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REGARDING THE STATE OF CYBERCRIME PREVENTION IN UKRAINE: PROBLEMS OF FORMATION OF OFFICIAL STATISTICS

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The article analyzes the types, forms, and content of statistical reporting reflecting the state and structure of cybercrime in Ukraine. It is noted that there is currently no clear definition of the concept of cybercrime in domestic legislation. Among scientists and practitioners, there is also no single approach to delineating the grounds for classifying illegal acts as such crimes. At the same time, such uncertainty has a negative impact on the effectiveness of countering cybercrime in Ukraine. The purpose of the article is a systematic analysis of available state statistical data related to cybercrime, persons who have committed cybercrime, and other data reflected in various sources; an assessment of the structure and content of such data and the possibilities of their use for the prevention and counteraction of cybercrime; coverage of problematic issues related to the formation of official statistical reporting on recorded cybercrimes. On the basis of official state statistical reporting prepared by the Office of the Prosecutor General of Ukraine and the State Judicial Administration of Ukraine, it is possible to analyze a small group of criminal offenses, namely, those provided for by the articles of Chapter XVI of the Criminal Code of Ukraine.

Some of the «traditional crimes» that fall under the concept of cybercrime are reflected in the departmental statistical reporting of the National Police of Ukraine, but it does not cover all cybercrimes and, of course, takes into account only those that are under the jurisdiction of the National Police of Ukraine. It was concluded that there is no official state statistical reporting on cybercrime in Ukraine. Considering the high latency of this type of criminal offense, it can be stated that it is impossible to conduct an analysis that would fully and reliably reflect the state of cybercrime in Ukraine.

Keywords: *cybercrime, latent cybercrime, analysis of the state of cybercrime, statistical reports.*

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1. Вступ

The practical activity of law enforcement agencies is determined by the current criminal situation, which affects both the adoption of specific management decisions and the coordination of available forces and means. In this regard, it is always relevant for law enforcement agencies to analyze the current state of crime and the dynamics of its changes. This, of course, also applies to countering crime in cyberspace, which is currently developing quite dynamically. There is currently no clear definition of the concept of cybercrime in domestic legislation. Among scientists and practitioners, there is also no unified approach to delineating the grounds for classifying illegal acts as such crimes, there is no list of "traditional" crimes that can be classified as cybercrimes, and therefore there is no official statistical reporting on recorded cybercrimes. This negatively affects the ability to prevent these crimes, causing difficulties in the fight against cybercrime. The analysis of such statistical reporting would provide an opportunity to analyze the state of the criminogenic situation in this area on the basis of recorded crimes and to develop on their basis organisational and legal measures for more effective counteraction of cybercrime at the national level [1,2].

2. Literary review

According to experts' research, there is currently no relevant statistical data reflecting the actual state of cybercrime, nor are there reliable methods for collecting such data. The estimates of damages caused by cybercrime remain quite approximate. M.V. Hutsalyuk (2021) also acknowledges the existence of this problem and addresses it in his work: "Criminal Opportunism of Cybercrime as a Threat to the National Security of Ukraine." Taran O.V., Havlovsky V.D. (2021) indicate that the issue is not only due to

the lack of alignment in the national criminal legislation among countries in combating cybercrime and the diverse practices of its application but also to the differences in the formation of criminal statistics and the peculiarities of the law enforcement system. "Organized Cybercrime in Ukraine: Problems of Official Statistics Formation and Analysis" [3]. Additionally, considering that a significant portion of cybercrimes fall outside the purview of official statistics, the issue of latent cybercrime in Ukraine becomes pertinent (Kovalchuk A. Yu., Havlovsky V. D. (2022)).

The analysis of the official state statistical reporting on the fight against crime in Ukraine, which is prepared by the Office of the Prosecutor General of Ukraine and the State Judicial Administration of Ukraine, shows that there are no statistics in Ukraine today that fully and reliably reflect the state of cybercrime [4].

