

The Judicial Dilemmas in Determining the “Constructive Knowledge” of the Crime of Assisting Information Network Criminal Activities and the Reconstruction of Relevant Rules

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Abstract

There are three dilemmas in the judicial determination of “presumed knowledge” in the crime of assisting information network criminal activity information: fragmentation of rules, local characterization, and technological alienation. With specific rules shining, the introduction of the Opinion is aimed at addressing these three predicaments, reconstructing the rules, unifying the rules, and eliminating some local differences. By comparing and quantifying cases in the Supreme People’s Court’s case library, this paper analyzes the role of the system of “objective behavior - subjective cognition - actor characteristics” constructed by it in achieving unified judgment. Opinions categorize objective behavior, subjective cognition and actor characteristics in major scenarios and refine specific rule scenarios by dividing technical elements into objective and subjective elements, which significantly narrows regional differences in adjudication, promotes the convergence of adjudication in technical cases, promotes the universality of functional specificity standards, and enhances the effectiveness of protection for special groups. Nevertheless, the reconfiguration of rules in Opinion still has limitations, and the ambiguity in the determination of the functional attributes of technical tools and the formalization of counterevidence review still restrict judicial rationality. The research suggests that the rules should be further improved in terms of legislation, interpretation and technology empowerment to achieve the dual goals of precisely cracking down on cybercrime and safeguarding the rights of the perpetrators.

Keywords

crime of helping information providers, presumed knowledge, judicial dilemma, rule reconfiguration, similar cases are judged the same

1. Introduction

As cybercrime has gradually shown an industrialized development trend in recent years, the crime of assisting information network criminal activities (referred to as “assisting information crime” (Lao, 2025) has gradually become an inevitable trend in combating chain crime. With respect to the regulated object of the crime of helping information networks, there are legislative views that the crime of helping information network criminal activities is directly criminalized and theoretical views that the crime of helping information network criminal activities is criminalized as a coconspirator. The reason for the long-standing dispute between the two may be the different views on the determination of the “criminalization of coconspirators” (Zhang,

2024).

The understanding and determination of subjective knowledge, especially the provision that uses the “presumed knowledge” of the accomplices as the basis for prosecution (Long and Hu, 2024), is another difficult problem in current judicial practice. The Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security issued the “Opinions on Issues Concerning the Handling of Criminal Cases Involving Assisting Information Network Criminal Activities, etc.” (hereinafter referred to as the “Opinions”) on July 28, 2025, which integrates the relevant provisions made by the Supreme People’s Court successively in 2022 regarding cases of illegal use of information networks, assisting information network criminal activities, and telecommunications and internet fraud. These include the “Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Telecommunication and internet Fraud (II)” jointly issued by the Supreme People’s Court, the Supreme People’s Procuratorate and the Ministry of Public Security (hereinafter referred to as the “Telecommunication Fraud Opinion (II)”), and the relevant provisions of the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Illegal Use of Information Networks and Assistance to Information Network Criminal Activities issued by the Supreme People’s Court and the Supreme People’s Procuratorate on October 9, 2020 (hereinafter referred to as the “Assistance Interpretation”). The “Opinions” of the Supreme People’s Court, the Supreme People’s Procuratorate and the Supreme People’s Procuratorate, on the one hand, add the “presumed knowledge” rule and set strict rules for the allocation of burden of proof for the determination of “presumed knowledge”; on the other hand, it has reasonably addressed the long-standing problem of different judgments for the same case. Taking the Supreme People’s Court database as an example, from 2023--2024, the proportion of conflicts in judgments caused by differences in application last year in cases of the “presumed knowledge” type among grassroots courts across the country has decreased significantly, indicating that the process of judicial unification has achieved results. This paper explores an optimized comprehensive determination system by empirically analyzing the judicial predicaments faced by courts before and after the promulgation of the Opinions and the actual rule-making effect of the new provisions, with the aim of achieving a balance between the rationalization of the judiciary and the technical complexity.

2. The three-dimensional dilemma of the same judgment in similar cases

Before the Opinions were issued, the determination of “presumed knowledge” in the crime of helping with information presented a conflict between fragmented rules, local characteristics and technological alienation, specifically manifested as a triple structural dilemma.

