The Question of Copyright

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I.

I have read with interest what has appeared in Liberty on this subject,—no doubt a puzzling one, because both abstract and complex. What is copyright? The word means the right to copy. But if I say I am in favor of copying what we want to copy, the advocates of copyright will immediately tell me that this is precisely what they do not allow, except to the author and his assigns. The word and the law are derived from a political condition in which the sovereign prohibited individual activities in general, then relaxed the prohibition in favor of certain persons. This theory of despotic power and gracious indulgence is the foundation of the patent system. The author is one of the class of inventors, otherwise discoverers. Whether he had to labor to any appreciable extent or whether his discovery, his prose or poetry, flashed from his genius, makes no difference in his standing as regards his legal right.

Starting from the Egoistic point of view, I of course have no respect for his right as his right. Is it convenient to me in the long run? By a process of reasoning and some inherited qualities I perceive, and it is agreeable to me to feel, that men may be approximately equal in industrial relations with mutual benefit. Thus I am disposed to allow to others the possession of their labor products if they will allow mine to me. But I make no sacred dogma of this, and it has to be qualified in accordance with my reason for allowing it. Thus, for example, if my neighbor takes a notion to make a garden upon the ground devoted to a road, I shall consult my own convenience about driving across his garden.

I not only allow to others their labor products, but also a reasonable amount of material on which to work, and all material in which they have embodied their labor without trespass. Both these kinds of property I cheerfully recognize, as being inseparable. Here I am disposed to stop. Show me that any other property is reasonable and can be maintained without government; then I may acknowledge it.

Literary and patent-right property, as I know it, is another name for prohibition. It prohibits an exercise of one's initiative and laboring faculties. It is true that I will join with my neighbor B to prevent C from taking B's farm or his statue or his house, and I expect general consent. Why? Because men in general can make use of land for farms, and can enjoy property in the other mentioned forms. It is not especially because he chiseled the statue or built the house, but because it came into his possession in a manner which I recognize as lawful, perhaps by exchange. There appears to be enough raw material for all to have work and consequent comfort. All men can find use for a piece of land; hence, when men become more intelligent, they will see their interest in defending the occupier. But how many out of a thousand are capable of availing themselves of copyright and patent laws to make more than they can make by disregarding such laws?

All men have labor products limited by the material in which the labor is embodied, and hence transferable. A copyright-privilege or patent-right privilege awaits embodiment in other material, and the author or inventor, if protected, can but levy toll upon those who will embody it in imitation of him.

I see that it is proposed, in putting together the scattered provisions of British copyright law, to include abridgments. Then there is the right of translation. Plagiarism is a delicate point in many cases. I think it must be very difficult to contrive any plan of protecting copyright which will not either leave a loophole for plagiarism or involve government, and that such would be the case were all disposed to admit the doctrine of copyright.

As a matter of comity, I think publishers could well come to agreements not to duplicate each other's work, but an indispensable condition among free men must be that authors and their publishers shall not enjoy the prohibitory privilege which is the soul of copyright.

Besides indorsing Mr. Tucker's argument in reply to Mr. Donisthorpe, I wish to add a few words on the inventions which have been abandoned to the public, not superseded. Let us suppose that perpetual patent and copyright had existed from the beginning of civilization, and that all inventors had claimed their rights. In that case there would be royalties on the wheel, the saw, the knife, the axe, the plough, the use of iron, the processes in every manufacture, on all games, on money, on paper, on fire, on matches, on window glass, on doors and hinges, on springs, on locks, on beds, on soap and the use of soap, on hot water, on brushes, on every kind of clothes and shoes, on ink, types and every press, on the musical notation, on books, on the alphabet, on the numerals, on arithmetic, on bookkeeping by single and double entry. What would business men do without figures? They must pay the descendant of some Arabian. What would engineers do without algebra? They, too, must pay. Everybody must pay for having a name and surname. What would composers do without a staff and notes, or authors without an alphabet? They could not claim any copyright, for they are using signs invented by a monk. The Church, being his heir, might farm letters out. But it, in turn, must get the permission of the owners of the processes of paper-making, printing, and bookbinding. The whole system, besides, would require more functionaries than Proudhon enumerated to bedevil the mass of mankind. Can that be social science which would result in slavery to privilege but for the abandonments and invasions before social science was thought of?