3. The Purpose and Objectives of the Research

The purpose of this article is to conduct a systematic analysis of available government statistical data related to cybercrime, individuals involved in cybercrimes, and other data reflected in various sources. In order to achieve the set goal, the following objectives are pursued:

1. Determine the peculiarities of the established definition of "cybercrime" and outline the list of criminal actions that fall under cybercrimes.
2. Identify the characteristics of this crime and their consideration to formulate recommendations regarding their potential use for prevention and counteraction against the defined crime.
3. Evaluate problematic issues concerning the formation of official statistical reporting on recorded cybercrimes.

4. Materials and Methods

For the effective conduct of scientific inquiry, a range of general scientific and specialized methods of cognition were employed. The dialectical method was applied to determine the characteristics of crimes falling under the category of cybercrimes. The theoretical approach was utilized to study scientific and journalistic sources. The analytical and comparative methods were employed to assess the impact of legal definition on the formation of a comprehensive set of measures to counter cybercrime. Additionally, the application of statistical and systemic methods allowed for identifying actual gaps in the formation of statistical indicators, consequently leading to negative outcomes in shaping the complex of measures to counter cybercrime.

5. Results

As a result, it has been established that the lack of clear formulation and legal definition of the concept of cybercrime negatively affects the completeness of accounting for this type of crime. Consequently, the discrepancy between the statistics and the actual demands for ensuring cybersecurity has a negative impact on overall security provision.

At the same time, insufficient attention is paid to the problems of cybercrime analysis, in particular in the part of official statistics. In addition, taking into account the fact that a significant part of cybercrimes is outside the bounds of statistics, the problem of latent cybercrime in Ukraine is actualized.

In Ukraine, only 12 years after the ratification of the Cybercrime on Convention [5], the term "cybercrime" was defined at the legislative level. In the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine", these terms are defined as follows: "Cybercrime (computer crime) - a socially dangerous criminal act in cyberspace and/or with its use, responsibility for which is provided by the Law of Ukraine on Criminal Liability and/ or which is recognized as a crime by international treaties of Ukraine. Cybercrime is a collection of cybercrimes [5]. However, today there are no recommendations, or instructions on classifying criminal offences committed in cyberspace as cybercrimes. Among scientists and practitioners, there is no unified opinion on this matter, and therefore there is no unified approach to delineating the grounds for classifying illegal acts as such crimes. And if there is no clear understanding or list of these crimes, then of course it is impossible to obtain objective statistical data on cybercrimes.

It is worth pointing out that most researchers who study the problem of cybercrime propose to divide cybercrimes into types depending on the object and subject of the offence: new crimes made possible thanks to the latest computer technologies (crimes provided for by Chapter XVI of the Criminal Code of Ukraine); traditional crimes committed with the help of computer technology and the Internet, that is, committed in cyberspace.

And suppose the basis of the first group of cybercrimes is the criminal offences provided for by the articles of Chapter XVI of the Criminal Code of Ukraine (Criminal offences in the field of use of electronic computing machines (computers), systems and computer networks and telecommunications networks) and Art. 376-1 of the Criminal Code of Ukraine (illegal interference in the operation of automated systems in bodies and institutions of the justice system). In that case, the crimes that should be

classified under the second part are not fully defined. And there is no official state statistical reporting on these crimes.

