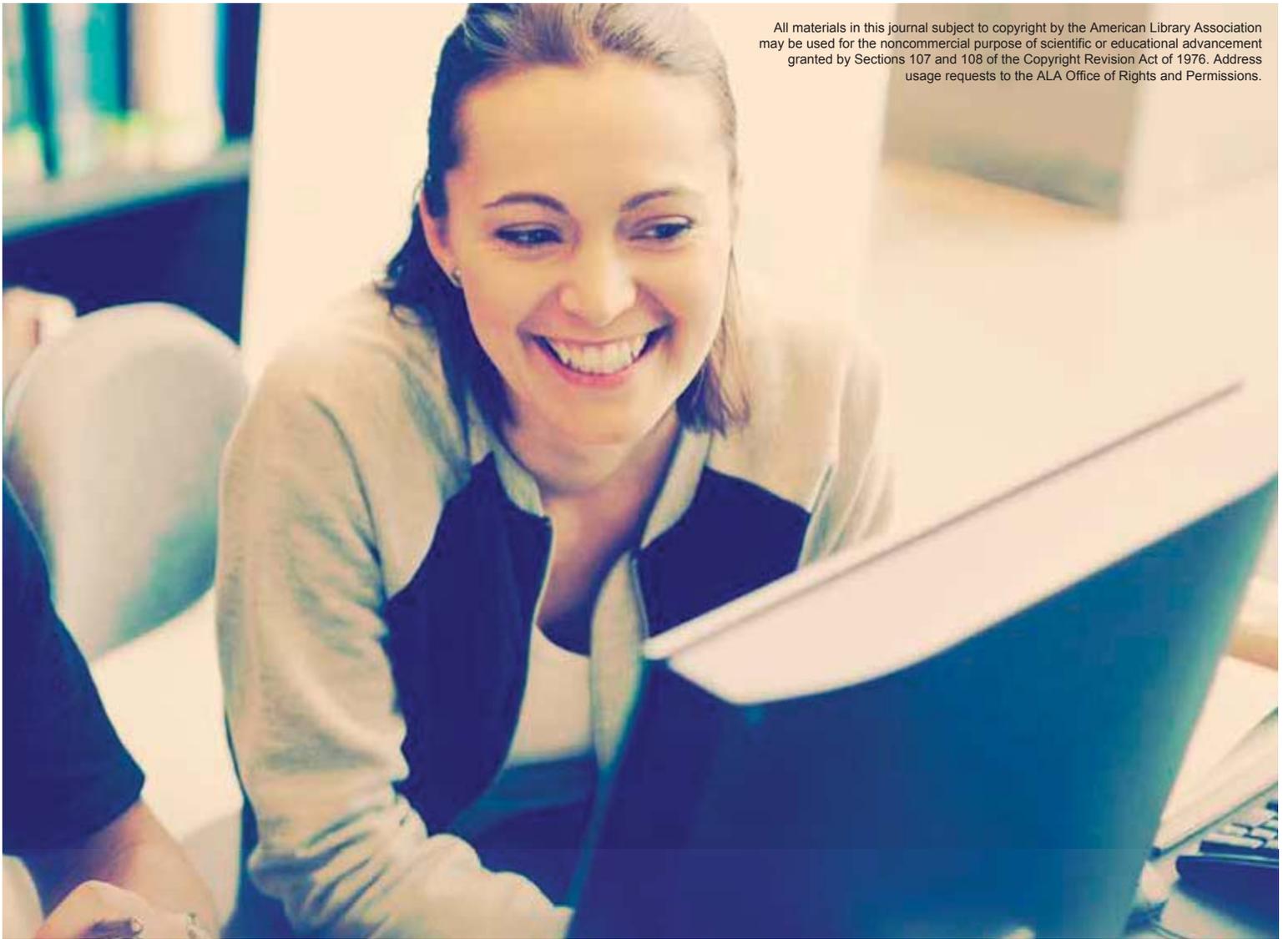


FEATURE



COPYRIGHT & REVIEW



BASICS

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Scenarios for the Practicing School Librarian

