

# FUTURE LAW, LAWYERING, and LANGUAGE

Helping People and Business Succeed, May 12-13, 2003 Helsinki, FINLAND

Challenge to academic approach: KNOWLEDGE is not enough,



practical, practised skills are needed!

HERE WE ARE!  
Promoting PRO-ACTIVE legal thinking



for improved, more profitable and amicable business!

INTRODUCING  
HIGHLY VARIED VIEWPOINTS:

- ▶ language skills
- ▶ active listening skills
- ▶ negotiation skills
- ▶ practical contracting

... AND MORE!

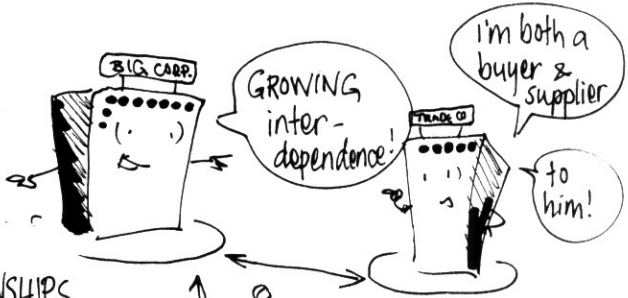
Defining TERMINOLOGY



PRODUCTS & SERVICES  
in the NETWORK ECONOMY



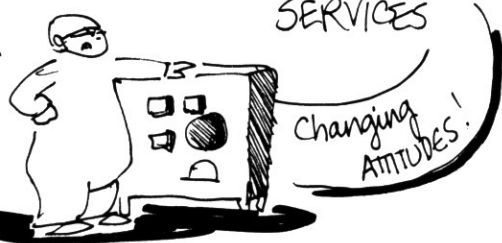
★ Growing interest in creating LASTING BUSINESS RELATIONSHIPS

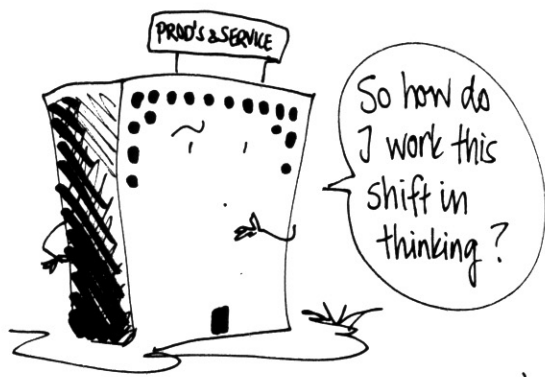


★ Shifting focus from products to SERVICES



Our gadget is the best! If you want service, go elsewhere!



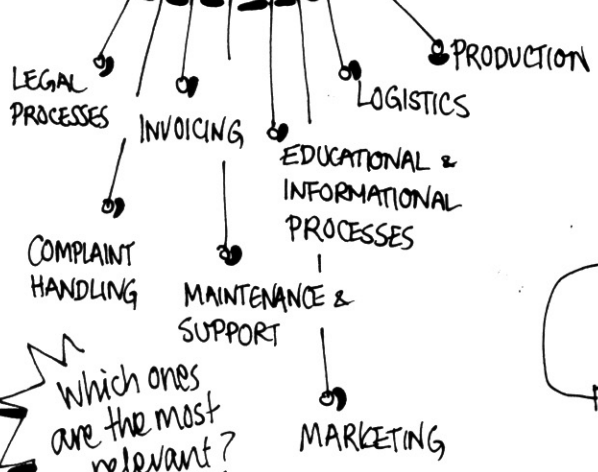


# UNDERSTANDING the CUSTOMER'S PROCESS

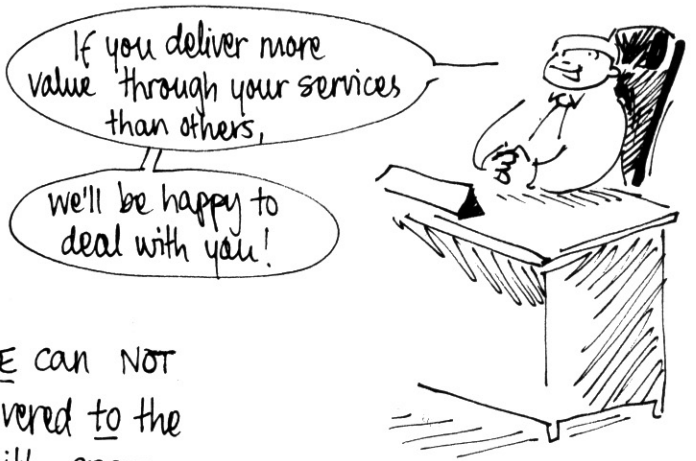
how does the customer value creation process work?



