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(U) Office of the Inspector General of the Intelligence Community



**(U) Assessment of Intelligence Community Foreign Intelligence
Surveillance Act Title V Information (INS-2016-003)**

November 28, 2016

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(U) Introduction

(U) In accordance with Section 108 of the USA FREEDOM Act of 2015, the Office of the Inspector General of the Intelligence Community (IC IG) completed an assessment of information acquired under Title V of the Foreign Intelligence Surveillance Act (FISA) (50 U.S.C. § 1861 et seq.) during calendar years 2012 through 2014.¹ Accordingly, the IC IG assessed:

- (U) the importance of information acquired under Title V of FISA to the activities of the IC;
- (U) the manner in which business record information was collected, retained, analyzed, and disseminated by the IC under Title V;
- (U) minimization procedures used by IC elements under Title V, and whether the minimization procedures adequately protect the constitutional rights of United States persons;² and
- (U) minimization procedures proposed by an IC element under Title V that were modified or denied by the Foreign Intelligence Surveillance Court (FISC).

(U) Background

~~(S//NF)~~ Our assessment focused on the (b)(1), (b)(3)

[REDACTED]

[REDACTED] The FBI used authority granted by Section 215 to collect business records for national security investigations.⁴

¹ (U) Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015. P.L. 114-23, 2 June 2015, 129 Stat. 268.

² (U) “United States person” is defined as a citizen, legal permanent resident, an unincorporated association in which a “substantial number” of members are citizens or legal permanent residents, or corporations incorporated in the United States as long as such associations or corporations are not themselves “foreign powers.” 50 U.S.C. § 1801(i).

³ (U) 50 U.S.C. § 1861 et seq.

⁴ (U) Section 215 of the USA PATRIOT Act allows the FBI Director or his designee to seek orders from the FISC for “any tangible things,” including books, records, and other items from any business organization, or entity provided the item or items are relevant to an for an authorized investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

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(U) Methodology

~~(S//NF)~~ To conduct this assessment, inspectors from the IC IG Intelligence Oversight team interviewed officials from (b)(1), (b)(3) [redacted]

[redacted] We also examined related reports including those issued by the DOJ and NSA Offices of Inspectors General (OIGs), the PCLOB, and the ODNI. This assessment was based significantly on program stakeholder interviews, reviews of FISC applications and orders issued from 2012 through 2014, and reviews of reports issued by the NSA and DOJ OIGs. We relied heavily on the findings in these reports to assess the importance of Section 215 information and adequacy of minimization procedures to protect the constitutional rights of United States persons; we did not independently validate the findings in those reports.

(U) The IC IG reviewed:

- (U) business records applications submitted to and orders approved by the FISC from 2012 through 2014; and
- (U) notices filed with the FISC and the Intelligence Oversight Board regarding non-compliance with minimization procedures or FISC Orders and actions taken to mitigate recurrence.

~~(S//NF)~~ The IC IG also reviewed and analyzed (b)(1), (b)(3) [redacted]

[redacted] In addition, we reviewed and discussed FISC Rules of Procedure and the process for modifying applications with the DOJ's National Security Division (NSD), which represents the IC before the FISC on business record applications and conducts oversight of the IC's implementation of FISC authorizations.

~~(S//NF)~~ The IC IG also observed (b)(1), (b)(3) [redacted]

(b)(3) [redacted]

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~~(S//NF)~~ (b)(1), (b)(3)

This review was conducted in accordance with Council of Inspectors General on Integrity and Efficiency 2012 Quality Standards for Inspections and Evaluations.

(U) Findings

(U) (b)(7)(E)

~~(TS//SI//NF)~~ (b)(1), (b)(3), (b)(7)(E)

~~(TS//SI//NF)~~ (b)(1), (b)(3)

(b)(1), (b)(3)

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(b)(1), (b)(3)

~~(S//NF)~~ However, limitations affected the use of information acquired under Section 215. For example, (b)(7)(E)

[Redacted text block]

(b)(1), (b)(3)

~~(TS//SI//NF)~~ (b)(1), (b)(3), (b)(7)(E)

[Redacted text block]

(b)(1), (b)(3)

(b)(1), (b)(3), (b)(7)(E)

(U) Observation

~~(S//NF)~~ On 28 November 2015, the bulk collection of business records authorized under Section 215 ended when the final FISC orders authorizing collections expired. The USA FREEDOM Act, among other things, provides a new mechanism through which the NSA may use FISC-approved selectors to obtain call detail