2.1 Regional differences in adjudication

One is manifested as rule fragmentation and proof of scale gaps. Article 6 of the “Implementation Measures of the Supreme People’s Court for the Unified Application of Law” (hereinafter referred to as the “Measures”) stipulates that in cases where “there is a lack of clear adjudication rules or no unified adjudication rules have been formed”, the presiding judge should conduct a search for similar cases. However, in practice, there are different views on the criteria for “similar case search”. Some courts only search for guiding cases and ignore the effective judgments of the Supreme People’s Court; some courts overemphasize local cases, and the results of similar case searches have difficulty conforming to the uniform national standards. As of July 28, 2025, the author, taking the “Faxin” big data search engine of the Supreme People’s Court as an example, entered “Crime of assisting information crime” on the homepage and went to the category of similar case search. If the full database was not purchased, the full text of the next level could not be viewed. Look at the directory on the left and then click on the “Provinces” column. Among all the provinces expanded by this category, there are 70 cases in 19 provinces except for one case of the Supreme People’s Court. In terms of the hierarchy of all the cases, except for one case from the Supreme People’s Court, there are seven cases from the Intermediate People’s Courts and 63 cases from the basic-level people’s courts. Regardless of the hierarchical results, in terms of economic geographical divisions, there are 13 cases in the Northeast Region, 15 cases in the East Region, 23 cases in the Central Region, and 19 cases in the West Region. From east to west, it increases slowly. When comparing Shanghai with Qinghai Province, a first-instance court in a criminal case in Shanghai held that selling a WeChat account to someone knowing that they were using the information network to commit a crime could be regarded as an act of “helping” in the crime of helping information. On the basis of the actual payment and settlement or communication transmission functions of WeChat accounts in telecommunications

network crimes, the corresponding standards for conviction and sentencing should be selected and applied within the scope of the unity of subjective and objective aspects. With the consent of the registrant or by registering a WeChat account and selling it to others, it usually does not constitute the crime of infringing upon citizens' personal information. When the sale of WeChat accounts constitutes the crime of helping with information, the number of accounts involved may be determined as a whole, in combination with the evidence in the file. The second-instance court of a certain criminal case in Qinghai Province held that the perpetrator, knowing that the act of creating a group might lead to fraud, still actively carried out the promotion for profit, which met the subjective elements of the crime of helping information. Knowing that others were committing cybercrimes, he still provided advertising promotion by means of telephone "diversion", and the circumstances were serious, constituting the crime of assisting information network criminal activities. The Shanghai interpretation is more detailed and includes a brief citation of reasoning.

In addition, the measures stipulate that the reports of similar case searches should be included in the subvolume of the case and be referred to as a standard for the application of uniform law in the deliberation of the collegial panel. However, it has been found that most judges have not recognized the importance of similar case searches, and their similar case search reports are merely going through motions and have not, to some extent, served to regulate discretionary power.

In practice, the understanding of "similar case search" is inconsistent. Some courts overly emphasize local cases, resulting in differentiated judgment standards, among which quantitative standards show obvious regional fragmentation characteristics. There are significant differences in the criteria for judging perjury as "obviously abnormal transaction price". In the eastern region, the standard is generally considered to be more than three times the market price as an obviously abnormal transaction price, and in the central and western regions, the standard is considered to be more than five times the obviously abnormal transaction price. This leads to a vast disparity in the handling of similar cases and a vast disparity between the offender and the nonoffender. It violates the principle of unity of the subjective and the objective. Even when two specific cases from western provinces are taken as examples, the gap is obvious. Shaanxi Province and Gansu Province were selected from the search results for comparison. In the case of the two geographically adjacent provinces, in the first instance criminal case of Gao Moumou and Meng Moumou in Shaanxi Province for the crimes of dangerous driving, infringing upon citizens' personal information, assisting in information network criminal activities, theft, theft, dangerous driving, and assisting in information network criminal activities, under circumstances where the defendant was driving under the influence of alcohol and the defendant claimed the advantage of guilty pleas and confessions, the court found the defendant Gao guilty of infringing upon citizens' personal information and sent him to seven months in prison and a fine of 2,000 yuan. He was convicted of assisting with information network criminal activities and sentenced to nine months in prison and a fine of 3,000 yuan. Convicted of dangerous driving and sentenced to one month of detention, convicted of theft and sentenced to four years and four months in prison and fined 8,000 yuan. The sentences were combined, and it was decided to serve five years in prison and a fine of 14,000 yuan. In the first criminal case of the crime of infringing upon citizens' personal information and the crime of assisting information network criminal activities in Gansu Province, the case features are particularly serious. The defendant Si Moumou was convicted of infringing upon citizens' personal information, sentenced to five years in prison and fined 1.5 million yuan. He was sentenced to ten months in prison and fined 20,000 yuan for the crime of assisting in information network criminal activities. The total number of sentences is five years and ten months, with a fine of 1.52 million yuan. It is decided to execute the sentence of five years and six months in prison, with a fine of 1.52 million yuan. There is an enormous disparity in the amounts sentenced. In terms of legal references, the first cites 14 articles of the Criminal Law of the People's Republic of China and the Criminal Procedure Law of the People's Republic of China, whereas the second cites 14 articles of the Criminal Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China, and the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China, including articles 449 and 445.

