

"PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE": A REALITY CHECK

Incisive Media's ClickZ, an ad-supported online publication, has been the largest resource of interactive marketing news, commentary, and how-to information since it was established in 1997.

Because the Federal Trade Commission's do-not-track proposal could have a far-reaching impact, ClickZ's editors reached out to readers and contributors to get a reality check on what the initiative means for advertisers, publishers, and consumers. The feedback we received discusses factors that must be considered if the FTC decides to implement a do-not-track mechanism, including unintended consequences.

ClickZ: A History of Thought Leadership on Regulatory Matters

Since 2003 when former ClickZ Executive Editor Rebecca Lieb testified at the Federal Trade Commission's Spam Forum, ClickZ has been a thought leader on key regulatory issues affecting the online advertising industry.

Since 2007 when the FTC proposed its guidelines for behavioral advertising, ClickZ News has followed the commission's work as it relates to online advertising practices. For instance, in an effort to help our readers understand the nuances of the FTC's do-not-track proposal, ClickZ conducted a Q&A with FTC chief technologist Edward Felten in December (<http://www.clickz.com/clickz/news/1934045/-ftc-s-technologist-talks-tracking>) about what types of online tracking and targeting could be affected if a do-not-track mechanism is put in place.

ClickZ recognizes that the commission's do-not-track proposal is the most significant regulatory initiative ever to be introduced during the short life of the online ad industry. For this reason, ClickZ's editorial staff wanted to ensure our readers – comprised of the top digital marketing professionals in the U.S. – shared their thoughts about the implications of do-not-track on this burgeoning sector of the economy.

The following summary outlines responses submitted by 17 readers and columnists, supplemented with information reported by staff journalists.

In the interest of providing useful feedback to the FTC, we have structured those responses in the form of answers to questions the agency has posed regarding the design, implementation, and impact of a do-not-track mechanism. Reader feedback to some of the questions overlapped, and in these cases we have grouped the questions together.

Thank you for the opportunity to weigh in on this crucial privacy issue.

Regards,
The ClickZ Team
ClickZ.com

ITEMIZED QUESTIONS

QUESTION: How should a universal choice mechanism be designed for consumers to control online behavioral advertising?

Themes:

- Display ads can accommodate disclosure
- Disclosures should link to detailed tracking information
- Costs to industry should be minimized
- Browser solution may be ideal

Summary:

Many ClickZ readers believe there is room in banner ads to provide effective notice to consumers.

"It's my opinion that 20-25 percent of every banner ad served should include an interactive, clickable notification area advising users as to the nature of any tracking that is in place or will take place as a result of the ad being shown or interacted with, along with instructions on how to change preferences." (Kevin Lee, CEO of search agency Didit)

Additionally, notice should include links to more detailed information and opt-out functions.

"A click thru on this icon should take users to a page where they can opt out of the behavioral targeted advertising including having the cookie purged from their machine. Also, the consumer should be able to see what behavioral triggered this ad." (Eric Frenchman, chief internet strategist at Republican digital consulting firm Connell Donatelli)

However readers also clearly desire to minimize the impact on business, both by limiting associated costs and avoiding barriers to innovation.

"It is critical...that any such mechanism continues to support the wide variety of business models and opportunities that allow companies large and small in our industry to innovate, disrupt, and continually push the boundaries in delivering information, entertainment, and increased productivity to the market." (Jeff Weitzman, chief marketing officer, Buysight)

Weitzman says the financial impact of a do-not-track mechanism will be mitigated somewhat if the mechanism allows consumers to share specific interests, and not merely opt out.

"The goal of online behavioral targeted advertising is to increase the likelihood that advertising is reaching consumers who are likely to be interested in it, so any mechanism that furthers that goal should be

welcomed by our industry. Again, if the playing field is level, the market will in the end favor those companies that provide real relevance and value to consumers." (Jeff Weitzman, Buysight)

According to some readers, a browser-based mechanism such as the FTC has proposed is the ideal approach.

"This would allow the consumer to communicate their preference to not be tracked, and it would be up to the individual web sites and technologies to honor that request." (Steven Vine, chief privacy officer, Datran Media)

It's important however that such a tool not be a blunt instrument, Vine argues. It should support transactions between websites, advertisers, and consumers -- for instance, by allowing a digital publisher to enable free access to consumers who opt in to tracking while on the site.