⁶ ~~(S//NF)~~ (b)(1), (b)(3)

[Redacted text block]

⁷ (U) (b)(7)(E)

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records from telecommunications service providers.⁸ The Act neither required the NSA to establish specific measures to assess the importance of the information obtained nor to assess whether the information provided to NSA under the new program continues to meet the IC's needs. (b)(1), (b)(3)

[REDACTED] While challenging, the IC should look for opportunities to establish metrics to assess the importance of information obtained. Going forward, identifying and tracking measures of effectiveness to assess the importance of information collected could help determine whether the programs are achieving their goals and effectively and efficiently using resources as required by federal internal control standards.

(S//NF) (b)(1), (b)(3) [REDACTED]

(S//NF) (b)(1), (b)(3) [REDACTED]

(b)(1), (b)(3) [REDACTED]

⁸ (U) USA FREEDOM Act of 2015 § 109. The USA FREEDOM Act requires the DNI to report information concerning U.S. person search terms and queries of certain unminimized, FISA-acquired information, as well as information concerning unique identifiers used to communicate information collected pursuant to certain FISA orders.

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(b)(1), (b)(3)

(U) Minimization procedures included provisions to safeguard U.S. person information and constitutional rights.

~~(S//NF)~~ According to the ODNI Office of General Counsel, Section 215 contains a range of safeguards that protect civil liberties. For example, Section 215 can only be used to obtain foreign intelligence information for an investigation not concerning a U.S. person, or, if concerning a U.S. person, to protect against international terrorism or clandestine intelligence activities.⁹ Moreover, the government must submit an application to the FISC for approval to obtain business records pursuant to Section 215.¹⁰ FISA expressly states that the FBI may not obtain a business records order from the FISC if an investigation of a U.S. person is conducted solely on the basis of activities protected by the first amendment to the Constitution.¹¹ The FISC reviewed and, when satisfied that legal requirements were met, approved renewals of minimization procedures

(b)(1), (b)(3)

¹² Although the FISC never issued an order explicitly approving the minimization procedures, according to the DOJ OIG, the Standard Minimization Procedures were developed with input from the FISC. In addition, the FISC reviewed notices of incidents of non-compliance submitted by DOJ (b)(1), (b)(3) DOJ NSD also submitted compliance notices to the FISC for FBI non-bulk business records. If the FISC finds that incidents of non-compliance resulted from processes inconsistent with minimization procedures, the court can require changes to internal systems or procedures and reporting on progress made to achieve compliance. In 2016, the DOJ OIG

⁹ (U) Office of the Director of National Intelligence, IC on the Record, *Privacy, Technology & National Security. An Overview of Intelligence Collection*—Hon. Robert S. Litt, ODNI General Counsel. 18 July 2013. Remarks as prepared for delivery to the Brookings Institute, Washington, D.C.

¹⁰ (U) The USA FREEDOM Act permits the Attorney General to authorize the emergency production of business records. In such cases, the government must still submit an application to the FISC within 7 days of that authorization.

¹¹ (U) The First Amendment protects the freedom of religion, speech, and of the press, and the right of the people to peaceably assemble and to petition the government for a redress of grievances.

¹² (U) The FISC issued supplemental orders for many of the business records obtained under the interim Standard Minimization Procedures that included provisions similar to those that later became part of the Final Procedures.