The “Nuts and Bolts” of Copyright for School Librarians

School librarians work with a variety of individuals; the largest groups are usually made up of students (most often K–12, but perhaps also preschoolers), teachers, and administrators. However, it is also possible that school staff, students’ parents and guardians, and even the community at large might participate in school library functions and activities, as well as use its facilities and access information in library materials in digital, analog, or print forms. Copyright may come into play when any one of these groups uses materials that they themselves did not create or from which they do not have permission to “borrow” text, images, video, etc. For the purposes of this article, however, I’ll focus on student and faculty borrowing from copyrighted materials in the United States and on the school librarian’s response to such use. Additionally, working with creators of original work will be addressed.

Following are important definitions and scenarios illustrating some of the most important copyright concepts for the school librarian and those with whom you labor. For some of you, this article may provide new information. For others, these scenarios can serve as a review of dos and don’ts. I’ve also included some ways you can use the law as your friend, rather than as the hindrance it sometimes seems to be.

Defining Copyright

According to the U.S. Copyright Office (2014, 1), “Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression.” School librarians may

find themselves on either side of the “copyright coin.” You may work with the user of an item (for example, a student who wants to copy information from a private company into his report on the space station) and also advise a copyright owner (for example, a faculty member who has created a new lesson plan that she wishes to sell on a marketplace website, such as Teachers Pay Teachers). In both cases, copyright law “...protects creators’ and owners’ rights to their works,” while at the same time limiting owners’ rights so that others may use the works. “As such, this law actually represents both the owners and the users of works” (Butler 2011, 8).

Copyright in Action in Your School Library

Scenario 1: Focusing on Fair Use

For school librarians, probably one of the most important parts of copyright law is dealing with fair use. Students want to use copyrighted material in papers and presentations. Classroom teachers want to copy and distribute library materials. Are these uses OK?

Fair use is a statutory exemption (part of the law) that focuses on four factors: character of use, nature of the work, the amount of the work used, and the effect on the marketplace. Purposely written to be vague (Rose 1993), the law’s wording has led many educators to assume that fair use means they can copy as much as they want when they want, as long as it is for educational purposes.

This interpretation, however, is a misconception in the extreme. In reality, educational use, like any other use of an original work, must be considered in light of the law. For example, the first fair use factor, character of use, addresses how a

work will be used. “Works copied for educational, nonprofit, or personal purposes are much more likely to be considered within fair use than are those items that are copied with the intention of earning money” (Butler 2014, 14). Thus, a student may be able to tape a song to share with his class but not record the same song for sale in a music store.

The second fair use factor, nature of the work, deals with the work’s characteristics: Is the work fact or fiction, published or unpublished? Works most usable under this second fair use factor are nonfiction published pieces” (Butler 2014, 14). With this in mind, a high school science teacher may be able to copy an article about the ecological system of the Mississippi River for her class. However, a history teacher’s copying of a fictionalized account of the Lewis and Clark expedition, dated 1833 and recently found in an old trunk, might not be considered legal under this factor.

The third fair use factor, the amount of the work used, is measured two different ways: quantitatively and qualitatively. Quantity is easy—borrow the least that you need. Quality is a little more difficult; considering quality means that if the heart of a work is borrowed—even if it is only a small portion—the use may not be OK. Therefore, if you need to borrow only three minutes of a movie to get a point across, borrow only that excerpt instead of showing the whole thing because “it is interesting to the class.” However, if that three minutes is the heart of the work—i.e., the rest of the movie builds up to that point and then fades away after—then that *particular* three minutes could be too much.

