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Intellectual Property Rights in Information Technology Sector

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I. INTRODUCTION

"Technology is a gift of God. After the gift of life it's perhaps the greatest of God's gifts. It is the mother of Civilization, of art, of sciences"

Therefore this is an era of technology and advancement many things are evolved and are still evolving by many people with their intellect, talent and originality in them. So before telling about the IPR and its relationship with IT sector and other provision related to law we need to first understand each word of IPR before we will be explaining it in core. So therefore, we have tried to define IPR differently. "First, we will explain Intellectual meaning, then we will be moving on to property meaning and in the last one the meaning of the term rights. Also in the final, we will explain the relation between these three words and how they combine and become IPR"

- Intellectual

The temporary term intellectual derived from 'intelligentsia' of Tsarist Russia. But as coming or talking about the 20th century the term intellectual acquired positive connotations of social prestige derived from possessing Intellect and intelligence. In other words, the term intellectual means basically related to human mind and personality capacity, ideas, innovation and a kind of Bill Gates, originality from one mind. Therefore, we can also sum up the term intellectual in terms of strength also. Thus, these days everyone is eager to show their intellect and talent to compete in this race which going on in every filed and every aspect of life and in a continuous form for 24 hours. That's why it is correctly said that: "the more one has intellectual abilities and use its intellect in daily life will succeed more and fast as compare to those who follow other path or other footsteps."

According to the Cambridge Dictionary : "It is relating to your ability to think and understand things, especially complicated ideas."

- Property

Property refers to as being the possession by any individual or group of individuals who are

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associated with that property. It gives the right of ownership to the individuals to whom that property belongs and establishes the goods as being "one's own thing". In simple we can it can be a thing and things belonging to someone. It can be tangible or intangible also.

Tangible is one that can be physically present like- Building, land, house, cash, jewellery and Intangible is the other is one which is not in physical form like – Brand identity or knowledge.

According to Cambridge Dictionary : "It is a quality in a substances or material, especially one that means that it can be used in a particular way."

- Rights

The Rights is a term which defines one legal, social or ethical principles of freedom or entitlement. These are the things which let the people to enjoy something, to enjoy their position. We the people can claim our rights we have the power to not let others violate our rights. For example: when a person owns a home and property he has the rights to possess and enjoy it free from the interference of others who are under a corresponding duty not an interference with the owner's rights by trespassing on the property or breaking into the home.

According to Cambridge Dictionary: - "Each legal right that an individual possesses relates to a corresponding legal duty imposed on another."

II. How Intellectual, Property and Rights Takes One Picture as IPR

In this we will basically try to show the relationship between these three words and how they are connected to each other. Now it is pretty much clear that these three words need each other to give each other strength and more existence because together these three words works better together instead of working alone. Thus, intellectual property rights are the emerging law that need in the society as due to development of the society and the development of the things around us specially the technology. People have invented so many things with their intellect and knowledge and with the originality in them they are inventing new things in eve fields, aspects of life thus to protect their originality and what they have invented we need this IPR which not only protect these inventions but also gives them strength for development. Thus, why these three words connected and measured to make IPR and that is one of the basic reasons that how these three different words take one picture as IPR.

What is intellectual property?

Intellectual Property is a category of property that includes intangible creations of human

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intellect and primarily encompasses copyrights, patents and trademarks. It also includes other types of rights such as trade secrets, publicity rights, moral rights and rights against unfair competition. Therefore, it is an intangible creation of human mind usually express and translated into intangible form assigned to certain rights of property. IP plays an important role in the business like:- Intellectual Creation Application Protection Successful Business

WHAT IS INTELLECTUAL PROPERTY RIGHTS?

It is right given to the people over the creation of their minds. It usually gives the creator an exclusive right over the use of his/her creation for certain period. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. These rights are outlined in the Article 27 of the Universal Declaration of Human Rights. The importance of intellectual property rights was first recognized in the Paris convention for the protection of industrial property in 1833 and the Berne convention for the protection of literacy and Artistic work in 1886 and both the treaties are administrated by the WIPO (World Intellectual Property Organization)

According to WIPO: "Intellectual property rights are like any other property rights – they allow the creator, or owner, of a patent, trademark, or copyright to benefit from his or her own work or investment."

