

Nai Supporting Open Media in Afghanistan



نی حمایت کننده رسانه های آزاد در افغانستان
Nai Supporting Open Media in Afghanistan

MEDIA WATCH REPORT

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Media Watch 31

Analysis of the month

By Mujeeb Khelwatgar

Nai Executive Director



Mujeeb Khelwatgar

Monthly Analysis

Media Law at a loose end

Based on the decision taken by the Council of Ministers of Afghanistan, the Media Law was presented to the Parliament a year ago. Along with this law an amendment was also presented to the Lower House. It took nine months to be approved by the representative house before it was sent to the Senate. After making some modifications, and a period of one month, the Senate approved the bill. According to the internal regulations of the National Assembly, whenever the Senate approves a modified bill it must then be sent by the representative house to a joint commission of both houses. This commission must then approve the bill and send it on to the President's office.

The bill took more than two months to arrive at the President's office, which is a distance of 7.5km from the National Assembly.

After reaching the Presidential office, it was then rejected by the President. The reasons for this were explained by the Ministry of Parliamentary Affairs.

In a statement given by the Ministry of Parliamentary Affairs it was reported that the bill was in conflict with some current laws, including the Afghan Constitution.

Media Law experts are of the opinion that all the arguments given in this statement are inaccurate except for one, which they agree differs with the Afghan Constitution. In other comments it has been said that the bill is not in line with the structural law of the government. Yet this law has not been approved by the President and is only in draft form, therefore the Media Law does not have to adhere to it.

The irony is that some articles that have been highlighted as unacceptable are articles that are in the existing Media Law, which dates from 1384, 2nd January 2005.

The question is "How did the President not spot these 'unacceptable' laws when he approved the original 1384 version?"

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If the answer is “he did see these articles” then why did he approve the law at that time?

If the answer is “he didn’t see them” then he has broken his own laws.

These are questions that still need to be answered by the President’s office.

In the 31st edition of Media Watch the following headlines have been recorded and investigated:

Content

1	Media Watch monthly analyze (By Abdul Mujeeb Khelwatgar)	
2	Short News and Media Development	
3	Threats instead of Journalists	
4	Analysis of the provisions of the Media Law in Afghanistan (by Sediqullah Tawhidi)	

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News in brief

Evaluating media outlets financial sources through a Commission within the Ministry of Information and Culture

After hearing the comments from the Minister of Information and Culture regarding the evaluation of the financial sources of the media outlets, the Afghanistan Council of Ministers approved two of his suggestions:

1. An investigation will be launched into media outlets sources of funding, and
2. A Commission will be appointed to work towards the improvement of soap operas that are broadcast on TV in Afghanistan.



It was argued that these soap operas are in conflict with the culture and traditions of the Afghan people. The council also highlighted the fact that electronic media are obliged to pay their taxes to the Afghan Government.

It is important to note that the Minister of Information and Culture claims that the financial affairs of private TV networks in Afghanistan are not transparent.

Meanwhile, the private TV channels are claiming that their financial transparency has never been investigated and they fear this is just another pressure from the Government to try to impose its influence on private enterprise.

RTA programs will be accessible via satellite in the United States and European countries



According to Abdul Karim Khoram, Minister of Information and Culture, Radio Television of Afghanistan (RTA), will be accessible via satellite in the United States and European countries.

Presently, RTA is only accessible via satellite in Asia.

The authorities for the Ministry of Information and Culture are currently conducting a test broadcast via satellite in the United States and European countries.

Najeebullah Manali, Advisor for the Ministry of Information and Culture says the broadcasting facility for these TV programs in United States and Europe had cost them half a million US Dollars.

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Currently RTA broadcasts eighteen hours of programming a day and intends to increase it to 24 hours.

The Media Law bill has been approved by the National Assembly but rejected by President Karzai.

The Media Law Bill that was approved by the Parliament on 15 Des 2007 has been rejected by President Karzai and sent for further amendment on 26 Des 2007.



Mohammad Asef Nang, spokesperson for the Ministry of Parliamentary Affairs told Media Watch that there is only one accurate reason for the Presidential rejection of this bill.

