

May 25, 2016

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Ronald M. Jacobs

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**Re: *Advisory Opinion Request***

Dear Mr. Patalas:

The Internet Association (“IA”) and The Internet Association Political Action Committee (“IAPAC”) together (the “Requestors”) respectfully request the Federal Election Commission (“FEC” or “Commission”) issue an advisory opinion pursuant to 52 U.S.C. § 30108 and 11 C.F.R. § 112.1 approving their innovative and democratizing online candidate interaction and fundraising platform.

**I. Background**

**A. The Requestors**

***The Internet Association:*** The Internet Association, the unified voice of the Internet economy, represents the interests of 36 leading Internet companies and their global community of users. IA is a nonprofit corporation exempt from taxation under Section 501(c)(6) of the Internal Revenue Code. It is dedicated to advancing public policy solutions that strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. Members of the Internet Association include Airbnb, Amazon, Coinbase, Dropbox, eBay, Etsy, Expedia, Facebook, FanDuel, Google, Groupon, Handy, IAC, Intuit, LinkedIn, Lyft, Monster Worldwide, Netflix, Pandora, PayPal, Pinterest, Practice Fusion, Rackspace, reddit, Salesforce.com, Snapchat, Spotify, SurveyMonkey, Ten-X, TripAdvisor, Turo, Twitter, Uber Technologies, Inc., Yahoo!, Yelp, Zenefits, and Zynga.

***The Internet Association Political Action Committee:*** IAPAC is the separate segregated fund of IA organized under 52 U.S.C. § 30118(b)(2)(C) and 11 C.F.R. § 114.5. IAPAC is a qualified multicandidate PAC, funded with voluntary contributions from IA’s restricted class. This includes executive and administrative personnel of IA and executive

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and administrative personnel of IA member companies, if the companies have given their prior written approval in accordance with 52 U.S.C. § 30118(b)(4)(D) and 11 C.F.R. § 114.8(d).

Like most association PACs, IAPAC has no staff of its own. Rather, IA staff provide administrative and support services to IAPAC under 52 U.S.C. §30118(b)(2)(C) and 11 C.F.R. § 114.1(a)(2)(iii).

## **B. The Proposed Online Events**

Pursuant to its mission to advance the Internet economy, the Requestors have developed a virtual fundraiser platform to allow people from all parts of the country, from all financial backgrounds, and from all political parties to participate in candidate fundraising events. Rather than gather in a Washington conference room, attendees will log on to the system the Requestors have developed, where attendees will be able to see the candidate in real time, ask questions, share their views, and, if they desire, make a contribution to the candidate. The event platform is a means by which IAPAC plans to communicate with the general public, not just its restricted class.

Moreover, IAPAC plans to make contribution information available to the public in real-time so the public can see who is giving. IAPAC envisions posting information such as name, location, and amount given as contributions come in to increase transparency in the process. The information would come from the information the contributor submits to Democracy Engine. If, however, this effort to increase transparency in the giving process presents any concerns for the Commission, the Requestors will not implement this feature.

The event platform is based on an existing online platform that is used for a variety of advocacy purposes. IA has contracted with the platform, which has been integrated into its website, for use in various online advocacy efforts. Through IA-specific customization, the platform is capable of hosting the events described below.

The events will be put on by IAPAC. In practice, this means the web site will be an IAPAC site, emails and other communications about the events will identify IAPAC as the sponsor of the events, and include disclaimers required to appear on communications made by political committees. IAPAC will select the candidates who will be invited to attend the events. Although IAPAC might allow others to make use of the platform, and

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certainly hopes that others will make use of its approach, these are IAPAC events and it will determine which candidates are invited to attend.

