

Video-film Production and Distribution in Tanzania: Copyright Infringement and Piracy

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Abstract

Regardless of the enforcement of the Copyright and Neighbouring Rights Act, Cap.218 R.E 2002 (i.e. the Copyright Act), Tanzania remains one of the “notorious” countries known for copyright infringement and piracy. In video-films, piracy comes in various forms such as illegal sales and counterfeit production. Piracy affects both locally made video-films and imported ones mostly in Digital Video Discs (DVDs) and Video Compact Discs (VCDs). Poor production and distribution contracts as well as infringement of moral and commercial rights of most filmmakers are the key challenges. This article sets to examine the enforcement of the Copyright Act in Tanzania. It focuses mainly on infringement and piracy in both video-film production and distribution. I argue that regardless of the existing laws and regulations, copyright infringement and piracy are leading challenges to the video-film environment in the country. I suggest legal reforms to the Copyright Act in order to accommodate technological advancement and complexities in video-film production and distribution.

Introduction

Up until recently there has not been any study to measure the level and economic impact of the video-film copyright infringement and piracy in Tanzania. Yet the situation is so rife as to speak for itself. The video-film market is flooded by thousands of pirated and counterfeit films, spread all over the country on Digital Video Discs (DVDs) and Video Compact Discs (VCDs). Shops selling pirated works are growing in numbers. Hundreds of street vendors move around with pirated DVDs and VCDs with impunity, which means no payment of tax or royalties is conceivable, clearly showing

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that advances in digital technologies present new challenges for national and international copyright laws.

As a point of departure I would like to reflect on the essence of law and its application in a society. One of the key functions of law is to establish and maintain peace and order as Kagan (2001:vii) argues, “[...] law is an instrument of liberation and social progress, a realm in which courageous litigants and judges can subject the preferences and prejudices of the powerful (or of selfish political majorities) to the constraints of reason and justice.” This implies that for the society to make progress, it needs proper laws and reinforcement. In some cases, laws also can be used to protect rulers so as to maintain their status quo. Kagan further comments that:

To some, law is primarily a mode of repression; a coercive instrument which rich and powerful invoke to discipline those they define as troublesome; or more subtly, an ostensibly even-handed set of rules that in actuality protects and legitimates existing political and social hierarchies (Kagan, 2001:vii).

Since copyright infringement and piracy are unlawful, they also disturb peace and order. Failure to reinforce existing laws is also a way to make “criminals” prosper and leave the rest to feel defeated by the “system.” Perullo (2001:7) argues that despite the potential benefits of the law, sometimes it is difficult to understand how copyright functions and the way it protects artists’ rights. This article analyses the enforcement of copyright law, focusing on infringement and piracy in the video-film production and distribution in Tanzania. It identifies the pitfalls in the Copyright Act and suggests regulatory reforms. The article is divided into five major sections. The first part is about key concepts followed by a discussion on the history of the Copyright Act in Tanzania. The third part analyses the video-film copyright ownership complexities while the fourth section provides some case studies of the copyright infringement and piracy. The last part is about possible solutions to curb infringement and piracy.

Key concepts

In this article, several key concepts are used to advance arguments. These include video-film, filmmaker, duplicator-distributor, copyright, infringement, piracy, counterfeit and author. Video-film refers to films produced using video cameras and intended for commercial purposes. These films are made for sales on DVDs or VCDs (and previously on VHS tapes) to

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offset the production costs and make a profit. The majority of these video-films are in two parts, Part 1 and 2, packed on DVD/VCD plastic cases; those which have inlay papers of A1 size, also known as DVD boxes and some in envelopes made with printed manila paper; it is also known as carton sleeve.

The term filmmaker is used to represent individuals who are involved in the “above the line” production of video-films such as screenwriters, directors, and producers. It differentiates them from those involved in the “below the line” production such as actors, camera operators, sound and light engineers, costume designers and makeup artists who essentially “sell” their labour, hence not entitled to copyright ownership. The term is also used to differentiate individuals in the production process from those who are involved in the distribution. On the other hand, duplicator-distributors is a term used to describe people (or entities) that duplicate and also distribute video-films. In Tanzania these are business people mostly of Indian origin (dubbed *wahindi*) who also give “capital” to actor/director-producers to produce video-films which they would distribute.

