

FREEDOM OF INFORMATION ACT (FOIA) AND THE CHALLENGES OF INVESTIGATIVE JOURNALISM IN NIGERIA

By

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Abstract

This paper looked at the nature, merits and challenges of investigative journalism in Nigeria, with particular attention paid to newspapers, vis-a-vis the country's Freedom of Information Act (FoIA) 2011. The objectives of the study included highlighting the merits and challenges of investigative journalism, as well as the relevance of FoIA to investigative reporting. Data for it were collected from secondary sources, while the libertarian and social responsibility media theories were deployed to guide it. It noted the merits and challenges of investigative journalism, and concluded that investigative reporting was a tough terrain for journalists, and that the media were yet to make appreciable use of the FoIA, which could ease their work as watchdogs of society. It recommended, among other things, regular training for journalists on the reporting-relevant contents of the FoIA, as well as the conscientisation of citizens on the provisions and utility of the Act, in the hope that this would promote open government for the public good.

Keywords: Freedom of information, Investigative Journalism, Media, Public Good, Role of the Press.

Introduction

The press (or the media) is said to be, among other things, the watchdog of society. That characterisation, it should be noted, belongs in large measure to investigative role of the press. Investigative journalism is research-oriented and is usually directed at fighting corruption in society, especially among influential public officials and corporate institutions, since they are more politically and economically exposed to issues of general public concern. It thrives on sniffing out, analysing, and publishing usually unpleasant publically-useful information that those at the receiving end thereof would rather keep from public view. According to Ahmad and Nasir (2022), investigative journalism began as the need to confront societal ills like corruption, terror, and drug abuse, arose in society. Aligning his thoughts to that, Yusha'u (2017, p.1) notes that investigative journalism "is mainly to expose some issues, specifically crimes, wrongdoings and corruptions in a community/society, private organisations and public organisations." The ultimate aim of that is to active and

embrace positive changes in society, even though whether this actually happens is open to debate. However, investigative reporting imposes the burdens of factuality, facticity and accuracy on reporters as he who goes to equity should do so with clean hands. This is so, because anytime reporters embark on investigation, they place their integrity and credibility on trial. Similarly, their relevance is placed in the crosshairs of public opinion, the law, and the targets of their work. Investigations can attract libel, threat to the integrity and lives of reporters; hence, it requires courage, tact, integrity, resilience, truthfulness, and patience, on the part of the investigative reporter, and/or their media houses.

Onyenankeya & Salawu (2020) trace the history of investigative reporting in Nigeria to the 1930s, when the country's nationalists used the media, especially privately-owned newspapers, to fight colonialism. The trend, he said, continued in the 1960s and up until the return of civil rule in 1999 after 29 years of stratocracies. But Ahmad and Nasir (2022) cite Maringues (2001; Dyikuk, 2012; Okon, 2017 and Njedaka, 2019), as saying that investigative journalism started in Nigeria in the late twentieth century. Regardless of its nativity, scholars agree that investigative journalism has been part of Nigeria's journalism annals.

Some studies indicate that the practice of investigative journalism is declining globally. Anyadike (2013) as cited in Ahmad & Nasir (2022) posit that the last three decades have witnessed its decline globally. Asemah (2014) agrees that the print media – the bastion of investigative journalism in Nigeria – were not paying serious attention to investigative journalism in Nigeria. On the hand, Kaplan (2013), as cited in Ahmad & Nasir (2022) notes that investigative journalism has been advancing globally over the centuries. Hasan (2013, p.235) agrees, by asserting that newspapers and magazines are turning more to investigative and interpretative reporting, as the broadcast media and internet have “a clear edge over them in giving up-to-the-minute development in news around the world.” There is thus no agreement among scholars on the state of investigative journalism practice globally. That can only be expected as the world is not ideologically monolithic. Where democracy is practised, investigative journalism is likely to be more prevalent than where totalitarian rules.

Though not a piece of journalism legislation, Nigeria's Freedom of Information Act (FoIA) has provisions which utilisation can enhance investigative journalism practice. The rationale for this law was to make publicly-held information accessible and available to the public, as much as possible. This would, it was hoped, ensure that public officers were accountable for their actions, and thus promote more citizen participation in governance. However, since it was enacted on 24 February, 2011, journalists do not seem to have leveraged on its 30-section provisions to do more investigative stories to expose corruption and crime in the country. This study highlights the nature, approach, and challenges of investigative journalism, as well as the major provisions of the FoIA, and how they could enhance investigative journalism practice, and promote open government in Nigeria. It also proffers solutions to investigative journalism challenges vis-a-vis the FoIA.