In addition, some courts have a serious tendency toward objective criminalization, such as simply using factors such as "frequent transfers" and "logins on multiple devices" as grounds to determine "evading supervision", ignoring the subjective awareness of the actors. This approach to adjudication is contrary to the spirit of Article 287-2 of the Criminal Law and requires the formulation of unified rules to correct it.

2.2 Technical scenario divergence

This is manifested as a systemic conflict in the application of criminal law. Currently, there are significant differences in the application of criminal law in supporting technical assistance cases, with two main points:

First, does the defense of “technological neutrality” hold true? In theory, it is believed that the defense should be examined and judged from both subjective and objective aspects: if there is a technical means for legitimate use, then the subjective cognitive state of the actor should be judged; if it is a technical tool that carries the danger of intrusion or destruction, the more serious charge should be chosen first.

Second, it should be noted that the crime of providing programs and tools for intruding into or illegally controlling computer information systems and the crime of helping information systems also present the problem of normative competition in technical assistance acts, as stipulated in Article 285 of the Criminal Law. In addition, in current judicial practice, there are differences in the characterization of the same technical act among courts in different regions. Such coincidental issues have already emerged in judicial practice, such as the case of Li Shaodong et al., who provided programs and tools for intruding into and illegally controlling computer information systems, which was attempted in 2018. Li Shaodong and Zhou Ni, the defendants in the case, were convicted and punished for “providing programs and tools for intruding into and illegally controlling computer information systems” during the process of selling “The Legend of the Condor Heroes” and “Sword of Destiny” games cheats others via the internet. This case shows that when technical tools also have a certain degree of intrusion or destructiveness, the provisions of Article 285 of the Criminal Law should be followed; that is, functionality should be used as the criterion for judgment first, and this also provides a good practical reference model for the functional exclusivity standard determined in the Opinion. Cases of game cheating, such as the “Li Shaodong case”, have the function of “avoiding security and technical protection measures of computer information systems” regardless of whether the running end is installed on the online game server or the local computer, which is recognized precisely as the standard of “intruding, controlling programs, tools”, as stipulated in Article 285 of the Criminal Law. Unlike the act of providing general assistance such as payment settlement and communication transmission for other cyber information criminal activities. Therefore, in regard to determining whether the perpetrator provided technical assistance or hid the seeds of evil in the technical tool, clarifying the functional attributes of the technical tool and then identifying the relationship of the same kind is the core element for solving the problem of competition and cooperation.

Opinion uses functional exclusivity lists such as virtual dialing software to ease the points of dispute but does not elaborate further on the application scenarios of new technologies such as AI and blockchain, which will also lead to a greater proportion of appeals in some technology-related cases.

2.3 Foreignization of counterevidence review

This is manifested in the institutional absence of protection for special groups. If the defendant’s counterevidence can prove that the charge against him is not valid, it directly affects the determination of guilt or innocence. In reality, courts vary greatly in their acceptance of counterevidence, such as the “defense of fraud”. Some courts will require documentary evidence from a third party to prove the possibility of fraud, whereas others will only require the submission of WeChat chat records as evidence of fraud. On the other hand, there is insufficient counterevidence bias protection for minors, which leads to omissions in subject determination.