"The goal of the do-not-track mechanism should not be to stop tracking but to give the consumer meaningful choices about whether to be tracked and how to control it." (Steven Vine, Datran Media)

QUESTION: How can such a mechanism be offered to consumers and publicized? How can such a mechanism be designed to be clear, easy-to-find, usable, and understandable to consumers?

Themes:

- New versions of Browsers will notify consumers of options
- Display ad disclosure should be clear and concise
- A PSA campaign could generate further awareness

Summary:

How the mechanism should be publicized depends on whether it is offered through a display ad interface or within the browser. A browser-based mechanism would be publicized jointly by browser manufacturers, online advertisers, consumer advocates, and individual publishers.

"It would be the role of the browser to publicize the mechanism, and up to the online advertising and consumer advocacy industries to educate consumers on their choices as they relate to behavioral targeting and tracking. It would be the role of the individual web sites to recognize and honor preferences." (Steven Vine, Datran Media)

The mechanism should be bolstered with a PSA campaign, according to Eric Frenchman at Connell Donatelli. Such a campaign should emphasize privacy literacy, and should not shy away from discussing various types of tracking -- including the use of offline consumer data.

QUESTION: What are the potential costs and benefits of offering a standardized uniform choice mechanism to control online behavioral advertising?

QUESTION: What is the likely impact if large numbers of consumers elect to opt out?

QUESTION: How would it affect online publishers and advertisers, and how would it affect consumers?

Themes:

- Benefits to consumers: more transparency; control; potentially higher-value advertising *if* consumers are allowed to add interest categories
- Costs to consumers: potentially less relevant advertising; higher volume of ads; more intrusive advertising as publishers compensate
- Benefits to business: regulatory clarity
- Costs to business: lost revenue for publishers; unfair playing field for smaller publishers; reduced innovation

Summary:

According to ClickZ readers, the greatest benefit to consumers of a properly implemented do-not-track mechanism is also the most obvious -- transparency and greater control for people who are largely ignorant of how online behavior is used for marketing purposes. Certainly they will enjoy a greater perception of privacy, which has value in and of itself.

"A properly architected set of technologies that help inform consumers about the anonymous and non-anonymous profile data being stored in their cookies or fingerprint-based profiles is highly valuable and appropriate." (Kevin Lee, Didit)

"The benefits are clear in that a choice mechanism would provide a better consumer experience and build trust and loyalty between brands and consumers." (Steven Vine, Datran Media)

It's also possible to imagine a scenario where a consumer choice mechanism will provide a net benefit to publishers and marketers, but only if that mechanism allows them to specify categories of interest -- rather than merely opt out of ad tracking. Such a nuanced approach will reward companies that provide relevance and value to consumers.

"Given a mechanism that emphasizes helping consumers choose what information they share with businesses...they will volunteer some level of information about what interests them. This will help to offset the financial impact of losing that segment of consumers who choose to share no information." (Jeff Weitzman, CMO of Buysight)

Another possible benefit to advertisers: A do-not-track mechanism could result in even more personal data being shared with advertisers, as websites add registration barriers to offset the loss of anonymous detailed profiles. The most handy current

example of this is Facebook, which routinely uses personal information voluntarily shared by its users to target ads. The company's increasingly sophisticated ad targeting methods are presumably not covered by a universal choice mechanism. That's because with social networking, sharing personal data is the whole point.

For consumers, the implications are somewhat grim. If websites take this tack, "a uniform choice mechanism could lead to an even greater loss of privacy for consumers who don't want to have to pay for content," according to ClickZ columnist Sean Carton, chief creative officer of idfive, an ad agency.

Carton points out this could lead to an undesirable economic stratification of consumer privacy.