Individual indicators of such criminal offenses are reflected in the departmental statistical reporting of the National Police of Ukraine, in particular in the Report on the results of the work of the units of the National Police of Ukraine (in the Chapter «Information on criminal offenses committed with the use of high information technologies Crimes in the field of high information technologies can be defined as socially dangerous acts (actions or inaction) committed deliberately or out of carelessness, which encroach on relations in the field of information processing in electronic computing machines (computers), automated systems, computer networks, provision and receipt of telecommunication services, electronic payments, including detection and follow-up of such offenses by employees of cyber police units», where, in addition to the crimes outlined in the articles of Chapter XVI of the Criminal Code of Ukraine, a number of those committed with the use of electronic computing equipment, provided for in Articles 176 "Infringements of Copyright and Related Rights" and 185 "Theft", Part 3 and 4 of Article 190 "Fraud", Article 200 "Illegal actions with transfer documents, payment cards and other means of access to bank accounts, electronic money, equipment for their production", Article 229 "Illegal use of a mark for goods and services, brand name, qualified indication of the origin of goods" and 231 "Illegal collection for the purpose of use or use of information constituting a commercial or banking secret", part. 3, 4, and 5 Art. 301 "Import, manufacture, sale and distribution of pornographic objects" of the Criminal Code of Ukraine. Recently, this list of crimes was supplemented by the following articles: Art. 120 "Incitement to suicide", 149 "Trafficking in human beings", Art. 156 "Depravation of minors", Art. 156-1 "Harassment of a child for sexual purposes", Part 1, 2 of Art. 190 "Fraud", Art. 191 "Appropriation, embezzlement of property or possession of it by abuse of official position", Art. 203-2 "Illegal activity of organizing or holding gambling games, lotteries", Art. 301-1 "Obtaining access to child pornography, its acquisition, storage, importation, transportation or other movement, production, sale and distribution", Art. 301-2 "Conducting a spectacular event of a sexual nature with the participation of a minor", Art. 307 "Illegal production, manufacture, acquisition, storage, transportation, forwarding or sale of narcotic drugs, psychotropic substances or their analogues", Art. 321 "Illegal production, manufacturing, acquisition, transportation, forwarding, storage for the purpose of sale or sale of poisonous or potent substances or poisonous or potent drugs", Art. 321-1 "Falsification of medicinal products or circulation of falsified medicinal products", Art. 357 "Stealing, misappropriating, extorting documents, stamps, seals, taking possession of them through fraud or abuse of official position, or their damage", Art. 358 "Forgery of documents, seals, stamps and forms, sale or use of forged documents, seals, stamps."

But not all "traditional" crimes committed in cyberspace are reflected in the report as a cybercrime, in particular, the objective side, subject, subjective side, qualified and especially qualified composition of the crime provided for in Art. 301 of the Criminal Code of Ukraine, in general, coincides with the corresponding signs of encroachment, the subject of which are works promoting the cult of violence and cruelty (Article 300 of the Criminal Code of Ukraine). At the same time, the criminal offenses provided for in Art. 301 of the Criminal Code of Ukraine, committed with the use of high information technologies, are taken into account in the report, and provided by Art. 300 of the Criminal Code of Ukraine are not taken into account.

At the same time, some scientists, in particular Doctor of Laws, Professor A.V. Savchenko, believe that, in addition to the criminal offenses specified in the above-mentioned report, the category of cyber-crimes may also include other crimes provided for by the Criminal Code of Ukraine (some of them are assigned to the jurisdiction of other pretrial investigation bodies), provided that *the tools* of their perpetration will be information network technologies and (or) their consequences will be reflected in cyberspace [6].

Such crimes include: actions aimed at violently changing or overthrowing the constitutional order or seizing state power (Article 109 of the Criminal Code of Ukraine); encroachment on the territorial integrity and inviolability of Ukraine (Article 110); high treason (Article 111); sabotage (Article 113); espionage (Article 114); disclosure of information on conducting a medical examination to detect infection with the human immunodeficiency virus or other incurable infectious diseases (Article 132); illegal disclosure of medical secrets (Article 145); providing false information to the body maintaining the State Register of Voters or falsifying election documents, referendum documents, voting results, or information from the State Register of Voters (in terms of entering false information into the database of the State Register of Voters, unauthorized interference in the operation of the database) (Part 1 of Article 158); violation of the secrecy of voting (Article 159); violation of the equality of citizens depending on their race, nationality, religious beliefs, disability, and on other grounds (in terms of propaganda via the Internet) (Article 161); violation of the secrecy of correspondence, telephone conversations, telegraphic or other correspondence transmitted by means of communication or through a computer (Article 163); disclosure of the secret of adoption (Article 168); violation of privacy (Article 182); disclosure of commercial or banking secrets (Article 232); a knowingly false report about a threat to the safety of citizens, destruction or damage to property (Article 259); illegal handling of weapons, munitions or explosives (*in terms of sales via the Internet*) (Article 263); calls to commit actions that threaten public order (Article 295); importing, producing, or distributing works that promote the cult of violence and cruelty, racial, national, or

