Lesson 11: Ethical and Legal Issues in Web Development

Objectives

By the end of this lesson, you will be able to:

☩ 1.3.1: Define ethics, and distinguish between legal and ethical issues.

☩ 1.3.2: Use Web content (e.g., text, graphics, code) properly, including original content, misleading/inaccurate information, copyrighted content, licensing, avoiding infringement.

☩ 1.3.4: Use strategies to avoid violating end-user privacy and trust (e.g., refusing to share or sell end-user information, opt-in/opt-out for mailing lists).

☩ 1.3.5: Develop privacy disclaimers appropriate to site purpose and audience.

☩ 1.3.6: Identify international legal issues, including fair use, trademarks, contracts.

Pre-Assessment Questions

1. What is the difference between legal conduct and ethical conduct?

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2. Which of the following is an illegal act, rather than an unethical act, in the Web development profession?

   a. Passing along chain e-mail messages
   b. Buying domain names you do not intend to use
   c. Copying an image from a Web site and publishing it without permission
   d. Inflating the prices you charge customers for your technological services

3. Which of the following does a copyright protect?

   a. The right to practice unpopular forms of communication such as spam
   b. Original works of authorship such as writing, art, music or program code
   c. Names, phrases, pictures or drawings that a company uses to distinguish itself from the competition
   d. The right to quote or refer to someone else's intellectual property if you provide source attribution

Ethics and Law in Web Development

As trained professionals who provide services to customers, Web developers must be familiar with the ethical issues and laws that pertain to businesses operating on the Web. Currently, many laws related to Web businesses and practices are not completely clear; others are evolving each day as court cases and legislation are addressed and settled. However, the law is only a baseline for the conduct you should observe — some practices may currently be legal, but the lack of a forbidding law does not necessarily make them acceptable.

The Web (and business in general) has many accepted professional standards of conduct that all Web developers should follow, called ethics. Ethics deal with good versus bad: values, moral duty and obligation. Some practices that are still legal are considered unethical by professional standards. As a professional Web developer, you have a responsibility to your customers to inform them of practices that are questionable or illegal in relation to their projects. You should also make decisions and conduct your own business in ways that will reflect well upon you, upon Web developers in general, and upon CIW-trained Web designers.

Ethical Issues and the Web

Ethics are a set of standards governing the conduct of members of a profession. Ethics establish basic values for responsible actions and practices within a professional community. Although there may be no punishment for violating ethical standards, some practices (such as spamming and sending viruses) are being written or will be written into law.

The generally agreed-upon ethical standards for Web professionals have developed from years of experience, and many have been inherited from other professions. Examples of ethical behavior for Web professionals include the following:

- Do not send unsolicited bulk e-mail, or spam.

- Do not buy domain names that you do not intend to use (a practice also known as domain squatting or cyber-squatting).

- Do not knowingly spread malicious program code such as viruses or worms.

- Do not pass along chain e-mail messages, especially those that imply threats.

- Be honest with your customers, and do not overcharge for technical services that they may not understand.

Spam

spam
Unsolicited and unwanted e-mail messages; the online equivalent of junk mail.

spam filter
An e-mail client program that identifies and filters out spam messages before they reach the e-mail Inbox.

Spam is unsolicited bulk e-mail — that is, e-mail messages that the recipients did not ask to receive. As you are undoubtedly aware, millions (if not billions) of spam messages are sent to Web users every day. A multitude of software companies have launched in recent years that are devoted exclusively to creating **spam filters**, which sort unwanted spam from wanted e-mail for the e-mail user.

mailing list server
An e-mail server that regularly sends e-mail messages to a specified list of users. List servers can also collect and distribute messages from an authorized group of participants, called a listserve group.

Bulk e-mail and business

Many legitimate businesses use bulk e-mailing as a way to advertise their Web sites and promotions to the online audience. E-mail lists are generally managed using a **mailing list server**, which is a server that automates the distribution of messages to an authorized group of participants. A user can subscribe to the list by sending an e-mail message to the list server, or by authorizing a Web site to subscribe him or her to its e-mail service for newsletters, specials and so forth.