Statement of the problem

The press, or the media, has been described as window on events, gatekeepers, signpost, disseminator, forum, among others (McQuail, 2010). These all refer to its roles in society. The media perform the major roles of surveillance of the environment, correlation, and transmission of social heritage. It also offers entertainment, news and information dissemination, analyses and interpretation of social events, education of the masses, persuasion and public relations. These are only as practicable as the media have unfettered access to, and use of information, especially via FoI (also known as Access to Information). The Nigerian FoIA came eight years after the African Union Convention on Preventing and Combating Corruption was adopted in June, 2003. But how much of its provisions do the media or the public know? How much of its provisions have the Nigerian media used to play their role as watchdogs and informers of society? The focus of this study is, therefore, to examine the merits and challenges of investigative journalism in Nigeria vis-a-vis the FoIA.

Objectives of the paper

The following are the objectives of this paper

- (a) To highlight the merits and challenges of IJ practice in Nigeria
- (b) To discuss the relevance of FoIA to investigative reporting
- (c) To assess the extent to which the Nigerian media have made use of the provisions of the FoIA as a means of enhancing their investigative reporting.

Review of related literature

According to UNESCO (2021) investigative journalism means “the unveiling of matters that are concealed either deliberately by someone in a position of power, or accidentally, behind a chaotic mass of facts and circumstances – and the analysis and exposure of all relevant facts to the public.” This position is in consonance with the widely held view by scholars that investigative journalism is basically about exposing wrongdoing in society, and so serves the watchdog role of the media. For instance, Aucoin (2004, pp.582-3) says that an alternative name to investigative journalism is “expose reporting”, which commonly focuses on “exposing corruption, malfeasance, and misfeasance in government and business that harm the public.” And Hasan (2013) notes that investigative journalism is the kind of journalism in which reporters investigate deeply some topic of interest to the public, usually concerning crime, scandals or political corruption. It begins with a hunch that there is something about an issue of public interest that is more than what meets the eyes. Thus, whereas straight news states the facts without explanation or drawing inferences or conclusions, investigative journalism goes deeper, asking not only what happened, but also how and why it happened. Investigative reports, Hasan adds, present fairly all sides of the case, in the context of it, and inject some meanings, to enable the reader better understand and even analyse the reported event.

Investigative reporting should have a goal beforehand. It does not have to await news breaks, but works to break the news itself. It has questions written out, trajectory defined, and intended goals kept in focus, and yet remains flexible enough to make detours and readjust strategies where necessary. The investigative journalist should be a person with an analytical mind and the knack for summarising details within a short time, asking probing

questions, cross-checking claims, and unscrambling body language. They should be imbued with a strong self-motivation to get the job done. Their work requires the active support of the editor of the medium (Hasan, 2013). This is necessary because of the risk, research, and resources involved in doing most investigations. Some issues, which of necessity must be of interest to the public, are so nuanced that to untangle and make meaning from them demand analytical skills to establish facts and define the direction of the investigation. All investigations must be driven by the search for truth and justice in the public interest. Thus, for Asemah (2014), investigative reporting must not necessarily be negative.

Ahmad and Nasir (2022) in their study of the practice of investigative journalism in Abuja, Nigeria, discovered that most journalists in the city practised investigative journalism. However, this was done more by online journalists than their offline counterparts. A report by Washington D. C.-based Centre for International Media Assistance (CIMA), entitled, "Global Investigative Journalism: Strategies for Support", of December 5, 2007, indicates that "investigative reporting has grown dramatically since the fall of communism began in 1989" (p.6). This development, the report says, has been fueled by globalization, international aid, and the efforts of journalism groups" across the world. The report, retrieved from <http://ned.org/cima/cima.html>, is about the fate of investigative journalism globally, and how it could be supported to advance the more.