RIGHTS PROTECTED UNDER INTELLECTUAL PROPERTY

The different types of Intellectual Property Rights are:

i. Patents

ii. Copyrights

iii. Trademarks

iv. Industrial designs

v. Protection of Integrated Circuits layout design

vi. Geographical indications of goods

vii. Biological diversity

viii. Plant varieties and farmers rights

ix. Undisclosed information

III. DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

India has been a World Trade Organisation (WTO) member since 1995. WTO member

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nations must include some IP protection in their national laws. This means that if you are doing business with India, you will find some similarity between local IP law and enforcement procedures, and those enforce in the UK.

Chronological development of IPR in India:

1. 1947: Patents & Designs Act, 1911

2. 1995: India joins WTO

3. 1998: India joins Paris Convention/PCT

4. 1999: Patent amendment provided EMR retrospectively from 1/1/95

5. 2003: 2nd amendment in Patents Act

6. Term of Patent – 20 years after 18 months publication

7. Patent Tribunal set up at Chennai

8. 2005: Patents (Amendment) Act 2005

9. 1999 - 2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

HISTORY OF IPR IN INDIA

In the year of 1856, George Alfred DE Penning is supposed to have made the first application for patent in India. On 28 February 1856, the Government of India had promulgated the legislation to grant what was termed as the "exclusive privileges for the encouragement of inventions of new manufactures". On March 3, 1856 a civil engineer, George Alfred DE Penning of 7, grant lane, Calcutta petitioned the government for grant the exclusive privileges of his invention, "An Efficient Punch Pulling Machine". On September 2, George Alfred DE Penning submit the specification for his invention and creation with the drawing to illustrate it's working. These were accepted and the invention was granted the first ever Intellectual Property Protection in India.

HISTORY OF COPYRIGHTS LAW IN INDIA

Modern copyright law developed in India gradually, in a span of more than 150 years. Copyright law entered India in 1847 through an enactment during the East India Company's regime. According to 1847 the term of copyright was for the life time of the author plus seven-year post Morten. The government could grant a compulsory license to publish a book if the owner of copyright, upon the death of the author, refused to allow publications. The act of infringements comprised in a person unauthorized printing of a work for "sale hire or

exportation "or" for selling publishing or exposing to sale or hire. The act provided specifically that under a contract of service copyright in "any encyclopaedia, review, magazines, periodical work or work published in a series of book or parts" shall vest in the proprietor, projector, publisher or conductor". Importantly unlike today, copyright in a work was not automatic. Registrations of copyrights with the Home Office was mandatory for the enforcement of rights under the act. At the time of copyright's introduction in India it was already popular and developed in Britain.

In 1914 then the India enacted a new Copyright Act which merely extended most portions of United Kingdom Copyright Act of 1911 to India. Firstly, it introduced criminal sanctions for copyrights infringement which is mentioned in under Section 7 to 12. Secondly, it modified the scope of the term copyright under the section 4 the "sole right" of the author to produce, reproduce, perform or publish a translation of work shall subsist only for a period of ten year from the date of the first publications of work". The author however retained her sole right if within the period of ten year she published or authorized publications of her work a translation in any language in respect of that language. The 1941 Act was continued with the minor adaptations and modifications till the 1957 was brought into force on 24th January 1958.

HISTORY OF PAETENT LAW IN INDIA

The first legislation in India relating to patent was the Act 6 of 1856. The Act was subsequently repealed by Act 9 of 1857. And the fresh legislation for granting the exclusive privileges was introduced in 1859 as Act 15 of 1859. The 1856 act was based on the United Kingdom Act of 1852 with the certain departures including allowing assignees to make applications in India and taking prior public use or publications in India or United Kingdom for ascertaining novelty. The Act 15 of 189 was further amended in 1833 by the 16 of 1833. But in 1888 new legislation was introduced to consolidate and amend the law relating to inventions and designs in conformity with the amendments made in the UK law.