"Consumers who can't afford to pay for privacy will be forced to give up greater amounts of personal information to retain access to content. Only those who can afford to pay for content will be able to retain their privacy." (Sean Carton, idfive)

Consumers could suffer a range of other negative consequences should consumers opt out of ad tracking in large numbers:

Higher volume of ads. "There is the potential that consumers will receive more non-targeted ads as publishers attempt to make up in volume what they have lost in premium prices for behavioral ads." (Ed Montes, managing director of AdNetik, a digital ad firm owned by Havas Digital)

Less free, quality content. "Without that trade-off of free content in exchange for data, publishers won't have the resources to support high quality content. As a result, they would have to charge for content, or the quality of their content would likely go down." (Steven Vine, Datran Media)

Less relevant advertising. "If behavioral targeting can't be used, online ads will revert back to mid/late 90's-style straight-CPM banner ads. In order to get the exposure they'll need, online advertisers will have to blanket the web with their ads in a "shotgun" approach hoping to find the right audience." (Sean Carton, idfive)

Intrusive ads. "One benefit of behaviorally-targeted advertising is that (in theory)...it's more relevant to consumer interests... If this capability is taken away we'll go back to more obnoxious ad formats that degrade the user experience." (Sean Carton, idfive)

Meanwhile on the business side, publishers and advertisers face a number of unpleasant realities should consumers opt out of online ad tracking en masse.

Competitive disadvantages for small publishers. Website owners resort to site demographic data and market research to target their ads. This requirement will tend to favor large publishers with research budgets and direct sales forces.

"Smaller publishers will fall by the wayside because they can't pay for the research they'll need to be able to provide media planners in order to sell ads on their site." (Sean Carton, idfive)

"If consumers universally opt-out of third-party tracking but not first-party tracking, smaller publishers that rely on advertising networks for their revenue will be at a huge disadvantage to those larger publishers that can afford their own technology and sales forces. The ability of ad networks to aggregate media across hundreds of smaller web sites while still meeting advertisers' needs to target their advertising to appropriate audiences on a large scale has been a key factor in the continued diversity of content on the internet." (Jeff Weitzman, Buysight)

Competitive disadvantages for general interest and news publishers. "If a large percentage of consumers opt out, it will depend if those are the same consumers who transact online or those who don't (on average). If the transactors move to opt-out, advertisers will be forced to rely more on contextual advertising and channel based advertising than behavioral advertising. That's...bad for general purpose and news sites." (Kevin Lee, Didit)

Reduced innovation: The online ad sector is a fierce competitive landscape where some of the brightest technologists in the U.S., working for well-funded startups, are developing the products that will define how media and marketing messages are delivered to future generations. The risk, should large numbers of consumers exercise a universal choice mechanism, is that this innovation would simply migrate elsewhere -- perhaps to Europe or China. Or it may simply grind to a halt, negatively impacting jobs and private sector investment.

"If we increase the barrier to entry, fewer and fewer entrepreneurs will be willing (or financially able) to jump that barrier. Right now the barrier to entry for entrepreneurs is essentially zero. Lower risk means that more people are willing to invest their time to try new things online. If we raise the risk (by increasing the cost of the advertising-supported business models that drive so much of the Internet), we'll effectively put the brakes on innovation." (Sean Carton, idfive)

Rewarding wrong-doers: "Like online gambling, some ecommerce and service providers may move offshore where they can operate without onerous privacy restrictions. Legitimate marketers may find themselves at a disadvantage compared to the outlaw competition, in the same way that ethical email marketers must compete with email spammers." (Kevin Lee, Didit)

QUESTION: How many consumers would likely choose to avoid receiving targeted advertising? How many consumers, on an absolute and percentage basis, have utilized the opt-out tools currently provided?

Themes:

- Opt-out rates for popular Firefox plug-in
- Click-through and opt-out rates for new behavioral ad icon
- Consumers may opt back into ads upon realizing impact on content

Summary:

While ClickZ readers clearly feel the prospect of a do-not-track mechanism poses significant threats to industry and consumers alike, many are also of the opinion that the consumer opt-out rate will be low.

Sean Carton observes that fewer than 1 percent of Firefox users have installed the extension Ad Blocker Plus, perhaps the best-known browser plug-in for removing ads, according to its developers.

