

Cloud Computing and Virtual Law Practice in the Legal Profession

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Introduction

Cloud computing is used by legal professionals in private practice and in non-profit legal aid organizations to reduce the cost of legal fees to clients and to deliver unbundled legal services online. There is no question that the cost benefits of cloud computing permit attorneys to provide more affordable and accessible legal services to lower and moderate income individuals

increasing access to justice across our country. However, there are unique ethics concerns that need to be addressed and precautions that should be taken before using cloud computing for law practice management. This paper will provide a short introduction to the use of cloud computing and virtual law practice by the legal profession and will discuss the benefits it provides to the public for greater access to justice as well as the different security and ethics risks associated with the use of technology to deliver legal services online. The author strongly encourages the reader to follow up this paper with additional reading and has provided resources at the end for more in-depth review of the issues discussed herein.

What is Cloud Computing?

Cloud computing means that the software application(s) being used are hosted by a third-party on servers and accessed over the Internet. The technology used to facilitate virtual law practice is software as a service (SaaS). SaaS applications used to deliver legal services online are secure, hosted systems. SaaS is only one type of technology platform that exists in the general realm of “cloud computing.” A few examples of cloud computing applications currently relied upon in traditional law practices include email (often unencrypted), legal research databases such as Lexis and Westlaw, electronic court filing (e-filing), web conferencing programs, Skype, and most Google applications from its search engine to Google Voice.

The term *cloud computing* originates from the explanation that programmers would use to describe complex networks and how the data was transferred from network to network. The space in which that data transferred from one law office’s computer network was drawn in diagrams as a cloud to show that this information was now outside the control of the

organization. This cloud is actually a known location that the data travels to and does not mean that the data is floating out in space unprotected and unobtainable. Diagramming the concept this way was easier for programmers to encapsulate in a cloud than to draw out the entire complex network system. Unfortunately the term “cloud computing” now carries a misleading image that the data is floating around in an unknown, unsecure space, which is simply not the case.

Likewise, the structure of most current companies providing SaaS should not be compared to the application service providers (ASPs) of the late 1990s. The model has evolved so that the software is specifically written as a service designed to work cooperatively in a network environment rather than being developed in line with the goals of PC software as it used to be. Because this affects the way IT professionals and the industry think about their users, resources, and security, it requires a reexamination of the cloud computing model.

SaaS is an ideal model for facilitating the delivery of legal services online. It allows the attorney to focus more on providing quality online legal services to the public without time-consuming in-house software installation, maintenance, and support. Attorneys are able to leverage this form of technology to exploit its benefits while at the same time finding ways to mitigate the risks just as they do with any other methods of law practice management.

What Is a Virtual Law Practice?

Virtual law practice and the delivery of online legal services rely on the use of cloud computing. Both are forms of eLawyering. ELawyering is defined by Marc Lauritsen, the co-chair of the ABA’s eLawyering Task Force, as

all the ways in which attorneys can do their work using the Web and associated technologies. These include new ways to communicate and collaborate with clients, prospective clients and other attorneys, produce documents, settle disputes and manage legal knowledge. Think of a lawyering verb—interview, investigate, counsel, draft, advocate, analyze, negotiate, manage and so forth—and there are corresponding electronic tools and techniques.¹

A virtual law practice is a professional law practice that exists online through a secure portal and is accessible to both the client and the attorney anywhere the parties may access the Internet. Attorneys are setting up completely web-based virtual law offices or they are integrating virtual law practice into their traditional, brick & mortar law offices. The secure client portal is the primary feature of the virtual law office that facilitates the delivery of legal services online. The client uses a unique username and password to enter into his or her own secure account homepage within the attorney's virtual law office website. End-to-end encryption keeps the clients secure as they log in and work with the attorney to receive legal services. This client portal where the client and attorney interact is unique to virtual law practice and is the key to differentiating it from other web-based services and companies offering legal documents to the public online.