Each event will feature one candidate for federal office and will be hosted by an IA staff person (likely IA's President and CEO, Michael Beckerman). The host will engage in a robust discussion with the candidate about his or her views on the Internet economy, issues affecting the Internet and Internet companies, and the state of the candidate's campaign. The public will be able to view these events online and will have the ability to submit questions, either through a chat function on the site or by tweeting questions and comments. The host will encourage individuals to ask questions. Other IA staff will provide technical support for the event, making certain the system is operational and the candidate is visible (if he or she is participating from a remote location). In addition, technical staff will track the questions submitted through the online system or other social media and provide them to the host who will pose them to the candidate. As noted in the request below, whether IA must pay IAPAC for the IA staff time is one of the issues presented.

IAPAC plans to market the events through a variety of channels. Prior to the event, IA staff will post blog entries about the event, include information about the events on IA's existing website, tweet invitations for people to join the event, and engage in other social media efforts to promote the event. IAPAC may also send emails to individuals who have opted in to receiving additional information from IA. In addition, IA will communicate with its member companies, in case they wish to share the information about the events with their restricted classes. In addition, IAPAC may pay for online advertisements on third-party sites and in social media (e.g., paid Facebook advertisements). Requestors would have no communication with the candidates or the candidates' agents about whether IAPAC will purchase such ads, the content of the ads, or the location and frequency of such ads.

During the events, the candidate will likely ask those who are eligible to vote for him or her to do so. At times, the host may also urge listeners to vote for the candidate. In addition, both the host and the candidate may explain to viewers how important it is for candidates to have the resources necessary to run a campaign and ask viewers to make contributions to the candidate.

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Unlike ordinary fundraisers, where attendees are expected to contribute if they attend the event, viewers will have the ability to contribute to the candidate, but contributions are not mandatory to participate. IA has partnered with Democracy Engine (which received Advisory Opinion 2011-06 approving its platform) to make the Democracy Engine system available to donors to process contributions. As part of the online system Requestors have built, there will be a contribution button that will allow individuals to click the link to make a contribution. When clicking the link, attendees will be taken to a screen that allows them to make a contribution through the Democracy Engine platform. The contribution page that is part of the system with fields on it that are connected, through an application program interface (“API”), to the Democracy Engine system.

These screens will also inform donors of the \$2,700 per election contribution limit, and warn them that if they have previously made a contribution to the candidate they must consider those contributions or they may exceed the contribution limits. Democracy Engine will record all of the information required by the Commission’s regulations, including the name, address, occupation, employer, amount of contribution, and date of contribution. 52 U.S.C. § 30102(b)-(c); 11 C.F.R. § 102.8.

As described in AO 2011-06, the contributor then enters into a contract with Democracy Engine, to provide for Democracy Engine to collect a fee from the contributor to cover credit card transaction costs and provide Democracy Engine with a reasonable profit. Democracy Engine transmits the funds to the candidates, less its fee, and provides information about the contributor to the candidate so they can include the information on the necessary FEC reports. The funds never touch an IA or IAPAC account. They go directly through the Democracy Engine system and are then transmitted to the candidate.

Again, as described in AO 2011-06, Democracy Engine does not enter into contracts with the candidates, except as necessary to effectuate the transfer of funds. The contributions are never in any IA or IAPAC account. Neither IA nor IAPAC have any control over which candidate a person will contribute to. Neither IA nor IAP pay any of the processing fees for the contributions—those are all paid by the contributor directly to Democracy Engine.

The contributors will have full direction and control of their contributions. If they choose to contribute to a candidate, they will click the contribute button and complete the online steps necessary to effectuate the contribution. Neither IA nor IAPAC (nor Democracy

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Engine) have any ability to steer that contribution to a different candidate or otherwise exercise control over the contributor's contribution.

The events will be archived on an IAPAC site. Visitors will be able to watch past events and make use of the contribute function to contribute to the candidate featured in the event. Neither IA nor IAPAC will have any director or control of the contribution: once the contributor clicks the button and takes the steps necessary to make the contribution, it will be a contribution to that candidate.

## **II. Questions Presented**

Question 1: May IAPAC ask candidates to participate in the online events it has planned, and encourage listeners to contribute to the candidates?

Question 2: Does IAPAC have to pay IA for software development costs of the event?

Question 3: Does IAPAC have to pay IA for staff costs associated with each event?