WHERE/HOW/WHEN is the value really created?  
NOTE! Several parallel processes



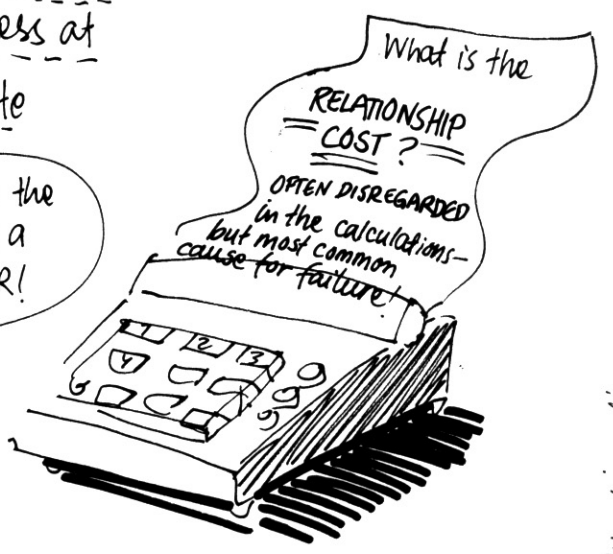
ENABLING tailored, timely support of the customer value creation



SERVICE can NOT be delivered to the client, it's CREATED in the process at the client site



EVERYONE in the organisation is a MARKETER!



Johan  
Horelli

# TRUST

the Foundation of  
All Human Relationships

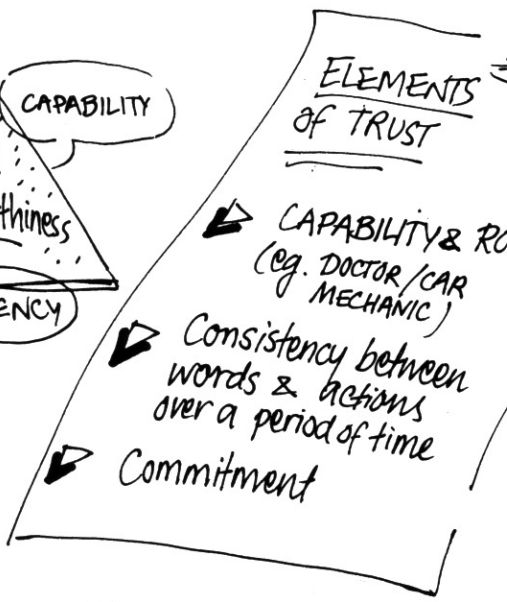


★ Enabled creation  
of highly  
NETWORKED,  
INTERCONNECTED  
World

Who can I  
trust now? What  
can I rely on  
tomorrow?



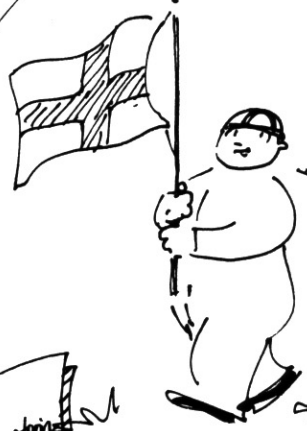
Aim  
high!



We're so  
VULNERABLE!  
Who can we trust?

Dependent  
for  
FOOD

Dependent  
for  
LIGHT &  
WARMTH  
from electricity



We value  
INTEGRITY in  
leaders above  
all!

# TRUST

will only develop  
if BOTH PARTIES  
are willing to  
open up to the VULNERABILITY  
inherent in trust creation process

TAKE A RISK!  
(which, if not material  
used, will create instant  
TRUST)

DISCLOSURE of  
what's important to me

DECLARE  
intentions





Lawyers need to also BALANCE between creating & upholding trust as well as protecting their client from UNNECESSARY RISKS.