Section 4 of the Copyright Act defines copyright as an exclusive right or sole legal right conferred by a government on the creator of original literary or artistic works such as books, articles, drawings, photographs, musical compositions, recording, film and computer programs. Section 9(1) of the Copyright Act grants the creator reproduction, derivation, distribution, performance, and display rights. The Copyright Act mandates that the period of copyright protection covers the life of the author and 50 years depending on the nature of the work (see section 14 of the Act).

Infringement of copyright occurs when a film is copied, reproduced in any other manner (piracy), screened in public, broadcast on television or online, adapted, hired, imported or distributed without authorization or sold without permission of copyright owners. The major copyright infringement in video-film distribution in Tanzania involves piracy and counterfeit. By definition, to pirate is to make a cheap copy of the original. Even though the content might be the same as the original, the pirated copy’s packaging is often a cheap imitation, sometimes just a photocopy of the original or even hand written. Counterfeit copies resemble the genuine original as closely as possible. Everything including marks of the owners of the work is replicated. However it is often easier to identify a pirated copy than the counterfeit copy of DVD or VCD.

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Under section 4 of the Copyright Act an author is the natural person who creates the work. Copyright does not protect ideas. However, it is often difficult to determine the author of the work in a video-film between the screenwriter and the producer. Practically and professionally film production starts with a written script. In the Kiswahili video-film industry, the film idea can come from the producer who “commissions” the screenwriter to produce the script. Section 15(5) of the Copyright Act states that in the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed. Perhaps this provision may assist to resolve the difficulty in identifying the author of a film. Hence it is safe to argue that in video-film, the author is a person or persons who are responsible for arrangement and production of the film – also known as producer(s).

History of copyright law in Tanzania

The concept of copyright was first introduced into the then Tanganyika in the 20th century through United Kingdom Imperial Copyright Act of 1911. That legislation was revised and became the Copyright Ordinance Cap. 218 of 1924. The main objective of that legislation was, according to its title, to provide for the protection of copyrights in the then Tanganyika. Five years after the independence of the then Tanganyika in 1961, a new Copyright Act of 1966 was promulgated. The objectives of the new legislation were first, to repeal the Copyright Act of 1911 of the United Kingdom, which was incorporated in the Copyright Ordinance Cap. 218. Second, it aimed to make provisions for copyright in literary, musical and artistic works, cinematography, films, sound recordings and broadcasts which were not in the 1924 Act.

The 1966 Act did not envisage developments in digital technology, which appeared many years later. As a result, there were many loopholes, shortfall and ambiguities in the Act, which made the implementation of the law difficult in some ways and in some cases impossible. Since there was no “serious” enforcement of law in the country, piracy grew endangering both literary and artistic works. The outcry from various stakeholders in the creative industries resulted in the promulgation of the current Copyright and Neighbouring Rights Act, Cap.218 R.E 2002 in Tanzania.

The Copyright Act has three regulations namely the Licensing of Public Performances and Broadcasting Regulations (GN No. 328 of 2003), Registration of Members and their Works Regulations (GN No. 6 of 2005), and Production and Distribution of Sound and Audio-visual Recordings

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Regulations (GN No. 18 of 2006).¹ The Act and the subsequent regulations assist local authors such as screenwriters, architects, actors, performers, directors, fine artists, musicians, broadcasters, and producers in protection of their rights as owners of original works. This protection benefits the authors financially when people use their works and morally acknowledged when their works are utilized. Regardless of such replacement of the Act, copyright infringement and piracy in the video-film production and distribution continue to be the challenges (Bakari 2009; Buitrago and Mo 2009; Mkinga 2010; Nyariki, Otieno, Sinare, and Lema 2013). With the digital advancements, the losses have become greater than in the past; currently copying the film onto DVDs /VCDs and illegal internet downloading, constitute most of the piracy.