In 1911 the Indian Patents and designs Act 1911 was brought into picture replacing all other legislations on the patent and designs. This act was amended in 1920 to provide the entrance into the reciprocal arrangements with the UK and other countries for securing priority. And in 1930 further amendments were made. After independence, it was felt that the act of 1911 is not fulfilling its obligations. Therefore, a committee under the chairmanship of justice Bakshi Tek Chand, a retired judge of Lahore High Court In 1949 to review the patent law in India. Then based upon the recommendations of the committee the act of 1911 was amended in

1950 in relation to working of inventions and compulsory license in relation to patent in respect of food and medicines, germicide for producing substance or other surgical or curative devices. In 1957, the Government of India appointed Justice N. Raja Gopal Ayyangar Committee to examine the question of revision of the Patent Law and advise government accordingly. The report of the Committee, which comprised of two parts, was submitted in September 1959. This report recommended major changes in the law which formed the basis of the introduction of the Patents Bill, 1965. This bill was introduced in the Lok Sabha on 21st September 1965, which, however, lapsed.

In 1967, an amended bill was introduced which was referred to a Joint Parliamentary Committee and on the final recommendation of the Committee, the Patents Act, 1970 was passed. This Act repealed and replaced the 1911 Act so far as the patents law was concerned. However, the 1911 Act continued to be applicable to designs. Most of the provisions of the 1970 Act were brought into force on 20th April 1972 with the publication of the Patents Rules, 1972.

This Act remained in force for about 24 years till December 1994 without any change. An ordinance effecting certain changes in the Act was issued on 31st December 1994, which ceased to operate after six months. Subsequently, another ordinance was issued in 1999. This ordinance was later replaced by the Patents (Amendment) Act, 1999 that was brought into force retrospectively from 1st January 1995. However, such applications were to be examined only after 31st December 2004. Meanwhile, the applicants could be allowed Exclusive Marketing Rights (EMRs) to sell or distribute these products in India, subject to fulfilment of certain conditions.

The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002 (Act 38 0f 2002). This Act came into force on 20th May, 2003 with the introduction of the new Patents Rules, 2003 by replacing the earlier Patents Rules, 1972.

The third amendment to the Patents Act, 1970 was introduced through the Patents (Amendment) Ordinance, 2004 with effect from 1st January 2005. This Ordinance was later replaced by the Patents (Amendment) Act, 2005 (Act 15 of 2005) on 4th April 2005 which was brought into force from 1st January 2005.

HISTORY OF TRADEMARK LAW IN INDIA

While some form of proprietary protection of the marks dates back of several millennia, India's statutory Trademarks Law dates to 1860. Talking about the 1940's there was no such law related to the trademark law in India. Many problems were arising at that time related to

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this concept and that were dealt in the Specific Relief Act 0f 1877. The registration was obviously adjudicated by obtaining a declaration as to the ownership of a trademark under Indian Registration Act 1908. To overcome all the difficulties the Trademark Act was introduced in 1940 with the correspondence of the English Trademark Act. After this Act was replace with the Trade and Merchandise Act, 1958. The repeal of the Trade and Merchandise Act, 1958 was done by the trademark Act 1999. This was done by the Government of India so that the Indian trademark law in compliance with the TRIPS obligation on the recommendation of the World Trade Organization.

WHAT IS COPYRIGHT?

Copyright is a body of law which grants author, artist and other creators for protection of literary and artist creations which are generally refers to as "work" According to Section 14 of the Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts It is a set of exclusive right which is given the author or creator of original work, including the right to copy, distribute and adapt the work. Copyright lasts for a certain time after which the work is said to enter the public domain. Copyright gives protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on physics covering various aspects like mechanics, heat, optics etc. Even though these topics are covered in several books by different authors, each author will have a copyright on the book written by him / her, provided the book is not a copy of some other book published earlier.

WHAT IS TRADEMARK?