Question 4: If IAPAC must pay IA for certain expenses, would any of these costs have to be treated as in-kind contributions to the candidates being supported, and if so, how would this be calculated?

Question 5: Will IA or IAPAC have any reporting obligations related to the events?

Question 6: Would unpaid social media and online promotion of the events be an in-kind contribution or expenditure?

## **III. Discussion**

The Requestors have developed a new way to engage in fundraising that will bring the traditional fundraiser to people outside of Washington. These online events will use the modern Internet economy to allow people to attend for free and then choose whom to support based on what they learn while attending the events. Where most people have to contribute to attend a fundraiser, this model allows people to see multiple candidates, ask questions, and then decide whether to give. More importantly, the events are open to all, not just those located in Washington. Even if people cannot attend live, the events will be recorded and made available online, so people can attend later and decide whether they want to contribute then. The Requestors believe the events can be hosted in a way that

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fully complies with the Act and regulations, and the method they propose would provide both transparency about the donors and very simple compliance obligations for IA (or others, should they desire to use the system to host events for other candidates, which IA hopes will become possible in the future).

**Question 1: May IAPAC ask candidates to participate in the online events it has planned, and encourage listeners to contribute to the candidates?**

Neither the Act nor the Regulations prohibit the Requestor's plan for the events. First, a separate segregated fund is permitted to solicit contributions to candidates. Second, the mechanism by which contributions are collected—the Democracy Engine platform—is a permissible way to allow contributors to make contributions without causing IAPAC or IA to facilitate the making of contributions. Third, the costs of the events should not be considered in-kind contributions to the candidates who participate. As such, there is no concern about corporate contributions or excessive in-kind contributions. Even if there are costs that must be treated as in-kind contributions, as discussed in the next section, there are ways to avoid corporate or excessive in-kind contributions. As such, the events should be permissible.

**1. *The Events are a Modern Way to Lawfully Solicit Contributions.*** Under 11 C.F.R. § 114.2(f)(3)(i), separate segregated funds are permitted to solicit contributions to candidates. Moreover, 11 C.F.R. § 114.5(i) provides that separate segregated funds may use voluntary contributions to communicate with the general public, as long as they do not solicit contributions for themselves. *See* AO 2011-14 (Utah Bankers) at 4-5.

The events will feature a candidate, who will answer questions posed by IA staff and the general public. IA staff as well as the website itself will solicit voluntary contributions to the candidate attending. Thus, the events are solicitations to the general public permitted under applicable regulations. Although the method of solicitation is more advanced than the web-based solicitations approved in AO 2011-14, the event platform here is a similarly permissible way for the Requestors to engage in political speech via the internet.

**2. *The Events Do Not Facilitate Contributions.*** If attendees respond to the request for contributions, there will be a button on the screen that will allow people to contribute to candidates. This button will not, however, facilitate the making of

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contributions to candidates, because the Requestors have partnered with Democracy Engine to process the contributions. As explained in AO 2011-06 and AO 2014-07, Democracy Engine will charge contributors for the use of its system by deducting a transaction fee from each user's contribution prior to forwarding the remainder of the contribution to the recipient committee. This fee will cover the costs Democracy Engine incurs in performing credit card processing and also provides a reasonable profit to Democracy Engine. *See* AO 2011-06 at 3. Neither IA, IAPAC, nor Democracy Engine contract to provide services to candidate committees to perform contribution processing services. Rather, all services will be performed on behalf of users of the system who wish to contribute to federal candidates.

Thus, neither IA nor IAPAC will process the contributions, deposit contributions into a merchant account in either of their names, forward contributions to candidate committees, or otherwise facilitate the making of a contribution. Moreover, neither IA nor IAPAC will exercise any direction or control over the contributions, nor will the contributions be made to IAPAC.