Video-film copyright ownership in Tanzania

While it is widely known that an idea is not protected but the script is, the assumption is that the screenwriter owns the copyright of the script, if the owner of the idea did not advance it into a script. The producer on the other hand is the one who covers for all production expenses, both below and above the budget lines. In most cases, the producer “purchases” the script from the screenwriter even though the legal practice is only to take a production license of the script. Therefore the producer is the link between production and distribution.

Once the film is complete, the distribution process begins. In fact, distribution processes start once the script is ready for shooting. The producer promotes and markets the film. He/she might sign contracts with various distributors if he/she is not directly involved in the distribution. Such contracts include those to distribute on DVDs, festivals, on-line companies and others. Producer expects to recover all production costs and produce profit after the sales. If royalties are to be paid they are expected to be distributed accordingly.

The director-producer therefore submits the “master copy” to the duplicator-distributor ready for duplication and distribution. In practice duplicator-distributors control both production and distribution of video-film in Tanzania (Shule 2014b). The so-called producers are not actual “owners” but representatives of duplicator-distributors. In this scenario, director-producers are like supervisors, or head persons in a farm; given resources to till the farm, buy seeds, pay other farm workers, take care of the crops, and harvest on behalf of the farm owner. They put the harvests in the store ready for sale.

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Therefore, it is impossible for supervisors to claim ownership of the harvests in the granary and dictate the distribution and sales while they were paid as labourers to work on the farm.

This being the case, the issue remains as to whom should the fight against copyright infringement and piracy – filmmakers or duplicator-distributors be directed? Regardless of the collective nature of the film production process, the owner of the film – duplicator-distributor is responsible for fighting piracy. Despite this state, in Tanzania it is filmmakers who have been complaining about piracy and get involved in various antipiracy campaigns (See baabkubwamagazine 2013; filmcentral 2013; globalpublishers 2013; wavuti 2013).

Mhando and Kipeja (2010:12) show clearly how filmmakers neither own copyright nor receive royalties. Some are paid on a one-off basis and some not at all as claimed by some duplicator-distributors who argue that the actor-director/producers are actually being promoted. Looking at section 10 (1) of the Copyright Act – on rights of distribution, it could be contended that authors, being story idea creators, screenwriters, or producers, might actually be selling their rights to another “copyright owner” – the distributors. Hence, the current practice of some producers to sell their rights to the distributor is not against the law. What needs to be questioned is the nature in which once a contract is signed, it forces the author to sell all rights (moral and commercial), reproduction, and distribution in and out of Tanzania. Indeed it is contended that such contracts with disproportionate remuneration can be reverted (see section 19 of the Copyright Act). But many filmmakers in Tanzania are not aware of the provision.

Copyright infringement and piracy

Tanzania is a leading country in copyright infringement and piracy in Eastern and Southern Africa (Mwakalinga, 2010:159). The pirated films are not only the Kiswahili video-films but also foreign films, which are dubbed in Kiswahili and distributed on DVDs and VCDs without copyright owners' permission (Krings, 2010). There are many factors that increase the rate of piracy and infringement of copyright. Unsatisfactory entertainment fees from existing related media such as television and radio, improved production of Tanzanian films, advanced digital technology, “ignorance” of the copyright owners, shrewdness of the pirates, and poor enforcement of the copyright law are leading factors (Kamin, 2011; Mhando and Kipeja, 2010; Mwakalinga, 2010; Ngakame, 1998; Perullo, 2012; Perullo, 2001; Rwezaura, Kasungu and

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Saiwaad, 1985). Makulilo (2013:474) shows clearly how the Act has failed to respond to the business needs of the creative.

The consequences of piracy in Tanzania are devastating and have adverse effect on the promotion and development of film industry (Kamin, 2011; Mhando and Kipeja, 2010; Shule, 2014a). The notable effects include the discouragement of potential investors in the industry fearing to lose their profits to pirates. Filmmakers also lose their income because duplicator-distributors do not pay royalties. Piracy also causes the exodus of talented producers to Europe and America and other developed countries where they think they can make more money by doing other occupations than making films. Others have decided to only work within donor-funded projects rather than engaging in the film business. This drain has made Tanzania to lose film professionals who could invest and improve works produced locally.