Media-related provisions in the FOIA

The Freedom of Information Bill was sent to then President Goodluck Jonathan on 27th May, 2011, who signed it into law the following day. The following are major provisions in the FoIA that present to the media an elbow room to practise much more freely before the law came into being. **Section 1(1)** establishes the right of any person "to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution" By this, the media and citizens can request any public information from any public institution and expect to be obliged, except where the Act disallows such. **Section 1(3)** empowers individuals to institute a writ of *mandamus* to compel public officials or institutions to comply with the provisions of the Act, except for information covered by Section 26, which include copyrighted information, library, museum and archival items. **Section 16** guarantees professional privileges, called, "Journalism confidently privilege." That should mean that journalists may not have to disclose any source of information they obtained in confidence. Public institutions, "May deny an application for information that is subject" to such privileges. **Section 27(2)** states, "Nothing contained in the Criminal Code or Official Secrets Act shall prejudicially affect any public officer, who without authorisation, discloses to any person, an (*sic*) information which he reasonably believes to show mismanagement, fraud, or abuse of authority. By implication, officials may give information that would expose malfeasance without authorization.

Review of related studies

Alhassan, (2022), used a sample size of five reporters working in Ahmadu Bello University (ABU) FM radio station, the study looked at various issues that campus radio journalists could investigate. It deployed the media theory of social responsibility to guide it. Among

issues the respondents said could be investigated were examination malpractices, and extortion of students by lecturers, sex-for-marks crimes among lecturers and female students. It concluded that although their awareness of the concept of investigative journalism was appreciable, the respondents did not, however, fully utilise the provisions of the FoIA in their work as journalists. The study's recommendations included that media outfits should organise more investigative reporting trainings for their reporters, and make greater use of the provisions of the FoIA to expose malfeasance in public life. This agrees with the position reported by Ahmad (2022) that the respondents in his study practised investigative journalism, even though there was no link of that to the use of FoIA. But the research by Alhassan did not seek to find out if indeed the respondents investigated any of the issues they said could be investigated.

Reviewing Ahmad and Nasir (2022), this study focused on the practice of investigative journalism among Abuja-based journalists. Adopting the innovation diffusion theory to guide it, the study as well used an in-depth interview design and multi-stage sampling technique (stratified and purposive) to select 21 respondents. With the objectives of finding out whether journalists in Abuja practised investigative journalism, and the extent to which they practised it, the study found out, *inter alia*, that online journalists practised more investigative journalism than their offline counterparts. It recommended *inter alia*, that there should be motivation and rewards for investigative journalists. This agrees to what Ahmad and Jubril (2022) also found out.

Yushau, (2010) study focused on knowing to what extent journalists investigated and uncovered corruption in Nigeria, as well as what challenges they faced in the course of doing that. The researcher interviewed journalists to elicit data, and found out that while the media were aware of their watchdog role, they, however, were not sure of to what extent they were practising investigative journalism. The researcher discovered that among challenges the media faced in the course of investigative journalism were widespread corruption in the media, poor pay for journalists, pervasive politician-reporter clientelism, as well as threat to investigative journalists. The study recommended that media institutions should bankroll investigative assignments undertaken by their reporters, set up of an independent commission to regulate media activities, and protect journalists who report professionally. This seems to tally with the position taken by Anyadike (2013) that investigative journalism has been in recession.

Section 22 of the 1999 Nigerian Constitution (as amended) provides for the right of the press to hold government accountable to the citizens. This implies a right of access to public information. However, Oberiri's (2016, p.20) study on the use of the FoIA revealed that in spite of the possibility of using the FoIA to aid "journalism practices", such had not been the case in the country. That is why the study recommended that "journalists should go beyond just being aware of the passage into law of the FoIA, but to be well acquainted with relevant provisions of the Act. It is only when they do that, that they can make the most of the Act".

Theoretical framework

As watchdogs and mirrors of society, the media have the responsibilities of informing, educating, mobilizing, warning, alerting, advocating, as well as providing enough information on the state of affairs in the society to the people. Accordingly, this study adopts the media **social responsibility and libertarian** theoretical frameworks.