As such, the Requestors are merely providing access to the Democracy Engine platform for contributors who respond favorably to the solicitation. The Requestors have chosen to make the Democracy Engine platform available because it provides a consistent and uniform interface for donors, as opposed to providing a link to the campaign website, which will vary greatly from candidate to candidate. It also allows the Requestors to have access to information about contributions so it can provide real-time data on the site. Accordingly there is no issue with facilitating the making of contributions because all costs of the contribution are borne by the contributor using the Democracy Engine system.<sup>1</sup> Moreover, IA may develop a log-in system that would further streamline giving through the Democracy Engine platform.

Per the process approved in AO 2011-06, Democracy Engine charges the contributor a transaction fee to process the transaction. As an analogy to the Commission's regulations that were written before the online age, the connection to the Democracy Engine platform is like providing the contributor with the address of the candidate, but not the stamp or

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<sup>1</sup> Alternatively, if the Commission would prefer, the system could deposit the contributions into the IAPAC account and IAPAC could earmark the contributions to the candidate under 11 C.F.R. § 110.6. *See* AO 2014-07 (Crowdpac) n.10.

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envelope. *See* 11 C.F.R. § 114.2(f)(2)(ii). The contributor pays for his or her own “stamp or envelope” through the fee that Democracy Engine charges to process the contribution. Or, the connection to the Democracy Engine system through the API could be analogized to a room a PAC rents to hold a fundraiser for a candidate; the PAC treats the room as an in-kind contribution to the candidate, but does not itself collect or handle the contributions. The screen that allows the contributor to fill in his or her information directly into the Democracy Engine platform through the API is the room, but there is no rental fee for that room, so there is no in-kind contribution from the PAC to report. *See* 11 C.F.R. § 114.2(f)(3)(i).

Finally, it is important to understand that contributors make the decision as to whether or not to contribute. Thus, they exercise full direction and control over whether to contribute and to which candidate they wish to contribute. *See* Advisory Opinion 2014-13 (ActBlue) at 3 (citing Advisory Opinion 1980-46 (National Conservative PAC)).

**3. *No In-Kind Contributions.*** Because the events will be entirely online, there are no in-kind contributions associated with the events. The events will be hosted on IAPAC’s publicly available website (which is hosted as part of IA’s overall website). The events will include express advocacy and requests for contributions and candidates will participate in the events. There will necessarily be discussions between IAPAC and the candidates to agree on a time for the event and where the candidate will be located (either at IA offices or in a remote location with a computer and web cam). As such, IA presumes the events will satisfy one or more of the conduct prongs of the Commission’s coordination regulations. 11 C.F.R. § 109.21(d).

The events occur only online, on the Requestors’ own website. Therefore, the events will not be public communications under 52 U.S.C. § 30101(22) and 11 C.F.R. § 100.26 because Internet communications that are not placed for a fee on another person’s websites are not public communications. Nor will they be electioneering communications under 52 U.S.C. § 30104(f)(3)(A) and 11 C.F.R. § 100.29 because they will not be transmitted by cable, broadcast, or satellite communications. As such, they do not satisfy the content prong of the Commission’s coordination regulations found at 11 C.F.R. § 109.21(c). Thus, the events will not be coordinated communications. *See* AO 2011-14 (Utah Bankers) at 5. As such, just like the Internet communications raising funds for candidates discussed in AO 2011-14, the “costs of these communications will not be in-kind contribution to those candidates.” *Id.* This is exactly how the Commission analyzed

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the online endorsements by Americans for Legal Immigration PAC when finding no reason to believe that the PAC made in-kind contributions to the candidates it endorsed.<sup>2</sup>

Therefore, IAPAC should be permitted to ask candidates to appear in the events, because no contribution results from the event, and there is no concern about contribution limits or permissible sources of contributions.

**Question 2: Does IAPAC have to pay IA for software development costs of the event?**

IA paid for the costs of developing the online fundraising platform. These costs included developer fees, staff time for IA staff to oversee the development, and license fees for software. Some of these will be recurring license fees. IA will use the platform for a variety of advocacy efforts. It can easily modify the platform for the fundraising events. All of these costs allow the events to take place within IA's website. There are two different reasons why requestors believe IAPAC does not have to pay IA for any of these costs. If the Commission disagrees, requestors provide two options for how payment could be made.