religious intolerance and discrimination (Article 300); pimping or involving a person in prostitution (Article 303); illegal production, manufacture, acquisition, storage, transportation, forwarding, or sale of narcotic drugs, psychotropic substances, or their analogues (Article 307); abduction, embezzlement, extortion of precursors or possession of them through fraud or abuse of official position (*in terms of sales via the Internet*) (Article 312); theft, appropriation, extortion of equipment intended for the production of narcotic drugs, psychotropic substances, or their analogues, or taking possession of it through fraud or abuse of official position, and other illegal actions with such equipment (*in terms of sales via the Internet*) (Art. 313); disclosure of state secrets (Article 328); the transfer or collection of information constituting official information collected in the process of operative investigation, counter-intelligence activities, in the field of national defense (Article 330); threat or violence against a law enforcement officer (Article 345); threat or violence against a journalist (Article 345-1); threat or violence against a state or public figure (Part 1 of Article 346); threats or violence against an official or a citizen performing a public duty (Part 1 of Article 350); illegal interference in the work of the court's automated document management system (Article 376-1); disclosure of information about security measures regarding a person taken under protection (Article 381); disclosure of data of operational investigative activities, pre-trial investigation (Article 387); threat or violence against the defender or representative of the person (Part 1 of Article 398); disclosure of information of a military nature that constitutes a state secret, or loss of documents or materials containing such information (Article 422); propaganda of war (Article 436); production, distribution of communist and Nazi symbols and propaganda of communist and national socialist (Nazi) totalitarian regimes (Article 436-1).

Therefore, to date, a significant part of crimes committed in cyberspace is not considered cyber-crime, that is, such indicators are absent both in official state statistical reports and in departmental ones, in particular.

Analysis of statistical data shows that the number of criminal offenses provided for by articles of Chapter XVI of the Criminal Code of Ukraine increased 5.7 times during 2013-2022 (595 in 2013 versus 3415 in 2022) (Table 1).

Table 1

The recorded criminal offenses provided for by the articles of Chapter XVI of the Criminal Code of Ukraine, committed by a group of persons (during 2013-2022)

Years	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total articles 361-363	595	443	598	865	2573	2301	2204	2498	3310	3415

But their share in the overall level of crime in Ukraine today is insignificant and amounts to about one percent, in particular, in 2022 – 0.9 %, in 2021 this indicator was 1.0 %.

In 2022, 3415 criminal offenses were registered. The specific weight of serious offenses is 63.0 % (2151), non-serious offenses – 26.5 % (905), criminal misdemeanors – 7.2 % (247), and particularly serious offenses – 3.2 % (108).

Out of 3415 criminal offenses, in 3279 (96.0 %) proceedings, the pre-trial investigation was carried out by the National Police of Ukraine, 102 (3.0 %) by the State Bureau of Investigation of Ukraine.

The number of criminal offenses provided for by Art. 361 of the Criminal Code of Ukraine (1679 in 2021 versus 1403 in 2022).

The number of criminal offenses has significantly decreased, provided by Art. 361-2 of the Criminal Code of Ukraine – by 57.4 % (141 in 2021 versus 60 in 2022), as well as the provisions of Art. 363 of the Criminal Code of Ukraine – by 75.0 % (12 in 2021 versus 3 in 2022).

At the same time, the number of criminal offenses increased by 8 times, provided by Art. 361-1 of the Criminal Code of Ukraine (35 in 2021 versus 280 in 2022), by 15.6 % – provided for by Art. 362 of the Criminal Code of Ukraine (1440 in 2021 versus 1664 in 2022).

The number of criminal offenses for which proceedings were sent to the court with an indictment increased by 24.7 % (1953 in 2021 versus 2435 in 2022).

The number of detected criminal offenses committed by persons who previously committed criminal offenses increased by 61.6 % (229 in 2021 versus 141 in 2022).

Five criminal offenses were committed by or with the participation of minors (13 in 2021).

The number of criminal offenses in which proceedings were closed increased slightly (+5.4 %) (333 in 2021 versus 351 in 2022).

The largest share is made up of criminal offenses provided for in Art. 362 of the Criminal Code of Ukraine (48.7 %) and Art. 361 Criminal Code of Ukraine Criminal Code of Ukraine (41.1 %).

The number of identified persons who committed criminal offenses provided for by the articles of Chapter XVI of the Criminal Code of Ukraine during 2016-2022 increased by 3.6 times (52 in 2016 versus 187 in 2022) (Table 2).