Lawyers; don't make things difficult, make them POSSIBLE!

Looking for OPTIMUM TRUST

SOILE POHJONEN

# FLOWING

DIALOGUE

FROZEN RULES

COMPLEXITY rules my life! And it keeps GROWING & CHANGING!



Imposing ORDER through SCIENCE & LAW!



BUT my business and my life can't be DEFINED OR BOXED. My goals may go beyond the boundary!



ENGAGE in DIALOGUE

- ▶ emerging agreement
- ▶ listening more than talking
- ▶ long-term process

# DIALOGUE IN CONTRACT CREATION

- ① Knowledge creation (NONBINDING AIMS)
- ② Binding framework
- ③ Specifications (eg. TECHNICAL & PROJECT PLANS)



## PROACTIVE PREVENTIVE LAW: Past, Present and Future

EDWARD DAUER

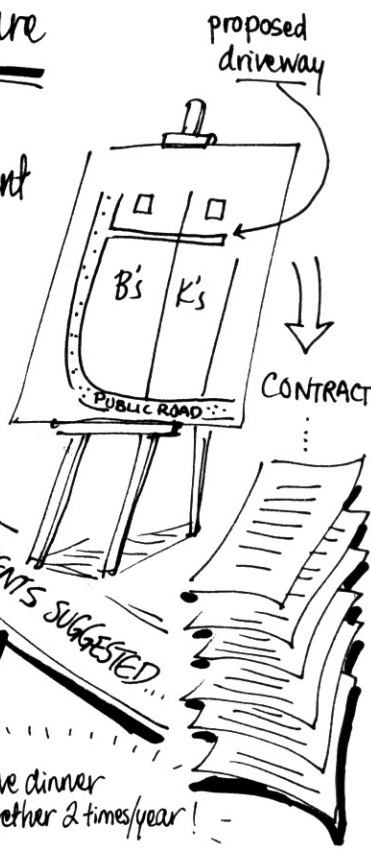
MAJORITY OF US ATTORNEYS



Huh. Proactive law is of no concern to me.

how to prevent problems in building & using the driveway?

HOW CAN WE MAKE THIS DEAL WORK?



This is proactive thinking!



3 clear, understandable and even memorable points

PROACTIVE SOLUTION

★ Have dinner together 2 times/year!

Most problems arise from



Predicting future Disputes

	DIRECT PARTIES	OTHER PEOPLE	GOVERNMENT
FORMATION			
OPERATION			
TERMINATION			

# UNDERSTAND

WHAT!?!  
That would require me to THINK!

Can't do THAT!

- ↳ the facts
- ↳ the business
- ↳ aims of the deal



I know the LAW and that should be enough!



This PREDICTING PEOPLE'S behaviour is PSYCHOLOGISTS' work or whatcha macallit, sociologists'!

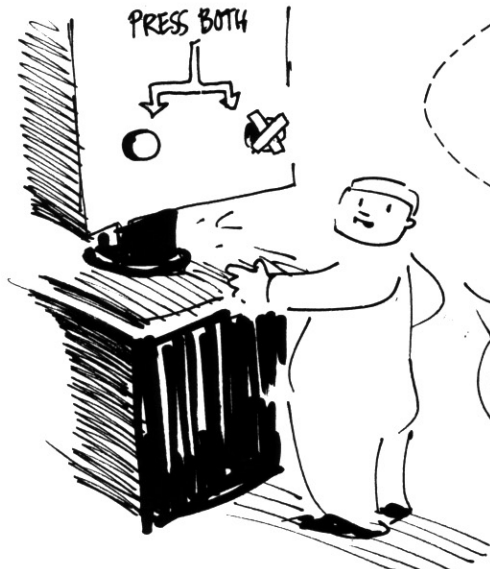


"...when rules & cultures clash, CULTURE always wins!"

Sorry, but culture says different!

"...educational material should always be tailored to the audience."

"...everyone must know what is expected from them..."



How much would my business client like me to be

involved WITH THEM in conducting the deals?



CLIENTS SAY: Please be more active!

A lawyer's role here is to:

- 1 Appreciate where legal risks REALLY come from
- 2 Early involvement in the client's facts
- 3 Participation in multi-disciplinary teams

DESIGNER of FACTS

★ Teach law students together with business students

THOMAS BARTON

# The FUTURE of LAW & LEGAL PRACTICE

COSTS go down...

