further information on national policies and initiatives must be obtained from Member States for the preparation of the Director-General’s report and of new reports on specific legal aspects of cyberspace, which will not necessarily be included in the report of the Meeting.

39. UNESCO publication entitled International Dimensions of Cyberspace Law, which will be based on the collective work in preparation and will take into account the views of those attending the Meeting, will appear after the Meeting but will not be the proceedings of the Meeting.

V. CONCLUSION

40. At the dawn of the third millennium, UNESCO is endeavouring to ensure the emergence of an information society in keeping with the ideas and principles of its Constitution, in which electronic communication will not be an instrument of profit, power, violence or perversion in the hands of the strong against the weak (especially children) but will pave the way for universal access to knowledge and
information without distinction of race, sex or religion by helping to preserve and defend human rights and fundamental freedoms in the fields of culture, science and lifelong learning. If UNESCO did not play this part, the global framework for cyberspace would continue to be addressed and formulated solely from the angle of cross-border electronic commerce. Now is the critical moment, especially as the United Nations has declared the year 2000 International Year for a Culture of Peace.

41. We may conclude by stating, with the Director-General, Mr Federico Mayor, that UNESCO is a watchtower that defends and safeguards the wealth and strength of our diversity. UNESCO has always supported and is continuously promoting multilingualism and multiculturalism and one of the Director-General’s priorities is to consider the problems arising from the standardisation of cultures whose languages are their very embodiment. Indeed, he believes that this is one of the great contradictions of our time, which can be resolved only on an international scale by political will and international law which are ethically motivated, rather than by tactical considerations or technical interventions. We are a system of United Nations and not of “unified nations” and because today’s problems and challenges are transboundary international organizations should be invested with more trust and resources. The Director-General has declared that, the time has come for action: the disproportionate importance attached to the short-term over the long term is glaring. The reality is transnational, calling for transnational measures, and the need for decisions is all the more urgent.

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