"What may really happen? Short answer: Nothing of any consequence... Given the choice, people may initially choose to exercise the choice to retain their 'privacy' but if publishers require access to behavioral information in exchange for content, the majority of consumers will eventually choose to give up on blocking behavioral targeting." (Sean Carton, idfive)

Others concur, as a sampling of comments reveals:

"If...we see that the adoption of these new features are in line with the number of people who currently choose to make themselves anonymous online, we will see that this whole debate was conjured up by a few loud voices and restricting the flow of data is not something the public wants." (Zach Coelius, CEO, Triggitt)

"I'm cautiously optimistic that consumers and legislators will realize that once consumers are empowered with the knowledge about what information an ad network, analytics provider, publisher or marketer has on them, most will leave well enough alone and prefer targeted ads to untargeted ads." (Kevin Lee, Didit)

"I would imagine very few (would opt out) if they understood advertising pays for a large portion of the content and...receiving relevant ads is a better user experience to them." (Heather Fogarty, interactive associate media director, TouchPoint Integrated Communications)

"When consumers are given a real-world, trade-off scenario, such as continued access to free content in exchange for targeted ads, a majority of consumers would opt to receive targeting ads." (Steven Vine, Datran Media)

A survey by Datran Media-owned Preference Central found that when presented with numerous trade-off scenarios, only roughly 10 percent of respondents expressed a preference for paying for content with no advertising.

More recent data backs up these viewpoints. When the ad industry began to implement a new ad icon last year, an average of around one in every 700,000 users served an ad incorporating the icon chose to opt out, according to an analysis of impressions served by privacy compliance vendor Better Advertising over a six-month period. That amounts to an opt-out rate of around .00014 percent. Of course, the fact that a user was served an ad does not necessarily indicate he or she saw the icon, or indeed the ad itself.

Perhaps more notable: Around five percent of users who have clicked on the icon choose to opt out of behavioral tracking. Better Advertising claims that statistics suggest "transparency doesn't foster opt-out" and that consumers are less likely to want to opt out if they feel they are being presented with sufficient information about how their data is used.

Better advertising also reported the icon has received an overall average click-through rate of around .0035 percent across multiple campaigns, suggesting it was clicked on once for every 28,500 impressions served. That figure, coupled with the fact that five percent of users clicking the icon went on to opt out, suggests one user opted out for every 570,000 impressions served. ("Few Opt Out of Behavioral Ads": <http://www.clickz.com/clickz/news/1933561/opt-behavioral-ads>)

QUESTION: In addition to providing the option to opt out of receiving ads completely, should a universal choice mechanism for online behavioral advertising include an option that allows consumers more granular control over the types of advertising they want to receive and the type of data they are willing to have collected about them?

Themes:

- Granular controls should be added
- Controls should include data type and permitted use
- Controls may also include brand level permissions

Summary:

Yes, according to our readers. Adding granular controls, including the ability to specify interest categories -- to add as well as subtract data use permissions -- will increase transparency and control for consumers and minimize the risk to publishers and technology innovation.

These controls should allow users to specify not only topics of interest, but also what data types can be collected, who may leverage that data, and how they are permitted to use it. A consumer should be able to grant a publisher such as Yahoo or Google permission to collect behavioral data and serve ads based on it, but may wish

to prevent those companies from reselling that behavioral data. A consumer may also wish to proactively decline receiving email based on online behavior, while giving permission for display ad messaging based on the same behavior.

"While this level of choice may add complexity, this is not a simple issue given to simplistic solutions. The choices, if presented to consumers clearly and well, are understandable." (Jeff Weitzman, Buysight)

Providing category-level opt-ins and opt-outs does have a significant drawback: It wouldn't guarantee a consumer would avoid ads in that category. That's because many ads are run-of-site buys or are targeted using geographic or other, non-behavioral factors. This could generate consumer confusion.

"A consumer's choice may not map back to their experience in a meaningful way. Suppose I look at my data profile and see 'in-market for mobile phones.' Opting out of this may be meaningless, because I may still receive mobile phone ads targeted based on other data such as my age, income and industry of employment. This is a very basic example and it can get far more complex, but the reason for this failure is the way marketers use data to place an ad is different than how a consumer would use data to control their ads." (Steven Vine, Datran Media)

Some readers support the further measure of allowing opt-ins and opt-outs at the brand level.

"Consumers are already used to making choices at the brand level across other channels such as email, telemarketing and direct mail. This is demonstrated by the fact that generally one subscribes to email newsletters from brands one likes, not email service providers. Thus, consumers should be able to opt-in to brands from which they want to see ads across the web and opt out of those they don't. Opting-in and out of ad networks has no real meaning for the consumer." (Steven Vine, Datran Media)

A risk in allowing granular controls is that it may initially overwhelm some consumers. However ClickZ readers believe it's a risk worth taking. Consumers have already taken considerable steps toward protecting their own data, and must be entrusted to continue that progress. A do-not-track mechanism could help empower them through such nuanced controls.