This cultural-economic rampage also makes governments to lose revenue because pirates do not pay taxes since they do not declare either the quantities of DVDs/VCDs produced or the revenue realized from the sale of such goods. On the side of film users, piracy frustrates consumers because poor quality films make consumers to fail to appreciate the value and beauty of the artworks. This critical situation makes imperative that state machinery and other stakeholders join forces to rescue the situation.

It is estimated that, film companies lose over 18.2 billion US dollars worldwide because of copying, reproducing, downloading and trading on illegal copies (LEK, 2005:4). So far there is no study conducted to evaluate estimated loss for Tanzania. In recent years, (Nyariki *et al*, 2013) attempted to quantify the contribution of the film industry in terms of GDP, employee income and employee number, but did not show exactly how much is lost through piracy and infringement. Some of the reasons might be the dubious nature of operation of the pirates and informal nature of the video-film production and distribution in Tanzania.

Looking at the trend of video-film production and distribution in Tanzania, one anticipates that the state will be able to control piracy so as to increase revenue collection. The assumption is that, if piracy is controlled, more genuine copies will be sold and hence more income to the film owner. This can improve the quality and quantity of films. On the other hand that might not be the case since the copyright owner is also the duplicator-distributor.

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Hence those involved in the filmmaking, especially the actors, might not improve their lifestyles or the quality of production.

The government of Tanzania has given the Copyright Society of Tanzania (COSOTA) mandate to assess and monitor the implementation of the Copyright Act. There are a number of obstacles which COSOTA faces including inadequate financial and human resources (Mkinga, 2010). Several other factors act as hindrance to proper enforcement of the copyright law. The education levels of the majority of the film practitioners and poor understanding of the governing laws are complementary obstacles (Nyariki *et al*, 2013).

Looking at the way video-films are produced and distributed in Tanzania, most of the films are not sent to the Film Board for censorship and classification. Besides, since copyright attaches on a work without any registration requirement, it means even a work which is not registered with COSOTA is still protected under the Copyright Act.² This makes it more difficult to have a reliable database on film titles and the content thereof. Such database gap has brought another type of piracy whereby in the market there are different films with same name. For example there is *Chungu/Pot* directed by Kimela Billa and *Chungu* directed by Babu Ally, both released in 2012. There is also a case like *Sister Mary* (2011) film directed by Scott Grenke and produced by Scott Grenke, James Vallo and Z.D. Smith and *Sister Marry*³ (2012) directed by Vincent Kigosi and produced by RJ Company. Since the Copyright Act does not protect titles of films but rather the content, such practice of using “best selling” title is becoming popular. This situation is not peculiar to Kiswahili video-film industry in Tanzania. In the Nigerian film industry it is referred to as “the bandwagon effect” (Oladunjoye 2008:64) whereby themes or titles which seem to “catch” audience interests are replicated.

Issues of script ownership, the position of the actor-director/producer and duplicator-distributor have remained controversial. The law recognizes screenwriter, director and producer as the owners of the work, hence deserve royalties. Actors are treated as labourers. To solve the controversies, some actors especially those with “big names” devised an alternative production style known as *Kanumbaism*, referring to the name of the “pioneer” of this practice in Tanzania i.e. the late Steven Kanumba.⁴ In this style, a single practitioner dominates all major production positions. The same person is the screenwriter, the main actor, the director and the producer.

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Kanumba's last video-films done under his company – Kanumba the Great Film Company provides a very good reference. These include *Uncle JJ* (2010), *Young Billionaire* (2010), *This is It* (2010), *More than Pain* (2010), *Deception* (2011), *Devil Kingdom* (2011), *The Shock* (2011), *Moses* (2011), *Big Daddy* (2012), *Because of You* (2012), *Ndoa Yangu/My Marriage* (2012) and *Love & Power* (2013). In the mentioned video-films Kanumba appears as an actor, director and/or a producer and a screenwriter to some of them. This style could also be seen in some American films such as *We the Party* (2012). In this film Mario van Peebles is the screenwriter, actor (Dr. Sutton) and director. In *I Think I Love My Wife*, Chris Rock is both the main actor (Richard Cooper) and the director. In the *Three Can Play It*, Vivica A. Fox is the main actor (Shanté Smith) and one of the producers.