List servers can also receive messages from listserve group participants, store the messages and distribute them to the mailing list. This function is generally used only by mailing list groups in which members subscribe to discuss specific topics with other members. Mailing lists used for advertisement generally do not offer recipients the option to communicate with other recipients on the list.

opt-in e-mail
An e-mail list service that is created legitimately by subscribing only users who specifically request to be added to the list.

opt-out e-mail
An e-mail list service that requires subscribers to unsubscribe themselves if they do not want to continue receiving messages. Opt-out is implied for opt-in e-mail services, although it is often used in unsolicited e-mailing lists to give the appearance that recipients requested their addition (opted in) to the list.

Opt-in and opt-out e-mail

If you want to use bulk e-mailing to promote your Web site, you should avoid being labeled a spammer at all costs. To create a legitimate e-mail list, you must give users the option to subscribe to your e-mail list, which they can do by submitting a form on your Web site or by checking a box when they complete a transaction. This type of e-mail list creates an **opt-in e-mailing service**, and it is the only way to build a legitimate customer e-mailing list.

Opt-in e-mail lists consist exclusively of users who specifically requested or authorized their addition to the list. This includes listserve group members and recipients of promotional e-mail from businesses.

Opt-out e-mail messages are bulk e-mail that offer recipients the option of unsubscribing from the list, generally by clicking a link in the message or visiting a Web page. Recipients of opt-out e-mail are expected to unsubscribe themselves from the list if they do not want to continue receiving the e-mail; otherwise, they are assumed to have authorized the messages. The opt-out capability is implied for all opt-in e-mail services. However, this capability is often used by spammers as an attempt to legitimize spam by giving the appearance that users on the list requested their subscription. In some cases, spammers even use the opt-out response mechanism to create lists of recipients for additional unsolicited e-mail; clicking the opt-out link from an unscrupulous messenger's e-mail may actually confirm your address as a target for further spam.

Opt-out e-mail is often used by legitimate businesses to subscribe users who have not requested the e-mail service but whose e-mail addresses were collected by the Web site for other purposes (such as completing a purchase or obtaining a site password). These recipients are then given the responsibility to unsubscribe themselves if they do not want to receive the unrequested e-mail. The opt-out method for creating a mailing list in this way is not recommended if you want your customers to feel confident about using your Web site. Some may find receiving your unsolicited e-mail messages so annoying that they will not return to your site. However, remember that you can provide good customer service by adding a convenient opt-out function to the e-mail messages you send to your opt-in e-mail list recipients.

Privacy and trust

Web server software collects information about Web site visitors through the creation of log files. These automatically generated log files contain information such as the pages a user viewed, the type of browser used, and the duration of a user's visit. By using cookies, the Web server can also record when a user returns to the site.

This information itself is relatively benign, but when it is combined with information that an e-commerce program can collect — such as name and address, past purchases, reviews of products, and frequently visited areas of the site — you find yourself with a combination of information that the marketing and sales departments of many companies would love to acquire.

Your responsibility as an ethical Web professional is to inform your site users as to how this information will be used by your (or the site owner's) company, and whether this information will be sold to other companies.

Privacy statements

For this reason, it is standard to post a privacy disclaimer statement on every Web site, and it is essential on sites that collect information beyond normal log files. Privacy policies detail the ways that information is gathered and whether it is transferred to third parties. If information is transferred to third parties, the privacy statement should also describe how the information is transferred.

Your privacy statement should be honest and open, rather than vague. For example, if one company buys another company, the purchased business will most likely be required to provide all customer information to the acquiring company. A business may also need to share customer data if it develops a partnership with another Web site. It is advisable to state these possible scenarios in your privacy policy — even if they are not immediately foreseeable situations — because excluding them could look secretive (or at least irresponsible) if they come true.

<div style="float:left; background:#b9f0f0; padding:4px;">
OBJECTIVE
1.3.5: Privacy
disclaimers
</div>

All privacy disclaimer statements should include the following sections:

- **Information collection** — a technical description of how user data is collected on the Web site. This description should specify the types of data that are required to perform a transaction or create an account, and the types of data that are optional. The description should also specify the types of data that are gathered in aggregate rather than for a specific user.

