



U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2022-1]

Remitter Payment Options and Deposit Account Requirements

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding regulations related to remitter payments for Office services and requirements for maintaining a deposit account. Currently, payment options are addressed in various sections of Office regulations, and the method of payment accepted varies depending on the service provided. Additionally, payment methods currently referenced in the regulations may not necessarily reflect the types that the Office can accept or may choose to accept in the future. Amendments in this rulemaking are intended to consolidate regulatory provisions related to payment options and update regulations to articulate current Office practices. The Office also is proposing to simplify requirements for maintaining a deposit account and to clarify procedures related to noncompliant accounts. The Office invites public comments on this proposed rule.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: For reasons of governmental efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/rulemaking/remitterpaymentoptions>. If

electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at (202) 707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

A. Remitter Payments

The Copyright Act provides the Copyright Office with the authority to collect fees for its services, such as registration of a copyright claim and recordation of a transfer of copyright ownership.¹ General fee-setting authority is provided in 17 U.S.C. 708(a), which enumerates ten services for which fees shall be required, along with providing authority “to fix fees for other services.”² Several sections of the Copyright Act provide the Copyright Office with explicit authority to collect fees for services not listed in section 708(a), such as designating an agent to receive notifications of claimed infringement³ and filing a notice of intent to enforce a restored copyright.⁴ A number of other fees are set pursuant to the Copyright Office’s general regulatory authority, such as the fee for providing notice to libraries and archives of normal commercial exploitation or availability of a copyrighted work at a reasonable price under 17 U.S.C. 108(h)(2)(B).

The majority of regulations addressing payment methods accepted by the Copyright Office for the fees it charges appear in 37 CFR 201.6; a number of other provisions address payment methods for specific services. Some of the payment options vary depending on the service—for example, the Office accepts payment by “electronic

¹ 17 U.S.C. 708(a).

² *Id.*

³ 17 U.S.C. 512(c)(2).

⁴ *Id.* 104A(e)(1)(C).

funds transfer, credit or debit card, or deposit account” for online applications for registration,⁵ while it accepts payment by “money order, check, bank draft, deposit account,” and most major credit cards for registration of foreign works restored under 17 U.S.C. 104A.⁶ Some services may be paid for with cash (only in person); others may not.⁷ The different payment methods across provisions can lead to confusion if not spelled out in regulations.

As part of broader modernization efforts, the Office is reviewing its regulations and updating them where necessary to reflect current and anticipated practices.⁸ The Office is undertaking this rulemaking as part of those efforts, which the Office anticipates will result in an integrated, unified IT system for its services, including payment processing.

The Office issued a notification of inquiry (“NOI”) on Registration Modernization on October 17, 2018,⁹ that invited public comment on a number of issues concerning regulations and practices related to the registration of copyright claims. Among the questions, the Office asked whether it should eliminate “payment options via check or money order” for copyright registration applications.¹⁰ This proposed rule, in part, reflects feedback that the Office received from commenters regarding payment methods. As this notice of proposed rulemaking does not address every issue raised in that notification of inquiry or by commenters, the Office reserves judgment on any matters not expressly discussed herein; no inference should be drawn from the Office’s silence on any particular point. The comments received in response to the notification of inquiry that

⁵ 37 CFR 202.3(b)(2)(i)(C).

⁶ *Id.* 202.12(c).

⁷ Compare 37 CFR 201.6 with *id.* 201.33(e), 201.39(g), 202.12(c).

⁸ A list of all recent rulemakings can be found on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/>.

⁹ Registration Modernization, 83 FR 52336 (Oct. 17, 2018).

¹⁰ 83 FR at 52338.

were not addressed by this proposed rule will continue to be evaluated by the Office as system development progresses.