“Media Law Article 13 states that RTA is a separate entity from the Ministry of Information and Culture. This is in conflict with the Constitution of Afghanistan which states that RTA can operate under the consideration of the Government. This draft also has legislative mistakes and the Pashto text is full of grammatical errors,” he said..

He added, that in Article 45 the media offences are not clarified and the issue of how to deal with the media if an offence occurs is missing. The issue of media receiving funds from foreign organizations was also not clarified.

However Fahim Dashti, Chief Editor of Kabul Weekly and spokesperson for the Afghanistan National Journalists Union (ANJU), believes that the reasons for the rejection are not based in legality.

“There are specific circles of people within the government who want to impose their own agenda, to put checks on the media and keep people without a public service broadcaster. They want a law which meets their own ends,” he said.

Likewise, Sayed Hamed Noori, Deputy Director for ANJU told Media Watch, “we can’t say that the Afghan Media Law is a hundred percent in line with the Constitution or 100% against it, but some words have been used ambiguously, for example the definition of a journalist is un-clear. In another example, an article in the structural law of the Government states that Directors of independent entities are selected by the President himself, they are not referred to the Parliament by the vote of confidence. The only exceptions to this rule are the Director of the National Security Directorate NSD and the General Director of the Central Bank. However, Media Law states that the General Director of RTA should get the vote of confidence from Parliament, therefore contradicting the structural law of the government. Without Presidential approval of the structural law of the Government no other law can be judged as against it.”

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After being approved by the Joint Commission, the Media Law took two months to reach the Presidential Office. Sardar Mohammad Oghlee, one of the Representative House members told Media Watch that the delay was due to the negligence of the administration staff of the National Assembly. He said that once the President received the Bill, he rejected it based on Article 46 of the Afghan Constitution.

Haji Mohammad Mohaqiq, the Head of the Commission of Religion, Culture and Education for the Representative House, considers the rejection of the Media Law as a normal process of law making. He told Media Watch that it's a common issue. "The President can reflect his comments in a Bill and both Houses can then debate and argue those comments. If the majority accept the comments made by the President, the law will be passed. If two thirds of the MPs vote for the existing Bill, that version will be put into practice," he said.

A Media Watch analyst said that the bill was rejected because the ministry of Information and Culture and some other government officials had wanted changes to the bill that the parliament did not include.

The rejection would allow the ministry and other officials to try once again to make changes, said the analyst.

There are two main points that are of concern to journalists:

The first is that the government is demanding more clarification about the media violation articles and wants to include a penal sentence for violations. The second is that by having the RTA under the umbrella of the Ministry of Information and Culture, and requesting more clarification regarding foreign funds for the media, the Government is seeking the opportunity to limit the activity of media outlets and keep the media under control. If the media does not stand up against these measures, the challenges facing all media professionals will become far greater.

Mohammad Omar Mohammadi, a reporter from Salaam Watandar was beaten up by the Chief of the 10th Police District in Kabul city.

On Tuesday, 4th Des 2007 a suicide attack took place in the 10th district of Kabul city, adjacent to Massood square. After the incident, Mohammad Omar Mohammadi, a Salam Watandar reporter went to investigate the story. While he was making his report, he was insulted, beaten over the head and had his possessions confiscated, allegedly by the Chief of the 10th Police District.

Mr. Mohammadi's told Media Watch that he was making his report when the Chief of the 10th Police District insulted him verbally and began to attack him.

"Soon his bodyguards also started beating me with their guns. They took my mini-disk recorder from me, on which I had recorded some sound bites from eye witnesses. It was not until the Chief of Police had gone to the Office of the Attorney General that the other officers gave me back my equipment," he said.

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Abdul Hameed Mubarez, Director of the Afghanistan National Journalists Union, told Media Watch that journalists are very concerned about this type of incident.

“We all feel that this level of intimidation is the beginning of strong pressure on everyone’s freedom of speech. I think that the police are responsible for preserving the property and dignity of the public. It is a journalist’s responsibility to inform the public and the Government about the problems people are facing,” he said.