- **Use of information** — a detailed description of how user data is used on the Web site. This description should specify whether user data will be used to send occasional e-mail messages to the users or to create personalized recommendations for them as they browse the site, for example.

- **Information transfer** — a description detailing the situations in which user data will or might be transferred to a third party. If you do not currently plan to transfer user data but you can foresee a circumstance in which you might, describe that in this section. Specify the data that is or would be transferred, and the way it would be transferred.

For an example of a thorough privacy statement, see the TRUSTe Privacy Statement at *www.truste.com/privacy-policy-full.html.*

Legal Issues and the Web

Remember that laws relating to the Web are evolving rapidly, and vary by country and region. As a professional, it is your responsibility to stay abreast of important legal issues that affect your business and your customers. Do your research, stay informed about issues relevant to your work, and seek professional legal advice when necessary.

WARNING! *This lesson discusses some key legal topics in a general way, focusing on law in the United States. However, the CIW program and its authors are not qualified to provide legal advice, and no information in this lesson should be interpreted as such.*

Although a complete listing and explanation of laws related to Web development is beyond the scope of this course, you should be aware of several current and potential legal issues that may affect your Web development practices. The most important of these are:

- Anti-spamming laws.

- Intellectual property laws.

- International issues.

Spam and the law

As previously discussed, spam is unsolicited bulk e-mail that the recipients did not ask to receive. Spam is the equivalent of junk mail. Spam is also notorious for presenting potentially offensive content (such as offers for pornography or prescription drugs) to users, with no discretion used in determining who receives it. In some cases, such content may be illegal depending on the region in which it is received and the age of the recipient. Generally speaking, however, sending spam remains more of an ethical violation than a legal one.

The CAN-SPAM Act

On January 1, 2004, the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003) became U.S. law. The CAN-SPAM Act takes a fairly lenient approach to spam, which is why the amount of spam most Web users get has continued to rise since this law went into effect.

CAN-SPAM established a federal "opt-out" spam standard in the United States. As discussed earlier in this lesson, opt-out e-mail provides the recipient with the option to be removed from an e-mailing list. However, it still places responsibility for eliminating spam on the recipient, rather than the sender. It does not address the fact that most spam recipients never requested (nor would have requested) to be placed on the mailing list. It also does not provide any protection against unscrupulous practices such as using responses from the opt-out function to create lists of "live" users for further spam.

Nothing in CAN-SPAM prevents a legitimate business from sending unsolicited bulk e-mail. Another weakness of CAN-SPAM is that it prohibits recipients of spam from suing spammers. Standard ethical practices that are followed by respectable Web marketers (such as opt-in e-mailing lists) are actually much more responsible than the baseline established by CAN-SPAM.

To learn more about the CAN-SPAM Act, visit the U.S. Federal Trade Commission's CAN-SPAM page at *www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm.*

Intellectual property: Copyright, trademarks and trade secrets

Intellectual property laws govern ideas and products of the mind. It is important to be familiar with the major laws governing intellectual property in the United States: copyrights, trademarks and trade secrets. Understanding these laws will help you protect the intellectual property on your Web site, as well as prevent you from infringing upon the property of others. Infringement upon legally protected intellectual property is punishable by law.

Copyright

In the United States, the 1976 Copyright Act provides protection for "original works of authorship that are fixed in a tangible form of expression" — literary, artistic, photographic, musical and audiovisual works. The law prohibits unauthorized duplication of such works. According to copyright law, the two components that distinguish a work of authorship are originality and expression, so copyright applies only to the work itself, not the objects or ideas described in the work.

Note that the content owner is not required to complete a formal copyright registration process to be protected by copyright law, although registration does provide some advantages. Copyright is secured automatically from the time that the work is created (essentially, fixed in a tangible format). A work of authorship immediately becomes the property of the author who created the work, and only the author of that work can share or transfer the ownership rights.

The result is that you cannot copy text, images, music and so forth from any source, on or off the Web, and use it in your Web site or any other publication. Program code is also protected by copyright.

For more information about U.S. copyright law and associated topics such as fair use, licensing and trademarks, visit the home page for the United States Copyright Office at *www.copyright.gov*. This site offers overviews, legal documents, links, registration forms and more.

