

Creating Dialogue... Affirming Fairness



*Office of the
ICANN Ombudsman*

2005 Annual Report

The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and “shuttle diplomacy” to achieve these results.

(ICANN Bylaws, Article V, Section 2)

The Values of this office are:

Respect for Diversity The Office of the Ombudsman recognises and honours the fact that members of the ICANN community come from across the face of the globe. This diversity means that the Office of the Ombudsman will respect that different cultures view disputes and conflict through different lenses. The Ombudsman will always be open to learning about cultural differences in responding to disputes and conflict.

Excellence in Ombudsmanship The Office of the Ombudsman will strive to be a leader for modeling and promoting fairness, equality, clarity, innovation, and by providing assistance to ICANN and the community in developing an awareness of the Ombudsman role. The Ombudsman will also strive to ensure that ICANN's Office of the Ombudsman is well regarded as an institution of excellence in the peer community, such as The Ombudsman Association, the United States Ombudsman Association, and the Forum of Canadian Ombudsmen. I wish to develop deeper relationships with Ombudsman in other regions of the world in the future to reflect the global nature of ICANN's constituency.

Professionalism The Ombudsman, in conducting his or her duties, will maintain and exemplify the highest standards of professional conduct, and respect for human dignity.

Confidentiality All parties, both within the community and ICANN, bringing information to the attention of the Ombudsman should feel assured that the information will be held in confidence, except when it is necessary to help resolve the complaint.

Impartiality In each and every situation, the Office of the Ombudsman will receive information from the community with no predisposed idea as to the outcome of the Alternative Dispute Resolution process, and without favouring any party in the process.

Independence The Office of the Ombudsman, in order to remain an impartial officer, will be independent of the normal ICANN structures.



Letter from the Ombudsman

30 June 2005

To the Chairman, and Board of Directors of ICANN,

It is with great pleasure that I submit to you this, the first Annual Report of the Office of the Ombudsman. I believe that this report marks a major milestone in the history, not only of my Office, but in ICANN generally, for it serves as an important precedent of open communication in connection with the Ombudsman's office. In a spirit of transparency, with the consent of the Chair, and taking example from many other Ombudsmen around the world I have decided to make this report public in order to create a greater understanding of the role of the Office of the Ombudsman within the ICANN community.

The Office of the Ombudsman, as with all other entities operating under the ICANN umbrella has a fiscal year end date of June 30, thus my inaugural report will be for a reporting period of eight months; from 1 November 2004 when I was appointed to the fiscal year end. The subsequent reports will be based on a full year's activity.

Before getting onto the specifics of my reporting, I think it would most appropriate to spend a moment in reflection, and to express a sincere thank you, on behalf of the Office of the Ombudsman, and myself, to a wide range of people who have made this first report possible. The Office of the Ombudsman has come about because of a sincere desire from the ICANN community to have a means of resolving disputes with the lowest possible level of conflict. The Board of Directors has responded by creating an Ombudsman, and by formalising its existence through a Bylaw. The fact that the Office of the Ombudsman has been codified in this way means that ICANN has entrenched the Ombudsman in its structure, and is therefore, serious about resolving disputes.

I would like to recognise the efforts of those who helped in the establishment of the office and in the lengthy world wide recruitment process to fill the post of Ombudsman. It was apparently an arduous process, with many candidates from various backgrounds from 'round the globe. I am grateful to have been the person finally selected, and I would like to thank the board for the confidence it has placed in me for this inaugural role.

I would like to thank the members of the ICANN staff for their assistance in setting up the Office, and in my conduct of Ombudsmanship on behalf of the community. Your professionalism sets the barometer on dispute resolution.

Frank Fowlie

Frank Fowlie
Ombudsman



*Photo by Barbara Fremgen

The Year in Review

Evidently, as I came to the position on 1 November 2004 as ICANN's first Ombudsman there were a number of tasks to be done to establish the Office, and to develop communication links with the community to be able to receive complaints etc.

The first task was to write an Ombudsman Framework. This Framework goes a step beyond the general principles set out for the operation of the Office of the Ombudsman in Bylaw V, and creates a much more definitive operational environment for the Office. The framework is based on an environmental scan of contemporary Ombudsmanship. The Framework was posted for public comment.