B. *Deposit Accounts*

The Copyright Office maintains a system of deposit accounts for frequent users of Office services. An individual or entity may establish a deposit account, make contributions to that account, and charge copyright fees against the balance instead of sending separate payments with applications and other requests for services. This process has been valued by deposit account holders, who have found it to be more efficient and less expensive than alternatives, and also to facilitate good record-keeping and accounting practices—for example, by allowing companies to track and attribute specific payments to specific projects and business units.

Although the Copyright Act does not require the Copyright Office to offer and maintain deposit accounts,¹¹ the Office has done so as a convenience to high-volume users of its services since 1910.¹² Under current regulations, deposit account holders are required to engage in a minimum of 12 transactions per year and maintain a minimum balance (no less than \$450) to hold a deposit account.¹³ In addition, the regulations direct the Office to close a deposit account if it is overdrawn twice within any 12-month period and offer deposit account holders the option of automatic replenishment of their account via bank account or credit card.¹⁴

¹¹ The Copyright Act does, however, authorize the Office to “request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the fees that, as determined by the Register, is not required to meet current Deposit Account demands.” 17 U.S.C. 708(d)(2).

¹² U.S. Copyright Office, *Rules and Regulations for the Registration of Claims to Copyright* at 16 (1910).

¹³ 37 CFR 201.6(b).

¹⁴ *Id.*

These existing administrative requirements were created through a final rule that went into effect May 1, 2011.¹⁵ The rule arose from a proceeding that the Copyright Office began on July 14, 2009, to solve problems associated with the suspension of paper registration applications for lack of deposit account funds.¹⁶ The Office had initially proposed to eliminate the ability to pay for paper applications using deposit accounts and to require deposit account holders to file their applications electronically.¹⁷ After considering public comments on the proposal, the Office “was persuaded that mandatory electronic application was not the most appropriate solution to its problem of underfunded paper applications.”¹⁸ The Office explored other options for addressing this problem and subsequently proposed the above account-maintenance requirements.¹⁹ Following favorable public comments, the Office promulgated the current regulations.²⁰

The Copyright Office more recently has been reviewing its deposit account regulations as part of its broader modernization efforts.²¹ In May 2017, as part of those efforts, the Office sought comments on recordation modernization and solicited public comments on “whether or not to continue allowing remitters to pay through deposit accounts . . . including whether potential users of deposit accounts would be willing to pay a surcharge for the development and maintenance of an automated deposit account system.”²² All respondents opposed the elimination of deposit accounts.²³

¹⁵ Administration of Copyright Office Deposit Accounts, 76 FR 9229 (Feb. 17, 2011).

¹⁶ 76 FR at 9229.

¹⁷ *Id.* at 9230 (citing 74 FR 33930 (July 14, 2009)).

¹⁸ *Id.*

¹⁹ *Id.* (citing 75 FR 62345 (Oct. 8, 2010)).

²⁰ *Id.*

²¹ For more information on the Office’s modernization efforts generally, see <https://www.copyright.gov/copyright-modernization/>.

²² Modernizing Copyright Recordation, 82 FR 22771 (May 18, 2017).

²³ See Ent. Software Ass’n Modernizing Copyright Recordation Comments at 6–7; Software and Info. Ass’n of Am. Modernizing Copyright Recordation Comments at 2; Motion Picture Ass’n of Am. Modernizing Copyright Recordation Comments at 2–3; Author Services Modernizing Copyright Recordation Comments at 2; Copyright All. Modernizing Copyright Recordation Comments at 2; Am. Ass’n of Indep. Music, Recording Indus. Ass’n of Am., & Nat’l Music

In October 2018, the Copyright Office sought public comment on issues related to modernization of the registration system.²⁴ Although the October 17, 2018, NOI did not expressly mention deposit accounts, it sought comment on whether the Office should eliminate “payment options via check or money order.”²⁵ In answering that question, several respondents reiterated support for deposit accounts.²⁶

Through its review, the Office has identified several areas where the current regulations could be improved. As a threshold matter, the Office recognizes that many stakeholders benefit from the ability to maintain deposit accounts, and the Office continues to support their availability.²⁷ The intent of this proceeding is to ensure that the Office is able to continue to provide deposit accounts in an efficient and cost-effective manner that aligns with user expectations, the overall operations of the Office, and the broader goals of the copyright system.

