

Digital access to government information: To what extent are agencies in compliance with EFOIA?

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Citizen access to government information is thought by many to be a cornerstone of democracy. The Electronic Freedom of Information Act (EFOIA), passed in 1996, established a legal right for people to request and receive government information in digital format and required agencies to provide specific information on their websites. Many commentators agreed that this law was a positive step and would improve citizen access to government information. This paper adopts a social informatics perspective to assess this prevailing view by examining the underlying assumptions about technology on which discourse is based. It then supports this critical assessment with an empirical investigation. First, compliance with Department of Justice guidelines was examined (following Gordon-Murnane, 1999). Then we analyzed the content of agencies' electronic reading rooms to determine if they were in compliance with the law. Our analysis determined that agencies are in better compliance with the Department of Justice guidelines, but many do not comply with the legal requirements. Agencies could improve their compliance with the letter and the spirit of EFOIA. In this way, our study contributes to bodies of research concerned with information access, social informatics, and digital government.

Introduction

Since 1966, when the Freedom of Information Act (FOIA) was signed into law by President Lyndon Johnson, an uneasy balance has existed between citizens, journalists and others who want to access government information and the Executive branch, which has sought to control access to this information. During the past two decades, developments in digital computing technologies and the rapid integration of the internet into American life changed the ways in which information was created, stored, and retrieved. Thirty years after FOIA was enacted, President William Clinton signed the Electronic Freedom of Information Act Amendments of 1996 to bring FOIA into the digital age. Much of the subsequent discourse surrounding EFOIA was optimistic and many commentators assumed these amendments would improve citizen access to

government information.

In this paper, we adopt a social informatics perspective to critically examine some of this discourse, finding that many of the claims have not been borne out in experience. In what appears as a lonely voice in the discourse, Gordon-Murnane (1999) conducted a study of federal agencies' implementation of EFOIA and found that many agencies were not in compliance with the law or with Department of Justice guidelines. This paper replicates Gordon-Murnane's work, examining the same agencies to assess changes in the past seven years. It also extends Gordon-Murnane's study by investigating the agencies' electronic reading rooms to assess the extent to which these sections of the agencies' websites provide access to the types of information required by EFOIA. The paper concludes that many of these web spaces are not well organized and provides recommendations for improving the information architecture and usability of electronic reading rooms to bring them closer to the letter and spirit of EFOIA.

EFOIA legislation & existing discourses

The Freedom of Information Act was enacted to “first and most important, ensure public access to the information necessary to evaluate the conduct of government officials; second, ensure public access to information concerning public policy; and third, protect against secret laws, rules, and decisionmaking” (Cate, Fields, & McBain, 1994, p. 65). To meet these goals, FOIA favors disclosure of information to any individual requesting any record from a federal agency or office. Agencies include “cabinet departments, military departments, government corporations, government controlled corporations, independent regulatory agencies, and other establishments in the executive branch” (H.R. Rep. No. 107-371, 2002, p. 9), though the legislative and judicial branches are excluded. FOIA also requires that agencies establish “reading rooms” which must contain, at a minimum, final opinions and orders in court cases, policy statements and interpretations, and staff manuals and instructions which affect the public. Agencies must also publish rules, regulations, and policies in the Federal Register (Freedom of Information Act, 1966). Since its enactment, use of FOIA has steadily increased; during fiscal year 2003, the Department of Justice reported 3,266,394 requests for all federal departments and agencies, with the overall cost for “all FOIA-related activities” totaling \$323,050,337.33 (Department of Justice, 2004).

This legislation was a turning point in the relationship between the Federal Government and the public because it ensured access to government records. Supreme Court Justice John Paul Stevens, writing for the Court in *Department of Justice v. Reporters Committee for Freedom of the Press*, asserted that FOIA's “central purpose is to ensure that the government's activities be opened to the sharp eye of public scrutiny” (Davis, 2001, p. 6). Since FOIA emphasizes disclosure, agencies must release requested records unless they fall under one or more of the nine exemptions included in the statute.