While the Ombudsman Framework was being developed, ICANN staff put together a web page and web mail facility for the Office. The page can be found at <http://icann.org/ombudsman>. Members of the community were able to contact the Ombudsman directly by email, and information, news, speeches, etc. were put up on the site. One of the most helpful additions to the site was an online complaint form. This allows members of the community the ability to complete a complaint form, which contains the elements required for the Ombudsman to ascertain jurisdiction, as outlined in the Framework. At the suggestion of ALAC, the complaint form can be completed in any language, and the Office of the Ombudsman will then look after translation. To date, there has been one multilingual complaint form completed.

In early 2005, I completed a Results Based Management

Accountability Framework (RMAF) for the Office. The RMAF discusses the evaluation and reporting strategies for the Ombudsman. Importantly, it describes the relationship between ICANN and the Ombudsman in a logic model, which is included elsewhere in this report. The RMAF was posted on the Ombudsman's webpage, and like the Framework, received no relevant public comments.

The RMAF imposes a duty on the Ombudsman to report to the Board regarding ongoing evaluation activities, and these are discussed later in my report.

As I write this report, the Office of the Ombudsman is at the point of implementing a Web based Case management system. This system will be housed on a separate, secure server at Marina Del Rey, and will manage all of the normal case handling functions, as well as statistical analysis for the Office.

Finally, as a result of attending a conference with The Ombudsman Association in Houston, Texas, I formulated a set of Values for the Office of the Ombudsman. This value statement is prominent on the Office's webpage, and is on every email emanating from my office.

Ombudsman Activities

Reception, referral, and investigation of complaints

In the eight months since I have become the Ombudsman I have often used the following analogy when people have asked me what it's like to be first Ombuds for ICANN:

"It's like going on a car drive with a family. For a long time they've wanted a first aid kit in the car. There's been some argument along the way about how big the first aid kit

Outreach, Consumer Education and Peer Activities

should be, just how much trauma it should be able to treat, how much it should cost, where it should come from, and who should be able to use it. But now that the first aid kit is in the car, the level of tension has gone down. It seems to be an okay first aid kit. People are now once again concentrating on the car drive, there's an interesting journey ahead of them. But, they feel confident knowing that the first aid kit is in the car if they ever need it."

Since beginning operations in November 2004, the Office of the Ombudsman has handled in excess of one hundred contacts and complaints. There are a number of charts in this report which breakdown the complaint taking activity of the Office of the Ombudsman. I think it is important to note a couple of things. First of all, the number of contacts from the community that actually lead to a complaint within Ombudsman's jurisdiction is seemingly within the norm that is experienced by many classical or executive Ombudsmen.

Second, ICANN staff, in particular, Tim Cole the Chief Registrar Liaison, to whom a majority of internal referrals are sent, have developed their own operating standards for handling Ombudsman related issues. This has greatly increased the timeliness in dealing with non-jurisdictional complaints.

Third, the volume of referrals and non-jurisdictional complaints is, in my opinion, indicative of two trends. First, that everyday users of the Internet view ICANN as a credible source of information and Dispute Resolution. Second, that other internet related bodies could do more to increase the awareness of their consumer service programs.

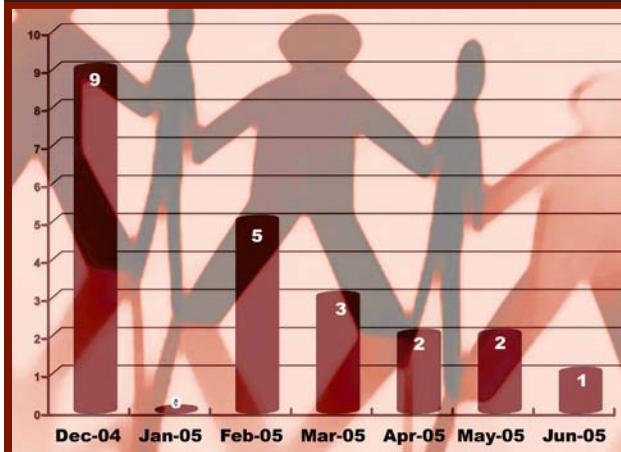
Two important functions of this Office, apart from the handling of complaints, include informing members of the ICANN community about the Ombudsman and maintaining professional skills through peer activities. Tables elsewhere in this annual report chronicle my outreach and peer activities.