Within that client portal, attorneys and their clients may securely discuss matters online, download and upload documents for review, create legal documents, and handle other business transactions related to the delivery of legal services in a secure digital environment. Document

¹ *Law Practice* (January–February 2004): 36. See also Lauritsen's *The Attorney's Guide to Working Smarter with Knowledge Tools* (Chicago: ABA, 2010), pp. 97–100.

automation and assembly technology may be combined with other law practice management tools, such as case and client files, document management, billing and invoicing, filing, calendaring and task recording, to create a complete backend online law office for the attorney or law firm. With the rapid changes in technology, the definition, terminology, and features of virtual law practice will evolve. However, the development of the virtual law office model and future innovations in the delivery of legal services will remain dependent upon cloud computing.

It is critical to distinguish a professional virtual law practice from companies selling online legal forms without attorney review. A virtual law practice provides direct and personal communication between an attorney and a client rather than strictly form-generated, unbundled legal documents for sale to the public. The distinction is important because it affects the security and ethics concerns related to the use of the technology. It is also important because some state bar rules regarding unauthorized practice of law require an examination of whether the services being offered by the attorney constitute the “practice” of law. Delivering legal services online to clients is the “practice” of law. The online delivery of legal services from start to finish requires a higher standard of care on the part of the attorney operating a virtual law practice and demands close attention to compliance with the rules of professional responsibility that may not always apply to the structure and processes of a traditional law practice.

Cloud Computing to Deliver Legal Services

Prudent or not, the public is going online to seek out legal professionals and to find ways to solve their legal needs through the Internet. They conduct e-commerce transactions that rely on cloud computing on a daily basis. Our clients bank, shop, conduct business, and pay their

credit cards and taxes online.² They are turning to resources other than the traditional law office for their legal needs. Legal Zoom, Inc. has been serving thousands of individual across the nation over the past few years and has generated millions in revenue from the sale of form-generated legal documents which were all delivered through the use of cloud computing.³

Online demand for legal services and the number of people using the Internet to transact business is growing regardless of state bar disciplinary complaints and lawsuits issued against these online legal service companies.⁴ The problem with these online legal services is that they are not reviewed by an attorney and therefore may not provide adequate legal guidance even though they are more affordable and convenient to access online.⁵ Some clients are even attempting to solve their own legal needs by cutting and pasting together legal documents they find online after going to search engines. The motivation for using these online methods is an issue of access and affordability.

² By 2013, the estimated US online retail sales will reach \$299 billion at a compound annual growth rate (CAGR) of 10% over a five –year forecast period. *US Online Retail Forecast, 2008-2013*, Evans, Patti Freeman, updated March 4, 2009, Forrester Research, Inc. See also, *US Ecommerce Growth to Pick up In 2010, But Hit Mature Stride*, *Bloomberg BusinessWeek* Blog (February 2, 2009) .

http://www.businessweek.com/the_thread/the_thread/blogspotting/archives/2009/02/us_ecommerce_gr.html (accessed May 27, 2010) providing a summary of the Forrester predictions for ecommerce over a five-year period.

³ For example, in a petition to have a case removed from a court in Missouri to federal court, Legal Zoom states that it has served over 14,000 Missouri residents over five years which generated over \$5,000,000 in sales. See IPWatchdog.com blog for links to the legal documents related to *Janson v. Legal Zoom, Inc.*, Western District of Missouri, December 18, 2009, <http://www.ipwatchdog.com/2010/02/09/legalzoom-sued-in-class-action-for-unauthorized-law-practice/id=8816/> (accessed May 27, 2010).

⁴ During March, 2010—one month alone—an estimated 535,000 people in the US searched online seeking legal solutions through the Legal Zoom website and an estimated 164,000 people in the US searched for legal services through the USLegal website. See Quantcast audience statistics related to websites providing online legal services. The number of duplicate people searching is not quantified. <http://www.quantcast.com>. (accessed May 27, 2010).

⁵ Nolo, Inc., sells blank legal forms to individuals online, whereas LegalZoom prepares the documents for the clients through a document-assembly program online. USLegal provides both legal documents for sale and online document preparation. With both types of services, the customers do not communicate directly with a licensed attorney and the product being sold does not go through individual attorney review. See www.legalzoom.com, www.nolo.com, and www.uslegal.com.

Recognizing the use of cloud computing as one solution, nonprofit form services created by legal aid organizations and some state court systems have also begun to provide cloud-computing applications designed to meet the public's demand for access to affordable legal services.⁶ Additionally, e-filing and public access to digital court documents relies on the use of cloud computing applications.⁷ Many practitioners from solos to large law firms as well as our local, state and federal court systems are already using cloud computing to handle client and law firm data on a daily basis.