Copyright infringement and fair use

Copyright infringement is the use of or profit from someone else's work without their permission. However, copyright does not restrict you from quoting or making reference to someone's work. The Fair Use doctrine included in the 1976 Copyright Act allows limited use of copyrighted works in socially important ways, such as research, teaching, journalism and criticism. Essentially, you can quote from or refer to other authors' works, but you cannot copy them wholesale or present them as your own.

If your Web site allows users to post information, it is important to include a Terms Of Use agreement that users are required to submit before posting any content. This agreement should include statements specifying that users are not allowed to post copyrighted material, that you are not responsible to validate their content as original, and that users are responsible for any actions resulting from content they post. If a user violates a copyright on your Web site, then the fact that he or she agreed to your Terms Of Use may protect you.

Trademarks

A trademark is any word, name, phrase, sound or image that a company uses to distinguish itself from the competition — most frequently, a company's logo and slogan or catchphrase. You cannot borrow another company's logo or catchphrase and use it for your company.

Tech Tip *A parody of a company's trademarked name, logo or catchphrase may be permitted on a humorous Web site under the Fair Use doctrine.*

Trademark law is also the basis for domain name disputes, which currently are primarily resolved by the World Intellectual Property Organization (WIPO) Domain Name Dispute Resolution Service.

Trade secrets and non-disclosure agreements (NDAs)

Although laws differ by state in the United States, a trade secret is generally a formula, pattern, idea, process or compilation of information that provides the owner with an advantage in the marketplace and that is treated by the owner in a way that can be expected to keep the public from learning about it. For example, a secret recipe, a customer information list or a series of books in progress could be trade secrets. If the owner of trade-secret information publishes the information on the Web, then it is no longer a trade secret. However, publication of trade-secret information by anyone who is not authorized to do so is illegal.

A non-disclosure agreement (NDA) is designed to protect trade secrets (as well as copyrighted material) from improper use by people who are allowed to access them, such as company employees, contractors and business partners. An NDA is commonly signed at the beginning and end of employment and contract relationships.

Patents

Patents are awarded for practices and processes that solve a problem or embody a new way of doing business. Some patents have been awarded for Web site processes, such as Amazon's One-Click Ordering. You should avoid duplication of patented processes in the design and development of your Web sites. If components of your process or service are similar — but not identical — to a patented process, you may be able to avoid a conflict. However, this is often vague, and disputes are resolved on a case-by-case basis.

Licensing content for your site

Because Web site content is protected by laws such as copyright and trademark, you must ensure that any content you use on your Web site (text, images, multimedia, etc.) is either your own original content — and thus protected from unauthorized use by others — or borrowed content that you have proper permission to use. Creating original site content is discussed in a later lesson.

If you want to use another author's copyrighted content (text, images, music, code, etc.) for your Web site or other purpose, you may be able to license the content from its owner for your use. Licensing means that you establish an agreement with the content owner, which might be a writer, artist, programmer, magazine, corporation or Web site. Licenses are typically limited in some way. When creating a license agreement, the content owner establishes the terms of the agreement, dictating how and where the content can and cannot be used, and what the owner will receive in exchange for use of the content (such as fees, credit attribution, etc.).

Some content owners will allow free use of their content for personal, non-commercial purposes. Some Web sites will allow other sites to provide links to their content. Again, any use still has terms and limitations. Some sites specify these policies to the public on their legal, permissions or copyright pages. For example, CBS Interactive grants permission to download, reformat and print a limited amount of its content for personal, non-commercial use. To see details about CBS Interactive permissions, visit *www.cbsinteractive.com/copyright_notice.php*.

Another avenue for licensing content and art is Creative Commons, a service that connects publishers with authors and artists. The Find page allows you to search for audio, images and text that are free to use, in some cases even for commercial purposes. Learn more about Creative Commons at *http://creativecommons.org* or conduct a search for content at *http://search.creativecommons.org/*.

Public domain

Content that is not copyrighted, or for which the copyright has expired, is said to be in the public domain. Any work that is in the public domain may be used freely by anyone for any purpose. Laws differ by country. In the United States, the following types of works are considered to be in the public domain:

- Works that were first created and published prior to January 1, 1923.