It is important for a sole practitioner Ombudsman, especially, to be able to participate in peer ombudsman activities such as training courses and conferences. This provides an avenue to engage with fellow Ombuds from around the globe to gain current perspectives on trends, legal issues, and to discuss the best practices for our offices. During the past several months I have been fortunate to been able to participate within The Ombudsman Association, the United States Ombudsman Association, and the Canadian Forum of Ombudsmen. The Ombudsman Association has recently voted to merge with the University and College Ombudsman's Association and will soon change its name to the International Ombudsman's Association to more accurately reflect its makeup.

I wish to develop deeper relationships with Ombudsman in other regions of the world in the future to reflect the global nature of ICANN's constituency.

As part of my Outreach program for 2005-06, I look forward to receiving invitations from the ICANN community from around the world to provide further information about my Office.

*Outreach Activities:
Fiscal Year 2005 (December 2004 to June 2005)*



File	Month	Activity	Location
04-01	December	Presentation at ICANN Board Meeting, various supporting organizations	Capetown
04-02	December	Media Interview Highway Africa	Capetown
04-03	December	Media Interview The Register	Capetown
04-04	December	Media Interview CKNW "Warren on the Weekend" Cross Canada call in show	Vancouver
04-05	December	Media Interview CKNW "The Jennifer Mather Show"	Vancouver
04-06	December	Media Interview 570 News "Morning Show"	Kitchener, Ontario
04-07	December	Media Interview CBC Radio One "All in a Day Show"	Ottawa
04-08	December	Media Interview ADR.com	Washington DC
04-09	December	Media Interview Ottawa Citizen - Can West News Services (15 papers)	Ottawa
2005			
05-01	February	European and Middle East Registrars meeting, 2 days	Brussels
05-02	February	Nominet	Oxford, UK
05-03	February	Foreign and Commonwealth Office	London
05-04	February	Department of Trade and Industry	London
05-05	February	Former Board member	London
05-06	March	The Ombudsman Association Ombuds 101 course, 3 days	Houston
05-07	March	New Staff Orientation	Marina del Rey
05-08	March	Ombudsman - Public Service Commission of Canada	Vancouver
05-09	April	Presentation at ICANN Board Meeting, (9 days)	Mar del Plata
05-10	April	The Ombudsman Association - Annual Conference, 4 days	Atlanta
05-11	May	Financial Management Institute - Keynote Address, 2 days	Vancouver
05-12	May	Forum of Canadian Ombudsman, Annual Conference, 3 days	Toronto
05-13	June	TOA Northwest Region meeting	Seattle

Evaluation and Recommendations

As part of the Results Based Management Accountability Framework (RMAF) the Ombudsman is required to look at five performance indicators concerning four evaluation questions and report on these to the Board on an annual basis.

A) Relevance - Is there an ongoing need for the Office of the Ombudsman?

Although it is still early days, the trend analysis would indicate that there are a steady number of complaints relating to the Ombudsman's jurisdiction during the reporting period. The trend analysis would also indicate that the Office of the Ombudsman acts as credible referral point for consumers, both within, and without, ICANN when in dispute.

Media analysis would indicate that prior to the Ombudsman being appointed that there had been criticism of ICANN for the length of the appointment process. Since my appointment the media has been supportive of the function.

B) Management - Are the Office of the Ombudsman resources sufficient to carry out its mandate?

Thus far, there is no backlog in case handling. Most contacts are replied to within the first 24 hours, unless I am in travel status, and then they are responded to within the first 48 hours. A plan has been put in place for an Adjunct Ombudsman for times when I am either on annual leave or should fall sick.

C) Cost effectiveness - Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration? Are there other models of Executive Ombudsman which ICANN could employ?

As it is still early days in the Ombudsman program, this year I have not made any formal recommendations which would lead to improvements in program delivery or administration. I have made informal recommendations concerning the standardisation of the planning cycle to assist both the board and staff members with their functions.