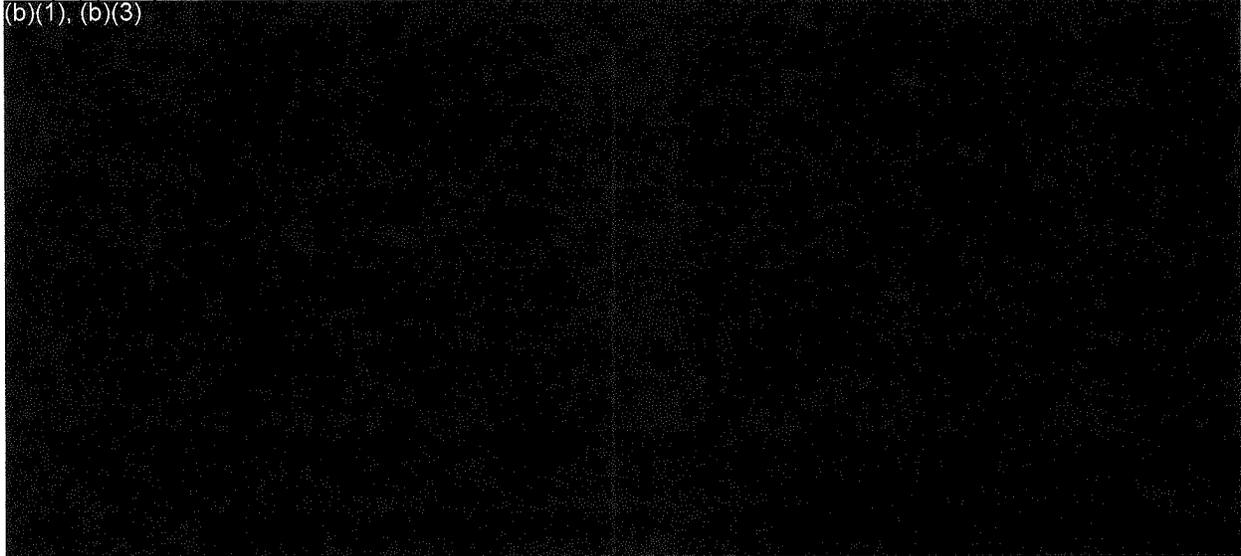
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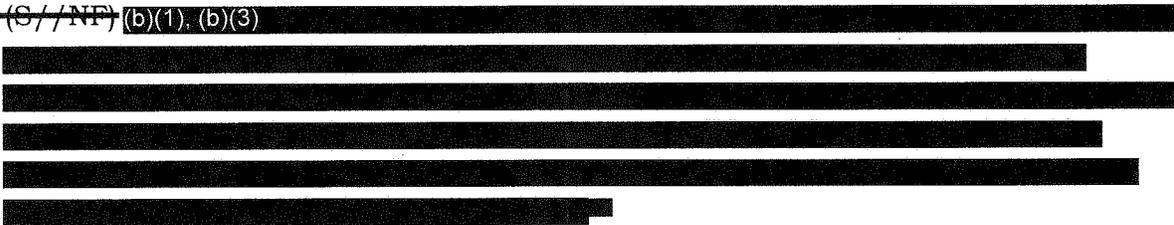
concluded that the process used to obtain non-bulk business records orders from 2012 through 2014 contained safeguards that protected U.S. persons from the unauthorized collection, retention, and dissemination of nonpublic information about them. For example, the business records process required multiple layers of approval, including by DOJ attorneys.

~~(S//NF)~~ FISC-approved minimization procedures and other safeguards

(b)(1), (b)(3)



~~(S//NF)~~ (b)(1), (b)(3)



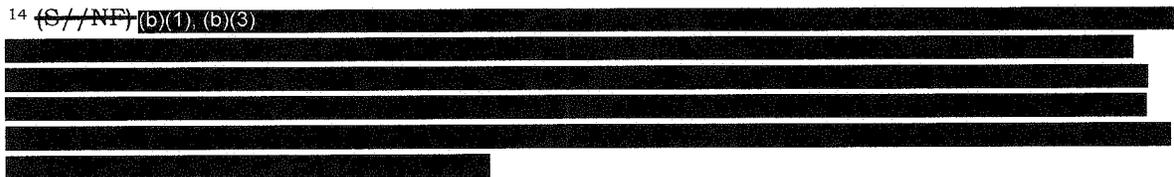
~~(S//NF)~~ Minimization procedures for non-bulk collection evolved over time to require a review of business records to ensure information was within the scope of a given order and that the information reasonably appeared to be foreign intelligence information, necessary to understand foreign intelligence information

¹³ ~~(TS//SI//NF)~~

(b)(1), (b)(3)



¹⁴ ~~(S//NF)~~ (b)(1), (b)(3)



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to assess its importance, or evidence of a crime to be retained or disseminated for law enforcement purposes. (b)(1), (b)(3)

(U) FISC did not deny business record applications, but the extent of modifications by the FISC was not always apparent.

(U) While the FISC did not deny business record applications, the extent to which the FISC required DOJ to revise proposed business records applications, and the minimization procedures, was not always apparent. DOJ's National Security Division considers modifications to be limited to any changes by the FISC *after* DOJ filed the final application and order. NSD does not consider revisions to applications and orders made at the request of the FISC after it reviewed "read copies" to constitute modifications.¹⁵

~~(TS//SI//NF)~~ The FISC approved changes to minimization procedures contained in applications submitted to the FISC

(b)(1), (b)(3)



¹⁵ (U) "Read copy" is a term used to refer to an advance copy of an application provided to the FISC.