Deen Mohammad Mobarez Rashedi, Deputy Minister for the Ministry of Information and Culture also commented on the incident.

“The police do not have the right to verbally insult any journalist or to use his physical power to intimidate or stop any journalist from carrying out his job. The police are responsible for ensuring journalists have a secure working environment. We have asked the Ministry of Interior to investigate this case and I am happy to hear that the Kabul Police Commander and the spokesperson for the Ministry of Interior have apologized to Mohammad Omar Mohammadi. I have been told that a dedicated team of police have now been assigned to assist journalists in an emergency situation. This is not something that we take lightly,” he said.

Media Watch tried to contact the head of the police and the spokesperson for the MoI, but neither were available for comment.

Media Watch believes that government authorities should not react so aggressively in these circumstances. It is a journalist’s job to reach the place where an incident has taken place and record the events. Nobody has the right to prevent a journalist from reporting, and we hope that the police and other government authorities support journalists when they are at work.

The Constitution of Afghanistan guarantees the safety of each citizen and according to the law, nobody has the right to harass or intimidate any Afghan citizen.

The high ranking authorities in this country should put an end to these criminal acts and put the processes in place so that journalists can continue their work without fear of harassment.

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Shoaib Ahmadi, Cheragh Daily's sports reporter was beaten up by Bashir Ahmad Rustamzai, the head of the kickboxing federation of the Afghan National Olympic Committee



In the 24th Nov 2007 solar year, Mr. Ahmadi was covering the sports news at the Afghan Olympic National Committee, when he was beaten over the head by the Director of the Kickboxing Federation, Mr. Rustamzai. Mr. Ahmadi believes that this was payback for his report on the Afghan Kickboxing Federation which was published in the Cheragh Daily around a year ago. In the report, Mr Ahmadi claimed that the Director had bought a medal of victory from an open market in Uzbekistan and brought it to Afghanistan as a sign of victory against Uzbekistan.

Disclosure of this fraud caused a lot of anger from Mr Rustamzai. Mr. Ahmadi said.

“First Mr.Rustamdzai assaulted me then he start beating me and threatened me, saying that if I ever make another report on the Kickboxing Federation I would be in serious trouble,” he said.

While Mr. Rustamzai said he regrets his misconduct with Mr. Ahmadi and apologized for his behavior to him and the Cheragh Daily, he claimed the report was false. He also said the paper published another wrong report on a boxing competition in the Philippines.

Meanwhile, Mohammad Daud Dadras, Chief Editor of Cheragh Daily, confirmed receipt of Mr. Rustamzai's apology, and said that the problem is now resolved.

Fahim Dashti, Chief Editor of Kabul Weekly and spokesperson for the Afghanistan National Journalists Union (ANJU) does not take the subject so lightly, telling Media watch that an apology after committing a mistake or crime is positive, but intimidation and physical abuse are inexcusable.

Media Watch condemns any intimidation or physical abuse of journalists for any reason. If a person or organization wishes to complain about a journalist or media organization they can refer to the Media Violation Commission at the Ministry of Information and Culture. Rather than resorting to abuse this official channel should be used. If the Cheragh Daily journalist's claim about the medal is proven to be correct then the Olympic committee can try to improve their systems so that a similar incident cannot happen again.

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Mir Ali Asghar Akbar Zada, head of RTA survives a murder attempt

Mir Ali Asghar, Director of RTA's Publication TV Department, has survived a murder attempt on 3th Des 2007. As he was traveling back home from his office a shot was fired by an unidentified gunmen in the area of the oil pump station of Deh Afghanana of the Kabul city. He told Media Watch the incident occurred at 9pm.



“I was going home from the office through the area of Deh Afghanan when a Corolla Toyota began to move very close to my car and blocked my way. They began to shoot at me but I followed them until Guzar Gah Bridge to try to see who was shooting at me. It was then that I called the police to inform them about the incident and they assured me that they would pass the information to their check points so that they could stop the car,” he said.