First, although the regulations prescribe minimum transaction and balance requirements, they do not prescribe any procedure for addressing noncompliant deposit accounts. The Copyright Office has periodically reviewed existing deposit accounts for noncompliance and has an internal procedure for closing noncompliant deposit accounts.

Publishers’ Ass’n Modernizing Copyright Recordation Comments at 3–4; Intell. Prop. Owners Ass’n Modernizing Copyright Recordation Comments at 2. Comments are available at <https://copyright.gov/rulemaking/recordation-modernization/>.

²⁴ Registration Modernization, 83 FR 52336 (Oct. 17, 2018).

²⁵ 83 FR at 52338.

²⁶ See Am. Intell. Prop. Law Ass’n Registration Modernization 2018 NOI Comments at 2; Copyright All. Registration Modernization 2018 NOI Comments at 8; Int’l Trademark Ass’n Registration Modernization 2018 NOI Comments at 3–4; Motion Picture Ass’n of Am. Registration Modernization 2018 NOI Comments at 4; Nat’l Music Publishers’ Ass’n Registration Modernization 2018 NOI Comments at 6–7; Shaftel & Schmeltzer Registration Modernization 2018 NOI Comments at 4. Comments are available at <https://copyright.gov/rulemaking/reg-modernization/>.

²⁷ See Administration of Copyright Office Deposit Accounts, 76 FR 9229, 9231 (Feb. 17, 2011) (“[T]he Copyright Office acknowledged in its October 8, 2010 notice that Deposit Accounts remain a useful and efficient option for copyright owners who frequently use its services, including, but not limited to, registration, and announced that it will continue to offer Deposit Accounts for the foreseeable future, reserving its prerogative to revisit the question of their utility and cost to the Office at a later time.”).

The process is designed to provide clear notice to noncompliant deposit account holders and an opportunity to cure within a reasonable time period. Communicating a process through regulations would increase transparency, clarity, and certainty.

Second, the establishment and maintenance of deposit accounts create costs to the Copyright Office above other payment methods. These costs include staff time to establish, maintain, and reconcile accounts and invest excess balances, as well as developing and sustaining internal controls necessary to manage unused deposit account balances (which the Office must hold as a fiduciary for deposit account holders until they use the funds or the Office refunds them).

The Copyright Office previously proposed establishing fees in connection with the creation and maintenance of deposit accounts,²⁸ though it ultimately decided against doing so. In 1994, the Office, after noting that “the Copyright Office deposit account system involves substantial benefits to the depositors and substantial costs to the Copyright Office,” proposed a fee of \$50 to open a deposit account and an annual maintenance fee of \$50 (the average cost of providing the service at the time).²⁹ Along with the fees, the Office proposed eliminating the minimum 12 transactions per year requirement.³⁰ The Office subsequently abandoned implementing any fees following public comment.³¹ The Office maintained that position again in 1998, as part of a general fee rulemaking, explaining that “the use of deposit accounts is beneficial both to the holder and the Office.”³²

²⁸ Fees, 59 FR 38369, 38371 (July 28, 1994).

²⁹ 59 FR at 38400.

³⁰ *Id.* at 38401.

³¹ Fees, 63 FR 15802, 15803 (Apr. 1, 1998) (noting that, based on the comments received in response to the fees proposed in 1994, see 59 FR at 38400, “the Office decided not to move forward with any charges” for maintaining deposit accounts).

³² 63 FR at 15803.