- Works whose term of copyright has expired. (Generally, works created on or after January 1, 1978, are protected by U.S. copyright for the life of the last surviving author plus 70 years.)

- Works for which no copyright extension has been filed.

International legal issues

Web users from all over the world can visit your Web site. Considering the breadth of your potential audience, you must be aware of some international issues if you develop Web sites that will conduct business with a worldwide audience.

For example, if the products your Web site sells are illegal in some countries, you may be responsible to provide ways to regulate sales and customers. If you are engaged in e-commerce, you should consult with a lawyer who specializes in international trade to determine whether your products are illegal anywhere in the world — and if they are, do not allow shipments to those regions. You should also post a statement on your site notifying residents in such regions that they cannot purchase the products in question.

Contracts

The Web enables people from all over the world to do business easily. However, as with any business arrangement, it is important to establish some ground rules in a contract or other binding agreement. Contracts between parties that reside in different regions should include a clause stating the country or state whose laws apply to the agreement. For example, a contract signed between a Web hosting company in California and a business in Japan will likely state that the agreement will be governed by the laws of California. You should consult with a lawyer before signing any agreement, particularly one with a company in a different country.

Intellectual property

It is also important to be aware that the laws in the country where your business is located, including intellectual property laws such as copyright and trademark, may not apply in other countries. For example, U.S. copyright laws are very specific, but no international copyright law exists. The World Intellectual Property Organization (WIPO) is an international body that fosters cooperation among countries on intellectual property issues. More than 180 countries are members of WIPO. However, WIPO cannot guarantee that all member countries will observe or enforce each others' intellectual property laws. For more information about WIPO, visit the Web site at *www.wipo.int/portal/index.html.en.*

Fair use

Fair use, which allows the reproduction or quoting of copyrighted works for certain purposes such as criticism or education, is unique to the United States. However, other countries have similar concepts. Be aware that practices considered to be fair use in the United States might be considered copyright infringement in other countries. To avoid violating international intellectual property agreements such as those established by

WIPO, you should closely comply with the concept of "fair use" established in your country of residence when developing Web sites.

In the following lab, you will use simple Web searching techniques to check content for possible copyright infringement. Suppose you are developing a Web site that will include a lot of text. You are receiving text for the site from several authors, including members of the marketing department and Web team, as well as some technical writers. Although the quality and styles of writing tend to vary somewhat before editing, you notice that a couple contributions sound very professional but do not quite describe your company or products correctly. You suspect that this content may have been "borrowed" from the Web site of a competitor company. Rather than risk legal action by posting Web site content that might infringe on another company's copyright, you can first check to see if the content came from another online source. If you find that it did, then you can avoid copyright infringement by asking your writers or editors to replace the copied content with some original content for your company's site.

Lab 11-1: Discovering copyright infringement

In this lab, you will learn to use Web searches to discover possible copyright violations and avoid infringement.

1. **Browser:** Go to *www.copyscape.com*. The Copyscape site is a tool for searching for duplicate copy (writing) on the Web. If you have your own Web site, you can enter it in the search box and see if your content is duplicated elsewhere. Due to bandwidth constraints, Copyscape limits the number of free searches to five per month for any given site. A premium account allows you to perform unlimited searches at $.05 per search.

2. In the search field, enter the URL of a site you think would be likely to include a famous quote, or a site that parodies famous quotes, such as *www.despair.com*. Click the **Go** button.

3. The results will appear in a few seconds. Depending on the URL you entered, there may be several matches because famous quotes appear on many Web sites. Generally, copyright law does not cover famous quotes, and so no legal action would result from any of these sites using these quotes. However, if you had entered your own Web site's URL and gotten many matches, you may have cause for concern.

4. On the Copyscape site, enter another URL, this time for a site that is more likely to contain mostly or all original content. You can use your own site, a favorite site, the CIW site (*www.CIWcertified.com*) or the Habitat for Humanity site (*www.habitat.org*). Notice that you may still see some instances of copied text. Notice also that it may take several attempts to find a site that has not already exceeded the limit of five searches per month.