The effect on the marketplace is the focus of the fourth fair use factor. Basically, if borrowing what you

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wish to use adversely affects how much money the owner of the work's copyright can earn from selling or licensing the item, then copying that work (or part of it) may be too much. For example, if making slides from photos in an art book means that particular art book will not be purchased by a class, then such copying could be an illegal use. (Remember that there is seldom just one answer to a copyright question. WHAT TYPE of copyright permissions are attached to a work, WHO is using the work, and HOW it is being used can all make a difference as to whether a particular "borrowing" of a work's intellectual property is legal or not.)

Accordingly, the next time a colleague says that the copying he or she is doing comes under fair use, take a look. Does it really? Remember that fair use is supposed to follow *all four* of the factors—not just the one factor of the user's choice (Lipinski 2005)! [Editor's note: See Yvonne M. Johnson's and Nicole M. Johnson's article in this issue for information about free tools that can help you make a fair use determination.]

Scenario 2: Centering on the Public Domain

A student wants to create a work of art containing the Bill of Rights and display the piece of art online. Is this copyright infringement?

Any medium in the public domain can be used in any manner that you, your students, and your colleagues desire. This freedom results when materials are no longer under—or have never been under—copyright protection. Examples of public domain media include many federal government documents (e.g., the Bill of Rights, the Declaration of Independence, etc.); phone books; freeware and other items to which creators and owners have given up their rights; items that cannot be copyrighted (e.g., scenery); works with expired copyrights, such as books published before 1923; and works for which no one claims



ownership (e.g., orphan works, see Scenario 5) (Butler 2014).

Public domain can be a complicated issue. For example, while many public domain works are free, it is possible to change and/or revise a public domain item, which may then go back under copyright belonging to the person who made the changes. For instance, the original *Romeo and Juliet* play is in the public domain; however, a movie version of this play is probably under copyright protection.

So, how does one know what is public domain and what is not? The easiest way to discern this status is to look at the documentation (identifying information) on the work itself. This documentation may say that the item is in the public domain. Otherwise, you can apply a number of rules (Butler 2001; Gasaway 2003; Hirtle 2016; Torrains 2003; U.S. Copyright Office 2011). The rules below apply to works copyright-protected in the United States or to international works that are under one of the world conventions or organizations to which the U.S. and the work's country of origin belong:

1. Works published before 1923 are in the public domain.
2. Works published between 1923 and 1963, when a copyright notice is attached, can have their copyright renewed for a total of 67 years beyond date of publication.
3. For works published from 1964 to 1977 with an official copyright notice attached, copyright is automatically renewed for a total of 95 years.
4. Works created but not published before January 1, 1978...are legally copyrighted for the life of the owner plus 70 years.
5. All works published on or after January 1, 1978, are copyrighted for the lifetime of the creator/owner plus 70 years...[unless by a] corporate author or... "work for hire"... [which is] copyrighted for 120 years after the date of creation or 95 years from publication, the lesser amount being the one that applies (Butler 2014, 21).

What this all means is that when a patron or you, the school librarian, wants to know whether a work is in the public domain or not, you need to check it carefully. A number of websites are helpful with public domain questions. [Editor's note: See the Johnson and Johnson article in this issue for information about helpful resources.]

Scenario 3: Obtaining Permission to Use a Work

Suppose you've read that listening to Mozart's music can help students do better on tests (Center for New Discoveries in Learning 2016). You want to play recordings of Mozart's music in the school library before the tests. Must you obtain permission from a copyright holder? Making this determination can be a daunting task.

While it is possible that a student can legally use a copyrighted work for a learning purpose (listening privately to a recording to learn about chromatic harmony), other use of works may be a copyright infringement, unless one of the following conditions applies to this use: (1) permission has been obtained from the creator or owner of the work, (2) use has been authorized by working with a

clearinghouse (and probably paying a fee), (3) a license to use the work has been acquired (again, usually a fee applies), (4) the work is in the public domain, or (5) the use falls under fair use or another part of the copyright law (Butler 2011; Butler 2014).