Another factor to consider is what the future generation of our clients will demand in terms of seeking out and receiving legal services online. Clients born after 1980 communicate professionally and personally using digital media. These "digital natives," also referred to as the "Facebook generation," will become the primary clients in law firms over the next ten to twenty years.⁸ The majority of our legal professionals will soon also be from this generation comfortable operating primarily in a digital world. These clients and younger attorneys operate many aspects of their personal and professional lives using cloud computing and will expect to collaborate with each other using the technology just as they do with other professionals.

⁶ See for example, Law Help Interactive (www.lawhelpinteractive.com), powered by ProBono.net (www.probono.net) and A2J (Access to Justice), powered by the Center for Access to Justice & Technology (CAJT), in partnership with the Center for Computer-Assisted Legal Instruction (CALI). For an analysis of the need for more accessible and affordable legal services in our country, see the Brennan Center for Justice at the New York University School of Law's Civil Justice Initiative, *The Economy and Civil Legal Services Analysis*, May 17, 2010 http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services/ (accessed May 27, 2010).

⁷ See for example, PACER, <http://www.pacer.gov/>, and the North Carolina Supreme Court and Court of Appeals Electronic Filing Site and Document Library, http://www.ncappellatecourts.org/nc_main_1.nsf (accessed June 12, 2010).

⁸ Palfrey, John and Urs Gasser. *Born Digital: Understanding the First Generation of Digital Natives*. Perseus Books, 2008. <http://borndigitalbook.com/about.php>,

Providing adequate access to legal services to the public will mean adapting in some ways to their primary methods of communicating and interacting.

Ethics Concerns

As with any technology used for law practice management, there are ethics concerns that arise from the use of cloud computing. Many of these concerns relate to security risks and the ability of the attorney to protect confidential client information. There are ways to mitigate these risks just as there are with the use of more traditional, install software used for practice management. With cloud computing, there are precautions to take when researching and choosing a software service provider and there are additional precautions to take when using the chosen software application to deliver legal services. Accordingly, both sets of ethics concerns are outlined below.

Researching the Cloud Computing Service Provider

Below is a list of topics that an attorney should address before choosing a software service provider and technology to deliver legal services online.⁹ These items may be found in the Service Level Agreement (SLA) with the software provider. If not, the attorney should inquire about these issues and understand how the responses given by the provider could potentially impact his or her law practice.

1. Data return and retention policy. Return must be in a readable format and within a reasonable amount of time upon request. See if transfer of the data is available to on-

⁹ For further research, see the North Carolina State Bar Proposed Formal Ethics Opinion 7 entitled “Subscribing to Software as a Service while Fulfilling the Duties of Confidentiality and Preservation of Client Property,” *North Carolina State Bar Journal*, Summer 2010, Volume 15, Number 2. The proposed Ethics Opinion provides a recommended list of questions that an attorney should ask prospective cloud computing providers before subscribing to the software services for use in law practice management. Other state bars have published similar guidelines for their members to assist in the research and selection process of software providers.

sight digital storage for internal backup for long-term digital record retention. If you prefer the additional security of in-house data retention in addition to the services provided by the hosting company, data contained in the online law office may be available to you to transfer to on-sight digital storage for internal backup or for long-term digital record retention. Find out what happens to the data after the relationship is terminated.

2. Government and civil search and seizure actions. Understand how the provider would handle this request with regards to your law office data if handed a subpoena to deliver the contents of your law office.
3. Third-party hosting. Obtain a copy of any agreements between your provider and another company that cover the servers, support and/or maintenance of your law office data that will be in the hands of that third-party. Fully understand these relationships when considering the terms covered in the software provider's service level agreement (SLA).
4. Server Information. Servers located outside of the United States may be subject to international laws. Find out where the servers are located and if there is geo-redundancy of the servers or if there is data escrow offered through companies with servers located overseas. Make sure that the servers are housed in Tier4 data centers.
5. Compliance with Federal Regulations. If your provider will be collecting credit card information rather than redirecting that service to another third-party hosting company, make sure that the service is Peripheral Component Interconnect (PCI) compliant.