Mr. Simpson's proposition of control over another by virtue of having adorned his piece of land, and the other's wanting to imitate his adornment, will do very well. I shall imitate Mr. Simpson's adornment and make no pretence of originality or coincidence. In order to fine me, he will have to come with force upon my piece of land. I shall talk to the neighbors about it, and endeavor to show them how the balance of exchange is affected if we do not receive labor equivalents, but are forced to pay for looking at objects publicly exposed. Mr. Simpson will then proceed to enforce his claim, perhaps. While he is doing so, I may have the luck to discover in the property of somebody else the natural object which gave him his design, and then there will be an unlimited claim against Mr. Simpson.

I have some further remarks to make touching on Spencer and Yarros.

II.

Mr. Yarros is an easy writer. A proverb tells the consequence to readers. He began on copyright by designating the notion of a perpetual monopoly of ideas as too silly to require any force for its refutation. But in his second article he says that it is only the difficulties in the practical application of the general principle that necessitate the abridgment and limitation of the right of property in this particular sphere, and, as to the perpetual and unlimited right to property in ideas, there is no argument against such a monopoly which does not apply equally well to monopoly in things material produced by labor. In his third article, he claims by the general principle of equal liberty property in ideas as having the same sanction as property in material things, and says: In no case does the author or inventor who has the monopoly of the use or sale of *his* invention or discovery infringe the equal right of others. But the application of the principle is difficult, hence

where absolute justice cannot be had a temporary protection is accorded. As to literary works he says: I see no reason for violating the general principle in this case. Now then, was it excessively silly (if all this be so) for anyone to entertain the *notion* of a perpetual monopoly of ideas, at least until the practical breakdown of the general principle was discovered? Is it too silly a notion to need refutation, though Mr. Yarros's refutation does not directly affect the notion, but affects a line of conduct? Can every one be expected to know off-hand when a general principle must be *violated?*

I gather that Mr. Yarros believes in two kinds of copyright: perpetual as to the exact form, and temporary as to the ideas,—temporary protection against plagiarism. In saying ideas I am reminded of a question how far form of expression is idea and how far it is labor. I feel quite certain that it is both combined in varying proportions; but, to proceed, I will say of form, to eliminate all question of coincidence, here is a book with the author's name on the title page.

Mr. Yarros professes to diverge from the Spencerian position,—to make a distinction between the right to property in inventions and the right to literary property. Was it not an unnecessary distinction to be paraded in front of Mr. Tucker in view of the fact that Mr. Tucker was not attacking merely perpetual copyright and patent right but the temporary right also,—and in view of the fact that Mr. Yarros believes in the right of protection in the one case for some time and in the other for all time? Tucker is after the Canaanites and the Amalekites, whereupon Yarros comes in and says: I perceive a distinction. These are not all Amalekites!

The alleged divergence of Mr. Yarros from Spencer appears to consist not in a distinction between copyright, in the broad sense in which Spencer uses the word, and patent right, but in a distinction which leaves a great deal of copyright still in the same category with patent right and separates one conceivable kind or degree of copyright from the rest so remaining with patent right. Though Spencer does not make that distinction, there is nothing to show that he would be unwilling to make it. Had Mr. Yarros repudiated property in ideas and held to property in the form, there would have been a difference between him and Spencer instead of there being simply a distinction in that he analyzes a point which Spencer leaves untouched, but which Spencer's argument would lead Spencer to analyze to the same effect were he considering copyright more minutely and not with relation to first the general principle and secondly his expedient abandonment of the general principle on account of practical difficulty. But were Spencer making such distinction, he would not call this a distinction between patent right and copyright, but a distinction between (1) that copyright which protects against plagiarism and with this all patent rights, and (2) that copyright which might be given to an author for his work say with his name on the title page.

Says Mr. Yarros: I cannot follow Spencer in his attempt to abridge the right of authors to their literary works. Yet Mr. Yarros has avowed himself in favor of abridging something which goes by the name of copyright—the protection of a monopoly in ideas—which is what Spencer had in view, as witness the quotation from Spencer made by Mr. Yarros. Spencer speaks of new knowledge, being claimed as private property, of property in ideas, which it seems difficult to specify, and thereupon he couples the inventor and author together, patent and copyright. All this shows that the abridgment spoken of was conceived with reference to that element in copyright which protects property in ideas.