¹⁶ (U) The statistics reflect only the number of final applications submitted to and acted on by the FISC. The statistics do not reflect the fact that many applications are altered prior to final submission or even withheld from final submission entirely.

¹⁷ ~~(TS//SI//NF)~~ (b)(1), (b)(3)



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~~(TS//SI//NF)~~ FISC Rules of Procedure required DOJ to provide the FISC with proposed applications for business records prior to formal submission. According to the FISC, as part of the process through which the court interacts with the government in reviewing proposed applications, the FISC's legal staff frequently examined the legal sufficiency of applications before they were presented in final form to a judge. These interactions consisted of telephone conversations in which legal staff asked the government questions about the legal and factual elements of applications and submissions; meetings to obtain additional information; or hearings in cases in which a judge assessed the need for additional information to rule on a matter.¹⁸ (b)(7)(E)

According to the DOJ OIG, reasons for withdrawals varied, but included determinations that the information was no longer necessary or could be obtained through other legal processes such as grand jury subpoenas or national security letters. According to the FISC, in 2013 it began tracking the frequency with which modifications and denials occurred. However, statistics provided to Congress by the Attorney General reflected only the number of business records applications submitted to the FISC that were denied or withdrawn, not those filed as advance copies and subsequently withdrawn.²⁰

~~(TS//SI//NF)~~ (b)(1), (b)(3)

(U) Conclusion

(U) Information acquired under Section 215 authority supported activities of the IC in various ways, but without specific measures, the importance of the information cannot be fully assessed. Requirements placed on bulk collection through FISC-approved minimization procedures set limits on the manner in which information

¹⁸ (U) United States Foreign Intelligence Court letter from the Presiding Honorable Reggie B. Walton, Presiding Judge, to the Committee on the Judiciary, United States Senate. 29 July 2013.

¹⁹ (U) A Review of the FBI's Use of Section 215 Orders for Business Records in 2012 through 2014. Department of Justice, Office of Inspector General. June 2016.

²⁰ (U) United States Foreign Intelligence Court letter from the Honorable Reggie B. Walton, Presiding Judge, to the Committee on the Judiciary, United States Senate. 29 July 2013.

²¹ (U) A Review of the FBI's Use of Section 215 Orders for Business Records in 2012 through 2014. U.S. Department of Justice, Office of Inspector General. June 2016.

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was collected, retained, analyzed, and disseminated. Minimization procedures for non-bulk collection governed the retention and dissemination of non-publicly available U.S. person information. However, the extent to which the FISC required DOJ to revise proposed business records applications, and the minimization procedures, was not always apparent.

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(U) Appendix: Related Reports

(U) *A Review of the FBI's Use of Section 215 Orders for Business Records in 2012 through 2014*. U.S. Department of Justice, Office of Inspector General. June 2016.

(U//FOUO) *Report on the Special Study of the Protection of U.S. Person Information during Analytic Processing*. National Security Agency/Central Security Service Office of Inspector General. 2 March 2016.

(U) *Special Study of OVSC Training*. National Security Agency/Central Security Service Office of Inspector General. 29 February 2016.

(U) *A Review of the FBI's Use of Section 215 Orders: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009*. U.S. Department of Justice, Office of Inspector General. May 2015.

(U//FOUO) *Implementation of §215 of the USA PATRIOT Act and §702 of the FISA Amendments Act of 2008*. National Security Agency/Central Security Service Office of Inspector General. 20 February 2015.

(U) *Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court*. Privacy and Civil Liberties Oversight Board. 23 January 2014.

(U) *Liberty and Security in a Changing World. Report and Recommendation of the President's Review Group on Intelligence and Communications Technologies*. 12 December 2013.

(U) *Report on the Audit of NSA Controls to Comply with the Foreign Intelligence Surveillance Court Order Regarding Business Records Retention*. National Security Agency/Central Security Service Office of Inspector General. 20 October 2011.

(U) *Audit Report on NSA Controls to Comply with the Foreign Intelligence Surveillance Court Order Regarding Business Records*. National Security Agency/Central Security Service Office of Inspector General. 25 May 2011.

(U) *Review of Foreign Intelligence Surveillance Court (FISC) Rule 13(a) and 13(b) Filings (ST-11-0001)*. National Security Agency/Central Security Service Office of Inspector General. 22 March 2011.

