Nonprofit
Risk Management
Center
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Risk Management ESSENTIALS

Tips, Knowledge and Tools for Nonprofit Organizations

Mark Your Calendar!



The Center's line-up of 2010 webinars is underway. During the current series of one-hour educational programs we are exploring a diverse array of risk management topics ranging from cyberspace risks to organizational structure.

Each program costs only \$59 or the entire series is available for \$459. These affordable, convenient and topical monthly education programs are a must for leaders who want to be in the best possible position to recognize and manage the risks facing their nonprofit organizations.

Detailed information on the line-up of programs is available on page 10.

Going Up? Elevator Talk, Risk Management and the Nonprofit Board

By Melanie Lockwood Herman

The Board of Directors sits atop the organizational chart of a nonprofit organization. Board issues are either self-initiated or are "elevated" by staff for board consideration. Both approaches are inherently necessary to the board's governance role. And while there are myriad definitions, governance is essentially the "means in which the leading authority, often the board of directors...guides and monitors the **values** and **goals** of its organization through policy and procedures." Source: *Philanthropic Foundations Canada*

Yet despite the clarity in the board-staff reporting relationship (the staff report to the board and never vice versa) many organizations struggle with creating a workable and appropriate division of labor. Others settle on a division of labor that becomes stale as the organization faces new challenges, including significant growth in good times or the need to cut back in a difficult economic climate. The respective roles and responsibilities of the board



and staff should be "on the table" for discussion and periodic review. Newcomers in both camps need to know "who's on first" and how the organization holds key personnel accountable. And veteran members of the board and staff need periodic reminders about their commitments and roles, as well as an occasional refresher course. By taking these steps the leaders of a nonprofit can avoid

continued on page 2

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Going Up? Elevator Talk, Risk Management and the Nonprofit Board continued from page 1

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Renee Vaca Razo North Carolina Center for Nonprofits, Inc. Raleigh, NC the fallout and unnecessary pain and suffering that result from role confusion.

One area where there is *infrequently* a tug of war is the oversight of enterprise risk (see sidebar on page 3 for a definition of "enterprise risk management"). In the Center's experience, both boards *and* staff are often happy to defer responsibility for managing risk to their colleagues across the aisle.

But like other key oversight areas, risk oversight belongs in both camps. It is without question a critical responsibility of the body charged with "monitoring the values and goals of the organization." But it also falls within the scope of responsibility of the staff who lead others, manage assets, experience the daily activities that give rise to operational as well as enterprise risk, and bring board policies to life each and every day. A survey of risk in action in the U.S. nonprofit sector would likely reveal that the lion's share of effort for both forecasting and addressing risk falls on staff. We believe that a figurative elevator ride is in order to correct this imbalance in the division of labor.

Determining the organization's appetite for risk, policies on risk-taking and overarching strategies for managing risk are essential to discharging the board of directors' duty of care. Effective monitoring of values and goals cannot take place without appreciation for risk and risk-taking. And, as an outwardly focused stakeholder group, a board is in an *ideal* position to see and report back on risks with which hard-working, internally focused staff may be unable to see clearly or likely to overlook.

Effective board service then must include active involvement in

discussions and decisions regarding the assessment and the management of risk for the nonprofit.

So the question becomes how does it happen? What information is needed and what type of discussion is required to help board members discharge their duties and perform at the highest possible level? And what steps should staff take to guide the board into the elevator and safely up to the top floor? How can staff effectively enable the board to accept and live up to its responsibility without appearing to be passing a thankless job up the organization chart?

The Charity Commission Model

One option is to borrow and adapt the experience of our British cousins across the Atlantic. *The Charity Commission for England and Wales* is an agency charged with regulating charities. The mission of the agency is to provide "the best possible regulation of the charities in order to increase charities' efficiency and effectiveness and public confidence and trust in them."

In the annual report required by the agency, the boards of all UK charities must make a statement confirming that the "major risks to which the charity is exposed, as identified by the trustees, have been reviewed and systems have been established to manage those risks." The trustees must confirm that they have reviewed major risks in the areas of operational performance, achievement of aims and objectives; and meeting expectations of stakeholders.