He added that this attempt on his life might have come from a report that he had prepared on the Intercontinental Hotel where a number of powerful figures had been accused of embezzlement.

Ali Shah Paktiya Wal, Head of the Kabul Police Criminal Investigation Department, told Media Watch that his team has started their investigation, evidence has been gathered from the crime scene and they hope to bring the criminals to justice.

Meanwhile, Abdul Hameed Mubarez, the Director of the Afghan National Journalists Union, condemned the attack, asking the Government of Afghanistan to ensure the safety of its journalists and all Afghan citizens.

Mubarez added: “I am asking the Ministry of Interior, in particular the Deputy Minister, General Khaleq, to follow up this case and bring the perpetrators to justice. If the perpetrators of this murder attempt are not found, there will be even greater fear among the journalist community”.

Deen Mohammad Mobarez Rashedi, the Deputy Print Minister for the Ministry of Information and Culture, expressed his sadness at this incident.

He says, “this is a suspicious act and so far no information has been found to clarify the case. As a Deputy Minister of this Ministry I am deeply concerned for the safety of all Afghan journalists and hope that the police will give us some clarification very soon.”

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Media Watch believes that a murder attempt on the life of a journalist creates greater fear among the entire community. It also sends a negative message to others as in many cases the criminals have more influence over government officials and therefore get away with their crimes. The security agencies need to find these people and bring them to justice. This will send a message to journalists and the entire country that anti-social behaviour will not be tolerated and the perpetrators will not get away with it.

Dr. Reja, the Manager of Radio Daikundi, was briefly detained by the Governor of Daikundi.

On 1st Des 2007 the Radio Manager of Radio Daikundi, was detained by Sultan Ali, the Governor of Daikundi Province, after airing a programme about the development budget.

According to Mr. Reja, the Manager of Radio Daikundi, he had been broadcasting this programme for over one month before the incident took place. In a parliamentary session, a number of Daikundi Parliamentarians claimed that the development budget for the province is USD 32 million for 1386 (solar year). When a reporter from Radio Daikundi investigated the amount, the claim was verified by the Ministry of Finance.



Dr Reja told Media Watch that when this story aired on Radio Daikundi, the Governor issued an order for his arrest.

“I was taken from my office to the Police Department where I was held in detention from 10am till 5pm. I was only freed after interventions from local parliamentarians and the Provincial Council of Daikundi,” he said.

In an interview with Media Watch, Sultan Ali Uruzgani, the Governor of Daikundi, rejected the claim of detention.

“The Manager of Radio Daikundi was summoned to the police office to clarify a report aired on his radio station. We needed to investigate this story as the tone of the programme was suspicious of the Government’s motives,” he said.

“Radio Daikundi announced that USD \$32 Million has been allocated to Daikundi province. They did not mention to which office this money went, how it will or has been spent or where the money originally came from. We believe this Radio aired unconfirmed reports which create suspicion and distrust amongst the people against the Government”.

The Governor then claimed that the Manager of Radio Daikundi belongs to a nongovernment organization, Sepahe Mohammad, and that the radio station intentionally airs critical programs to influence the minds of the public.

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Dr. Reja strongly rejects these allegations and argues that airing critical programmes such as the one being discussed was meant to highlight the shortages in public services in the province, not to meet his own political agenda.

Waheed Gharwal, a member of the Media Violation Commission at the Ministry of Information and Culture spoke to Media Watch about the detention of Mr.

“According to the Constitution of Afghanistan and the Media Law, to detain an innocent man is considered a crime. Mr Reja should not have been detained and it is the responsibility of the Media Violation Commission to look into a case like this. If the high ranking provincial officials are using their influence to detain anyone, they are violating the law and should be brought to justice,” he said.

Mobarez Rashedi, the Deputy Minister of Publications at the Ministry of Information and Culture urged the detention of Mr. Reja to be viewed as an illegal act and expressed his concern at being unaware of the incident.

He said the Governor should have first referred this issue to the Commission, requesting it to summon the Radio Manager to a meeting to discuss the issue. He said that the Governor is not in a position to give orders to arrest a journalist on this type of charge.