- ▶ COMMUNICATION
- ▶ TRANSPORTATION
- ▶ INFORMATION

★ ECONOMY  
 from products to services,  
 changing roles of everyone in organisation

★ CULTURE  
 from self-protective  
 to connection-building  
 way of of life,  
 how to combine  
 complexity with structures

★ LAW PRACTICE  
 from passive, reactive to  
 proactive, designer of facts

INDUSTRIAL ERA



ECONOMIES of SCALE

Centralised authority & standardised products

SAFE CHOICE



Happy consumer buys branded commodity!

Affected SOCIAL INFRASTRUCTURE

SAMENESS

HOMOGENIZATION

POWER (in the market share)

... NOW...  
 Emerging a Helena Haapio-era  
 - a new kind of HUMAN EFFICIENCY



ALLOW for focus & deep expertise in the subject

## FUTURE LAW

★ We want to grow away from the SAMENESS

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ONE SIZE FITS ALL thinking

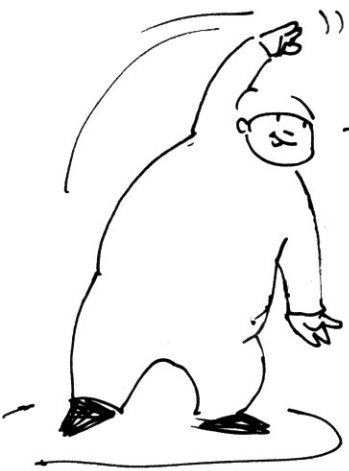
★ Focus on facilitating mutually beneficial relationships

(7)



point of view customer base

★ Acknowledge the particularity & connectiveness of each one



Future lawyering calls for FLEXIBILITY

of thought, curiosity of mind and openness of actions.

HELPING BUSINESSES & INDIVIDUALS to succeed!

PROACTIVE law is an instinctive way for an in-house counsel to act.

I see the benefits daily!



HELENA HAAPIO



TRUE OR FALSE?

LEGAL LITERACY

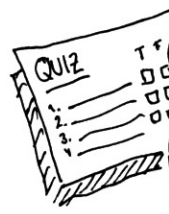
- helping clients to help themselves



Vaccinate to protect you against litigation disease!

It can only be TRUE or FALSE!

"BUT it's SELF-EVIDENT!"  
evident to oneself but to no-one else



Engineers are lovely! They're so PRECISE!



Except if you speak with a lawyer!

... because then it all depends...

PROACTIVE lawyering

★ avoids ambiguity & disputes

★ aims to bridge the gap between legal research & business reality



"It usually costs less to avoid getting into trouble than to pay for getting out of trouble" - LOU BROWN-



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Draft your contracts for the audience who'll read them!

Demystify law and bring it into the EVERYDAY BUSINESS REALM!

Direction of proactive lawyering!

PROBLEM SOLVER

FIGHTER



DESIGNER



Anette Kavaleff

# PROJECT FINANCE CONTRACTING as an example of Proactive Contracting

Lending to a project in which the lender expects to be repaid from the cashflow generated by the project.

This is typical of proactive work - STRONG LEGAL

FOUNDATION supports the business!



## Power project risk management step-by-step



Lot's of INTER-DISCIPLINARY teamwork!



Will & skill to use foresight & negotiate are key!

In projects like these, contracts are KING!

- ★ HIGH QUALITY DUE DILIGENCE
- ★ Optimal SHARING & ALLOCATION of RISKS



Here are some very good ideas that apply to other projects, too!

★ Partners really get to know each other before signing  
↳ BUILDING OF TRUST

All this will take its time!

Preventing & avoiding disputes is key!

Soili Nystén-Haarala

# HOW

DO DIFFERENT CONTRACTING APPROACHES WORK IN PRACTICE?

In proactive law, a contract is a tool for both parties!



## 1 CONTRACT LAW

a set of rules for lawyers to operate with?

↳ ex post courtroom approach



How to create & maintain business transactions  
↳ ex ante approach

BUT I JUST WANT TO DO MY BEST WORK AS A LAWYER! AND IF YOU CAN'T UNDERSTAND IT, THAT'S REALLY NOT MY PROBLEM, IS IT?