Table 2

The number of identified persons who committed criminal offenses provided for by the articles of Chapter XVI of the Criminal Code of Ukraine in the current year and in previous years (2016-2022)

Years	2016	2017	2018	2019	2020	2021	2022
Persons who committed criminal offenses in the reporting period were identified	52	103	136	103	152	221	187
Persons who committed criminal offenses in previous years (before the reporting period) were identified	38	65	118	117	168	189	197

In total, in 2022, 187 people who committed criminal offenses were found, which is 15.4 % less compared to the same period in 2021 (221 in 2021). In 2022, 47.4 % fewer persons were revealed to have committed criminal offenses under Art. 361-2 (19 in 2021 versus 10 in 2022), by 32.0 % – provided by Art. 362 (75 in 2021 versus 51 in 2022), by 27.3 % – Art. 361-1 (11 in 2021 versus 8 in 2022) and by 3.2 % – Art. 361 (124 in 2021 versus 120 in 2022). The largest number of persons who committed criminal offenses was provided for by Art. 361 of the Criminal Code of Ukraine (64.2 %) and Art. 362 of the Criminal Code of Ukraine (27.3 %).

During the reporting period, 23 persons committed criminal offenses in the group, including 8 – as part of an organized group or criminal organization and 1 – with the participation of minors (mixed group). 31 persons who previously committed criminal offenses were identified, including 12 persons whose criminal record has not been removed or repaid. It is worth paying attention to the statistical data on identified persons who committed criminal offenses in the past years – 197 such persons were identified, which is 5.3 % more compared to those who committed criminal offenses in 2022.

According to the statistical data of the State Judicial Administration of Ukraine, the number of persons who committed criminal offenses provided for by the articles of Chapter XVI of the Criminal Code of Ukraine, the proceedings in respect of which were held in courts of first instance during the years 2013–2022, increased by 5.8 times (76 in 2013 versus 437 in 2022) (Table 3).

Table 3

The number of persons whose proceedings were in court (during 2013-2022)

Years	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total	76	77	89	94	142	224	242	308	459	437
Among them, the persons whose court decisions have entered into legal force have been convicted	49	37	31	24	42	49	50	56	76	74

According to the Report on the Composition of Convicts in 2022, out of 74 convicted persons, whose court decisions entered into force, 10 were sentenced to imprisonment: 7 – more than 2 years up to 3 years inclusive, 2 – more than 3 years up to 5 years inclusive, 1 – more than 1 year to 2 years. Fines were applied to 23 convicts, and 38 convicts were released from punishment with probation. It is worth noting that in 2022 there were no persons who committed crimes as part of an organized group or criminal organization.

Over the course of 10 years, 6 persons were convicted who committed crimes as part of an organized group or criminal organization, and court decisions regarding which became legally binding in the reporting period. One of the most important socio-demographic features that characterize the personality of the criminal is the age of the convicts. In 2022, the largest number of people who committed crimes between the ages of 30 and 50 were convicted – 27 (36.5 %) people; aged 25 to 30 – 20 (27.0 %) people; from 18 to 25 years old – 19 (25.7 %) people; 5 people committed the crime between the ages of 50 and 65 and 2 people between the ages of 16 and 18.

Information about its social status and occupation are also of significant importance for characterizing the criminal's personality. Thus, 56.8 % (42 persons) were able-bodied who did not work or study; followed by doctors and pharmacists – 8 (10.8 %); workers – 4 (5.4 %) persons; employees – 3 (4.1 %) persons; military personnel and pensioners, including disabled people – 2 (2.7 %) persons each; one person each - private entrepreneurs, students of schools, lyceums, colleges, gymnasiums, students of educational institutions, unemployed, detained in a penal institution, in custody, other occupations –

8 (10.8 %). A very important characteristic of a criminal's personality is education. The largest number of convicted persons were persons with a complete higher education – 28 (37.8 %) persons. This is followed by persons with a basic general secondary education – 20 (27.0 %); full overall average – 10 (13.5 %); 7 (9.5 %) people each had a basic university and 7 people had a professional and technical one; 2 persons had primary general education. It is worth paying attention to the fact that every fourth convicted person is a woman. In 2022, 19 (25.7 %) women were convicted. An analysis of the specific weight of certain types of punishments for convicted persons in relation to the number of persons whose court decisions entered into legal force in the reporting period indicates that the largest percentage of punishments of convicted persons are convicted persons who were released from a sentence with probation. In the period from 2013 to 2022, only in 2018 and 2019 was the number of fines more than the number of convicted persons who were released from sentence with probation.