How could you proceed with your plan to play CDs of Mozart's music over the PA system in the library? You know that the creator of the compositions (Mozart) is dead, so you must look to another of the criteria above. You could contact a music clearinghouse to see if a particular Mozart recording is available via the clearinghouse; you also might be able to purchase a license to use such a recording in the library before exam day. Perhaps you can find a Mozart CD in the public domain, or maybe the use of the music falls under fair use or another statutory exemption. If any one of these conditions applies, then you can play the Mozart recording in the library for students before testing begins.

Scenario 4: Licensing, Creative Commons, and Open Educational Resources

Students using subscription databases accessible through your school library's website want to print whole articles they find. Is this printing copyright infringement? It depends on the license you bought.

"Licenses...are legally binding contracts (that) ...define the ways that a protected (copyrighted) work can be used. The owner of the copyright uses the licenses to delineate which exclusive rights in a work are granted to others for their use...the rights...are limited and nonexclusive, and they only extend to using the work for specified

purposes...Essentially licenses are a part of the package that buyers purchase in conjunction with most works" (Butler 2014, 40). Thus, the license for one database that a school librarian buys for a library may state that students can print out complete articles, while the license for another database might decree that these same students can print out only article abstracts.

Creative Commons offers owners and creators of works a number of differing standardized licenses that the owner/creator may use when licensing work. Creative Commons licenses give owners/creators options regarding what parts of their work they are willing to give away and which they wish to keep (Creative Commons 2016). An example of this could be when a student remixes the lyrics to a song with a Creative Commons (CC) Attribution CC BY license, which "...lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation" (Creative Commons n.d.). Because of the particular CC license, the student can legally remix the lyrics, as long as the student gives credit to the original lyricist.

"Open Educational Resources (OER) are teaching, learning, and research materials in any medium that reside in the public domain or have been released under an open license that permits their free use and re-purposing by others" (Creative Commons 2016). Several states, including Arizona, Illinois, Oregon, and Wisconsin are currently committed to OERs (Mulholland and Roscorla 2016; Illinois State Dept. of Ed. 2016). This means that a school librarian in Illinois can access a free statewide website to obtain educational

materials with CC licenses for the use of faculty and students in the school.

Scenario 5: Considering Orphan Works

One of the English teachers in your school found an old book of short stories in her grandmother's attic. The book doesn't contain a copyright statement, and the publisher is no longer in business. The teacher wants to make copies of one of the stories for her three tenth-grade sections, but she's not sure if making and using the copies would be legal. She turns to you for guidance. What can you tell her?

An orphaned work is one "where finding the owner(s) is problematic or next to impossible" (Butler 2014, 51). When considering whether to use orphan works, educators have to wonder whether they should "(1) continue searching for an owner, in order to obtain permission to use the work? (2) use only that part of the work which might fit under fair use or another copyright exemption? (3) 'give up' and use something else? (4) argue, after searching for a 'reasonable amount of time,' that in good faith, they have tried, and risk using the work anyway?" (Butler 2014, 51). Unfortunately, there's no easy answer.

The bottom line is that if you or a faculty member chooses to use an orphan work and the owner/creator shows up and demands compensation, you may either elect to pay for the use of the item or stop employing it. Should you ever receive a "cease and desist" letter from a work's owner, honor it immediately!

Whatever the length of the policy, it is important that copyright policies be worded, as much as possible, in a positive manner. Negative language may overly restrict the borrowing of intellectual property by apprehensive patrons, whether students or faculty.



Scenario 6: Dealing with Copyright and Other Countries

Suppose the parent of one of your students bought a movie while he was in China. Now he wants to show it at an after-school club meeting in your library. You wonder whether an international copyright law covers this circumstance.

According to “Circular 38a” of the U.S. Copyright Office (2016), international copyright law does not exist. What does exist are a number of organizations, conventions, and treaties (e.g., Berne Convention for the Protection of Literary and Artistic Works; World Intellectual Property (WIPO) Copyright Treaty, Geneva; Universal Copyright Convention as revised at Paris) agreed upon between various countries, so that participating countries can more easily deal with the vagaries of using in one country a work published in another.