After its initial enactment in 1966, FOIA was subsequently amended in 1974, 1976, 1986, 1996, and 2002. This paper concentrates on the 1996 Amendments, which are known as electronic FOIA or EFOIA, because of the incorporation of new technologies. EFOIA made several relatively minor procedural and administrative changes to FOIA which primarily consolidated and codified a consensus that emerged over nearly ten years regarding the relationship between FOIA and information technology” (Perritt, 1998, p. 298). EFOIA also required agencies to establish “electronic reading rooms,” as they have become known. Each agency is now required by statute to maintain an electronic reading room on its website that contains all of the records required in the physical reading rooms, any records “likely to become the subject of subsequent requests” and an index of records in the reading room (5 U.S.C. 552, 1996, (a)2D-E). Electronic reading rooms were intended to expand accessibility and reduce delays due to repetitive requests (Halstuk, 2000, p. 436).

Political science and legal frameworks addressing FOIA and EFOIA often assume that responsible, democratic government should make certain categories of information available to citizens. The underlying assumption is that democracy depends upon transparent government and open information, which enable people to make informed decisions, especially important since much of the executive branch consists of non-elected officials in non-representative agencies. When President Johnson signed the FOIA into law on July 4, 1966, he stated, "A democracy works best when the people have all the information that the security of the nation permits" (Johnson, 1966), a sentiment echoed 30 years later by President Clinton when he signed the EFOIA Amendments (Clinton, 1996).

With the advent of EFOIA, political science and legal scholars embraced the view that digital technologies are an important tool in preserving, even enhancing, the transparency of government. Perrit (1998) epitomized this optimistic view when he stated, "the United States Freedom of Information Act (FOIA) is a model for governmental transparency throughout the world....The EFOIA Amendments are a model for how law can ensure that information from public institutions is a part of the information superhighway" (p. 391). In this view, technology is seen as the enabler of transparency and critical to democracy. Some discourse was more subtly utopian concerning technology. For example, Frost (2000) cited the "unique opportunities offered by the Internet" which would provide "greater access to government information" (Section II, para. 4). These analysts expect electronic reading rooms to radically (and positively) alter information dissemination and access. The emphasis is on efficiency, volume of records, and widespread access (Grunewald, 1998; Halstuk, 2000). A 2000 survey of the general public found similar beliefs among U.S. citizens. When people were asked about e-government, including governmental internet use, 23% believed e-government would mean more public access to more information, and 36% believed e-government would be more accountable to its citizens (Heintz, 2000, p. 483).

These general discourses among scholars (often reflected among the public) seem to be based on an tacit premise of technological utopianism, a viewpoint that focuses on new technologies as agents of social change and assumes that they will be effectively used within social systems (Kling, 1994). Discourses about digital computing technologies tend to exhibit either technological utopianism or dystopianism (Kling 1996). The existing discourses about EFOIA appear to be predominantly utopian about technology, assuming that the implementation of technologies will lead to positive, easily attainable effects. The causal simplicity and seemingly inexorable logic of this perspective make it especially appealing to many groups: utilize the new technology of the internet to create electronic reading rooms, and the wider dissemination of information will improve government accountability, citizen participation, and democracy itself.

Social informatics: A critical approach to EFOIA

While both the political science and legal perspectives are useful and important, they are not adequate to fully analyze the implications of EFOIA. For example, a recent Government Accountability Office report (GAO, 2005) counters the simplistic assumption that putting information on the internet unequivocally improves access. Some educator resources are only available on the Department of Education's website, the agency's primary means of information dissemination. The GAO found that a majority of state officials and teachers were unable to locate this information. Clearly, mere online posting is insufficient. Actual use of technology is more complex and problematic than these perspectives acknowledge.

A social informatics approach can be used to critically examine some of the problematic assumptions about technology that underlie the standard political science and legal analyses (Kling, Rosenbaum, and Sawyer, 2005). Kling (2000) called for empirically-based perspectives that offer more rigorous, nuanced alternatives

to technological utopianism. Social informatics adds nuance and complexity to the understanding of how technology works within social settings. A more thorough depiction of technology should “consider an array of relevant factors, including social, cultural, organizational, and other contextual components” (Kling, 2000, p. 229). Common findings in social informatics research include the notion that context affects design, implementation, and use of information and communication technologies. This usage has political consequences: it creates winners and losers. The use of information and communication technologies leads to multiple, paradoxical effects and unintended consequences (Kling et al., 2005).