A trademark is a distinctive sign, which identify certain goods or services as those produced or provided by specific person or enterprises. It origin from back ancient times when craftsman reproduced theirs signatures or marks on their artistic work. This system helps the consumers to identify their products or things. Because its nature and quality is indicated by its unique product trademark meets their needs.

WHAT IS PATENT?

Patent is a grant for an invention by the government to the inventor in respect in exchange of full disclosure of the invention. It is an exclusive right grant by the law to the inventors and applicant to make use of exploit their inventions for a limited period generally from the 20 years of filling. It is a product or process which provides a new way of doing something or offers a new technical solution to the problems.

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IV. WHY TO PROTECT AND PROMOTE INTELLECTUAL PROPERTY?

There are several reasons and this also raise several questions like: - Why we need to promote it? Why we need to protect? And what are the benefits its can provides us if we protect it?

1. Wellbeing of humanity: - Firstly the process and wellbeing of humanity rests on its capacity of new creations in technology and culture.

2. Encourage the expenditure: - Secondly, the legal protection of the new things and creations will encourage the expenditure of additional resources which will lead to further innovations and birth of many new things.

3. Boost to Economic Growth: - Third reason that why we need to protect and promote is that it will boost up the spread of economic growth. Because new things when invented and created which are better than the old will benefit the people and the working style of theirs which further lead to fast production in less time and cost and high production leads to high sale which will benefits the income and in the end the growth of the economy.

4. Employment and Increase the quality of life: - Fourth Is that it will creates new jobs and industries, and enhances the quality and enjoyment of life. Because when the production and economic growth will increase it will provide the opportunity for employment which further help to increase the standard of living and quality of life.

V. ROLE AND IMPORTANCE OF IPR IN IT-SECTOR

- Protection of many things: - The first and very important and one of the basic role of the IPR in the IT sector is that it helps in the protection of not a single thing but so many things in the technology and advancement fields. Like – Copyrights help to protect the expression of the software's developed in the IT sector and the Patent law helps in the protection of the idea and principle of that software. Therefore, IPR helps in protection of these things under the IT sector.
- Trade secrets (or undisclosed information): - Another way of the Software protection is the trade secrets by provisions concerning the prevention of unfair competition and particularly on protection of undisclosed information envisaged in Chapter 5 of the Armenian Law on Protection of Economic Competition. Therefore, through the help of the trade secrets we can easily have protection of the IPR in the IT sector.
- Provide license: - Another important role of the IPR in the IT sector is that it helps to provide the license. On account that some domestic companies elaborate a new software through an investment in the existing program computer programs licensed by a customer

under contractual licenses, there may be some licensing or conditions which could restrain competition and may impede the development of domestic industries.

- Protection under domain name: - According to this IPR has also helped in the working of the domain names and their protections also. At present, most of the IT companies have registered their domain names on the internet which are intended to perform not only the technical functions facilitating the connectivity between computers through internet but to be used as the identifier of their activities, services and product during the advertisement through the Internet. However, because the domain name system is usually privately administrated by the non-government organizations without any functional limitation and any legislation adopted by the government of a country concerned, domain names have come into conflict with trademarks. Because of many unfair trade practices were developed and continued. Thus, to stop and provide protection we have the IPR which protects the domain names.
- Remuneration to the Authors: - According to this it is not just to protect the IP objects under the legal provisions. The incentive to create an IP original object will dry up, if the adequate remuneration is not paid to the real authors. The factor is very crucial in the age of globalization of economic activity and the increasing mobility of employment. Unfortunately, domestic IT companies in their contracts with employees don't provide any clauses concerning remunerations (royalties) due to genuine authors of IP creations.
- Developments of the IT Industries: - Talking about the IT Industries they play very important role in the developments of the IT industries and through the help of IPR laws and legislations the illegal things that are evolved in the IT sector or IT industries market are making hurdles or to illegal or unwanted benefits from these industries thus with the help of IPR everyone is provided a certain name and exclusive indemnity so that each industry can work best at their own individual level.