Third, the current deposit account regulations allow for automatic replenishment of funds and state that a deposit account that was closed due to a second overdraft within a 12-month period “can be re-opened only if the holder elects to fund it through automatic replenishment.”³³ But the Copyright Office does not have the practical ability to accept automatic replenishment, either as a convenience for replenishment or as a means for re-opening a closed account, via the most-commonly used payment methods. Pay.gov—a U.S. Treasury Department system for secure processing of payments to federal government agencies that the Office uses to administer payment for electronic services—currently only allows automatic payments via ACH; it does not permit automatic payments to be made by other payment methods, such as credit cards. Accordingly, the regulations need to be revised to reflect current Office capabilities.

II. Proposed Rule

Having carefully considered the above issues, including relevant public comments in prior proceedings, the Copyright Office now issues a proposed rule amending its regulations regarding remitter payments and deposit accounts and invites further public comment on any aspects of the amended rules.

A. Remitter Payments

The Copyright Office proposes amending its regulations governing remitter payments as follows. First, the Office proposes to consolidate all regulations related to the types of payment methods it will accept for services into a single set of provisions. This will ensure accuracy and consistency in payment methods across the Office’s services, particularly as the Office moves to an integrated enterprise IT system.³⁴ The rule enumerates the payment methods accepted for three different avenues: electronic

³³ 37 CFR 201.6(b)(2).

³⁴ Library of Congress & U.S. Copyright Office, *Modified U.S. Copyright Office Provisional IT Modernization Plan* at 7 (Sept. 1, 2017), <http://www.copyright.gov/reports/itplan/modifiedmodernization-plan.pdf>.

payments, mailed payments, and payments provided in person at the Office's Public Information Office. Electronic payments must be made through Pay.gov, which accepts most common types of electronic payment methods. For mailed payments, the Office will only accept checks or money orders. The Office will accept checks, money orders, credit card, debit card, and currency for services requested in person, along with electronic payments made via Pay.gov if done by appointment at the Public Information Office kiosk.

Although cash transactions are the costliest transactions to process, the Copyright Office notes that, prior to the pandemic-related suspension of in-person services,³⁵ the Public Information Office received a not insignificant volume of cash payments,³⁶ and that eliminating the acceptance of cash might limit access to Office services for some individuals. The Office will continue to explore ways to ensure the widest accessibility of its services while exercising fiscal responsibility, including the possibility of adding a surcharge to cash payments to offset their processing costs and incentivizing payment through less expensive methods.³⁷

B. Deposit Accounts

The Copyright Office proposes simplifying requirements to maintain a deposit account and identifying in regulations the deposit account closure procedures. First, the Office proposes that a deposit account holder no longer be required to engage in a minimum number of transactions per year. The Office proposes to eliminate this requirement for several reasons. For one, as noted above, the rationale that led to the creation of the minimum-transactions requirement—that without a minimum-transaction

³⁵ See Operations Updates During the COVID-19 Pandemic, U.S. Copyright Office, <https://www.copyright.gov/coronavirus/>.

³⁶ These amounts were \$9,154.66 in 2018 and \$6,498.30 in 2019.

³⁷ The Office already has a model for this: fees for registration applications submitted via paper are higher than the fees for electronic applications. See 37 CFR 201.3.

requirement deposit account holders would neglect account balances and leave “insufficient funds to process a paper application”³⁸—has lessened. The percentage of service requests the Office receives by paper, as opposed to electronically, has declined significantly since the requirement was created and is expected to continue to drop;³⁹ a lower proportion of paper applications reduces the likelihood of deposit account holders overdrawing because the Office’s electronic system will not process a request if a deposit account lacks sufficient funds. Additionally, the imposition of a service charge for a deposit account that falls below the minimum balance, as discussed below, will create additional incentives for deposit account holders to maintain sufficient funds for service requests. Finally, the costs associated with monitoring transaction numbers outweigh any benefit the minimum-transaction requirement provides in reducing overdrafts. For deposit account holders, the elimination of the minimum-transaction requirement should ease their own regulatory burdens.