On the Spencerian argument itself, I will claim a hearing in another article, but I will now draw attention [6] to these facts, namely, that whereas Spencer introduces assertions with the phrases: It is tolerably self-evident, It is clear, It is further manifest, Mr. Yarros predicates that property in

ideas is logically deduced by Spencer from the principle of equal liberty. Spencer's language does not lead me to think that Spencer would make quite this claim. He finds himself prepossessed in favor of property in ideas, and, as far as shown by the quotations, he does not perceive any violation of liberty in reaping a harvest from the activity of others whom he may assume to have been aided by the ideas. He does not see the harm of the method by which the man who supplies the idea is aided to secure his alleged share in the results of its application. The most I make of Spencer's position as viewed by Spencer is that he thinks property in ideas is not vetoed by the principle of equal liberty; and included in his notion of property in ideas is a projection of power which I shall not admit to be part of the science of industrial relations.

III.

In Liberty No. 176 there are two quotations from Herbert Spencer, the first claiming new knowledge as private property, and the second discussing the probability of independent discoveries as a reason for limiting the inventor's monopoly. I regard Mr. Tucker's reply in the same number as being satisfactory, but there is perhaps occasion for a review of the alleged property in ideas and of copyright in every form, from the point of view of individual possession as true property versus societary invasion of the individual to establish an alleged property.

My thoughts are my property as the air in my lungs is my property. When I publish my ideas, they become the property of as many persons as comprehend them. If any person wishes to live by imparting his ideas in exchange for labor, I have nothing to say against his doing so and getting coöperative protection without invading the persons and property of myself and my allies. We will take care, if we can, that he and his party do not invade our houses, stop our printing-presses, and seize our books. Mr. Spencer is welcome to all the property in ideas that he can erect and maintain without government. No one can speak or write, and yet have the same advantage as if he were silent, plus the advantage of a market for his lecture or his book, even if he sell but one copy. But whatever he can do by contract, coöperation, and boycotting,—that is, by the means of equal liberty,—let him do at his pleasure.

When Spencer claims the exclusive use of his original ideas, I am interested to know how he purposes of enforcing such claim. I do not admit it. The mere fact that the idea was original with him does not have an effect to debar me from using it after he communicates it to me. I do not invade any privacy, but, when he either sells or gives me knowledge, it is mine. It is simply impossible for him to have property in me,—in the restraint of me so that I must not use my pen, my paper, and Mr. Tucker's type with Mr. Tucker's consent;—that is to say, all this is impossible without tyranny. The terms equal freedom, if construed to mean an equal degree of freedom and an equal degree of denial of freedom,—that is, less than full freedom,—become a mockery of what I understand by equal freedom. I understand by it no privileged order of persons, no privilege except by personal consent. And here is the point: if I undertake to limit my conceivable *action*, I do so in the exercise of my freedom to choose or refuse alliance with others. Further, while choosing as wise and congenial to outlaw the robber, the thief, and the murderer, in asking only voluntary adhesion to the Anarchistic compact we recognize that adhesion is an exercise of freedom. I would be understood that *property*, in the alleged invasion of which I may be taken, is to be given no idealistic extension. Otherwise I will not sign the compact, for the terms equal liberty will mean no more than reciprocal invasion.

This result follows: there are two associations where there would have been one. Owing to Mr. Yarros's association demanding for authors a prohibition upon printers, perhaps many authors adhere to it; but the printers will probably adhere to the same association as myself. I can understand that men who feel that their property is invaded will retaliate, but I do not understand how the authors are going to retaliate successfully against the printers and readers. I know that the pensioners regard their incomes as property and are prepared to keep themselves saddled upon the taxpayers, and it is possible that some pensions have been given for services which some of the taxpayers would willingly contribute something to reward, but only as a voluntary contribution. On a claim to exact the pensions, the issue depends upon the decision of those who pay them.

Anarchism has to face the claims of people who have put the evidences of past labor into government bonds and land investments as well as patent and other royalties. It is very important then to settle the question: what constitutes property?

I take a copyrighted book and copy it. I give or sell the copy to another. He reads it. He might or might not have bought the author's edition if I had never existed to draw his attention to the work. All that I do in the matter is done in my own room and with my own property.