According to McQuail (2010) social responsibility theory has the following propositions: the media owe the society obligations and that media ownership is a public trust; news media should be truthful, accurate, fair, objective and relevant; the media should be free, but self-regulated; they should have and follow an agreed code of ethical practice and professional conduct, and that government could, under certain circumstances, such as protecting public interest, intervene in the operations of the media. The theory emerged from the Robert Hutchins' Commission set up in the US in 1942 (and submitted its report in 1947) to address criticisms of the American press for its sensationalism, commercialism and imbalances in its political reports. The summary of the theory is that the media should operate with a high sense of responsibility, bearing in mind the welfare, safety and security of the public they serve, and so, should not engage in any tabloidisation.

The theory is relevant to this paper in that it advises the media not to allow any unethical influence to colour their reportage. It encourages them to state the bare facts and allow their *customers* to make up their minds on such issues. This implies that in investigating the underbelly of individuals, groups, and institutions, the press should stay with the truth and public good, regardless of their personal sentiments about the object of their investigation.

The libertarian (or free press) theory was propounded by Siebert, Peterson and Schramm in 1963. Anaeto et al (2008) say that the main assumptions of the theory are: publications should be free from prior censorship; there should be no compulsion to anything; no restrictions should be placed on the collection of information for publication, provided it is done by legal means; there should be no restriction on export or import or sending of messages across national frontiers; and journalists should be allowed to claim a reasonable degree of autonomy in their places of work.

Asemah (2014) notes that the theory advocates press freedom and abhors press censorship, and has the assumption that if the press must function well, it must be free "from government control and influences", and the public should "have access through the media to all kinds of information and opinions from which they are expected to make the right decisions by applying their rationality" (pp.100-101). The theory also urges journalists to carry out their functions professionally and not do anything unethical in the course of their work. It is relevant to the study since it is the responsibility of the media to keep the society informed, and that includes exposure of evil of corruption, violence, and crimes in society.

Research methodology:

This paper drew its data from secondary sources. According to Uford (2017) as cited in Etim and Uford (2018), they include materials such as; books, journal articles, and other internet pages/materials.

Methods of investigation and the investigating reporter

Conducting investigations is not to be done haphazardly, as they often deal with issues affecting reputation, dignity and integrity of persons, groups, and corporate citizens. Much as hunches could prove helpful, they are not to be over-dependended upon. If the leads are from whistleblowers, they should be subjected to thorough scrutiny and profiling as the sources may turn out to be identity thieves out on personal vendetta missions. Investigative journalism is at times aided by sources who want to remain anonymous. They may not even want to leave documents behind with the investigative reporter. To be sure of the genuineness of the sources and the information they give, the reporter may have to use hidden communication gadgets such as pen cameras, high definition tape recorders, and cell phones with scanning applications. The reporter just must be professional enough to be able to write authoritatively and confidently.

Yusha'u (2017) lists what he calls basic principles of investigative journalism to include attribute of the reporter, concept/idea development, processes and strategies, as well as tools and approaches. He notes that an investigative reporter should be one with an alert mind to identify story ideas and analyse data. They should be polite, able to protect documents, take notes fast, and be able to arrange information, as well as be patient to dig for information, have a network of contacts, as well as the courage to withstand threats.

To the list should be added the ability to listen attentively and patiently to sources, alertness to situations during, and even after, investigations. Investigative reporters planning to physically contact their sources should inform their editors ahead of time. Such information should include when and where the concourse would be, what specific purpose it is intended for, as well as their mode of transportation to and from the venue of such meetings. Security measures in the premises of the media houses involved in in-depth investigations should include security men manning the gates of the media houses. Official mails should be handled with care, as they could contain lethal materials. Hawkers coming to sell food items, and unknown visitors to media houses should be screened at the security posts. Employers of investigative reporters should take up insurance policies for them.

Merits of investigative journalism

1. The core value of investigative journalism is to do factual, interpretative in-depth reports on events, institutions, and personalities, with the aim of naming and shaming wrongdoings, which their perpetrators and collaborators would rather want hidden. This implies that it could be a means of building a saner society. It took an investigation done by two journalists working with the *Washington Post*, Carl Bernstein and Bob Woodward, to expose the criminal excesses of Richard Nixon as President of the US (Harcup, 2009). While investigative journalism is not a silver bullet for ridding society of all its ills, it could serve as a leash on corruption.

2. Investigative journalism promotes accountability. The fear of the probing eyes and typing fingers of investigative journalists may compel individuals and institutions to be more circumspect and responsible in the use of their privileges, power, and positions. The assertion attributed to Napoleon Bonaparte that "four newspapers are more to be feared than 1000 bayonets", sits well with this.