In this section

"Enterprise risk management is a process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives."

Source: Committee of Sponsoring Organizations of the Treadway Commission, www.coso.org

The term "major risks" is defined as follows: risks which "have a high likelihood of occurring and would, if they occurred, have a severe impact on operational performance, achievement of aims and objectives or could damage the reputation of the charity, changing the way trustees, supporters or beneficiaries might deal with the charity." Source: www.charitycommission.gov.uk/investigations/ charrisk.asp

Experienced nonprofit leaders know that bringing items of an administrative nature (e.g., the size of the type on the disclaimer language on our volunteer application or the color of the carpeting in the conference room) to the board leads to board involvement in administrative matters and distraction from the true meaning of governance. Yet risk management is often written off as a collection of administrative matters that include taping down loose carpets and wordsmithing application forms. The discipline of risk management and the environment in which nonprofits

annually or to the agenda of the board's annual retreat. The results of these discussions should be included in the orientation manual or packet

1. Establishing risk policy. What sorts of risk need to be considered? Risk and Proportionality Framework for the How can risk be managed? What types of risk do charities face? The role of the charity trustees
A process for identifying and managing risk

The role of the charity trustees Charities Back on Track operate today require that nonprofit leaders bring a discussion of risk and risk-taking to the board room and invite the board to discuss risk as part of their role in guiding and monitoring the values and goals of the organization. One approach to doing so is by adding "risk taking and risk management" to the agenda of at least one board meeting held

A process for identifying and managing risk

There are several models that can be used to identify and manage risk. There is no

of the charity's risk profile increases. These key stages are likely to include:

requirement or obligation on trustees to adopt any particular model or approach, but each of

these models has a number of core elements and these are recommended as being essential for a proper understanding of risk management. Although these elements can be used as

'steps' or 'stages' it is very likely that trustees will need to revisit each stage as their knowledge

Going Up? Elevator Talk, Risk Management and the Nonprofit Board continued from page 3

provided to each new board member during the orientation process. We hope the questions below will stimulate your thinking about how to structure a discussion about risk at an upcoming meeting of your board.

- What are the organization's most important goals during the next five years?
- What are the organization's most significant risks during the next five years?
- How likely is it that the organization will experience a loss in the top risk areas?
- How likely is it that the identified risks would have severe consequences (think impact on mission) were they to materialize?
- What are the primary risk management strategies for the key areas of risk?
- How effective is the organization at forecasting risk, understanding and evaluating risk, and taking timely, appropriate action?
- How does the board actively contribute to the accurate forecasting of risk?
- Does the board have a shared vision of the organization's risk appetite?
- Is the identification, assessment and management of risk linked to objectives?
- Do current risk management efforts cover all areas of critical risk?
- Does our risk profile reflect our views about levels of acceptable risk?

- Do we review the results of our overall risk management program?
- Is risk management ongoing and imbedded in our culture?
- What big risk(s) could the organization take this year to advance its mission?
- Have we recently conducted a formal risk assessment with the assistance of knowledgeable and objective professionals?

Elevating the discussion of risk by inviting the board to discuss the nonprofit's risk-taking appetite, risk management culture, and role in forecasting offer a starting point to help your board move from a windowless first floor conference room to a rooftop offering panoramic views. To some extent the vision of the collective board will be directly related to the vision of those elected to serve. But to an even larger extent the board's role and effectiveness as a partner in understanding and addressing critical risks depends on the staff's willingness to invite the board along for the elevator ride to the top, to structure the process to encourage candor, and to recognize that protecting the mission of the organization is an important, if not essential shared responsibility.

Melanie Lockwood Herman is Executive Director of the Nonprofit Risk Management Center. She welcomes your feedback on this article and questions about the Center's resources at Melanie@ nonprofitrisk.org.

Melanie's most recent books include Ready...or Not: A Risk Management Guide for Nonprofit Executives, and EXPOSED: A Legal Field Guide for Nonprofit Executives. Information on these titles can be found at www.nonprofitrisk.org/store/hot.asp.