5. Visit the CIW Certification Pathways & Exams page at *www.CIWcertified.com/certifications/program.asp*. Use your cursor to select and copy the first sentence of text you see on this page, just under the CIW Certification Pathways & Exams heading. The text should read *"The CIW certification program validates job-role skills competency for entry-level job seekers and seasoned professionals alike"*.

6. Direct your browser to the Yahoo! search engine at *www.yahoo.com*. Place your cursor in the Search field, and paste the sentence you copied from the CIW page.

(Alternatively, you can type in the sentence from that page as listed in Step 5.) Click the **Web Search** button. This technique is called a string search.

7. The results page for this Yahoo! Search will show a list of sites that use the wording you entered, showing in bold the words that exactly match your entry string. This technique provides a quick way to check a sentence or paragraph for duplication from another source. Remember that exact duplication of a written expression may constitute infringement, whereas use of some of the same words in different orders to express similar ideas differently is not a violation of copyright.

8. Direct your browser to the Google search engine at ***www.google.com***. Click the **Images** link to access the Google Images page. Type *CIW* in the search field, then click the **Search Images** button. Notice that the results page for this image search shows images with your keyword (CIW) in the image file name. Each image is accompanied by the site address at which Google found it. Are any of these images copyrighted or trademarked material? How might you be able to use a search such as this to check image files for copyright infringement?

In this lab, you learned ways that the Web makes it easier to discover copyright violations, especially when it comes to written words. You can use tools such as these to learn whether your content has been published online or to verify whether the content on your site is original.

Case Study

Steal This Site!

Rather than pay a Web developer to create an expensive Web site for Big Al's Hardware, Big Al decided to have his receptionist download the pages and content from another Web site and simply modify the text to create Big Al's Web site.

Big Al instructed his receptionist to choose a hardware store that was far away so it would not be a direct competitor. As he said, if the company whose Web site they copied was nowhere near Big Al's store, then Big Al's was not taking away any business from them by having a similar site.

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Consider this scenario and answer the following questions.

- Are Big Al's actions ethical? Why or why not?

- Are Big Al's actions legal? What specific law(s) might he be violating?

- Is Big Al taking business away from another company by copying its Web site if the company resides in some other geographical region? Can you think of ways in which his actions might be stealing business from the similar but far-away company?

Lesson Summary

Application project

Terms of use and privacy policies differ widely among Web sites. It is very important for any Web site that interacts with users (or allows users to interact with each other) to clearly specify the site owner's responsibilities as well as the user's responsibilities on the site.

Visit several Web sites, and look for the sites' terms of use and privacy policies. Links for these pages are generally provided at the bottom of the home page. How many of the sites you visited offer these pages? Do they tend to be small companies, large companies or all sizes?

Read some of the privacy policies and terms of use that you find on these sites. Do these terms and policies make sense? Are they clear or vague? Do they seem reasonable to you? Is there anything contained within these documents that would make you think twice about revisiting that site or doing business with that company?

Consider how often you read a site's privacy policy before giving the site information about yourself. Are you more likely to do so now, less likely, or just as likely?

Skills review

In this lesson, you studied ethical and legal issues related to the Web. You distinguished between ethics and law in relation to Web development and business. You also learned about privacy and the importance of privacy disclaimer statements. Finally, you studied some important legal issues that may affect you as a Web developer, including intellectual property laws, spam laws and international legal issues.

Now that you have completed this lesson, you should be able to:

✓   1.3.1: Define ethics, and distinguish between legal and ethical issues.

✓   1.3.2: Use Web content (e.g.,text, graphics, code) properly, including original content, misleading/inaccurate information, copyrighted content, licensing, avoiding infringement.

✓   1.3.4: Use strategies to avoid violating end-user privacy and trust (e.g., refusing to share or sell end-user information, opt-in/opt-out for mailing lists).

✓   1.3.5: Develop privacy disclaimers appropriate to site purpose and audience.

✓   1.3.6: Identify international legal issues, including fair use, trademarks, contracts.

Lesson 11 Review

1. What is opt-in e-mail?

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2. What is opt-out e-mail?

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3. What is the purpose of a patent?

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4. What is the purpose of a privacy policy?

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5. What term is used to describe the practice of buying domain names that you do not intend to use? Is this practice illegal?

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    _____