As discussed in Question 1, the Requestors believe all costs for the events are expenditures, not in-kind contributions. Because the events are expenditures and not in-kind contributions, IA itself should be able to pay for them under *Citizens United v. FEC*.<sup>3</sup> Thus, IAPAC would not have to pay IA for the development costs. Requestors recognize that some of the regulations might suggest a different result, but those regulations are inoperative restrictions under *Citizens United*.

Alternatively, the creation of the system to host the events could be viewed as standard operating expenses. Much of the cost of the platform can be allocated to non-fundraising purposes by IA. Moreover, the technology costs are not per-event costs. Rather, they are one-time expenses, or possibly annual software licensing fees. As such, the costs would be like other software licenses and overhead that belong to IA (e.g., word processing, Internet access) that IAPAC may use. For example, if IAPAC were to spend funds to host a traditional event, it would pay IA for paper, postage for the invitations and food, but

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<sup>2</sup> Factual and Legal Analysis, In re Americans for Legal Immigration PAC, MUR 5896 at 5-6 (Sep. 27 2007).

<sup>3</sup> *Citizens United v. FEC*, 130 S. Ct. 876. (2010).

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would not, presumably, have to pay for a portion of the software used to design the invitations.

If the Commission believes IAPAC must pay for the development costs, then Requestors suggest one of two options. First, IA and IAPAC could themselves enter into a licensing arrangement whereby IAPAC pays IA a monthly fee for access to the platform. The problem with this approach is that it is difficult to determine the appropriate fee to charge. The platform will be usable for years to come, so apportioning the costs over just one year would not be appropriate. The other alternative would be to treat the costs as one-time expense attributable to the system's first use. If that were the Commission's approach, then IAPAC could conduct a fundraiser for itself with its restricted class, which would be a permissible solicitation cost for IA to pay.

***Question 3: Does IAPAC have to pay IA for staff costs associated with each event?***

The Requestors anticipate that IA's president will moderate most of the events. Other IA staff will work each event to field questions and handle technical issues. By handling the logistics of an event hosted by its separate segregated fund, IA is merely engaged in the administration of IAPAC, which is an exempt expense under the Act. 52 U.S.C. § 30118(b)(2)(A). Further, because the events all occur on the web, IA's staff time need not be paid by IAPAC, since the events do not result in in-kind contributions to the candidates. The staff time involved is all part of the online communication. In other words, just as the communication is exempt as an online communication, so too is the staff time necessary to produce it.

***Question 4: If IAPAC must pay IA for certain expenses, would any of these costs have to be treated as in-kind contributions to the candidates being supported, and if so, how would this be calculated?***

As discussed above the Requestors do not believe any expenses need to be paid by IAPAC. If, however, the Commission determines that some costs must be paid for by IAPAC, then IAPAC asks the Commission to explain which costs must be paid, and whether those costs would then have to be treated as an in-kind contribution from IAPAC to the candidate. Again, the reason IAPAC believes the expenses do not have to be funded through the PAC is that they are not coordinated contributions and therefore not in-kind contributions.

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**Question 5: Will IA or IAPAC have any reporting obligations related to the events?**

IA may need to report its expenditures if they exceed \$250. *See* 11 C.F.R. 109.10(b). However, IA does not anticipate that it will have any actual expenditures paid to a third party, merely staff time. As such, it appears that nothing would need to be reported. *See* 11 C.F.R. 109.10(e)(1)(ii) (requiring reporting of “[t]he identification (name and mailing address) of the person to whom the expenditure was made.”).

**Question 6: May IA send materials (e.g., email) to its members and ask those members to disseminate the materials to employees who are within the restricted class of the member companies.**

IA’s member companies may communicate with the employees in their restricted class on any subject under 11 C.F.R. § 114.3(a)(1). This would include notifying those employees in the restricted class about the events and informing them that they may watch the events during their working hours, as long as this does not impede their ability to complete their normal tasks. *See* 11 C.F.R. § 114.9(a)(1)(i). Forwarding an email from IA inviting restricted class employees to attend the online events would entail no cost to the member companies and therefore there would be no reportable communications costs under 11 C.F.R. § 114.3(b).