It is worth noting that even with out the existence of the Media Violation Commission, the detention of Dr Reja was breaking the Media Law. The Commission is the only formal body which is authorized to investigate violations by the media. If a member of the media commits an illegal act the concerned party either apologizes or the case goes before the courts for further investigation.

When an accusation is made it is then up to the judicial authorities to investigate the claim. It is not up to a provincial government to take action against a journalist by detaining him or her and then releasing them with no explanation or apology. This example clearly shows some provincial authorities are indulging in behavior that breaks the law they are meant to enforce. Enforcement of the law is the responsibility of the Government. When the Government authorities are themselves in breach of the law, we are faced with a situation of lawlessness and ambiguity.

The Office of the Cheragh Daily Newspaper was surrounded by security officials for 10 hours



A number of security officials forced their way into the building of the Cheragh Daily Newspaper and asked to see Katreen Weda, the Editor in Chief. They introduced themselves as officials from the Publications Department of the Ministry of Information and Culture. At the time Mrs Weda was not in her office so they

surrounded the building.

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Mrs. Weda, told Media Watch that she received a call from someone describing himself as an employee of the Publications Department of the Ministry of Information and Culture.

“He requested I meet with him as soon as possible. I explained that I was not in the office and wondered if they could come back tomorrow. Instead they surrounded our office and subsequently arrested four of our employees,” she said.

Massood Amery, the IT manager for the Cheragh Daily was among the four detainees. He told Media Watch, that on the day, the office seemed different to every other day. “About 9 to 10 vehicles with private number plates were parked outside the Office when I arrived. Then, without warning I was arrested and my hands tied behind my back. I was treated as if I was a terrorist. They detained me for two and a half hours and after a short interview I was released,” he said.

Media Watch sought clarification from the officials of the 10th District (the district where Cheragh’s office is located). One of the officers who wished to remain anonymous told Media Watch that Cheragh Daily was surrounded by the 76th department of the National Security Directorate (NSD), but that he was not at liberty to disclose any further information at this time.

Media Watch also attempted to contact officials at NDS for clarification but without success.

Based on the investigations made by Media Watch, it is possible that the incident was in response to an article published by Cheragh Daily titled “Who is responsible for the political deaths in Afghanistan?” The article claims that the United States of America is to blame for the political murders in the year of Jihad as well as other deaths over the last six years. At the same time, names of other political figures were given as American targets for assassination.

The Cheragh Daily Editor in Chief Mrs. Weda confirmed the arrest of her four staff members, and declared her dissatisfaction with the Ministry of Information and Culture, the Media Violation Commission and the Deputy Minister of Publications. Mrs. Weda said that she has officially complained to all these organizations’ officials.

Deen Mohammad Mobarez Rashedi, the Deputy Minister said that Ms. Weda’s complaint is baseless.

“Cheragh Daily was surrounded at 8am, but they did not inform us until 7pm, by which time the problems had been resolved,” he said.

One day after the incident Media Watch Afghanistan published a press release condemning the attack on Cheragh Daily. At a media briefing, ANJU also condemned the

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actions. Abdul Hameed Mobarez, Director of Afghanistan National Journalists Union said this action is in conflict with the Media Law.

“The right to freedom of thought and expression is reiterated in this law. No government or nongovernment organization has the right to put pressure on any media outlet. We have passed on our displeasure to the public via the media and once again express our concern and condemnation of the action taken against Cheragh Daily,” Mr. Mobarez said.

Media Watch believes that the publication of any article without a dependable source leads to difficulties, but what has happened at Cheragh Newspaper is breaking the Afghan Media Law. The Media Violation Commission is the only entity which has the authority to handle these cases. No other organisation has the right to involve themselves directly or take any action. Any activity carried out by the security agencies in this type of situation is in conflict with the Media Law. According to the law a person can complain to the Media Violation Commission and request the Commission to investigate a specific matter. The security agencies and police cannot take action without considering the law or surround a newspaper office, and detain journalists without proof of guilt. All such actions are in clear violation of the Media Law.