The ICANN Ombudsman practices in a particularly unique environment, and unlike the vast majority of my peers who meet and engage their community's primarily in person or on the telephone, over 99% of my work is done on the internet and by email. While this greatly enhances the ability to converse with members of the ICANN community from around the globe, with no barrier to time zones etc, it does reduce the normal intonations of human conversation. Often times, especially in more complex files, I will have to recompose and rephrase questions a couple of times, just to make sure that I understand what my correspondent really feels and desires.

However, as a sole practitioner office, with members of the ICANN community across the whole world, I cannot think of a more appropriate or efficient system at this time. Going forward key documents, such as the Ombudsman Framework, will be translated into a number of widely used languages in the ICANN community and posted, in order to reach a wider audience.

During the past eight months, as a result of my investigations I have notified the Board on one occasion of administrative unfairness or maladministration. In this instance I believed that a member of the ICANN community had suffered an unreasonable delay in receiving a response from ICANN on an issue he had raised. ICANN responded in a very positive manner to my notification and the oversight was quickly remedied.

I have also made a recommendation to senior staff at ICANN, as a result of issues which have surfaced in a number of complaints, that ICANN should, in due course, develop policies and procedures as foreseen in Article III, Section 1 of the Bylaws. These policies and procedures would deal with a privacy statement regarding the collection, retention, and release of data held by ICANN, especially by or on behalf of third parties. While ICANN has a general philosophy to be open and transparent, it also has countervailing duty to protect data and information given to it by third parties.

Logic Model

Objective

Ensure that the members of the ICANN community receive fair and equitable treatment

Key Functions

Independent Reviewer of Facts

Activities

- Receive and investigate complaints
- Make referrals
- Uses best practices
- Conducts outreach to raise awareness
- Develops communication tools

Outputs

- Ombudsman Website
- Online Complaint Forms
- Ombudsman Framework
- Ombudsman RMAF