Second, the Copyright Office proposes imposing a service charge of \$25 for each month a deposit account balance is below \$450.⁴⁰ As pointed out above, this will incentivize deposit account holders to maintain sufficient funds in deposit accounts to avoid overdrafts. The Office notes that the U.S. Patent and Trademark Office currently imposes a similar service charge in connection with its deposit accounts.⁴¹ The Copyright Office will not assess the service charge until the last day of the first full calendar month

³⁸ 76 FR at 9229.

³⁹ In the fourth quarter of FY2011, paper registration applications amounted to about 16% of all applications. *See Annual Report of the Register of Copyrights, Fiscal Year Ending September 30, 2011*, at 22. Currently, they amount to less than 1% of all applications. *See* Registration Processing Times, U.S. Copyright Office, <https://www.copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited Jan. 4, 2022).

⁴⁰ Deposit Account balances will be reviewed and recorded at the end of the final day of each month.

⁴¹ *See* 37 CFR 2.6(b)(11); *see also* Deposit Account Rules and Information, U.S. Patent and Trademark Office, <https://www.uspto.gov/learning-and-resources/fees-and-payment/deposit-account-rules-and-information> (last visited Jan. 4, 2022).

in which the account balance remains below the minimum balance in order to provide deposit account holders with sufficient opportunity to replenish the account before incurring the charge, and an account with less than \$25 at the end of a month will be inactivated by the Office rather than incur the service charge.

Third, the proposed rules provide for the inactivation of accounts in two circumstances. One is when an account has had no activity for 24 months. Though the Office proposes to eliminate the minimum-transactions requirement, providing for inactivation when an account goes unused for such a prolonged period will reduce the costs associated with maintaining unused accounts. The other circumstance is after several unsuccessful attempts to contact the deposit account holder. Undeliverable accounts create burdens for the Copyright Office, and these procedures will alleviate them.

Fourth, the rules spell out the Copyright Office's procedures for closing noncompliant deposit accounts, including the circumstances for closure and the process for returning any remaining funds to the deposit account holder. Currently, the Office's closure procedures are not explicitly set out in regulations. Adding them will provide additional transparency, clarity, and certainty regarding Office deposit account policies.

Finally, the Copyright Office is eliminating references to automatic replenishment of deposit accounts. At this time, Pay.gov lacks the ability to provide such automatic replenishment.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 202

Preregistration and registration of claims to copyright.

For reasons stated in the preamble, the Copyright Office proposes to amend 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.3 by redesignating paragraphs (d)(2) through (17) as paragraphs (d)(3) through (18), respectively, and adding new paragraph (d)(2).

The addition reads as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * *

(d) * *

Registration, recordation and related services							Fees
							(\$)
* * * *							
(2) Service charge for each month when the deposit account balance at the end of the month is below \$450							25
* * * *							

3. Amend § 201.6 by revising paragraphs (a) and (b) to read as follows:

§ 201.6 Payment and refund of Copyright Office fees.

(a) *In general.*(1) *Electronic payments.* All fees for online applications and services must be paid by electronic payment through Pay.gov.

(2) *Mailed payments.* All fees mailed to the Copyright Office should be in the form of a money order or check payable to the U.S. Copyright Office. Currency will not be accepted; any payment received in currency will be refunded via check, and the

registration or other service request will not be processed. Where the statutory fee is submitted in the form of a check, the registration of the copyright claim or other record made by the Office is provisional until payment in money is received. In the event the fee is not paid, the registration or other record shall be expunged.

(3) *In-person payments.* All fees for services rendered in person at the Copyright Office Public Information Office must be paid by cash, money order, check, or credit or debit card.

(4) *Foreign remittances.* Foreign remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. Postal money orders that are negotiable only at a post office are not acceptable. International checks and money orders must be drawn from a United States bank and payable in United States dollars for the full amount of the fee required. Uncertified checks are accepted subject to collection.

(5) *Other.* In addition to the payment options in paragraphs (a)(1) through(3) of this section, payment for any application or service can be made using a Copyright Office deposit account.