3. Value of the Opinions

Although Article 11 of the Opinion provides leniency, there are still significant differences in the rates of prosecution among provinces; some groups, such as minors and students, have weak counterevidence capabilities but have not received the corresponding degree of attention. For example, in one case, a 17-year-old student was identified as “unaware of the purpose” simply because he provided his own bank card to transfer money to others, which shows the insufficiency of protection for special groups.

3.1 Core breakthroughs

The core breakthrough of Opinion is the three-dimensional reconstruction of the comprehensive recognition

system. The prerequisite is that the subjective cognitive status of network service providers must be carefully examined. In general, the subjective cognition of a network service provider should reach the level of definite intent, that is, knowing clearly that others will or are using the information network to commit criminal activities (Xiong and Huang, 2016). Opinion, in accordance with the principle of consistency between subjectivity and objectivity, builds a new comprehensive determination framework through the expansion of circumstances and the rule of counterevidence on the basis of element integration.

3.1.1 Systematic integration of subjective and objective elements

Opinion establishes a three-dimensional evaluation system of “objective behavior + subjective cognition + actor characteristics”. This system is fully reflected in typical cases of punishing activities that assist with information network crimes and related crimes released simultaneously with Opinions.

Table 1 Comprehensive Recognition Element System and its Proof Direction Table

Element types	Specific metrics	Demonstrative effect	Examples of evidence forms
Abnormal behavioral elements	Trading prices deviate from market levels	Suggesting an illegal trading purpose	Bank statements, price comparison appraisals
	Pay a high “expedited fee” “secrecy fee”	Reflecting an awareness of illegality	Communication records, transfer notes
	Deliberately circumventing the real-name system requirements	Show an intention to evade regulation	Account opening records, identity verification
Tools involve criminal elements	Provide number-changing software, dynamic IP tools	Prove the illegal use of the technology	Software functionality verification, operation manual
	Manage accounts using group control devices	Display large-scale illegal assistance	Equipment seizure list, operation log
	Preset anti-investigative rhetoric	Indicating criminal intent	Script text, training recordings
Main characteristic elements	Professional technicians involved	Presumption of higher duty of care	Professional qualifications, work experience
	Financial industry “insider” assistance	Strengthening breach of trust malice	Job credentials, internal regulations
	Minors and students involved in cases	It may reduce the determination of liability	Proof of age, school materials

For example, in Case One (Supreme People's Court, 2025), “Zhang Moumou assisting Information Network Criminal Activities Case”, Zhang Moumou, in collusion with others, jointly operated a “studio” and, for a long time, systematically engaged in the work of unblocking the QQ accounts that had been suspended for members of QQ groups that were online to engage in criminal activities. This was characterized by obvious “organization” and “sustainability”, and the service targets were the QQ groups involved in criminal activities. The subjective awareness was very clear. On this basis, the punishment for the organized and professional crime of helping information was severe and sentenced to one year and six months in prison.

In Case 2, “Deng Moumou, Wang Moumou assisting Information Network Criminal Activities, Huang Mou assisting Information Network Criminal Activities, infringing upon citizens’ Personal Information”, the defendants set up GOIP devices with functions such as remote control, remote dialing, and disguising incoming call numbers to provide communication transmission support for telecommunications network fraud. This act is a typical case of “providing a technical tool specifically designed to evade supervision”, with a very high “criminality of the tool”, and the perpetrator has a clear understanding of the use of the technology, constituting a typical situation of “presumed knowledge”.

In Case 3, “Xue assisting information network criminal activities”, the defendant Xue, as a staff member of a communication operator, took advantage of his position to illegally issue phone cards for others. His “subject nature”, that is, being an “insider” in the industry, directly presumed that he had a greater duty of care and awareness of the illegality of the act. The court, while imposing the sentence, lawfully declared a professional prohibition. This demonstrated a severe attitude toward criminal acts committed by taking advantage of professional convenience.