3. It provides leaps along the rungs of ladder of the professional career of journalists. Media establishments (or reporters) are often recognised for awards that are celebrated widely. For instance, Asemah (2011), cited in Asemah (2014), notes that the investigative reporter towers above other reporters because they are engaged in what can only be driven by courage, capacity for diligence and thoroughness. For example, two of the four journalists listed by the Committee to Protect Journalists (CPJ) for the Press Freedom Awards 2023, slated for 16 November, are investigative journalists: Ferdinand Ayite of Togo's *L'Alternative* and member of the Organised Crime and Corruption Reporting Project; and Maria Teresa Montano, editor and founder of Mexico's investigative medium, *The Observer*. Speaking on the awards, CPJ President, Jodie Ginsberg, said that the awardees were "formidable reporters working tirelessly to expose corruption, abuse, and wrongdoing despite considerable efforts to silence them" (retrieved from www.cpj.org 11.07.2023).
4. Such awards, accompanied with cash prizes, as they often do, implies that investigative reporting could be a means to economic advancement.

Challenges of investigative journalism

Some of the challenges to investigative reporting are:

1. **Professionalism:** Besides quackery which pervades the profession of journalism, even rookies assume they are good enough to run columns (Macebuh, 1987). This assumption is often carried into serious areas as investigation, making a mess of an otherwise noble profession.
2. **Legal issues:** According to (Ukpaukure, 1991, p.167), a number of laws in Nigeria "restrict the practice of journalism". Undoubtedly, many of these laws were sired for purposes of regime preservation, especially during stratocracies in the country. Legal issues involve defamation laws affecting individuals and corporate entities as well. Greenwood & Welsh (1985, p.96) say libel presents "for the journalist, the publisher, and distributor of newspapers – indeed, for anyone who earns his living with words", one of the greatest perils.
3. **Poor ethics:** Poor ethical practice among many journalists is such that Adelusi (2000, p.23-24) would say, "when you add a number of unethical behaviours engaged in by journalists on their own and to which the authorities have turned a blind eye – garbage rifling, hidden cameras, ambush interviews, eaves-dropping, blackmail, plagiarism, deliberate distortions and 'brown envelopes' - you have a total picture of professional environment in which the unethical has assumed the posture of the expected, while the ethical is openly ridiculed." Ethically-challenged reporters cannot handle investigative reporting.
4. **Poor pay:** The media landscape in Nigeria is strewn with cadavers of many newspapers that hardly lasted beyond a year, partly because of high turnover of reporters changing jobs in search of better pays. Even with the low pays, many journalists are at times not paid regularly. Reporters facing economic desertification can hardly withstand taking a sip from a cup of corruption water, and thereby compromising professional standards.
5. **Fear of personal harm:** Some journalists in Nigeria have been unlawfully arrested and detained, physically assaulted, and some media establishments forcefully shut down over government's perception that they were unpatriotic. This affects their operations, including

carrying out investigations, negatively (Udoakah, 2014). Thus, Downie (as cited in Chukwuma, 2013), cautions that the investigative reporter must realise that their stories will hurt the targets of their reports, and must, therefore, be ready for vengeful reactions from those *victims*. The fear of such reactions dampens reporters' oomph for investigations.

6. Paucity of work tools: Modern journalism tools include computers, internet facilities, smart phones, remote recording devices and security cameras. These items and others are costly and may not be readily available to many journalists. Since investigative journalism often times demands secrecy until the publication of the investigations, it is not in the interest of investigations for reporters to resort to even occasional use of business centres to photocopy and scan their documents. Even printing newspapers outside the media houses is a risk to document security.

7. Privacy rights: The investigative reporter might be confronted with the difficult choice between respecting an individual's privacy and exposing that individual's wrongdoing in the public interest (Akinfeleye, 2000). If the possibility of the matter going to court is high, they may step back from investigation because of the high cost and treacherous path of litigation in the country.

8. Ethno-centricism: Nigerians are generally ethnic-conscious. Malfeasance culprits exposed by the press often resort to playing the ethnic card by accusing the press of ethnic biases. Some reporters may, for ethnocentric considerations, refrain from investigating malfeasance involving people from their ethnic enclaves in the spirit of ethnic solidarity.