(b) *Deposit accounts.*(1) *Establishment.* Persons or firms may prepay copyright expenses by establishing a deposit account.

(2) *Service charge.* The service charge prescribed at § 201.3(d)(2) is assessed at the end of the first full calendar month after a deposit account balance falls below the minimum balance requirement.

(3) *Contact information.*(i) Deposit account holders are responsible for keeping contact information with the Copyright Office current.

(ii) If the Copyright Office is unable to correspond with the deposit account holder (e.g., due to returned/undeliverable postal or e-mail), the Office will deem the deposit account undeliverable.

(iii) Undeliverable deposit accounts will continue to be charged the fee prescribed at § 201.3(d)(2) at the end of each month if the account balance remains below \$450 throughout that period.

(4) *Inactivation.*(i) The Copyright Office will inactivate a deposit account if there has been no activity in the account for 24 months.

(ii) The Copyright Office will inactivate a deposit account if the deposit account holder overdraws his or her account.

(iii) The Copyright Office will inactivate a deposit account that has insufficient funds at the end of the month to pay the service charge for maintaining a deposit account with an account balance below \$450.

(5) *Closure.*(i) An inactive deposit account will be closed no sooner than 30 days from the date of inactivation if insufficient funds to pay the service charge remain in the deposit account or if the service charge for maintaining a deposit account with an account balance below \$450 at the end of the month has not been paid.

(ii) The Copyright Office may permanently close a deposit account if the deposit account holder overdraws his or her account twice in any calendar year.

(iii) An undeliverable deposit account will be closed after the Copyright Office has made at least three unsuccessful attempts, including at least one attempt by phone if a deposit account holder provided a telephone number, to correspond with the deposit account holder. Attempts at corresponding with the deposit account holder may be considered unsuccessful if the postal or e-mail correspondence is returned as undeliverable.

(iv) Any funds remaining in a closed deposit account will be applied to any pending or processed service request(s) for which payment is due. If there are insufficient funds to cover the total of all fees due for any service, the service request(s) will not be processed.

(v) Any balance remaining in a closed deposit account will be refunded to the account holder in accordance with Copyright Office policies. Unredeemed refunds will be handled in accordance with Library of Congress and U.S. Treasury rules and policies.

(vi) The Copyright Office may refer any overdraft in a closed deposit account for collections.

(6) *Further information.* For information on deposit accounts, see Circular 5 on the Copyright Office's website, or request a copy at the address specified in § 201.1(b).

* * * * *

5. Amend § 201.33 by revising paragraph (e) to read as follows:

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

* * * * *

(e) Fee. The filing fee for recording Notices of Intent to Enforce is prescribed in § 201.3(c).

* * * * *

§ 201.39 [Amended]

6. Remove § 201.39(g)(3).

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

7. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.3 [Amended]

8. Amend § 202.3 by removing (b)(2)(i)(C) and redesignating paragraph (b)(2)(i)(D) as (b)(2)(i)(C).

9. Amend § 202.12 by revising paragraph (c)(2) to read as follows:

§ 202.12 Restored copyrights.

* * * *

(c) * *

(2) Fee. The filing fee for registering a copyright claim in a restored work is prescribed in § 201.3(c) of this chapter.

* * *

10. Amend § 202.16 by revising paragraph (c)(5) to read as follows:

§ 202.16 Preregistration of copyrights.

* * *

(c) * *

(5) *Fee*. The filing fee for preregistration is prescribed in § 201.3(c).

* * *

11. Amend § 202.23 by revising paragraph (e)(2) to read as follows:

§ 202.23 Full term retention of copyright deposits.

* * *

(e) * *

(2) Payment in the amount prescribed in § 201.3(d) of this chapter payable to the U.S.

Copyright Office, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full-term retention has been granted for a particular copyright deposit.

* * *

Dated: January 24, 2022.

Kimberley Isbell,

Acting General Counsel and

Associate Register of Copyrights.

[BILLING CODE 1410-30-P]

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