3.1.2 Rational expansion of presumptive circumstances

In the context of the typification of charges, the newly criminalized “Opinions” add presumed

circumstances such as “providing technical tools specifically designed to circumvent regulation”, “still providing accounts or technical support after restricted services”, “presetting anti-investigation rhetoric”, etc., to reduce discretionary space. In Case 4, “Wang et al. Concealing and Disguising the Proceeds of Crime”, the defendant transferred the proceeds of telecommunications and online fraud crimes for others through virtual currency transactions, which was highly concealed and was a typical case of “preconceived anti-investigation” and “evading supervision”. In this case, although Wang’s actions were treated as “the crime of concealing and disguising the proceeds of crime” in accordance with the judicial interpretation, the behavioral pattern was highly similar to the new type of credit assistance crime, and the need for the Opinion to expand the presumption of circumstances was also obvious; that is, the relevant provisions newly added in the Opinion need to be applied in practice to prevent the change and renewal of the perpetrator of such crimes.

3.1.3 Double counterevidence review mechanism

Note the combination of basic counterevidence and supplementary review. Opinion takes “basic counterevidence + supplementary review” as the main mode of proof and provides preferential protection to minors and student groups on this basis. A typical example is Case 7, “The case of Gao et al. assisting Information Network Criminal Activities”. In this case, Gu and Shi were both students, and Gu was a minor. Under the instructions of others, the two lent their bank cards to others for online fraud crimes. During the review, the procuratorial organs conducted in-depth interrogations, repeatedly verified the details of the criminal facts, and ascertained the objective background through inquiries. The procuratorial organs followed the principles of “education, persuasion and rescue” and informed Gu and Shi of their guilt and acceptance of punishment before the trial. Ultimately, the decision not to prosecute the two was made in accordance with the law, and through active communication with Gu’s school and family members, bad behavior was urged to be corrected and social relations repaired, achieving a unity of precise strikes and rights protection. This case corresponds to Case 6, “Zhu’s case of concealing and Covering up the Proceeds of Crime”, both of which reflect the correct application of the principle of proportionality between crime, responsibility and punishment and the criminal policy of leniency and severity in all aspects of cases involving “two cards” in accordance with the law.

3.2 Empirical Investigation and Analysis of the Effectiveness of Rule Reconstruction and Its Limitations

On the basis of the Supreme People’s Court case database, the effect of rule unification after the implementation of the Opinions can be examined.

3.2.1 The scale of regional judgments is approaching

Quantified standards can bridge certain gaps; comprehensive determination rules help to further reduce regional adjudication gaps. At present, courts in many places have been piloting a model of “three times market premium + comprehensive background review” to identify “abnormal transactions”, and the standards of adjudication have tended to be consistent. According to Article 10 of the Measures, for cases where the collegial panel intends to make a judgment that is inconsistent with the legal application standards for guiding cases or similar cases of the Supreme People’s Court, the collegial panel may suggest that it be discussed by a professional judges’ meeting, and this regulation is beginning to take effect. For example, when establishing the criteria for identifying “abnormal transactions”, courts in various regions, after examining the differences in sentencing range that led to inconsistent judgments on the crime of helping information in different regions, proposed reporting the “three times market premium + comprehensive background review” formed locally to the professional judges’ conference and, after discussion, formed this new standard for local trials to refer to.

3.2.2 Convergence of judgments in technical cases

The generalization of standards for functional specificity. The functional specificity standard is universal for technical assistance acts. The “Li Shaodong case” is a barometer, and the adjudication logic of this case—criminalizing on the basis of whether technical tools have “invasive” or “destructive” functions—has been strengthened and expanded since the release of the opinion. When cracking down on the sale of add-ons, hacking software and the like with explicit intrusive and controlling functions, most adjudicators use Article 285 of the Criminal Law for sentencing, and it does not conflict with the crime of helping information. Similarly, in technical cases, it is not uncommon for someone to be convicted and sentenced to provide

specialized tools such as number-changing software and dynamic IP services to the other party.

3.2.3 Effectiveness of protection for special groups

Counterevidence quantification of tilt. Opinion has played a real role in leniency policies for minors and students. For example, by 2025, the rate of nonprosecution for students will increase significantly, and the rate of acceptance of counterevidence will multiply. Some courts have accepted the defense of “being deceived” via indirect evidence such as WeChat chat records and part-time job advertisement pictures, as seen from the sentencing results of Gu and Shi in Case 7 and the connection between law enforcement and punishment for Zhu in Case 6. This shows that the tilted protection of counterevidence review has moved from paper to practice, with a significant increase in student nonprosecution rates and the rate of acceptance of counterevidence.