9. Clientelism: Journalists meet, interact, and at times befriend many influential folks, in the course of their work. Such relationships sometimes get in the way of professionalism when it comes to investigations. Thus, where their friends are involved in some ill-doings, journalists tend to look the other way, or even encourage their colleagues to do same.

10. Business interest influence: While the media may be interested in the public good, they are also in business to make profit. So, they would most unlikely investigate their advertisers or investors, as no media business can survive without advertisements.

11. Secrecy in government: Investigative reports depend largely on information or intelligence available to reporters. Oftentimes, investigations focus on activities of government and its operatives. Incidentally, public servants are made to swear to an oath of secrecy, which makes it difficult for them to divulge information (Akinfeleye, 2000). This has been addressed by the FoIA, but not much seems to have changed.

Issues confronting the use of Freedom of Information Act

According to Open Government Partnership's "Improved Compliance with Mandatory Publication Provisions Requirement (FoIA) (NG0024)" Nigeria Action Plan 2019-2022 (www.opengovpartnership.org) (accessed 23 December, 2023), challenges confronting the implementation of the FoIA in Nigeria include: (i) Low awareness, skills and knowledge of the FoIA provisions and processes by citizens and public servants; (ii) Lack of designated officers responsible for Freedom of Information (FoI) in most public institutions; (iii) Lack of sanctions against public institutions and FoI responsible officers who do not respond to FoI requests or/and report to the Attorney of the Federation (AGF) annually; (iv) Fewness of public institutions with FoI portals; (v) Few public institutions submitting their annual reports to the AGF, and (vi) Paucity of infrastructure to support digital collection and management of information to facilitate timely retrieval of information requested for. The

media hardly report these issues, if at all. And so long as the issues remain, the media and the public would not reap the full benefits of the provisions of the FoIA.

Usage status of the FoIA in Nigeria

The FoIA has potentialities for assisting journalists monitor, fight, and checkmate unwholesome behavior in society; but they do not seem to make use of the legislation. For instance, *Premium Times* (October 15, 2017) reported that six years into the life span of the FoIA, Nigerians had not made any significant use of it. It cited the FoIA Annual Performance Report for the years 2014 - 2016, prepared by the Office of the AGF, as indicating that more than 53 per cent of government agencies received, "Just one or no request for information in the years under review." This refers to all the requests made by citizens and institutions. The implication is that, most Nigerians, including journalists, have not made adequate use of the FoIA.

David & Sijuade (2021) studied the Nigerian media's use of the FoIA within a 10-year period, 2011- 2021. Their conclusion was that the use of the FoIA within the period was, "Appalling." They added that, "The success stories that have emanated from the use of the Act remains few and far in between." As at May 2020, only 11 Ministries, Departments and Agencies (MDAs) in Nigeria had e-FOI portals, and only five were about building theirs. Similarly, the compliance rate with the Act among 900 MDAs, according to a study by the International Centre for Investigative Reporting (ICIR), was only 10 per cent (www.opengovpartnership.org, visited 2023, May 13).

Conclusion

Investigative reporting, for reasons indicated herein, is a tough genre of journalism. But this paper has also highlighted its merits, the primary one of which is exposing wrong doings in society, especially by the strong and mighty, to the end that society will be safer and saner for the greater number of its citizens. The paper submits that the FoIA offers the media much advantage to mainstream investigative reporting, especially under the current civil rule in the country. However, it notes that the Nigerian media have yet to made appreciable use of the provisions of the law to enhance their work and discharge their watchdog responsibilities. Addedly, the media have done little in the direction of getting public institutions to put the necessary infrastructure in place to make the FoIA work, even as they have not mainstreamed its provisions in their reportage to adequately inform the public, and encourage them to make use of its provisions.

Recommendations

1. Media owners and professional bodies should organise regular trainings on the FoIA for journalists, to help them realise and utilise open government provisions of the Act.
2. The media should see investigative reporting as part of their contributions to the good health of society by using it a sanitiser to demand accountability, responsibility and open society from government.
3. The media should regularly monitor and report on the situation or progress being made by public institutions to emplace the necessary infrastructure for effective compliance with the provisions of the FoIA.

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