This means that, in the case of a movie created in China, one of the issues you need to address might be any copyright-related agreements between the U.S. and China. Note that, as a general rule, if you are unable to discover what such agreements might be or mean, treat the international work as if it were published in the United States.

Scenario 7: Explaining the Distinctions between Copyright and Plagiarism

Student A fails to identify the sources of text, images, and ideas. Student B may identify sources but uses others’ intellectual property illegally. Are both students doing something illegal?

Copyright and plagiarism “...are indirectly linked in that both are engaged in the borrowing of someone else’s work. Copyright considers whether permission has been granted to use another’s work

and/or license agreed to or royalties paid. Plagiarism, on the other hand, focuses on whether the work’s user gives credit (usually a citation) to the work’s creator” (Butler 2015, 150). Thus, a student copying part of the U.S. Constitution for a paper will not have violated copyright (the work is in the public domain), but if the student does not cite where the copied text came from, plagiarism will have occurred. Please note that infringing on copyright is a *legal* issue while plagiarism is an *ethical* one, i.e., ethics do not have to be law (Reference 2016).

Scenario 8: Creating Copyright Policies

OK, you’ve done an excellent job of guiding your students and fellow-educators around the pitfalls of possible copyright infringement. Some department chairs, including the heads of the English and social studies departments, approach you about creating an official copyright policy. Now what?

If your school, district, or library does not have a copyright policy, it is imperative that one be generated; such a policy (and its corresponding procedures) will support you, as well as researchers and owners, in cases where copyright compliance becomes an issue. School district/school library copyright policies are plentiful on the Web; “some of the policies are quite long, covering many pages and formats...and some are very short, stating only that the organization in question should ‘follow the law’ ” (Butler 2009, 11).

While a short copyright policy may be only a sentence or two, or a paragraph in length, a long policy can include things such as excerpts from the law and/or guidelines; types of works that can be copyright-protected (such as books, periodicals, DVDs,

videos, the Internet, and computer software); information on how to register a work at the U.S. Copyright Office; a sample permission request form; examples of infringements and consequences; district/school photocopying criteria; and more. Some may even contain guidance applicable to such things as the school copy center and a signature line, so that the school/district has a record of who has read the document (Butler 2009).

Whatever the length of the policy, it is important that copyright policies be worded, as much as possible, in a positive manner. Negative language may overly restrict the borrowing of intellectual property by apprehensive patrons, whether students or faculty.

Educating the User

All your library users, regardless of whether they are students or teachers, need to grasp the ins and outs of copyright. Such an understanding can be difficult for you to help them develop; copyright compliance in a school requires teaching and learning countless things, meeting many standards, and recognizing that few directly address copyright. [Editor’s note: For more on *copyright standards*, see Barbara Fiehn’s article in this issue.] However, introducing basic copyright concepts to your students—no matter their age—is extremely important, as is providing copyright information to teachers and staff through workshops, individual tutorials, and answering questions.

While the likelihood that an individual will be involved in a copyright lawsuit may be small, in reality, all of us have at one time or another made a choice that either follows copyright law or infringes

upon it. In the school, it may be as simple as copying library software to one extra computer beyond the licensing limit, so that a needy student has material for a class report; showing personally owned movies on a field trip school bus; or putting an article up on the online homework hotline without looking to see if permission is needed to do so. Given the plethora of copyright lessons for students and adults available via the Internet as well as books and articles on this subject, it need not be difficult to find teaching and training materials for school library patrons of any age.

[Editor's note: For educational resources see the Johnson and Johnson article in this issue.]

Lastly, teaching K–12 students what copyright is and why it is important has an added benefit. A student who sees a teacher violating copyright law may remind the teacher about the right thing to do, thus sparing you the necessity of acting on this teaching opportunity!