The issue here is that the process of copyright registration for a video-film requires one to fill a form and indicate who are the screenwriter, director, and producer. Therefore if the duplicator-distributor wants to own the film, he or she has to provide contracts for the mentioned. In order to avoid such “cumbersome” process, most producers and distributors will prefer to own each and everything. That is why, regardless of the fact that Kanumba “produced” all those films, in practice he owned none of them. The situation is the same to most of the actor-director/producers such as Jacob Steven (JB), Issa Musa (Cloud 112), Vincent Kigosi (Ray), Single Mtambalike (Richie Rich), Mahsein Hawadh (Dr. Cheni), Tuesday Kihangala (Chuzi), Wema Sepetu, Jacqueline Wolper, Yvonne Cherrie (Monalisa), Jennifer Kyaka (Odama), Irene Uwoya, Aunt Ezekiel, Rose Ndauka and few others. Richie Rich once commented that, “we shouldn't lie to ourselves. None of us here owns a film, though some of us have produced nearly a hundred.”⁵

Tax stamps: a way forward?

In 2013, Tanzania introduced a Tax Stamp Regulation as one of the mechanisms to curb piracy and other related copyright infringement. The regulation gives directives, and legal sanctions on a newly established system of putting stamps on film and music works. These stamps come in pair; possessing the same serial number of eleven digits. The price for the pair of stamps including printing and excise duty is equivalent to fifty-four Tanzanian shillings and fifty cents (54.50/-) i.e. (equivalent to 0.03 USD). Currently there are four types of stamps differing in colours and initials; all are approximately 1 x 2 centimetres large. The violet LF is for local films, the green IF for imported films in DVDs/VCDs, the pink LM for local music and the blue IM is for imported music in CD form (Shule, 2014a).

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In the process of implementing the tax stamps regulation, the assumption is that the actor/director-producers together with the duplicator-distributors collect stamps from Tanzania Revenue Authority (TRA). In most of the existing contracts, actor/director-producers do not have rights to collect stamps with duplicator-distributors as they are no longer part of the ownership. The other challenge is that tax stamps have eleven unique digits as one of the key identification and not the film name. It is difficult for the film buyer to be sure that the stamp on the DVD belongs to the right distributor or film owner. Experience from music industry shows that some duplicator-distributors do pirate their own works, the same might be for video-films. On this issue Perullo (2011:284) says that:

It is widely believed that many distributors sell albums illegally, even those that are under contract. These duplicitous actions have been described as a form of imperialism where music pirates pilfer the rights and labour of Africans for their own prosperity.

Since each DVD/VCD copy must have two stamps; one on the cover and the other on the DVD/VCD, some unfaithful duplicator-distributors stamp only on the covers.⁶ The Film Board has also noticed one duplicator-distributor stamping three different video-films with stamps allocated to a single video-film. All these dynamics shows clearly that tax stamps have created another room for piracy especially in the situation that most of the video-film distribution is done through DVD. Phad Mutumba⁷ once commented, "DVDs and piracy are synonymous."

The enforcement of tax stamps might interfere with the distribution of royalties. Hakigrams⁸ were supposed to be the link between COSOTA and its members in the distribution of royalties. So far there is no clear procedure on how tax stamps will tackle the issue of royalties. There are many unanswered questions: how and where will royalties be collected under the tax stamps system? Is it possible to use tax stamps as a basis for distributing royalties? Are tax stamps replacements of Hakigram stamps? Are the filmmakers ready to pay tax? Are they aware of the tax regime and systems in Tanzania?