Online Social Networks, CyberRisk and Your Nonprofit: What You Need to Know

by Jeffrey S. Tenenbaum, Esq. and A.J. Zottola, Esq.

Online social networking sites, such as the popular offerings provided by MYSPACE, FACEBOOK, TWITTER, and LINKEDIN, offer new ways for nonprofits to connect and interact with key stakeholder groups and the community at-large. An online networking site can offer opportunities and rewards due to the ease with which a nonprofit can rapidly spread or easily target a message or communication. Incorporating the use of social media and online networking sites into a nonprofit's larger communication or marketing strategies, however, raises a number of potential legal risks and associated liability exposure. With advance planning, these risks can be managed effectively. The following is a non-exhaustive list of legal tips and issues to consider in connection with using social networking sites or social media either to create/manage content or to send or sponsor content. The following tips also can be considered with respect to the types of policies and guidelines to implement with stakeholders who connect with your nonprofit through an online social

networking site.

It's More Public than You Think.

Don't be naïve about the availability of information for display or review as well as what is being preserved for future display and use. Nonprofits should exercise care in selecting items to post or send and assume that greater (not less) publication or disclosure is possible.

Avoid Use of Material Obtained without Permission and Provide Proper Attribution for Content Used With Permission. Avoiding copyright infringement is a critical concern for nonprofits with online activities. Avoid the risk of harm

Incorporating the use of social media and online networking sites into a nonprofit's larger communication or marketing strategies, however, raises a number of potential legal risks and associated liability exposure. With advance planning, these risks can be managed effectively.

continued on page 6



Online Social Networks, CyberRisk and Your Nonprofit: What You Need to Know continued from page 5

Nonprofits should avoid encouraging or promoting unauthorized use or copying of third-party content and, where possible, seek the consent of the author, owner, or subject before reproduction or use.

stemming from the unauthorized use of material belonging to others by prohibiting this practice in your nonprofit. With respect to any licensed material, remember to abide by any license terms and ensure that the right to use extends to electronic formats (or otherwise modify its license rights/permission to secure such rights). Comply faithfully with attribution requirements. Do not rely on the "fair use" defense for your publishing activities except to the extent that you clearly understand this limited doctrine.

Be Careful When Allowing Others to Post Content. When setting up or managing a page or site within an online social network that will allow for or enable the posting of content by a third party, such as a member, such content functionality can create situations that give rise to liability for copyright infringement, torts or defamation. Nonprofits should avoid encouraging or promoting unauthorized use or copying of thirdparty content and, where possible, seek the consent of the author, owner, or subject before reproduction or use. This advice can apply with respect to the actual posting of content as well as to acts that give rise to availability, such as storing content for further re-distribution or display. Exercise great care with negative content that identifies a particular person or entity or with the insertion of additional commentary to content created by unaffiliated authors; as such acts can create publisher responsibility and liability. In addition, adopt a "takedown" policy that does not tolerate repeat offenders.



Know Your Identity and Role.

Social media and networking sites can make it easy for another user to masquerade as or act seemingly on behalf of your nonprofit. Copycat sites, pages or activities may even be in furtherance of a nonprofit's mission or goals. However, as such sites are not controlled by the nonprofit, it is important to clarify and announce the nonprofit's role in the content distribution, display and publication processes. Keep in mind that when a nonprofit encourages other users to use its name, connect to its page/ site, post supporting information, or generate communications in line with the nonprofit's mission, it is preferable in such situations for the nonprofit to function as much as possible as a passive operator, conduit or distributor, as opposed to an author or editor that has played a role in the creation or development of information that was actually posted or sent by another user.

Pattern Behavior to Take Advantage of Potential Immunity.

Certain immunities may be available to a nonprofit for particular instances when copyright infringement, tortious conduct, or defamation occurs. Although each of the following laws





















predates the advent of online social networking, the Digital Millennium Copyright Act of 1998 ("DMCA") lays out certain safe harbors for "Internet service providers" that could provide protection from copyright infringement claims and the Communications Decency Act of 1996 ("CDA") offers safe harbor protection for providers or users of interactive computer services from civil liability for defamation, invasion of privacy, negligence, and trespass claims. In both cases, however, the immunity is only available for liability resulting from the publication of information provided by a third party. Accordingly, and in order to try to claim immunity, steps must be taken by a nonprofit to remain a mere content conduit rather than a provider or creator of the information posted. The more editorial or publishing control taken, the less likely the protections under the DMCA or CDA will be available. Moreover, to qualify for the DMCA, infringing material must be taken down by the nonprofit (to the extent controllable) when duly notified by the copyright owner.