How much does contract law allow/limit proactive approach?



## 3 TRANSACTION COST ECONOMICS

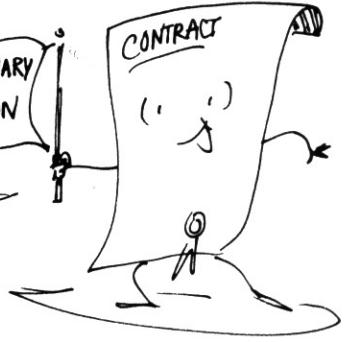
- bilateral governance
- private ordering ex ante
- commitment to co-operation creates trust

## 2 RELATIONAL CONTRACT

- value based
- trust as a standpoint

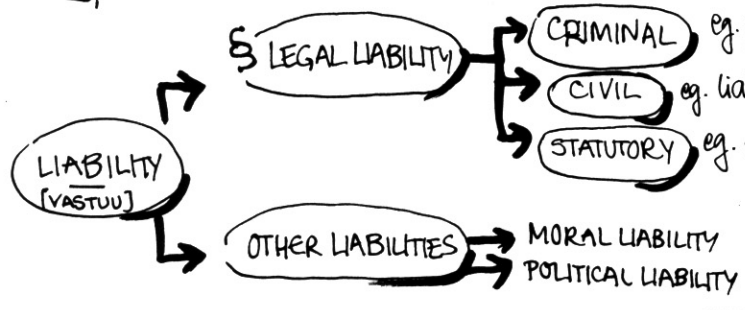
INTERDISCIPLINARY CO-OPERATION

Helping people & business succeed!



SARI LINTOMAA & PÄIVI NYGREN

## RECOGNIZING & MANAGING legal risks



eg. punishments like fines, imprisonment  
eg. liability for damages  
eg. prohibition notice

**LIABILITY RISK**  
is a threat that an entity/person must bear the consequences/damages caused by activities, products, acts or omissions or non-compliance with legally binding obligations.





When something goes wrong...

This is the motivational bit!

### LIABILITY for DAMAGES

- ▶ Damage to company image
- ▶ Litigation costs
- ▶ Punishments
- ▶ Loss of revenue
- ▶ Costs for claims adjustment
- ▶ Actions of authorities
- ▶ Mgmt & employee contribution
- ▶ Decrease of share value

Liability risk management process aims to:

- ▶ prevent risks from materialising
- ▶ mitigate consequences
- ▶ secure business continuity & profit
- ▶ help maximise opportunities without exposing company to unnecessary risks.

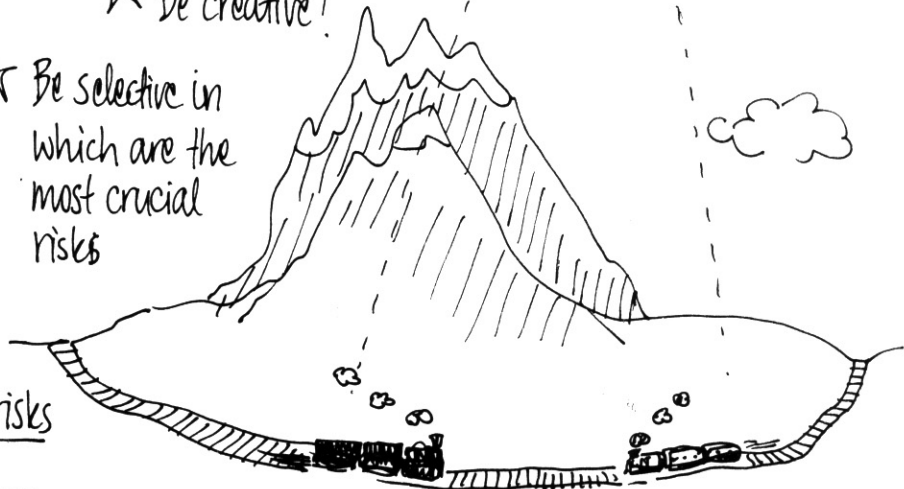


### LIABILITY ASSESSMENT ASKELMA



### FRIME method AOn Finland RISK RECOGNITION & EVALUATION

- ★ Take the eagle's view
- ★ Be creative!
- ★ Be selective in which are the most crucial risks



### Dealing with risks

- ▶ RISK AVOIDANCE
- ▶ RISK REDUCTION
  - QUALITY CONTROL & SUPERVISION
  - TECHNICAL SOLUTIONS
  - IMPROVING QUALITY OF CONTRACTING
  - PERSONNEL TRAINING & MOTIVATION
- ▶ RISK TRANSFER
- ▶ RISK ACCEPTANCE
- ▶ MONITORING



This continuous monitoring is key to truly minimising risks.