From the social informatics perspective outlined above, EFOIA begins to appear more problematic. For example, the law provides little incentive for agencies to release information in a timely manner, or even to release information at all. Requesters can sue if they believe information has been inappropriately withheld, but few can afford the lengthy, costly litigation process, so the impetus to release records, then, must come from within the agency. Likewise, the speed with which records are released depends upon an agency’s backlog, financial and labor resources, and attitude toward FOIA requests. EFOIA extended the deadline to respond to a request from 10 days to 20 days. Grunewald (1998) explained that agencies which were able to respond in 10 days now have no incentive to move that quickly (pp. 350-352). The extension, in other words, is primarily symbolic, rather than an actual solution. These examples illustrate the futility of making simplistic assumptions about the efficacy of new technology.

In an attempt to set aside the “lofty goals and inspired idealism” of most political science and legal commentary on EFOIA, Gordon-Murnane (1999, p. 35) examined the websites of fifteen federal departments and three agencies. Though EFOIA requires inclusion of certain records in agency electronic reading rooms, the law provides no guidelines for these reading rooms. The Department of Justice issued recommendations in 1998 to assist other departments in creating and organizing their websites. While these guidelines do not have the force of law, they are essentially the only parameters agencies have for electronic readings rooms. As such, Gordon-Murnane analyzed how well agencies followed them.

None of the agencies she examined fulfilled all of the legal requirements of EFOIA, and none fulfilled all of the guidelines established by the Department of Justice—not even Justice itself (Gordon-Murnane, 1999, p. 47). According to Gordon-Murnane, 65 percent of the surveyed agencies did not provide a link to their FOIA page on their main website. In addition, she found that most agencies did not provide a well-defined or indexed reading room. Links were frequently empty or broken and text on the websites was rarely updated. Gordon-Murnane concluded that the two most significant findings were “the lack of consistency between sites and the high level of wasteful duplication” (p. 50). She felt that agencies should all link to one FOIA Reference Guide, for example, rather than having several different, incomplete guides. Gordon-Murnane appears to be a rare skeptic concerning the impact of new technology on fulfillment of FOIA laws. In her questioning of taken-for-granted assumptions, she began a critical social informatics approach to EFOIA implementation.

Method

Since social informatics calls for detailed empirical study which captures the nuanced way that context affects implementation and use of technology (Kling, 2000; Kling et al., 2005), we analyzed the content of agency FOIA websites and electronic reading rooms to determine if the agencies were in compliance with EFOIA legislation and Department of Justice guidelines. Content analysis is an appropriate method to use in this study since the law and the guidelines refer primarily to content, rather than usability or design features. The first part of the study examined compliance with Department of Justice guidelines, following

Gordon-Murnane's (1999) study. The guidelines are:

1. Immediate access to FOIA page from departmental homepage.
2. Immediate access to FOIA page from agency components' homepage.
3. Main homepage access to FOIA is clear and distinct.
4. Each agency and major component maintains a FOIA homepage.
- 5a. FOIA reference guide available on FOIA page.
- 5b. Agency's current FOIA/Privacy Act regulations available on FOIA page.
- 5c. Links to all main FOIA homepages of subsidiary agency components.
- 5d. Agency's annual FOIA reports available.
- 5e. Agency / component electronic reading rooms accessible.
6. Electronic reading room clearly labeled; contains index of print and electronic materials.
7. Each FOIA page has a link to the department (or component) homepage.
8. Each subcomponent FOIA page has a link to the agency's main FOIA page.
9. All links checked regularly (at least quarterly).
10. Textual content of all FOIA homepages is up to date (Gordon-Murnane, 1999).

To analyze these guidelines, we defined them through discussion prior to evaluating the websites. For twelve of the fourteen guidelines, analysis was binary: either the guideline was followed, or it was not. Analysis in these cases frequently determined the presence or absence of a particular component. Adherence was not as simple to determine for the remaining two guidelines, as they involved subjective analysis (e.g., the third guideline recommends that access to the FOIA page be "clear and distinct"). The intercoder reliability (using percentage agreement) for these subjective guidelines was 97%.