"Consumers will have this power whether it is given to them by the FTC or through other means. As they become more aware and more savvy they will take control and determine what information they are comfortable with others collecting." (Augustine Fou, group chief digital officer of Omnicom's Healthcare Consultancy Group)

"In an ideal scenario, we'll be providing consumers with options. It doesn't need to be all or nothing, as some people want to receive targeted advertising. It just needs to be very clear to users how they choose to opt in to this. Users should be in control to make changes at any point. (David Gorodyansky, CEO of AnchorFree)

QUESTION: Should the concept of a universal choice mechanism be extended beyond online behavioral advertising and include, for example, behavioral advertising for mobile applications?

Themes:

- Universal choice mechanism should cover mobile devices, despite technical challenges
- Tracking preferences should ultimately extend to offline data as well

Summary:

Extending a universal do-not-track mechanism to include mobile devices is easier said than done, since (A) cookie-based ad tracking doesn't function on mobile browsers in the same way it does on PC desktop browsers, and (B) mobile devices as a rule cannot import browser settings.

However that hasn't stopped ClickZ's readers from throwing their support behind the principle. A sampling of their comments:

"Data is essentially platform neutral; marketers use data – often the same data – across different platforms, so consumer choice should be platform neutral as well. Mobile phones are just another device with access to the Internet, and consumers' preference should be respected wherever they go, or however they access the Internet." (Steven Vine, Datran Media)

"It shouldn't matter what kind of device is being used (computer, mobile device, iPad, etc.). The element of choice should remain the same irrespective of the device on which behavior is being tracked." (David Gorodyansky, AnchorFree)

"This absolutely should be extended for mobile where the abuse I think could be far more dangerous if your phone number is grabbed." (Eric Frenchman, Connell Donatelli)

"It should be simply 'digital' without differentiating between online or mobile, since those are essentially the same. Mobile browsers are increasingly becoming the method of choice of consumers trying to find information right away, rather than waiting to get back to a broadband connection at home." (Augustine Fou, Omnicom's Healthcare Consultancy Group)

Others go farther. Ed Montes, managing director of Havas Digital's AdNetik trading desk, is among those who believe that a tracking opt-out mechanism that fails to account for offline behavioral marketing is "discriminating on the delivery vehicle."

"I think if you are going to regulate the concept of 'behavioral' advertising it should be done in every medium where 'behavior' is collected and used. I would extend this beyond digital formats such as browser and mobile but include any collection of behavioral data -- that means 'offline' as well -- to things like shopper marketing and

direct mail. If you don't, aren't you just discriminating on the delivery vehicle? And can you craft a statute and policy that is broad enough to anticipate new technological advances?" (Ed Montes, AdNetik)

QUESTION: If the private sector does not implement an effective uniform choice mechanism voluntarily, should the FTC recommend legislation requiring such a mechanism?

Themes:

- Most readers do not support legislation
- A vocal minority believes the industry has not acted quickly enough, and a privacy bill is appropriate

Summary:

Readers are divided on the question of legislation. Most are against it, but a vocal minority believes a legislated solution would bring needed regulatory clarity or that the industry has failed to move fast enough to provide transparency, notice, and choice to Internet users.

"Many consumers want meaningful choice, and despite many years of trying, the industry has failed to provide it. Without an environment of consumer trust, large brands are hesitant about engaging in different types of advertising because of the current uncertain privacy landscape. And for technology companies who lack clarity, innovation carries with it risk from an unknowable regulatory environment. From a business perspective, it is highly important that this is resolved, that there is clarity for consumers and the industry as a whole, and that trust is restored." (Steven Vine, Datran Media)

For those against it, the prevailing reason given was the risk that a privacy law could inflict significant harm on consumers and publishers.

"While a 'Do Not Track Privacy Bill' sounds great to consumers, the eventual effect of such a bill would be disastrous, with unintended consequences that would actually make things much worse for online consumers. This move is all about politics, not actually protecting consumers' online privacy." (Sean Carton, idfive)

"The government should play the most limited role possible in the development and enforcement of any universal choice mechanism." (Jeff Weitzman, Buysight)

Instead, Weitzman and others believe, government should focus on the greater good of enhancing consumer choice through a self-regulatory framework and through aggressive consumer education.