**Question 6: Would unpaid social media and online promotion of the events be an in-kind contribution or expenditure?**

IA and IAPAC plan to publicize the events through online media owned by IA and IAPAC. This would include Facebook, Twitter, IA and IAPAC’s website, and email. These are not public communications, and so no in-kind contribution to the candidate or independent expenditure should result. *See* AO 2011-14.

**IV. Conclusion**

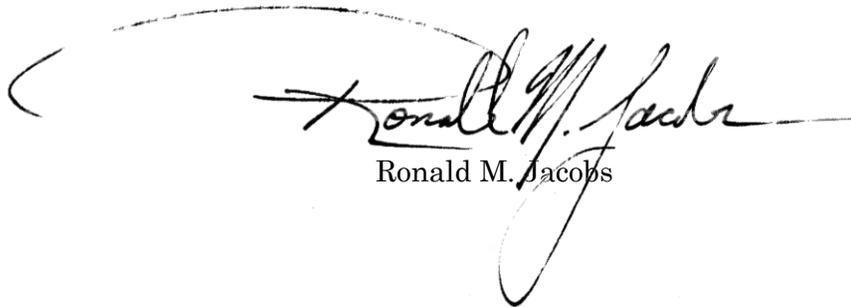
IA and IAPAC believe that the online events they have developed will enhance participation in the democratic process, provide new ways for candidates to interact with the public, and expand the donor base. In many ways, by using Internet technology, IA plans to open up “Washington” fundraising to the entire country. Rather than being limited to those who can afford to contribute a sufficient amount to attend a fundraising

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event and those who geographically can come to Washington, D.C., IA and IAPAC believe they can use Internet technology to reinvent the traditional fundraiser and make it available to all, much like the Internet—and the companies that are members of IA—have revolutionized so many other industries.

Should you have any questions or need additional information, please do not hesitate to contact me at 202-344-8215 or [rmjacobs@venable.com](mailto:rmjacobs@venable.com). Thank you very much for your time and attention to this matter.

Sincerely,



Ronald M. Jacobs

**From:** [Jacobs, Ronald M.](mailto:Jacobs.Ronald.M.)  
**To:** [GKetcham-Colwill@fec.gov](mailto:GKetcham-Colwill@fec.gov)  
**Cc:** [JSelinkoff@fec.gov](mailto:JSelinkoff@fec.gov)  
**Subject:** RE: Internet Association PAC Advisory Opinion Request  
**Date:** 05/31/2016 04:37 PM

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Dear Mr. Ketcham-Colwill:

Both statements are correct. Thank you.

Sincerely,  
Ron Jacobs

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**From:** GKetcham-Colwill@fec.gov [mailto:GKetcham-Colwill@fec.gov]  
**Sent:** Tuesday, May 31, 2016 4:14 PM  
**To:** Jacobs, Ronald M. <RMJacobs@Venable.com>  
**Cc:** JSelinkoff@fec.gov  
**Subject:** Internet Association PAC Advisory Opinion Request

Dear Mr. Jacobs:

Thank you for speaking with us about your advisory opinion request today. I have set out below our understanding of some of the information that you provided in that conversation. Please confirm the accuracy of these statements or correct them if they are not accurate as written.

1. The issue posed by Question 3 of the request is whether IAPAC must pay IA for staff costs (as stated on page 10 of the request), and not vice versa (as stated on page 3 of the request).
2. The link that IAPAC will provide to the Democracy Engine fundraising platform will allow viewers to contribute to only those candidates IAPAC has invited to the proposed events. Viewers will not be able to use an IAPAC provided link to contribute (via Democracy Engine or otherwise) to other candidates.

We would appreciate your response by email. Your response may be considered part of your advisory opinion request; if so, it will be posted as such on the Commission's website.

Sincerely,

Greg Ketcham-Colwill  
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