Immediate Outcomes

Members of the ICANN community can make complaints

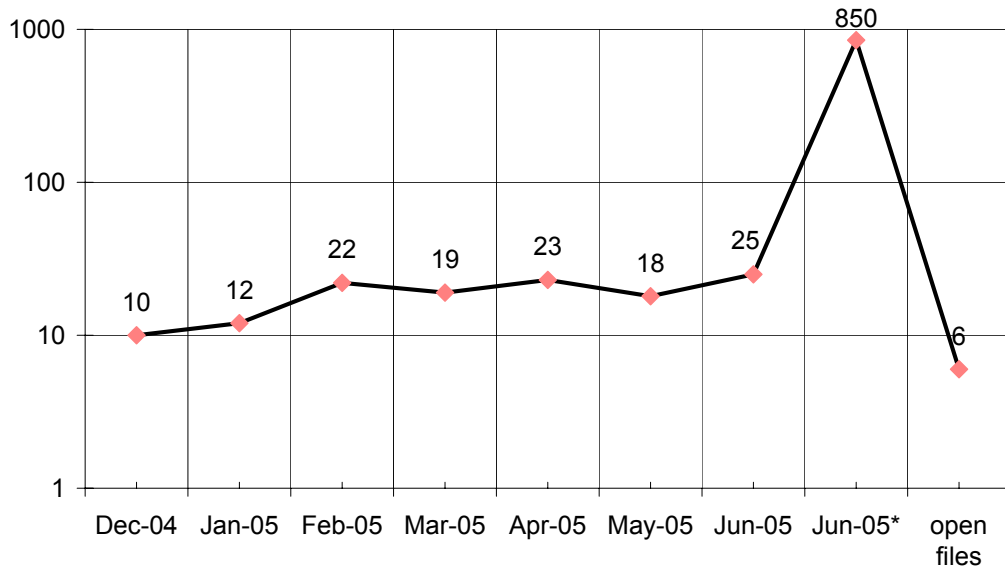
Intermediate Outcomes

- Raising of fairness standards and expectations
- Increased level of trust

Final Outcome

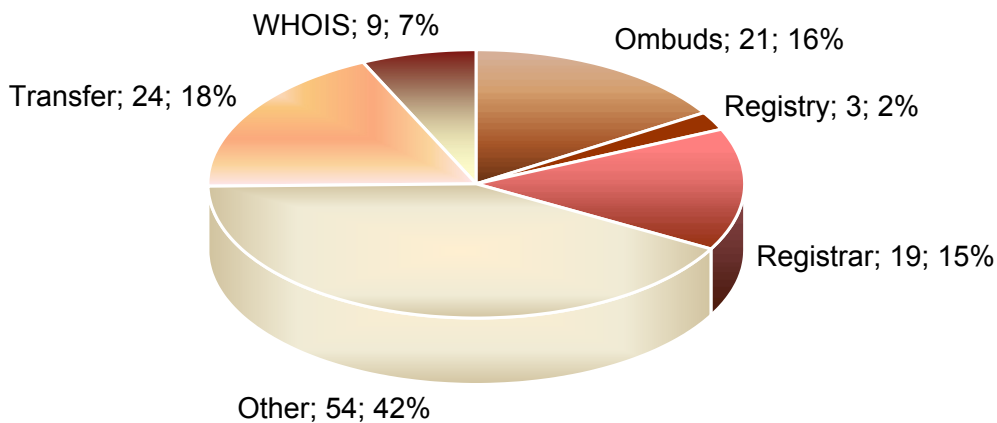
Stable, Secure, and Universal Internet

*Overall Complaints Received:
Fiscal Year 2005 (December 2004 to June 2005)*



**individual complaints received, responded to and closed concerning a non-jurisdictional issue - June 2005*

*Type of Complaints Received:
Fiscal Year 2005 (December 2004 to June 2005)*

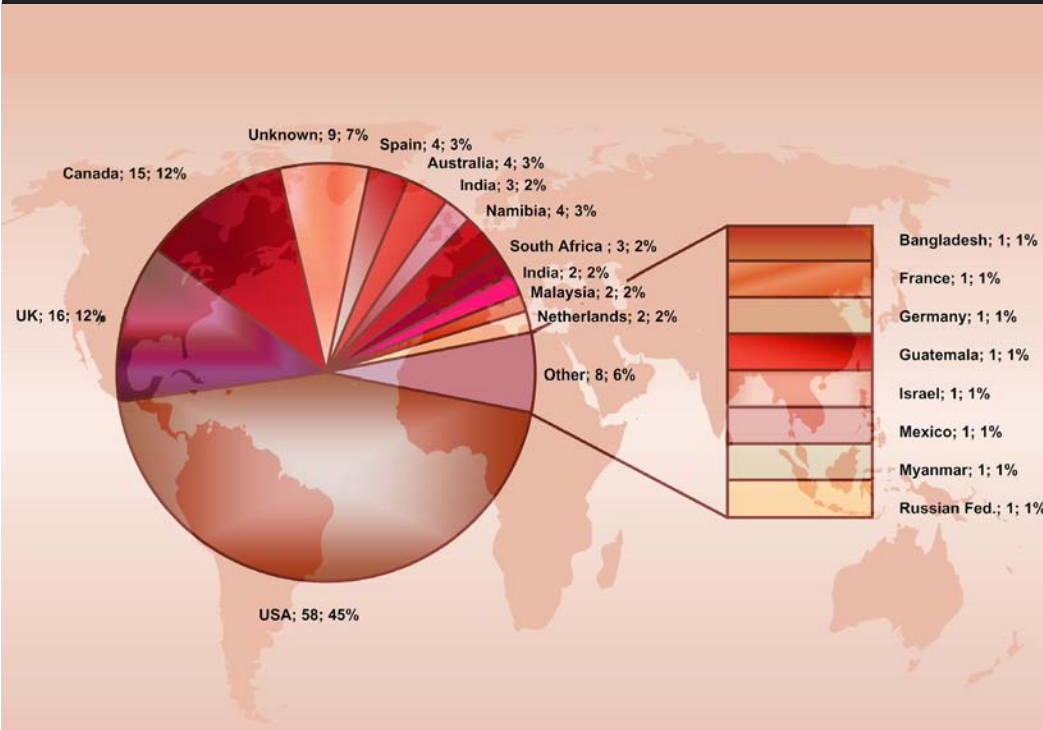


CASE STUDY

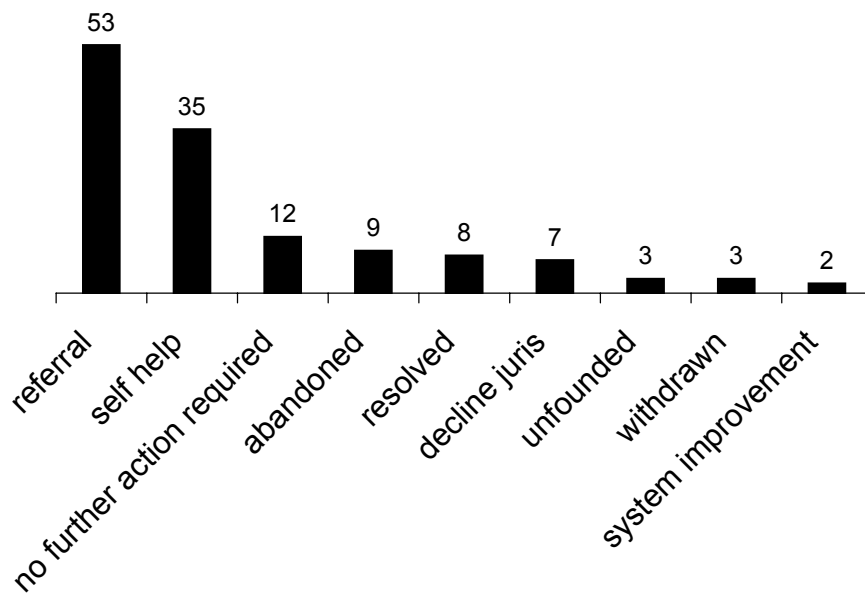
"The Ombudsman tries to assist, even when the problem is out of his jurisdiction."

A complainant contacted the Ombudsman, mistakenly believing that he was actually "Immigration Canada" Ombudsman, on what appeared to be an important matter. The Ombudsman referred the complainant to her local elected representative, and considered the matter closed. Several days later, the complainant wrote back to the Ombudsman saying that she had not had any reply from anyone. The Ombudsman determined who the complainant's Member of Parliament was, and copied her message to the MP. A short time later, the complainant wrote back to the Ombudsman saying that she had been contacted by the MP's office, and thanked the Ombudsman for his assistance.

*Geographical Distribution of Complainants:
Fiscal Year 2005 (December 2004 to June 2005)*



*Complaint Resolutions:
Fiscal Year 2005 (December 2004 to June 2005)*



CASE STUDY

"Privacy is a two-way street"