"The government should be concerned with making sure consumers have a choice about what information is collected about them and how it is used, and an advocate ensuring that those choices are respected. The FTC should therefore develop a framework that ensures transparency in the interactions between businesses and consumers with respect to the collection and use of data and enforceability if businesses do not fulfill their obligations to consumers. Beyond that, the FTC should focus on educating consumers about their choices and help them understand both the risks and benefits of the use of their data in the commercial marketplace." (Jeff Weitzman, Buysight)

CONCLUDING THOUGHTS: FTC-Inspired Self-Regulation Takes Hold

In addition to covering the FTC's path toward its latest "Protecting Consumer Privacy in an Era of Rapid Change" report, ClickZ keeps a watchful eye on privacy related legislative efforts, as well as the online ad industry's sweeping self-regulatory initiative. The online behavioral advertising privacy program developed and operated by the Digital Advertising Alliance, a coalition of the largest advertising trade groups including the Interactive Advertising Bureau, Association of National Advertisers, and the Direct Marketing Association, has come a long way even in the short period of time following publication of the FTC's report in December.

The two largest digital ad buying agencies, GroupM and VivaKi, are actively encouraging their advertiser clients to include the alliance's online behavioral ad preferences icon in their ads. Visible in ads targeted through behavioral data, the icon links to detailed information about how the ads were served and allows consumers to easily opt out from receiving ads from third parties of their choice in the future. Two of the three companies certified by the alliance to implement the icon in ads and provide related technology and compliance services have each served around 5 billion ad impressions featuring the icon each month, and the program has only just begun.

Additional companies are expected to be approved by the alliance to serve advertisers, ad buying agencies, and website publishers in complying with self-regulatory guidelines and the icon program. Companies currently certified to implement the icon expect many more advertisers, agencies, and ad networks to begin including the icon in ads in the coming months.

The Digital Advertising Alliance initiative was patterned directly after the FTC's own guidelines for behavioral advertising. ClickZ has covered the incremental steps taken by the alliance, whose program appears to be advancing and can be considered the most pervasive self-regulatory digital ad program ever devised by and implemented by such a wide array of companies and organizations. In the coming months we can expect to see it in action across the web.

Progress by Browser Developers

Additionally, in the same two-month period major browsers have begun to embrace visible ad privacy settings that adhere to the spirit, and in some cases the letter, of the FTC's proposal. Consider these developments:

In January, Google, maker of the Chrome browser, unveiled a Keep My Opt-Outs plug-in for opting out of behavioral tracking and targeting; the plug-in works in conjunction with the industry's self-regulatory initiative. Also in January, Mozilla, developer of the Firefox browser, proposed a do-not-track header allowing people to opt out of behavioral ads. And in December, Microsoft said it would include tracking protection functionality in the next version of Internet Explorer.

On behalf of our readers, we encourage the FTC to consider these positive privacy developments as it revises its report and drafts formal recommendations to lawmakers.

Links to Related ClickZ News Coverage

ClickZ's Coverage of Regulatory Matters

<http://www.clickz.com/type/news/category/legal-regulatory>

Online Privacy: What to Expect in 2011

<http://www.clickz.com/clickz/news/1934456/online-privacy-expect-2011>

Firms Compete to Offer Behavioral Ad Icon

<http://www.clickz.com/clickz/news/1938347/firms-compete-offer-behavioral-icon>

FTC Wants Do Not Track for Online Ads

<http://www.clickz.com/clickz/news/1725015/ftc-studying-do-not-track-list-online-ads>

ClickZ's Q&A with FTC Chief Technologist Edward Felten

<http://www.clickz.com/clickz/news/1934045/-ftc-s-technologist-talks-tracking>

Google Offers Privacy Plug-In for Chrome

<http://www.clickz.com/clickz/news/1939201/google-offers-privacy-plug-chrome>

Firefox Aims to Go Beyond Do-Not-Track

<http://www.clickz.com/clickz/news/1934477/firefox-aims-track>

FTC's 2003 Spam Forum

<http://www.clickz.com/clickz/column/1705757/ftc-spam-forum-dispatch>

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