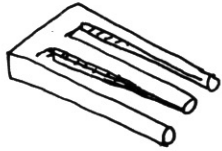
Is like taking a bath: having bathed once doesn't mean you'll stay forever CLEAN!

ANITA  
EKWALL

# CULTURAL awareness IN INTERNATIONAL MANAGEMENT

Body language follows CULTURAL GUIDELINES

Our BRAINS are wired to a certain kind of thinking  
↳ different ways!



IF YOU DISAGREE WITH ME, YOU'RE WRONG.



collective programming of the BRAIN

I'll take this to others and we'll think about it.

Mom, look! Strange!



DEFINITIONS of normality are largely formed by age 6.



TO UNDERSTAND OR NOT TO UNDERSTAND?

Identify differences, then work with them

ACCEPTANCE



To a Swede, what's enough information

to satisfy others, is just a good starting point.

★ Identify national strengths & use them to full advantage

HUMAN RELATIONSHIPS

TIME ORIENTATION

RELATIONSHIP WITH NATURE

▷ SWEDEN: time is quality  
▷ FINLAND, DENMARK, NORWAY: Save time!

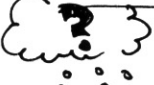
▷ DENMARK: nature is a social arena

OH NO! THEY'RE INEFFICIENT, WASTED TIME!

LONG DISCUSSIONS ARE FABTASTIC!



PROBLEM AREAS



**2** PEOPLE COMMUNICATING  
IN A 3RD LANGUAGE  
WHICH IS NOT EITHER ONE'S  
MOTHER TONGUE,  
understand each other  
better than when

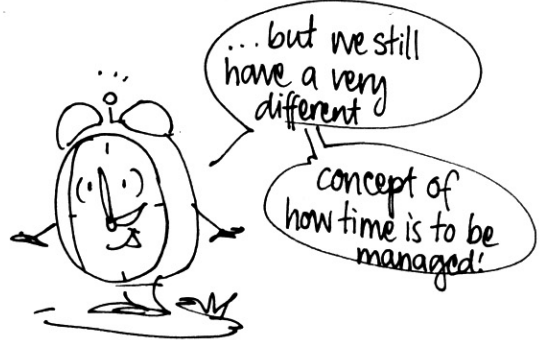
**1** OF THE PEOPLE  
SPEAKS IN THEIR OWN  
mother tongue

- the way we speak...
- sentences...
- vocabulary...
- pauses...
- intonation...
- interruptions...
- sarcasm...



Concept of TIME

↳ NORDIC COUNTRIES  
all have a linear  
view of time



Legal linguist  
**TARJA SALMI-TOLONEN**

PROFESSIONAL COMMUNICATION

- an interplay between  
Multiple Sources of knowledge

Linguistic knowledge is a tool for negotiating shared meaning.

★ Meaning is a CONSEQUENCE of words & phrases rather than their inherent quality

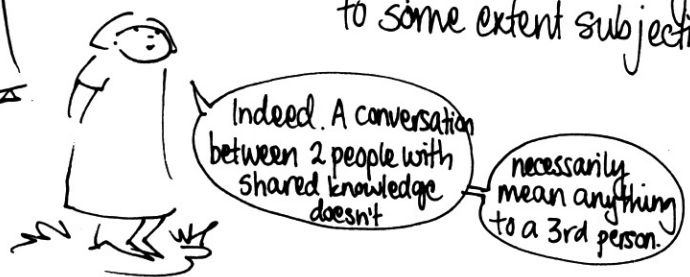
★ Interpretation & meaning are to some extent subjective

Factors of co-operative communication

- QUANTITY.
- QUALITY.
- RELEVANCE.
- MANNER.

Shared meanings must be negotiated

RAISING LINGUISTIC AWARENESS



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