Maintaining Copyright Compliance

To implement and then maintain copyright compliance in a school, the school librarian (along with support from administration and faculty) is best served by teaching library patrons the basics of copyright, posting copyright notices on equipment that can be used to copy (photocopy machines, computers, etc.), and modeling proper copyright-related behavior. Here is a list of activities that will help you maintain school-wide copyright compliance:

- establish a district/school copyright compliance policy;
- establish copyright compliance procedures;
- analyze organizational impact;

- determine copyright training needs;
- provide necessary copyright training;
- communicate to all stakeholders the copyright policy and procedures;
- audit the copyright process for compliance;
- provide feedback for copyright process improvement; thus
- maintain copyright compliance. (Butler 2009, 2015)

Wiggle Room

How Can We Make the Law Work for Us?

Contrary to popular belief, copyright law can actually help researchers in the context of copying and borrowing, as long as the intellectual property of others is used correctly. In addition, many educators choose to observe copyright guidelines and encourage their students to follow this practice. Below are a few points of interest to school librarians and their patrons to help them use copyright to their advantage.

Copyright Law, Teachers, and Students

In the United States copyright law is written in a somewhat ambiguous manner, giving both owners and users the ability to make some interpretations. Thus, copyright is best seen in shades of gray; a copyright-related question seldom has only one answer. For example, it is probable that we all have met educators who argue that all borrowing of intellectual property for educational purposes is fair use. Such individuals may contend that this is so because they are working with students, and there is not enough money for everything needed in K–12 education. While

such need could possibly relate to a moral issue, it is not a legal one, and copyright law asks that everyone borrow others' works in a legal manner.

For instance, "The first fair use factor, purpose and character of use, looks at how those copying the work are going to use it" (Butler 2014, 14). Parodies, commentaries, and similar "transformative uses" fit under this factor. The United States Copyright Law, 1976, Section 107:16, says that such use is permissible "for purposes such as criticism [or] comment." This means that the eighth-grade home economics teacher could legally assign her students to find an online advertisement featuring clothing and transform the content into a critique of today's fashion. Additionally, this critique could then be shared in the original classroom and even used in student portfolios.

Another "plus" regarding copyright law is that in a nonprofit face-to-face classroom setting, if the borrowing of a work obtained in a legal manner is needed for a learning purpose, this can be done by either students or their teachers. This means that if the best way for a fifth-grade class to learn how to place music into digital presentations is to borrow songs from their own personal CDs, put the songs into said presentations, and present these to the class, then students may do so (U.S. Code. Title 17. Chapter I. Sec. 110).

Law v. Guidelines

"Copyright law is federal law, updated periodically by acts passed by the U.S. House and Senate" (Butler 2009, 11). Copyright guidelines, on the other hand, can be interpreted to mean that the

user has "...acted in good faith" and "...are flexible; they provide a conservative definition for the use of works, not the maximum that the law permits. You actually could, in good faith, use more of a work than those moderate amounts suggested without infringing on the owners' copyright. Unfortunately, the maximum use is not clearly defined in copyright law. Therefore, be aware, the further beyond the guidelines that you borrow from a work, the greater your chance of copyright infringement" (Butler 2014, 47).

Because "Guidelines are far more rigid than the fair use factors...are not binding under the law, and represent minimum amounts rather than maximums...many copyright experts do not encourage their use" (Butler 2014, 15–16). Thus, guidelines have a place; they inform the borrower as to exactly how much can be copied, usually specific amounts, such as 10 percent of a work. However, be aware that in many cases, the law might let you borrow more intellectual property than the guidelines suggest.

Conclusion

Whether using digital content, working with print materials, or operating in social media, we have legal ways to use and borrow from another's works. As you navigate the minefield that copyright observance sometimes appears to be, remember that information is available on the Web, in books and articles, as well as through lawyers, consultants, and other educators. Also note that copyright law can be a good thing. Instead of seeing it as a negative, look at all the things that you can do. Make the choices to borrow from works in a positive manner, and copyright can also become your friend!



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