The second part of the study examined agency compliance with the law and other content components. The components we studied are:

1. Existence of electronic reading room (mandated by law).
2. Electronic reading room contains final opinions (mandated by law).
3. Electronic reading room contains policies and interpretations (mandated by law).
4. Electronic reading room contains frequently requested records (mandated by law).
5. Frequently requested records are indexed (mandated by law).
6. Annual reports available in electronic reading room or on FOIA page.
7. Additional, non-required information provided by the agency.
8. Search capability for FOIA pages provided.
9. Overall utility of navigation bar.
10. Additional components such as FAQs, Help section, or About pages, specific to FOIA.

Again, most of the content analysis was objective, determining the presence or absence of certain content. However, two of the components (search capability for FOIA pages provided and overall utility of the navigation bar) were based on subjective analysis. For example, many electronic reading rooms provide a link to GILS, the government information locator system. Through discussion, we determined that a link to GILS was not sufficient, since we sought search capabilities specifically for the FOIA pages. For those aspects that were less objective, we utilized multiple coders and reached an intercoder reliability of 96% (using percentage agreement).

Table 1. Federal Department / Agency Compliance with Recommendations for FOIA Websites: Comparison with 1999 study

Federal	Immediate	Immediate	Main	Each	FOIA	Agency's	Links to all	Agency's	Agency /	EI
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Legend:

Darkly shaded boxes represent a negative change from the 1999 Gordon-Murnane study (i.e., the agency was following the guideline but no longer is).

Lightly shaded boxes represent a positive change from the 1999 Gordon-Murnane study (i.e., the agency was not following the guideline but is now).

Unshaded boxes represent no change from the 1999 Gordon-Murnane study.

Findings

Overall, adherence to the Department of Justice guidelines has increased greatly since Gordon-Murnane's 1999 study. The findings are summarized in Table 1. In this table, lightly shaded boxes represent a positive change from the 1999 study; in other words, a department formerly did not meet this guideline but now does. Darker shaded boxes indicate a negative change: a department met the guideline in 1999 but no longer does. Unshaded boxes represent no change from the previous study. The new study found 67 positive changes and 19 negative changes, indicating that compliance to the guidelines has improved. Ninety-four percent of the surveyed departments provided a link on their homepage to their FOIA webpage. The only exception was the Executive Office of the President. Likewise, 76 percent of departments now provide electronic reading rooms. A majority of departments provide a FOIA reference guide (88 percent), FOIA regulations and policies (53 percent), and annual FOIA reports (71 percent) on their main FOIA webpage, as recommended by the Department of Justice.

The Departments of Labor and Agriculture have made the most number of positive changes to its online FOIA information, followed by the Department of Education. Though no department meets all of the guidelines, the Departments of the Interior, Housing and Urban Development, and Veterans Affairs meet all but two of the recommendations. Several agencies' FOIA websites had only positive changes from seven years ago (Commerce, National Oceanic and Atmospheric Administration, Health and Human Services, Food and Drug Administration, and Labor). Several interesting findings emerge from the comparison. The Executive Office of the President does not currently meet any of these recommendations. The Department of Justice only meets 71 percent of its own guidelines and has actually decreased its adherence from seven years ago.

Guidelines involving component agencies have a lower rate of compliance. Sixty-nine percent of components provide access from their homepage to their FOIA pages, but only 29 percent of departments link to their components' FOIA pages. When departments have many autonomous components, it may be difficult to coordinate a department-wide approach to FOIA.

After replicating the previous study (Gordon-Murnane, 1999), we extended it by analyzing content of agency electronic reading rooms to determine if they complied with EFOIA legislation and by examining other content components. This was a slightly different data set, only examining the 15 primary federal departments. Table 2 illustrates the results of the analysis. Shaded cells represent content items that agencies are lacking. Though most agencies have electronic reading rooms (73 percent), only one agency, the Department of Education, has all four types of content required by law (final opinions, policies and interpretations, frequently requested records, and an index of frequently requested records). The Departments of Commerce and Interior also satisfy the four items in the guidelines. However, there are only four frequently requested records posted in the Department of Commerce electronic reading room, and one link is broken. Similarly, the Department of Interior website contains an index of frequently requested records, but only for paper documents which are unavailable on the website.