The Governor of Paktika has insisted that Radio Paktika Ghag evacuate their building and give it to the Government.



According to Barrat Mashal, the Manager of Radio Paktika, on 24th Des 2007 Government officials came to the radio station and asked the radio staff to evacuate the building.

When Media Watch contacted the Governor of Paktika to clarify the case, he said that the land on which the radio station is built is Government property.

“The Department of the Ministry of Information and Culture intends to build an AM state-run radio station on the land instead of Radio Paktika Ghag,” the Governor said.

Barat Mashal, Manager of Radio Paktika Ghag argues that the PRT built the radio station on land which was donated by its legal owner to the radio station with the support of the civil society and local tribal elders.

The Governor of Paktika told Media Watch that officials at the radio station were asked four months ago to evacuate the building.

He said that since its inception the government has been supporting the station through providing electricity and land.

“If this private radio station cannot sustain itself it should stop broadcasting and close down,” he said.

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The Manager of Radio Paktika Ghag disagreed with this statement and claims that he has spent a huge amount of his own money on this property and cannot shift the radio station somewhere else.

“I have spent \$50000 USD of my own money on this radio station. This building was built with financial support from the PRT and if they ask me to evacuate the building I will. If they do not ask me I will continue my broadcasts from here. It is not an option for me to move my radio station somewhere else. If the Government does not leave Radio Paktika Ghag in this building the people of Paktika will be deprived of a community radio station,” he said.

Media Watch shared this information with the Deputy Minister of Information and Culture, Deen Mohammad Mobarez Rashedi, who declared he was unaware of the situation. He added that he had no information about an installation of an AM state run radio station in Paktika by the Ministry of Information and Culture.

To clarify, Media Watch would like to state that in line with the Media Law and the Constitution of Afghanistan the Government of Afghanistan is obliged to protect independent media and should not be working against its development. The Government is claiming that the land belongs to them, but residents in the community reject this claim. Media Watch believes that the radio station should not be moved from its current building and the people of Paktika should not be deprived of their community radio station.

Analysis of the Media Law Provisions

Part 6

By: Siddiqullah Tawhidi



Sediqullah Tawhidi

Media Law Analysis

Chapter 6 Rights and Reservations Legal Support

Article 6:

1. While carrying out their professional activities journalists are entitled to protection from the law. This includes any articles that are seen as critical.
2. Journalists have the right to protect the identity of their sources of information unless there is a request to expose the source from an authorized court of law.

Analysis:

In this article the legislator explained two issues in two separate sections.

- A. In regards to the legal protection of journalists when they are publishing critical articles about the Afghan government. This article means that every journalist has the right to publish critical articles about the government, and the government has a responsibility to protect these journalists and the organizations they work for. It is also explained that no one has the right to create barriers that would prevent the articles being published.

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The Afghan Media Law gives journalists the right to criticize and the right to publish their investigations. Yet at the same time warns them to follow journalistic principles during their work.

- B. The second paragraph of this article sets out a journalist's right to protect his/her source of information unless requested by an authorized court of law to disclose it. This means that no organization or individual, except an authorized court, has the right to ask a journalist or media outlet to expose their source of information.

This paragraph hopes to guarantee the safety of the source. With this protection sources can feel more confident in telling their stories to the media.

If, however, the case leads to an authorized court hearing, it is up to the court to ask the journalist or the media outlet to expose its source of information. In this case the safety and protection of the source is guaranteed by the government and the threats are thought to be decreased.

Collectively, both these paragraphs of Article 6 may pave the ground for the improvement in media activities in the country and, to some extent, decrease the level of possible threats.

The Media Law encourages the publication of news and critical articles and makes it a responsibility of the Afghan Government to support and protect journalists and media outlets.

Whenever the government doesn't protect journalists and media outlets and doesn't support them, it will have violated the law.

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To obtain a soft copy of the report, please visit the following link:
<http://www.nai.org.af/Mediawatch.htm>

Note: *To maintain confidentiality and to protect sources it was not possible for Nai Supporting Open Media in Afghanistan to corroborate the incidents by carrying out additional investigations.*

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