The author does not know of my action, and cannot, by any inspection of his property, discover that any part is missing. Does not the analysis show that the claim of immaterial literary property is a claim of property in other men's production? True that but for the author the book would not be there for me to copy, but true also that I have not contracted with any man to give him a power of thrusting his partnership upon me, he doing something which has cost him certain labor and in return taking a general injunction upon us all, from which it is not impossible that he will make ten thousand times the amount that his labor would have made. This, if we permit, he makes out of us by the combination of a certain amount of labor with some fortunate idea and our belief in allowing immaterial property. Do we not all see that here are the elements of exploitation of man by man? And under Anarchism will not the authors' association be so small and the free copyright association so large that the former will find it expedient to disband on making some terms for consideration that will give the author a reasonable return for his labor, not at all a recognized right to make all he can by the means of a social prohibition? His own individual prohibition would mostly be impotent.

To steal is to take by stealth,—without the knowledge and consent of the owner. As long as Spencer has an idea in his brain, it is his, and it is not mine until it is in my brain. I do not get it by stealth if he publishes it. I shall then print his idea in his own words; make an exact copy of his book, with his name on the title-page, if it suits me best to do so.

If the printer may not copy new books, of course the shoemaker may not copy new shoes. But that would be the denial of liberty. The equality would be in the denial and frustration of liberty, not in the liberty. There is also denial of property where there is denial of liberty. The new shoe or the new book has superseded the old ones, and the shoemaker or printer with materials and tools in hand must copy what is in demand or starve. If he be not permitted to use his tools and his material in fashioning any goods that he knows how to fashion, and chooses to fashion, his liberty and his property are frustrated at one stroke. The old forms are no longer marketable. The choice is between these two: making him the slave of the man of new ideas or leaving him a free man. If the man of new ideas kept his new ideas to himself, the shoemaker or printer would at least have work, for the public would be content with fresh supplies of what it had before.

Ask for some agreement or arrangement which will secure a reward to the inventor or author, but do not ask for recognition of exclusive *property* in ideas when they have been made *common*, for that is falsehood, contradiction in terms. Ask for reward in any form rather than by the stale, execrable device of preventing production,—a method radically contrary to liberty.

Liberty for the printer and the shoemaker puts them in the same boat, though there is the difference that a copying of Herbert Spencer's works or any other books, from title-page to finis, means a flat denial of property in restrictive privilege, whereas the shoe may be invented by another, no one knows how soon. The argument of Mr. Tucker is a settler: that one who has seen an invention is debarred in that respect from becoming an inventor. It may be seen also that the author by writing a certain book has probably cut some one else out from writing a different book with successful results.

This leads to another consideration. If the author is entitled to property in his so-called work,—the immaterial book,—a projection and exploitation, not really *proper* to him but a power of society,—then he may be held responsible for all damage done by his property running at large. The liberty of the press will be a serious thing for authors when they are held responsible for the action of their alleged property,—their oxen that gore, and steam-engines that explode, and poisons that destroy. Shall we have even more government?

In my second article I accommodated myself for the moment to Mr. Yarros's terminology as to the more general ideas (contra, plagiarism) and literary form, respectively; but I must say that both what to express and how to express it are certainly ideas. The words as material signs, ink on paper, are all thereabout that is not ideal. When we speak of labor of production in this matter of ideal form, we speak of labor which is precedent to obtaining the form. There may be much labor in obtaining some ideas which, when obtained, present no difficulty in variously expressing them, a number of facts, for instance, which may be stated in figures, words, or Roman numerals; and there may be little labor expended in the manner of expressing an idea even when it appears that long and hard labor would be requisite for another person to express it in that manner. In poetry, for example, often there is scarcely the ghost of an idea other than that of the arrangement of the words, and we know not whether the arrangement has cost a day's labor more than copying would have cost. When we speak of the manner of expressing an idea, we deceive ourselves if we forget that manner is ideal. It is convenient to speak of tools and material, but this does not alter the fact that the adze and the trowel are themselves material. Manner in the ideal is the tool with which ideas of fact are arranged or shaped. Though thus distinguished, it is to be identified ultimately in ideal basis with ideal material, as the material tool is to be identified in basis with the material material. In short, it is as illogical to contrast literary expression with ideas as to contrast grapes with fruit. But the labor? Well, the labor of arranging a bouquet of wild flowers may be more apparent: it is not more actual than the labor of discovering the flowers to be arranged.