VI. PROTECTION OF IPR IN IT-SECTOR

These days technology has advanced so much that it helps in every fields and aspects or different kinds of working environment in the world. Therefore, we need to protect it and, we need to protect so many things which give the strength to this IT sector. Hence therefore IPR does play an important role in the field of the IT sector. Because IT sector is such a wide game and pool which includes many things thus these things are somewhere and somehow protected by the IPR that's why we need to protect to protect IPR in IT sector. Furthermore, there are following reason: -

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- The increased competitiveness of countries: - These emerging and continuous growing world is on a continuous race to become the best in the world. Every single country doing something in each individual level to accomplish their goals. That's why due to this the increased competitiveness of countries with the low labour costs and improved production and global advancement in the field of IT sector. These days like – America is focusing more on the elaboration of the economic policy oriented on the creation of high-value added intangible assets based on free thinking and creativeness of individuals.
- Substantial investment: - The Proper Protection of Intellectual Property Rights (IPR) may plays a crucial role in fostering the substantial investment in creativity and innovation and that will lead in turn to growth and increased competitiveness of IT industry. Thus, that's why we need to protect IPR in IT sector.
- Protect the Computer Programs: - As in most WTO (World Trade Organization) members countries as per accordance with the Article 10 of the agreement on Trade related aspects of Intellectual Property Rights (TRIPS) Article 10 of the American on copyrights and neighbouring rights stipulates that all kinds of programs (expressed in any programming language and form (including application programs, operation systems, source code and object code) shall be protected as literary works.
- Protection to Software Developers: - It goes without saying that the IT sector is developing so much the software sector is a very lively market with various new software introduced to public every day and any idea and principle developing for the new products and software constitute an important business elects for the software developers. The software developers not only want others from making verbatim copies of software but also as much of the innovation that goes into the software as possible. So, they resort the patent protection of the ideas and principles that underlined the elements of the computer software as they believe they would be better protected under the patent laws. Therefore, in short, we can say that Copyright will protect the expression of the software and the Patent law will protect the idea and principle of the software that will help the software developers in overall protection.

VII. GROWTH OF IT-SECTOR RESULTING IN NEED OF IPR

Intellectual property refers to an invention from the human intellect that is protected for the creator's use under the law as a patent, copyright, trademark, or trade secret. In the Information Age, intellectual property is the foundation that ensures future innovations make the leap from the drawing board to the marketplace, where they can be used to improve our

lives and tackle the challenges confronting our society.

- Innovation through patent reform: It's important for intellectual property rights to keep pace with recent advances and promote the creativity, investment, and address the risk involved in developing new technologies. However, out of control lawsuits by litigious non-practicing entities (NPEs) are exploiting shortcomings in patent laws against innovators and creators, siphoning billions of dollars from legitimate patent holders each year.
- Abusive patent litigation does more than cast an unwelcome shadow on our intellectual property system: It deters investment in jobs and new technologies and harms innovation. It is believed that Congress should act to ensure the continued success and viability of the patent system and prevent the waste and abuse caused by out of control litigation to help make India more competitive.
- Ensuring the spirit of innovation: In today's dynamic marketplace, a technology company success is highly dependent upon its innovations and competitive advantage, both of which are closely tied to the development and protection of trade secrets. When valuable intellectual property, particularly trade secrets, is stolen through cyber espionage or other means, it poses a serious economic security problem for technology companies and hurts the Indian economy. For that reason IT sector supports a strong, uniform standard to protect trade secrets that will encourage creativity and ensure that today's ideas will become tomorrow's revolutionary technology.

VIII. MAJOR ISSUES RELATED TO IPR IN INDIA

While the IPR system in India comprises of strong Intellectual Property laws but it has many loopholes as it lacks effective implementation, for which "least priority given to adjudication of IP matters" is often quoted as a reason. Major challenge is to inform the enforcement officials and the Judiciary to take up issues of Intellectual Property rights, at par with other economic offences, by bringing them under their policy locator. There are also many issues in having an Intellectual Property fund, which can be utilized for further developing the IP culture in the country. It is necessary to devise a National IP Policy for India, which will help in working towards realizing the vision of India in the area of Intellectual Property rights. This will enable the establishment of a strong socio-economic foundation and deep international trust.