Consider Hyperlinks to

Third-Party Sites. Linking is commonplace within every online social network. A nonprofit should clarify its role with respect to and disclaim responsibility for any third-party site or page that it cannot control. Although mere linking may not suffice to find copyright or trademark liability, nonprofits should avoid directing other users to exploit any content or materials available on a third-party site or page. Moreover,

your nonprofit should never frame, deep link to, or incorporate any thirdparty content without permission when linking to other sites or pages.

Don't Misuse Trademarks. Thirdparty trademarks should be used by a nonprofit with permission when possible and with extra caution when use is in a commercial context, with respect to products or services, or in connection with campaigns, sponsorships or endorsements. Use of third-party logos or stylized versions of trademarks is also more problematic in comparison to plaintext versions. Moreover, a nonprofit should never promote unauthorized or unlawful use of third-party trademarks, use third-party trademarks in user or account names, or use third-party trademarks as keywords or for search optimization (to the extent page design is possible).

Be Careful with Sweepstakes.

A nonprofit should always seek legal counsel before implementing an online sweepstakes or contest through an online social network; especially if a prize having cash value will be awarded. There are numerous state laws and regulations that govern online contests, lotteries and sweepstakes. Accordingly, for any promotion involving a sweepstakes or contest, consider the scope of permissible participants (by state), include terms and conditions for any contest or sweepstakes, and carefully consider the implementation of fees or charges for entry. Be aware that certain prize or reward practices can constitute illegal gambling.



Online Social Networks, CyberRisk and Your Nonprofit: What You Need to Know continued from page 7

Also remember that privacy considerations, particularly with respect to children under the age of 13, still apply to social networking sites. If personal data collection is desired or anticipated, post a privacy notice describing the data collection and use practices.

Watch What You Say When You **Market.** Avoid passing along false or misleading information and exercise extreme care with any practice that is or may be perceived to be advertising in disguise. For example, certain social networking techniques, such as blogging about a nonprofit or its activities, can in fact be treated as advertising when there is content posted regarding a product or service. Recent FTC guidance on blogging indicates that the FTC may penalize bloggers who make an endorsement of a product or service without disclosing the material connections with the seller of the product or service (such as being compensated by the seller). Promotional campaigns within an online social network should therefore be controlled and monitored in the same fashion as with other media or formats and your nonprofit's promotional campaign should not be left simply to the complete discretion of unaffiliated entities or users even though the viral

nature of social networks may be

perceived as an advantage.

Don't Ignore the Rights of Privacy or Publicity. Be mindful of publishing information concerning individuals that may not be generally known or available to the public. Also remember that privacy considerations, particularly with respect to children under the age of 13, still apply to social networking sites. If personal data collection is desired or anticipated, post a privacy notice describing the data collection and use practices. The foregoing also should apply to the tracking of online consumer activities, which has received increased scrutiny by government agencies and officials, notwithstanding the more public nature of conduct within online social networks.

Be Careful when Sending Unsolicited Communications.

E-mail and other forms of viral campaigns, particularly for commercial messages, can remain subject to laws governing unsolicited e-mail, such as the CAN-SPAM Act of 2003, notwithstanding their use inside of a social networking site. Always consider whether the recipient



has provided consent to the receipt of any communications and obtain such consent where and when possible for commercial messages. At a minimum, always consider using opt-out notices for commercial messages.

Monitor Blogs and Other Instant Communication Forums. Unlike other forms of communication that undergo more careful scrutiny, the frequency with which blogs and other instant communication tools, such as TWITTER, can be updated can increase the exposure for a nonprofit to liability for any displayed or discussed content, due to less control over the posted information. If a blog will be utilized by a nonprofit, whether by its own employees or by other users, then it should be governed by clear internal or external policies regarding its content and use in order to manage the nonprofit's responsibility and potential liability. As indicated previously, a clear takedown policy also should exist.