The number of convicted persons sentenced to imprisonment for criminal offenses provided for by articles of Chapter XVI of the Criminal Code of Ukraine, whose court decisions entered into force in the reporting period, is insignificant. For the period from 2013 to 2022, the largest number of such convicts was in 2022 – 10 people, which is 10 % of the number of people whose court decisions entered into legal force in the reporting period. This indicator is close to the general indicator, which is 14.4 % – the total number of persons against whom court decisions entered into legal force in the reporting period in Ukraine in 2022 was 65795, of which 9462 persons were sentenced to imprisonment.

According to the statistical report of the National Police of Ukraine in 2022, the number of criminal offenses committed with the use of advanced information technologies increased by 49.2 % compared to 2021 (10020 in 2021 versus 14948 in 2022). The number of criminal offenses increased the most (by 7,5 times), provided for by Art. 361-1 of the Criminal Code of Ukraine (38 in 2021 versus 285 in 2022), 4,4 times - Art. 358 of the Criminal Code of Ukraine (47 in 2021 versus 205 in 2022), 3,6 times - Art. 301-1 of the Criminal Code of Ukraine (43 in 2021 versus 154 in 2022), 3,4 times - part 3, 4 of Art. 190 of the Criminal Code of Ukraine (1928 in 2021 versus 6591 in 2022). At the same time, the number of criminal offenses decreased by 6,3 times provided by Art. 176 of the Criminal Code of Ukraine (19 in 2021 versus 2 in 2022), 2,3 times – Art. 361-2 of the Criminal Code of Ukraine (113 in 2021 versus 49 in 2022), 1,9 times - Art. 200 Criminal Code of Ukraine (1010 in 2021 versus 531 in 2022).

It is worth pointing out significant discrepancies of individual identical indicators in statistical reports prepared by the Office of the General Prosecutor of Ukraine and the National Police of Ukraine. Thus, in 2022, the Office of the Prosecutor General of Ukraine registered 1,371 criminal offenses provided for in Art. 361 of the Criminal Code of Ukraine (Uniform Report on Criminal Offenses Chapter 2. Criminal offenses in proceedings, in which pretrial investigation is carried out by the bodies of the National Police), and in the Report on the results of the work of the units of the National Police of Ukraine, prepared by the National Police of Ukraine, this indicator is 1636. The difference is 265 criminal offenses.

5. Conclusions

1. There is currently no clear definition of the concept of cybercrime in domestic legislation. Among scientists and practitioners, there is also no single approach to delineating the grounds for classifying illegal acts as such criminal offenses.

2. Cybercrimes clearly include criminal offenses provided for by articles of Chapter XVI of the Criminal Code of Ukraine, statistical data on which are available in official state reports prepared by the Office of the Prosecutor General of Ukraine, and the State Judicial Administration of Ukraine. Analysis of the statistical data of these reports makes it possible to reveal the level, intensity, dynamics, and structure of this group of cybercrimes (criminal offenses in the field of use of electronic computing machines (computers), systems, and computer networks)). Regarding "traditional" criminal offenses that can be classified as cybercrimes, there is no official state reporting.

3. There is only departmental statistical reporting of the National Police of Ukraine, but it does not cover all cybercrimes, of course, it only takes into account those that are under the jurisdiction of the National Police of Ukraine, and also individual indicators differ significantly from similar indicators in state reporting. This negatively affects the ability to prevent and fight cybercrime. The analysis of such statistical reporting would provide an opportunity to develop organizational and legal measures based on them for more effective countermeasures against cybercrime at the national level.

Conflict of interest

The authors declare that they have no conflict of interest in relation to this research, whether financial, personal, authorship or otherwise, that could affect the research and its results presented in this article.

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Data availability

Data will be made available on reasonable request.

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