As noted, the enforcement of copyright law in Tanzania is challenging. In that case there is a need to establish a separate institution to act as a collecting society for filmmakers instead of relying on COSOTA. Lumping all genres under the collective administration of COSOTA may not be proper

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because of the different nature of these creative works as well as the fact that COSOTA is a copyright office. Such an institution will work with COSOTA (as a copyright registering office) in collaboration with TRA, Film Board, and National Art Council (BASATA) and other state agencies responsible for quality and standard assurance such as the Tanzania Bureau of Standards (TBS).

Video-film retailers should be encouraged to form their association/network separate from duplicator-distributors and wholesaler-distributors due to the nature of the film distribution system in Tanzania. Many distributors are also duplicators of DVDs but they are not dealing with the end consumer while these retailers, most of whom own video shops, do communicate directly with film buyers/viewers. Such association/network will help to trace and assess video-film products distributed and easier the sensitization process on the effects and legal consequences of copyright infringement and piracy.

There is a need to develop a guideline with various samples of contracts in Kiswahili and make it available in print and soft copies to enable filmmakers and distributors, to use them if they want. Books such as *The 10 Music Contracts, Mikataba 10 ya Muziki* (UNESCO, 2010) and *Artistic Rights; Copyright Law for East African Musicians, Artists, Writers and Other Authors* (Perullo, 2012) have been useful documents not only for musicians but also for filmmakers. What has to be done is to sensitize filmmakers and distributors on the availability of these documents and importance of having well drafted contracts for all their transactions.

Conclusion

The copyright infringement and piracy in the video-film industry in Tanzania is fatal. It directly affects the quality of produced and distributed films. Few producers can risk and produce high budgeted films and expect to get profit. The adoption of the Copyright Act and the subsequent regulations has not adequately curbed infringement. Poor quality of the video-films can be partly associated with the Act and its regulations. Various measures have been put in place to improve the situation. The outcomes of Tax Stamp Regulation of 2013 are yet to be realized and evaluated. Challenges on how to distribute royalties pertaining to the distributed films have not been adequately addressed. There should be a multi approach in combating the situation including establishment of a commission or institution which deals particularly with the fast-growing video-film industry. Public awareness campaign in the effects of piracy to the national economy and to the

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individuals working in the industry should be conducted. Otherwise, copyright infringements and piracy will continue to stifle creativity and innovation in the video-film industry in Tanzania.

Notes

1. GN No. 328 of 2003 is also known as Licensing Regulation; GN No. 6 of 2005 is also known as Anti-Piracy Regulation; whereas GN No. 18 of 2006 is also known as Registration Regulation.
2. When a work is registered with COSOTA is only for collective enforcement as COSOTA is also a collecting society apart from being a copyright office.
3. This film was removed from the market after complains from the Catholic Church in Mwenge - Dar es Salaam, Tanzania where most of the recording took place. The church accused the actor/director-producer - Vincent Kigosi "Ray" for misusing the location by insulting the church in various scenes in the film. Since it needed extensive editing, Film Board issued a note to ban it from public viewing.
4. Kanumba (8 January 1982 - 7 April 2012) is regarded as one of the popular contemporary video film actors, directors and producers in Tanzania. In his last two years, apart from his countless appearance in other films, and infomercials, he managed to "produce" a total of fourteen video films. This made him one of the most viewed actors in the Tanzanian commercial film industry.
5. Richie Rich one of the top most Tanzanian actor, director/producer comment on 5th July 2013 at Marumaru Hotel in Zanzibar during Zanzibar International Film Festival (ZIFF).
6. Information collected during discussion we held with Joyce Fissoo, Executive Secretary of the Tanzania Film Censorship Board (TFCB) on 18 December 2013.
7. Phad Mutumba, one of the contemporary film producers from Uganda/Canada and festival director of the Nile Diaspora

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International Film Festival (NDIFF) in Uganda comment on 12th March 2014 at Mount Meru Hotel in Arusha during 1st Preparatory East Africa Film Festival and Filmmakers Forum.

8. Hakigrams (*Haki* literary rights) were stickers proposed by COSOTA in early 2000 as a mechanism to curb piracy, collect, and distribute royalties as well as an income generating activity for COSOTA. These stamps were supposed to come out earlier than tax stamps but the process did not mature due to many reasons (See Shule 2014a).

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