I cannot admit that labor of production is better attested in a collocation of words than in a mechanical invention. The demonstrable labor in writing is that which the copyist would have to duplicate. The labor in making a model may be less than in writing a volume, but in neither case do we see all the forms that have been constructed or know of all the mental efforts that have been made.

We meet people who are sure they know what to say, but not how to express it. Expression is terribly hard work for them. Such people either deceive themselves, or they are trying to deceive others as to their knowledge, or they really want to appropriate from some other person the full

expression of the ideas which they have partly appropriated, but to do it in some slight disguise, and to be paid for it, not as copyists, but as authors, be their aim even only social estimation.

Labor indispensably prerequisite to production is labor without which the product would not have come into being. It may be labor in gathering ideas of fact or labor of arranging ideas of relation,—literary expression for one kind. In either case it is labor of production of the first product. Without discovery, no product; often, without labor, no discovery.

What is the right to use and abuse? It is intelligible as the definition of personal material possessions and of ideas as possessed in the individual consciousness. Thus the owner of types may employ them in any way (use or abuse). But what becomes of the right to abuse if one may not abuse in every way? My idea of the right to abuse is not that we approve abuse, but that we recognize possession and individual immunity from interference in the handling. LibereyLiberty to do all acts consistent with the equal liberty of others implies that each may possess materials and employ them as he sees fit, short of injuring another in his life, liberty, or property (possessions). How can I lessen or injure him in his idea, general or particular, or say his form of expression, by repeating it? I can injure his project of exploitation by reasoning against it. Hence, if protection to literary property be needed, it may be necessary to disfavor my liberty of discussion.

After literary property and the copyright protective system come personal reputation and the law of libel. I am but a limited owner of pen and paper if I may not attack reputations. I throw this out by way of suggestion for others to reflect upon. My own view of equal liberty and property admits of no breakdown or exception in the general principle. I hold to tangible possessions and personal immunity in what I deem use of tongue, pen, and all industrial appliances. Ownership of the press means more than the so-called liberty of the press which is the right to use. It means the exercise which all others may call abuse; and it is for ownership that I contend, which excludes all claims to tribute or involuntary partnership, and logically requires me to view ownership strictly as personal possession. A convenient test is this: No ownership except in that which is embodied in tangible form, hence subject to wear and decay, for this is the general mark of products as distinct from that so-called production which can be imparted to others and become common property without the original owner having less than before,—the ideal, hence simply discovery.

I must criticise an attempt to employ the word monopoly to designate personal possession. The word monopoly is properly used to designate an exclusive privilege of market, and how could this be more glaringly exemplified than it is when one has an immaterial so-called property, so that he sells nothing but a permit and does not reduce the quantity of what he has to sell when he makes a sale? By making use of the word monopoly as a forced synonym for that true property which is personal possession, a sort of color is given to the notion that monopoly might be equitable property.

What appears of the fabulous possibilities of wealth suggested in selling permits to successive generations will stamp ideal production as discovery beyond doubt, and thus as being outside the sphere of industrial production with its labor equivalents of perishable and consumable products. The imperishable and inconsumable were never produced in the sense of equitable commerce.

Mr. Yarros's hint as to introducing a different *kind* of copyright induces me to remark that, while this use of language is common, it is not penetrating. The differences now existing relate to time and extent of territory, hence are only by a loose use of language called different kinds,—meaning copyright variously conditioned. Now, if Mr. Yarros were to introduce voluntary associative methods in procuring consent to copyright, that would be a difference as to mode of execution rather than as to the right claimed.

IV.

These charges or imputations brought against me by Mr. Yarros I repel,—viz., that I am unwilling to take the principle of equal liberty as the test of economic right; that I seek to decide à priori what is property; that I discriminate against produce of the brain in favor of produce of the hand; that I make *arbitrary* distinctions between material property and immaterial property. I leave the charge of unscientific method for others to judge of; I began by scrutinizing terms, but here I will only refer back to former articles of this series for observations on the falsity of the word copyright, and the danger of error in accepting an equal denial of liberty as equal liberty.

As regards a frank declaration of purpose, it was not offered as a substitute for argument, but as an amicable contribution toward a basis of mutual understanding.