6. Confidentiality Breaches. Does your provider have adequate business insurance to cover the cost of providing the attorney with the ability to hold the company to unlimited liability for data breaches?
7. Security and Backups. Who has access to the law office data? Look for confidentiality, privacy policy and nondisclosure statements. The law office data should remain encrypted and only decrypted with the permission of the attorney. Does the provider conduct regular security audits? How often do they backup the data? Understand how backups, maintenance and updates to the service affect the security of the law office data.
8. Transferring Data/Compatibility. Are there export features that allow for the data to be transferred to other software applications or backed up in-house in addition to the online storage and backup. If the company goes out of business or the relationship is terminated with the provider, how easily can the attorney transfer law online law office data to a compatible system.

Ethics Concerns Related to Virtual Law Practice

In addition to the concerns associated with the relationship between the technology service provider and the attorney, and the security risks associated with cloud computing applications, there are potential ethics risks that arise from the attorney's individual use of the software to deliver legal services to clients online. As with any traditional law practice, there are daily best practices that the attorney must employ to ensure that he or she is acting responsibly and ethically in using this form of practice management.

With many of these concerns, the technology itself may be used to help prevent malpractice in the online delivery of legal services. For example, the software may have jurisdiction and conflict of interest checks built into the system. Other software applications are designed specifically to protect both the clients and the attorney by creating processes that ensure the online client understands the nature of the unbundled legal services being delivered online. With some applications, the attorney must follow a fixed procedure of ensuring the online client's acceptance before proceeding with the attorney/client relationship. Regardless of the structure of the virtual law practice or the technology chosen, the following ethics concerns should be addressed prior to engaging in the delivery of legal services online.

1. Unauthorized Practice of Law

- a. UPL in Other Jurisdictions: Attention must be given to compliance with the marketing and advertising rules and regulations of each jurisdiction in which the virtual law office provides legal services. Jurisdiction checks are needed when a prospective client registers through the client portal to inform the attorney if the legal matter is within his or her jurisdiction to handle and to notify the prospective client of the restricted jurisdictions in which the online attorney is licensed to practice law.
- b. UPL with Multijurisdictional Virtual Law Firms: The prospective online client should be connected to the attorney in the multijurisdictional firm who is licensed to handle the legal matter through a more robust jurisdiction check. The virtual law firm must be careful about compliance with marketing and

advertising rules and regulations of several state bars which may include registration of URLs and approval of website design in multiple states.

- c. Residency Requirements and UPL: Residency requirements exist for a handful of state bars and specifically require a “bona fide office”. However most of these rules do not specifically address the use of cloud computing or a virtual law office whether completely web-based or integrated into a traditional law practice.¹⁰

2. Conflict of Interest

- a. Conflict of interest checking should be run on both online and offline contacts.

3. Competency

- a. Each attorney must make the decision on a case by case basis whether the prospective client’s legal matter may be adequately handled online or if it requires a full-service law firm. Different practice areas and client bases require different processes and forms of communication. The attorney should recognize what level of legal assistance they may provide online and then adequately inform the prospective client of the limitations of those services.
- b. A virtual law practice may streamline the legal workflow, but it should never compromise the quality of legal services delivered to clients or affect the attorney’s “zealous representation” of the legal matter.

4. Conflict of Laws

¹⁰ See, for example, Missouri State Bar Informal Advisory Opinion Number 970098 regarding Rule 5.5; *Tolchin v. New Jersey Supreme Court*, 111 F.3d 1099 (3d Cir. 1997); *Lichtenstein v. Emerson*, 674 N.Y.S.2d 298 (App. Div. 1998); *Parnell v. West Virginia Supreme Court of Appeals*, 110 F.3d 1077 (4th Cir. 1997).

- a. This issue occurs when an attorney provides federal law–related legal services online, such as intellectual property law. The attorney may handle the online client’s matter as far as it relates to the federal law issue, but if that same online client requires the drafting of a state-specific legal document, such as a contract, the attorney may not handle this aspect of the project for the online client if that client is not located in a state in which the attorney is licensed to practice law.