A member of the ICANN community interested in the top level domain process contacted the Office of the Ombudsman to complain that two documents listed at various points in ICANN's deliberations concerning an application for a top level domain could not be found on the website. One document was subsequently placed on the website, and the complainant was notified of its posting. I determined that ICANN staff had not acted unfairly by not posting the second document as it contained confidential and proprietary data and information about a third party's business operations and finances; the release of which would have been a greater unfairness to the owner of the data than the withholding from the requestor.

"The first public sector ombudsman (OM-budz-
man, -buhdz-, -boodz-) was appointed by the
Parliament of Sweden of 1809. The Swedish
Constitution divided and balanced power between
the king and Parliament with the king having
executive powers and Parliament retaining legislative
power. The ombudsman, who was appointed by and
responsible to Parliament, was to protect individual
rights against the excesses of the bureaucracy. "

(United States Ombudsman Association 2004 Online.
Internet. July 2005 <<http://www.usombudsman.org/>>)

*Special Thanks to my wife Joanna, for
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ICANN Board of directors; John Jeffrey
and Dan Halloran; Tanzanica King
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Cole and Tina Dam; the ICANN
Staff; and the ICANN Community.*



ICANN

*Office of the
ICANN Ombudsman*

*Contact The Office of the
ICANN Ombudsman*

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Web:
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Online Complaint Form:
<http://ombudsman.icann.org/complaints/>

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