Protect Your Intellectual Property and Use Proprietary Notices.

A nonprofit should remain aware of any new content, trademarks, domain names, or methods created with respect to social media so that available intellectual property protection and registration can be considered and sought. Remember to reserve rights in the nonprofit's intellectual property used or displayed online and monitor use of its intellectual property by other users. With most social networks, copying is not only the sincerest form of flattery but also is the easiest way for intellectual property rights to be infringed or diluted. To assist with protecting intellectual property rights, consider the use of a ™, ® and/or © symbol in connection

with more prominent placements of the nonprofit's intellectual property and otherwise provide notices and conditions for any use of intellectual property by other users within an online social network.

Don't Ignore Employer/Employee **Considerations.** Every nonprofit employer should define its expectations regarding employee use of social networking sites to advance the nonprofit's mission. With respect to volunteers and paid vendors/ consultants, a nonprofit should revisit its use of written assignment of rights agreements with individual authors, particularly non-employees, in order to ensure ownership of material that should be owned by the nonprofit. The blurring of personal and business conduct during the day heightens the need for attention to the nonprofit's rules and requirements.

Develop Policies for Social Networking and Media. Every nonprofit that uses social networking tools should develop internal and external policies and agreements to address the risks described above. With respect to preparing these policies, keep in mind that the terms of service provided by social network providers are primarily for the benefit of the social network providers and not the nonprofit user. ■

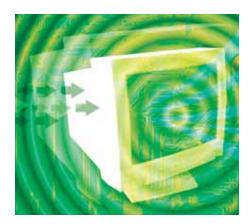
Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. A.J. Zottola is a partner at Venable in the Business and Technology Transaction Groups and focuses his practice on intellectual property, computer, Internet, new media, and technology law. For more information, please contact jstenenbaum@venable.com or ajzottola@venable.com or call (202) 344-4000.

With respect to volunteers and paid vendors/
consultants, a nonprofit should revisit its use of written assignment of rights agreements with individual authors, particularly non-employees, in order to ensure ownership of material that should be owned by the nonprofit.



Professional Development and Training Calendar

Fill out your 2010 calendar with professional development and training opportunities brought to you by the Nonprofit Risk Management Center. You won't want to miss any of these.



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Dates and Topics

2010 WEBINAR SERIES

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Register

Register for the entire series and save!

2010 WEBINAR SERIES

The line-up of 2010 programs is featured below. Subscriptions to the series are available for \$459—a \$249 savings over the cost of purchasing all 12 programs at the regular price of \$59 per webinar. View past programs at your convenience!

January 6, 2010

House of Sand or Foundation of Stone: The Board of Directors/Trustees

The first webinar of 2010 examined methods for evaluating and addressing governance risks. The program explored a wide range of topics including the composition of the board and best practices for empowering the board to discharge its legal responsibilities.

February 3, 2010

The Deep End: Nonprofit Finance and Audit Committees

During February we continued our review of governing structures by using the risk management process to evaluate the roles and responsibilities of the finance committee and audit committee.

March 3, 2010

Ethics and Conflict of Interest Policies

During the March webinar we explored the role of ethics and conflicts of interest policies to strengthen the foundation of a nonprofit. What role do these policies serve and how should leaders go about developing practical policies that set the right tone for the nonprofit?

April 7, 2010

Risk Management, Budgeting and Forecasting

Effective budgeting and forecasting are vital components of sound risk management. This webinar will offer a risk management

approach to budgeting and forecasting, highlighting practical strategies to position both activities as assets to the overall risk management program.

May 6, 2010

Back to the Future: Long Term Planning and Investment Strategies

The need to look into the future and how to approach that process will be explored in the May program in the Center's 2010 series of webinars. The program will examine long-term financial planning and investment strategies from a risk management perspective.

June 2, 1010

Records Destruction/Retention Policie Nonprofit executives need practical advice to develop practical, defensible document destruction and retention policies. No leader wants to retain more than is necessary, but we all fear destroying something that might be needed to defend our organization. This webinar will explore the process for developing a practical and custom documents destruction and retention policy.