5. Authentication of the Online Client’s Identity

- a. While the attorney should conduct some form of online verification to ensure that the prospective client on the virtual law office are who he or she claims to be, it is not the attorney’s duty to identify and prevent fraud.
- b. Online clients sign clickwrap agreements to confirm his or her identity online and accept the terms of the representation. Just as a traditional firm would accept a signed engagement letter from a client, an attorney should be able to rely on the contact and other information provided to them through the client portal.
- c. It is the attorney’s responsibility to refer the prospective online client to a full-service law firm for legal matters where the attorney does not believe that online methods used to authenticate identity are adequate for the circumstances.

6. Defining the Scope of Representation Online

- a. Prospective online clients must understand the scope and nature of the legal representation being offered through the virtual law office and provide

informed consent. The notice will depend on whether the practice provides completely web-based, unbundled legal services or being run in conjunction with a full-service firm.

7. Establishing the Attorney/Client Relationship Online

- a. One ethics concern may be that the virtual lawyer creates an unintended client/lawyer relationship online.¹¹ Multiple clickwrap agreements and communications with the prospective client address this concern and ensure that the client has adequate understanding of the nature of the relationship and provides informed consent to the attorney.
- b. In addition to using a clickwrap agreement to establish the attorney-client relationship, the attorney may also use a combination of online and traditional methods to ensure that he or she has clearly established the relationship.

8. Protecting Client Confidences

- a. Most state bars have rules of professional conduct requiring that communications transmitted from the client to the lawyer be kept confidential. Accordingly, a virtual law office should have an SSL certificate and provide the client with secure transmission of data.
- b. Ensuring the protection of client confidences depends on the ability of the attorney to thoroughly research the cloud computing provider to understand the technology, security and how the virtual law office data is stored and

¹¹ See *Barton v. U.S. Dist. Court for the Central Dist. of Cal.*, 410 F.3d 1104 (9th Cir. 2005) (holding that the attorney/client relationship was formed and a duty of confidentiality arose when prospective clients filled out an online form that the law firm had posted on its Web site. See also Kelcey Nichols, *Client Confidentiality, Professional Privilege and Online Communication: Potential Implications of the Barton Decision*, 3 *Shidler J. L. Com. & Tech.* 10 (Feb. 14, 2007), at <http://www.lctjournal.washington.edu/Vol3/a010Nichols.html> (accessed May 30, 2010).

protected. See the above section related to researching the cloud computing service provider.

9. Online Storage and Retention of Client Data

- a. The attorney has a duty to safeguard client property throughout the legal representation and for a number of years following the completion of the client's legal matter. The attorney needs to understand how the law office data is stored and retained by the service provider. See the above section related to researching the cloud computing service provider.

10. Online Payments and Trust Accounting/IOLTA Compliance

- a. Ensure that the funds are slated to the correct trust account in each client's jurisdiction and that it is in compliance with that state's IOLTA requirements. This takes additional work when there is more than one lawyer with multiple jurisdiction regulations with which to comply.

11. Dissolution of a Virtual Law Practice

- a. Ensure that the digital files from the virtual law practice are transferred to the attorney responsible for recordkeeping following the dissolution.

12. Daily Best Practices

- a. It is the responsibility of attorney to ensure that he or she is well-educated and kept up to date on the security issues related to the use of the technology chosen for practice management. Firms might want to consider establishing best practice guidelines for use by attorneys practicing law on remote devices that use cloud computing applications. As a basic example, an attorney would

need to carefully protect his or her unique username and password and avoid practicing law remotely using free, public WiFi access.

- b. A virtual law practice might provide online clients with educational content on the website pertaining to the protection of their usernames and passwords or guidance on how to protect themselves from identity theft and other security risks associated with conducting business online.

An Opportunity for the Profession

The fact that cloud computing applications are growing in use by legal professionals and are in demand by the public seeking online legal assistance implies a significant need in the market for legal services that is not being met. It also indicates an opportunity for the legal profession. The use of cloud computing in law practice management provides a solution to the consumer need for access to justice and also meets the needs of our changing profession. It permits the public to retain the services of an attorney without having to turn to less secure online methods of solving their legal matters. More affordable pricing, convenience, and less intimidation are all factors that make the features of cloud computing appealing to a large segment of the public.

Some of the main benefits of using cloud computing for legal professionals include the following items. The benefit to the public is that many of these items produce cost-savings that result in lower legal fees for clients.