3.2.4 Limitations of the rules

Technological alienation and the continuation of the proof dilemma. Although the Opinions have shown initial results in promoting the same judgment in similar cases, the limitations of the rules remain. There are still differences in the determination of “fuzzy function” technical tools, such as VPNs, which have legal uses but are prone to abuse. In one case, the line between providing a VPN service for “accessing external academic resources” and “cross-border gambling” is hard to distinguish. In addition, some courts still have the problem of “forming over substance” when reviewing counterevidence. In one case, the defendant provided a “user agreement” defense, but the court rejected the counterevidence without examining the authenticity of the agreement.

4. Optimized paths and synergies for rule reconstruction

4.1 Legislative recommendations

Build a normative system of “summaries + examples”. It is suggested that judicial interpretations be used to clarify the “significantly minor circumstances” sentencing clause to reduce the “quantity-only” tendency. The Guidelines for the Determination of Technical Assistance Behavior should be formulated, a reference table for the technical function and subjective knowledge should be released, and technical experts should be involved in rule-making.

4.2 Suggestions for Interpretation

Element weights and the refinement of coin competition handling. According to Article 9 of the Measures, pending cases should be judged with reference to the key points of the guiding cases, and the corresponding case number should be cited in the reasoning of the judgment. Therefore, this is highly important for the determination of “presumed knowledge” in the crime of assisting with information crime. If the “objective act + subjective cognition” of a case is similar to that of the guiding case, the judgment logic of the guiding case can be directly applied during the trial, and there is no need to repeat the argument.

In addition, Article 8 stipulates that the collegial panel shall incorporate the search results of similar cases into the deliberation content, and when handling cases of the crime of helping information, a “comparison table of similar cases” shall be added to quantitatively analyze and identify the similarities assisting information network criminal activities to avoid duplicate evaluation. When dealing with issues similar to the sale of add-ons in the case of Li Shadong, it should be made clear that “functional identification” is a prerequisite, and the presumed knowledge of the crime of helping information networks should be applied only when the technical tool has no intrusion or control function but is closely related to information network crimes owing to the provision of technical assistance.

4.3 Technology Enabling

Intelligent support for similar cases. Article 15 of the Measures stipulates that the Supreme People’s Court shall establish a unified legal application platform and a unified legal application database; Article 16 requires the collection and organization of typical cases and their inclusion in the unified legal application database platform. In light of the complexity of the technology involved in the crime of helping with information, an

intelligent push system for similar cases of the crime of helping with information should be developed, and natural language processing technology should be used to extract keywords such as “virtual dialing software” and “defense of fraud” to precisely match the adjudication rules of similar cases.

At the same time, Article 13 of the Measures requires each judicial business department to strengthen judicial management and business guidance, and the application of the database of similar cases can be included in the performance assessment of judges to be truly implemented. For cases where a similar case search has not been conducted, the Trial Management Office may provide warnings through case quality review. An element weight model can be constructed, and machine learning techniques can be used to analyze the key elements of the judgment documents. The data barriers of a “similar case database + sentencing recommendation system” can be identified, and a “similar case database + sentencing recommendation system” platform can be built to provide intelligent services for similar case pushes, element comparisons and sentencing recommendations for similar cases.

5. Conclusion

Opinion has achieved the unification of the judgment criteria for the crime of helping information through the construction of a three-dimensional evaluation system, the expansion of the presumption situation, and the regulatory modification of counterevidence. The Li Shaodong case is a good precedent reference for how to define the crime of helping with information or the crime of providing intrusion, control program tools, etc., and is very worthy of reference and learning. Therefore, in future development, efforts should still be made to enhance the construction and improvement of legislation, judiciaries and technology and strive to achieve the unity of precise strikes and the protection of human rights. Future research could incorporate issues such as “dynamic identification of the functional attributes of technological tools” and “algorithmic ethics of intelligent adjudication systems” into the research scope, thereby providing better theoretical support for the rational treatment of technological complexity by the judiciary.

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