The only type of required information provided by more than half (60 percent) of agencies was policies and interpretations. The most common item found on the federal agency websites under study was annual reports. All fifteen agencies have made annual reports available either in electronic reading rooms or elsewhere. Only the Department of State did not have annual reports posted in a location that was intuitively placed. Their annual reports were found under “Reference” on the main FOIA page.

We further extended the analysis to examine other aspects of electronic reading rooms based on four criteria: availability of additional (not required) records; searchability of FOIA pages; utility of navigation bars; availability of FAQs, help, or about pages specific to FOIA. These criteria refer specifically to site architecture designed to facilitate ease-of-use for the general public. Fifty-three percent of agencies provide additional records. For example, the Department of Commerce offers selected publications via their website including “Commerce Business Daily” and “Export America.” The Department of Health and Human Services offer speeches, testimony, etc. Badre (2002) asserts that “for large sites, 20 or more pages, designers should provide for keyword-based search engines” (p. 143). Yet only three agencies (Department of Defense, Department of Energy, and Department of State) include a search engine on their FOIA pages. Since 67 percent of the agencies do not index the frequently requested records, a search engine should be provided.

Table 2. Analysis of Federal Department Electronic Reading Rooms

Dept. of:	Existence of ERR	Final Opinions	Policies & Interpretations	Frequently requested records	Index of frequently requested records	Annual reports present	Presence of unrequired records	Search capability	Utility of navigation bar	FAQs, Help, or About pages, specific to FOIA?
Agriculture	Yes	Yes	Yes	Yes	No	Yes	No	No	No nav. bar	No
Commerce	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Defense	Yes	No	No	No	No	Yes	Yes	Yes	No nav. bar	No
Education	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	FAQs
Energy	Yes	No	No	No	No	Yes	Yes	Yes	No	No
Health & Human Services	No	No	Yes	No	No	Yes	Yes	No	No nav. bar	No
Homeland Security	Yes	No	No	No	No	Yes	No	No	No nav. bar	No
Housing & Urban Development	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No nav. bar	No
Interior	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
Justice	No	No	No	No	No	Yes	No	No	Yes	No
Labor	No	No	No	No	No	Yes	Yes	No	No nav. bar	No
State	No	No	No	No	No	No	Yes	Yes	No	No
Transportation	Yes	No	Yes	No	No	Yes	No	No	No nav. bar	No

Legend:

Shaded boxes represent a negative response: the agency does not have that content component.

Unshaded boxes represent a positive response: the agency does have that content component.

The four columns outlined in teal are the content requirements of the law.

We also considered navigation bars provided in agency electronic reading rooms. We asked the following question: were the labels included logical and descriptive? Although subjective, only four agencies (Department of Education, Department of Interior, Department of Justice, and Department of Veterans Affairs) have logical and descriptive navigation bars. The Department Commerce uses logical and descriptive navigation labels, but has acronyms that are confusing, especially to casual users. For example, a lay person is unlikely to know what NIST means. The Department of Housing and Urban Development's electronic reading room has twenty categories of documents. Most users would be overwhelmed by so many options. The twenty categories should be chunked into smaller numbers to avoid cognitive overload. Finally, we examined the availability of FAQs or help/about pages specific to FOIA. The results indicate that only two agencies (Department of Education and Department of Veterans Affairs) provide FAQs. Providing a help screen has been one standard feature of many computer software programs and online service-oriented websites (Farkus & Farkus, 2002). Because these agencies are likely to be accessed by a wide spectrum of people in with a range of technical skills, it would be useful to provide help screens to facilitate use. In summary, the agency electronic reading rooms can be improved with existing and better guidelines.

Discussion

In the past seven years, website architecture has become increasingly sophisticated and organized. Conventions and standards have gradually emerged. So, for example, it is probably not surprising that 88 percent of departments provide "clear and distinct" access to FOIA pages (usually through a hyperlinked phrase such as "FOIA" or "Freedom of Information"). The only surprise may be that the number is not higher. Another non-surprise is that as the guidelines become more complex, or involve greater numbers of component agencies, the percentage of adherents decreases. This is not to say that all website conventions are followed in the federal government. None of the surveyed sites, for example, had a published policy about how frequently they check links, and only 41 percent provided a "Last Update" date for FOIA pages. However, by and large, most departments and agencies were in compliance with most of the Department of Justice recommendations, in contrast to Gordon-Murnane's study in 1999. Replicating the study seven years later demonstrates that federal departments have improved their websites and access to FOIA-related information.