- Lower law office overhead
- Eco-friendly, paperless, less office waste

- Ability to expand client base across the jurisdictions to reach remote areas of the State; competitive advantage for solos and small firms
- Flexibility for the attorneys to transition between different phases in life and career to meet professional and personal needs
- Provide services to a broader spectrum of individuals seeking legal services, including clients in remote areas of the State and our military stationed overseas
- Hosted backups of law office data and other cost-effective benefits of using software as a service (SaaS) which may be more affordable for solos and small firms than hiring an IT professional to set up and maintain an in-house server
- Lessen malpractice risks through the use of technology to automate malpractice checks
- Streamline administrative features of a law practice to permit the attorney to focus on the actual “practice” of law. Document automation, assembly and intelligent decision making applications also assist in the delivery workflow.

Likewise, the benefits to the attorney through streamlined legal work and a competitive advantage make it a cost-effective solution for both solos and small firms to implement. Larger law firms who may be able to afford more expensive, in-house technology solutions for their practice management may not be interested in working with the larger number of lower to moderate income individuals needing unbundled legal services online. In some cases, the security and backups provided by the cloud computing provider may be higher quality than more traditional methods of in-house backup or document storage that a solo or small firm may attempt to implement itself.¹²

¹² The data centers housing the servers that store law office data are typically million-dollar investments with highly regulated environments with fire suppression, backup power, redundancy, security, and 24/7 monitoring. The

The benefits and risks of using cloud computing in law practice management are going to differ based on what type of application(s) the attorney has chosen and what that practitioner hopes to accomplish by using the application(s) in his or her practice to serve clients. This is another reason why technical restrictions and regulations that impose broadly over cloud computing may not be practical to apply and would quickly become out-dated in light of the rate at which the technology develops and new security risks arise.

Conclusion

There is no debate that there is an increasing need for affordable access to justice in our country. Unbundled legal services, whether provided online through the use of cloud computing or in-person to clients, is considered by many state bars and the ABA as one solution to providing the public with affordable legal services. The legal profession will encounter difficulty in implementing these methods and serving the public without the use of cloud computing to assist in automating and streamlining much of the transactional legal advice and document creation that makes these methods cost-effective for practice management.

However, this issue directly involves a broader discussion about how the profession adapts to serve the public at full-capacity without leaving gaps in the justice system. Any innovation in the delivery of legal services that occurs in the future is primarily going to happen through the Internet. This means that cloud computing will be involved. Developments in document automation, assembly and intelligent decision making applications are not within the

building itself may have redundant climate control, a redundant physical power plant, generator backup, and encrypted electronic door locks.

capabilities of a traditional law firm to develop and employ.¹³ Yet, these applications are a critical solution to providing basic legal services to the public.¹⁴ Future innovations in the delivery of legal services will specifically include more applications that allow the public to directly interact with their attorney online to receive legal services.

The only effective way to distribute this technology to the legal profession and for attorneys to employ these methods in their practices is through the use of the Internet.¹⁵ Cloud computing allows the cost of developing these applications to be spread out over a wide number of users. The danger of placing specific regulations on cloud computing in law practice is that it may hinder innovation of future evolutions of cloud-based technology and will quickly become obsolete as are many of the ethics and advisory opinions currently in place. This leaves attorneys attempting to interpret out-dated rules and opinions to current practice needs. Any regulations related to cloud computing for law practice management would best serve the profession and the public by providing “best practices” or guidance to attorneys that may easily be updated on a regular basis. The sooner that the legal profession is able to comfortably adopt the use of cloud computing in practice management, the sooner members of the public will have a safer alternative to solving their legal needs than the more affordable and accessible, but less secure solutions they currently have available.

¹³Lauritsen, Marc. *The Attorney's Guide to Working Smarter with Knowledge Tools*, ABA Publishing, March 2010.

¹⁴Ron W. Staudt. *All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice*. Loyola L.A. L. Rev. 1117 (2009).

¹⁵George L. Paul and Jason R. Baron, *Information Inflation: Can the Legal System Adapt?*, 13 RICH. J.L. & TECH. 10 (2007).

Further Reading

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<http://www.abanet.org/legalservices/delivery/delunbundrules.html> (accessed May 28, 2010)

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