Shred or Retain? A Closer Look at

July 7, 2010

House of Cards or House of Brick? Evaluating Organizational Structure

The policy of another nonprofit may not

ill-suited to your nonprofit.

work... don't risk it by "borrowing" a policy

A nonprofit's mission requires a solid foundation on which to deliver services. Many nonprofits are at risk of not realizing their missions because the underlying structure of the organization isn't as solid as it needs to be. Or perhaps the sound policies of the nonprofit aren't being followed to a "t." This webinar will offer strategies for examining the risks you face that stem from things outsiders can't see. Learn how to diagnose risks and shore up the foundation of your nonprofit.

August 4, 2010

Reputation Risk: What's in a Name

A nonprofit's reputation is a vital asset on which it depends. Yet that asset is at risk everyday and many leaders feel powerless to evaluate the degree to which reputation is at risk and respond capably when the "brand" is tarnished. Sources of brand risk include every stakeholder group near and dear to the heart of the nonprofit: volunteers, staff, donors, client/members, and more. This webinar will explore the process for

How We Can Help You the Year Through

... find the answer here

The Nonprofit Risk Management Center, established in 1990, provides assistance and resources for community-serving nonprofit organizations. As a nonprofit, the Center is uniquely positioned to both understand and respond to questions with practical, affordable suggestions for controlling risks that threaten a nonprofit's ability to accomplish its mission.

Our mission is to help nonprofits cope with uncertainty.

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- Additional information is also available under the Online Tools tab at www.nonprofitrisk.org.
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- We design and deliver workshops at events and conferences sponsored by nonprofit organizations, umbrella groups and associations, and insurance providers.
- We sponsor regional conferences on risk management and hold an annual conference, called the Risk Management & Finance Summit for Nonprofits, each fall, visit the Training tab at www.nonprofitrisk.org.
- We offer competitively priced consulting services, including risk assessments, visit the Consulting tab at www.nonprofitrisk.org.

The Nonprofit Risk Management Center is a 501(c)(3) nonprofit organization. The Center does not sell insurance or endorse organizations that do.

managing reputation and offer practical tips on protecting the name and mission of your nonprofit.

September 1, 2010

Back to School: Orientation, Education and Training

Nonprofit leaders who seek to integrate risk management into their operations often look far and wide for "best practices." Yet the fundamental activities of volunteer, staff and client orientation and in-service training are important components of your risk management strategy. Attend this webinar to explore the role of effective education in an overall risk management program.

October 6, 2010

Got Resources? Risk and Reward in Resource Development

Fundraising and resource development are vital components of every nonprofit's operations and some leaders report that fundraising takes more time than ever. Risk may be the reason for this phenomenon. A growing array of risks arise when a nonprofit seeks support from individual and institutional donors, and the complexity of laws regulating fundraising activities frustrates even the most seasoned leader. This webinar will explore the risks associated with asking for and accepting the support your nonprofit needs to deliver its mission. The presenter will offer practical strategies for managing the risks you know about as well as those that are coming around the bend.

November 3, 2010

Cyberspace Risk: What You Don't Know Could Hurt You

The nonprofit sector's reliance on the Internet and modern technology has grown beyond anything most leaders imagined was possible. In many cases modern technology has enabled small and midsized nonprofits to reach unreachable audiences with mission-related messages. But it's

a dangerous world out there! Attend this webinar to find out what you don't know about cyberspace that could hurt your nonprofit and impair or disrupt your mission. Explore practical steps for risk identification and the design of effective strategies for managing the risks of your online presence.

December 1, 2010

What Do the Numbers Say About Your Nonprofit?

The story of your nonprofit is told in various ways and formats. One of the ways is through your published financial statements and Form 990. While you may hope that stakeholders are focusing on your "vision statement" and the compelling descriptions of programs on your Web site, in reality their attention may be riveted to the story your numbers tell. Attend this webinar to learn how to manage the risks associated with telling your story in numbers and practical steps for ensuring that the story is both accurate and mission-advancing.





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My Financial Management Plan



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