In recent years, the issue of intellectual property rights protections is debatable among public policy approaches to issues in developing countries. The TRIPs agreement, implemented in 1993 among World Trade Organization member nations, sets minimum standards of

intellectual property rights protections and enforcement in many developing countries, with the threat of negative repercussions if these guidelines are not followed.

Since many decades, intellectual property law has developed legal rules that cautiously balance the above competing interests. The objective is to provide enough legal protection to maximize incentives to engage in creative and innovative activities while also providing rules and policies that minimize the effect on the commercial marketplace and minimize interference with the free flow of ideas generally. In short, the law has developed a careful balance between competing interests. It is observed that legislative enactments and judicial decisions have adopted an extensive view of intellectual property. The subject matter eligible for protection has continued to expand significantly in recent years. This expansion has removed the clear description between patent, copyright, and trademark law. It has also led to overprotection of intellectual property in the form of overlaps that allow multiple bodies of intellectual property law to concurrently protect the same subject matter. Such overlapping protection is difficult because it interferes with the carefully developed principles that have evolved over time to balance the private property rights in intellectual creations against public access to such creations.

Plagiarism is a major issue. It is the act of theft of another person's intellectual property which comprises of ideas, inventions, and original works of authorship, words, slogans, designs, proprietary information, and using them as own without giving credit to main author or inventor.

Today, digital technologies are major tools for creating and storing information for its speed and easy access. Intellectual property rights apply on the Internet but the main issue is to make them enforceable. The ease of reproducing works if they are in digital format is low-cost and there is a near-perfect quality of copies. Publishers argue that the Internet harms their intellectual property interests by fundamentally transforming the nature and means of publications and thus making their works extremely vulnerable to Internet piracy. The distributed nature of Internet's management makes it possible for any user to widely circulate a work on the electronic network termed as Cyberspace through any number of channels. A user can easily distribute a work to news groups through e-mail or on personal website. Intellectual Property Rights Law has presented problems for advanced technologies such as computer programmers. The law adopts that something is either in writing protectable through copyright or a machine protectable by a patent but not by both concurrently.

In Indian situation, Indian Copyright Act kept track of international conventions, the current

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copyright law has many deficits as compared to the west. As India did not sign the "WIPO Internet Treaties" there is no corresponding legislation in India to the US DMCA. The present Copyright Act of India does not have requirements regarding the 'technological protection measures' nor the protection of electronic rights management information. Some provisions of the Indian Penal Code, 1860 (IPC) may serve to provide for legal protection for technological measures. Section 23 of the IPC speaks of 'wrongful gain or wrongful loss'.

IX. CONCLUSION

In time being immensely antagonistic global economy, IPRs are providing companies the advancement and increasing their aggressiveness. With recent changes in IP laws, various IP related issues have hurdle up, which are exceptionally circuitous in nature. To abstract, the concept of 'Intellectual Property' includes the ingenious and erudite outputs of human such as novels, music, motion pictures and industrial designs that are used for commercial purposes. Intellectual property consists of original creations but the same creations are divided into two main categories. First is creations being used for industrial purposes, and second is creations that are copyrighted material. Industrial Property also covers patents or inventions, trademarks, industrial designs and geographical indications of source. Patents are rights that are granted exclusively for inventions pertaining to a product or a process. The unimportance of intellectual property in information and communication technologies seems to the reason for the rapid diffusion of the technology in developing countries. The technological progress in this field seems to be the result of technology push factors, rather than whether intellectual property protection is available or not or whether such intellectual property protection is strong or not. The rapid technological developments themselves are the reason why intellectual property may not be important. The other reason why intellectual property is not leading to any conflicts between developed and developing countries, seems to be the rather disinterest in technology transfer shown by the developing countries in this sector in recent times. The fact that intellectual property protection is not leading to a discernible rise in prices, while technological advances are resulting in falling prices, which in turn lead to imports and rapid diffusion of these technologies in developing countries makes these technologies very uncontroversial.

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