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(U) *A Review of the FBI's Use of Section 215 Orders for Business Records in 2006.*
U.S. Department of Justice, Office of Inspector General. March 2008.

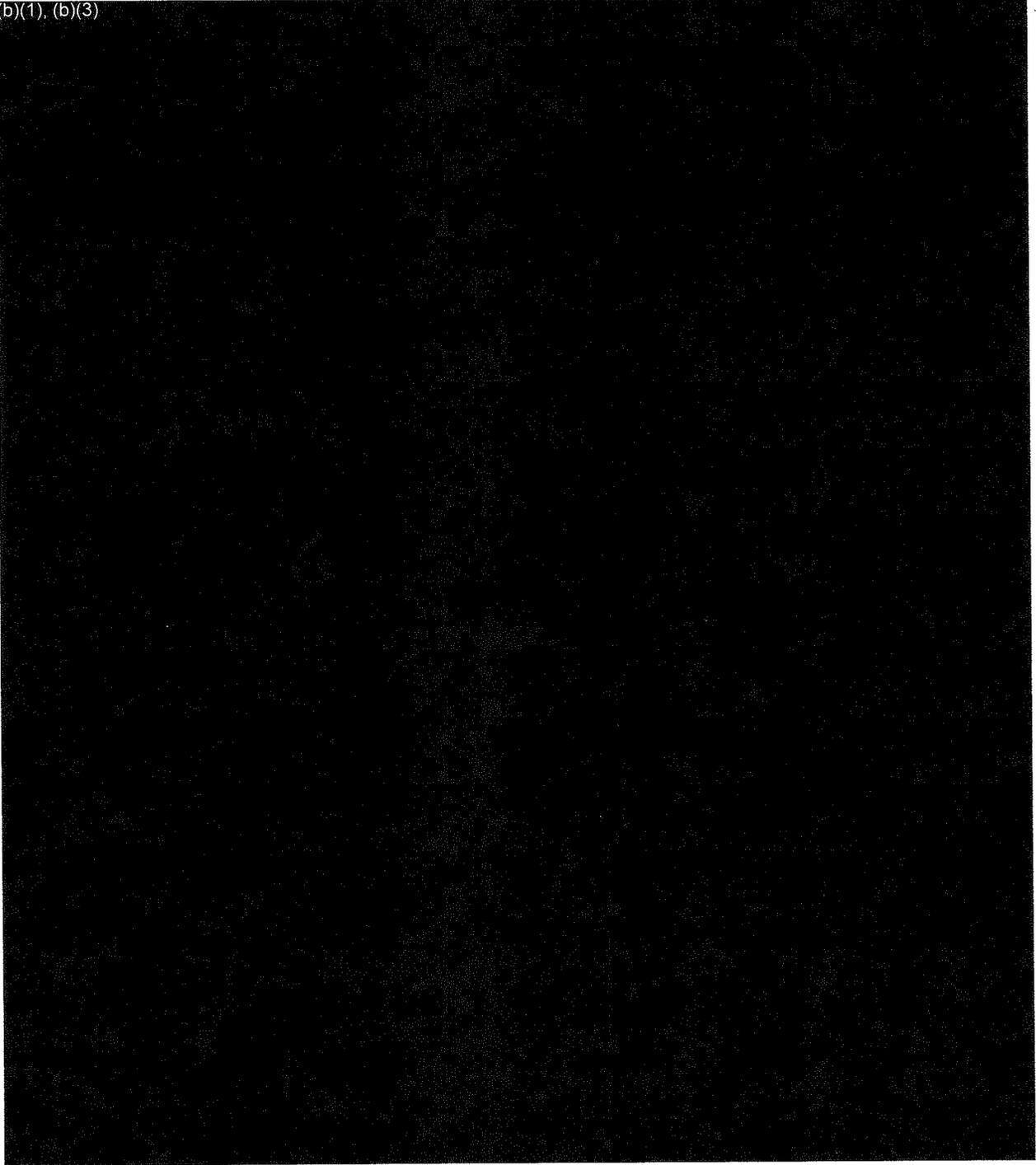
(U) *A Review of the Federal Bureau of Investigation's Use of Section 215 Orders for Business Records.* U.S. Department of Justice, Office of Inspector General.
March 2007.

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(U) Appendix: Derivative Source List

(b)(1), (b)(3)



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