Economic science is based upon wants and their satisfaction. The necessity for objects of consumption and the facts of their perishable nature and limited supply are of chief significance. Hence arise labor and property in the economic sense.

This property, whatever else it be, is alienable. The giver or seller parts with it in conveying it. This characteristic distinguishes property from skill and information. Bread is property. Those who hold that the art of baking is property hold that it is alienable, but—

Monopoly consists in the attempt to make property of liberties, discoveries, sciences, and arts by a pretended or forced alienation. This may be no argument. If so, I prefer to make none. Property ends where monopoly begins.

Literary property has its special definition in the dictionary. It would readily be seen to be a false term were there not a mass of generally received claims of property based on mere professed alienation. An author may sign an agreement to part with his thoughts and not to reproduce them, but that is merely a bargain in restraint of his own liberty. If liberty be inalienable, the author, having had the admitted [4] liberty to copy his own work, cannot divest himself of it. Hence the purchaser of such alleged property can have no security where liberty is not invaded.

The alleged exclusive right of the author to reproduce his works differs radically from one's right to be unhindered in his labor. When another invades my workshop or garden to work there, he prevents me from working. It is not so when another in another place does work similar to mine.

Another notable point is that the act of copying is a different act from that of composing a literary work. How, then, can it be suggested that one who copies interferes with the liberty of one who writes? More: the act of composing this article is an exercise of liberty completed when it meets the reader's eye. I cannot comprehend, either, how anyone of ordinarily clear understanding could affirm that my liberty to write other articles is invaded by any one's copying this article.

Profit is gain by monopoly. What Spencer seeks from copyright is gain; and he wishes to be protected against others doing the same acts as himself and his assigns. But equal liberty permits him to do merely such acts as he can do without interfering with the equal liberty of others. Since Spencer remains at liberty to copy, we do not invade his liberty by copying. He, however, wishes to be the sole copyist or to sell the privilege as regards his compositions. But thus he would mingle a certain amount of labor with natural elements which he did not create, and that universally. He would exercise ownership and receive pay where he knows not. Like one who discovers and first cultivates a new variety of wheat and lays claim to a share of the increase of all fields where it is sown, he is a monopolist.

I grant that it is allowable for Mr. Yarros and others to voluntarily submit to such royalties, but suppose that one who has bought a bushel of the new wheat, grown more, and so far paid the demand of the discoverer from his crop, sells the rest. The burden of proof in the question of ethics is, I think, decidedly on the other side, on a claim that royalty attaches to the culture by any hands and intelligence.

I take it that the normal use of speech is to communicate one's thoughts, and that it is a modern and very questionable notion that one's liberty in matters of speech and writing is chiefly to be prized for the sake of exacting money from others.

While I prefer the direct examination whether liberty is invaded by copying, of course if sufficient care is taken in making the more roundabout deduction via property the corollary of liberty, it must result the same. I note that Spencer does not leave his ideal extension in the ideal. It is material tribute he requires. As there are two courses open to the author when I copy, let us glance at them. He may undertake to stop me. If so, he will please show that he does not interfere with my equal liberty. But if he has force to stop me, I fear that he will not feel bound to give me his reason. In the alternative case, he may simply protest. Of course a protest does not interfere with my liberty.

If one can sell his liberty to copy his writings, can he not sell his liberty to build a second house after the pattern of the first? Can he not sell his liberty to follow a trade? Can he not bargain for a conjugal privilege that he will not have other conjugal relations? And if one of these transactions receives the social sanction, why not the others?

If, however, I have an inalienable right to rebuild according to my own plans have I not a right to engage others to help me? And have not others a right to do for themselves on their own land what they have a right to do for me for hire on my land? Let the answers be given by reference directly to liberty,—to the maximum of equal liberty, may I say? If, then, the inquiry via the corollary seems to some persons to show an infringement upon a gain which has an appearance of being a proprietary result, it will be well for them to examine all the factors, to discover where there has been a false principle admitted. In these articles I have anticipated this position. Perhaps I need only add now that it is not incumbent upon society to guarantee the individual a certain gain for his labor. Equal liberty being admitted, he must be content with whatever gain follows.

If there be any room for construction as to what equal liberty means, it must be construed, I think, in the interest of liberty.

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