The results of the second part of the study are similarly mixed. Though nearly every agency had an electronic reading room, few had all of the content required by law, and few indexed the information that was available. By now, the need for useful indexing of large websites is well-established. In addition to making an electronic reading room available, these agencies can benefit from information architecture principles. For example, research shows that "landmarks" help users navigate on the web as in the physical world (Farkas & Farkas, 2002).

This study did not perform usability analysis of FOIA websites or electronic reading rooms, though some suggestions about how to improve website functionality, to comply with the law and provide easier access, did arise. For example, descriptive, short indexes to documents available online would be useful. Search engines, FAQs, and Help pages would be helpful to casual users. Providing a policy for updating text and checking links would signify current information. These suggestions, however, ought to be analyzed in future

studies to determine actual needs of users and capabilities of agencies. Though outside the scope of this paper, information architecture and human computer interaction research could be utilized to improve compliance and functionality.

We utilized social informatics as a framework to investigate compliance with FOIA law and Department of Justice guidelines. Agre (2002) cautions against assumptions that the internet will automatically increase open information, because “the internet has no power to make information open on its own; the political culture has to want it” (p. 314). Extending this idea to EFOIA, we would suspect that agencies’ implementation of the amendments will be related to their general attitudes about releasing records. If, prior to EFOIA, an agency was permissive in releasing records, that agency may be more likely to create and maintain an informative electronic reading room with useful documents, indices, and links. The organizational context, in other words, may affect the use and implementation of technology such as websites and electronic reading rooms, a finding that echoes other social informatics studies.

The organizational culture can affect information dissemination in other ways, as well. Agencies are required to post records in their electronic reading rooms that have been or are likely to be the subject of repeated FOIA requests. There is no legal guideline about how this determination should be made, however. Grunewald (1998) explains the implications: “to the extent that agencies decide... what information is worthy of public dissemination, the product is more likely to resemble the routine output of the public information office than embarrassing records pried loose, sometimes only after litigation” (p. 367). Similarly, agencies are required to post indices of electronic reading rooms, but the indices do not necessarily have to be helpful. The Department of Justice index, for example, merely lists its component agencies, such as the Civil Rights Division. To locate a record in this electronic reading room, one must know which sub-agency is responsible for that record—a level of knowledge that most casual record seekers are unlikely to have. Such a paradoxical effect—an index that is not helpful—is likely not what Congress anticipated, yet social informatics analysis frequently uncovers such paradoxical effects. Rather than deterministic and simplistic, use of technology yields unexpected behaviors and results.

Despite increasing use of EFOIA (e.g., an increase of 36% from 2002 to 2003; Department of Justice, 2004), openness of the government has been decreasing recently, especially since the attacks on New York City and Washington D.C on September 11, 2001. Newly created information categories, such as “sensitive but unclassified,” are not regulated by traditional declassification schemes or FOIA (Feinberg, 2004). In addition, federal agencies have removed documents and data from their websites, including FOIA pages, in attempts to reduce terrorism threats (Ojala, 2002). To understand this increasing secrecy, one ought to look beyond technology to analyze the context created by ongoing war and elevated security. Other aspects of the agencies’ context include the organizational culture (mentioned briefly above), characteristics of each administration, and financial and labor constraints; these could be addressed more fully in future studies.

Conclusion

In this study, we evaluated the FOIA webpages and electronic reading rooms of several federal agencies. We found that few met legal content requirements. While many of these websites have improved site architecture from seven years ago, based on compliance to Department of Justice guidelines, there are still many improvements that can be made. This paper begins to study the broad context of federal agencies as they implement FOIA requirements. Specifically, we examined the social context created by the legislation and the utopian assumptions concerning technology. In this analysis, we found some evidence for social informatics assertions, such as the impact of context on implementation and use, and the sometimes

paradoxical effects of new information communication technology. We hope this study will trigger future studies of FOIA and information access using social informatics perspectives.

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