

“Follow the Lead” Workshop

STAFF PERSPECTIVE | SEPTEMBER 2016

Introduction

Online lead generation is nearly ubiquitous in the modern marketplace, connecting consumers who are interested in goods or services with the merchants or providers who can offer them. But because lead generators often operate behind the scenes in complex ways, consumers and many businesses may know little about what they do and how they do it.

As the nation’s consumer protection agency, the Federal Trade Commission (“FTC”) has broad jurisdiction over lead generators, whether they are generating leads for a lender, an educational institution, or a company offering another good or service. Using this authority, the agency has brought law enforcement actions against unscrupulous actors in the lead generation industry. For example, the FTC has sued lead generators that lured consumers with promises of extremely low fixed rate mortgages or free refinancing, but then sold consumers’ information to entities that did not actually offer these deals.¹ The FTC also has sued payday loan lead generators that sold consumers’ sensitive bank account information to non-lenders who simply debited charges directly from consumers’ accounts without authorization.²

Given the complexity of the industry, on October 30, 2015, the FTC hosted a public workshop, entitled “Follow the Lead” (“Workshop”), at which a variety of experts and stakeholders discussed online lead generation practices and key consumer protection issues raised by those practices.³ This Staff Perspective summarizes and reflects upon that discussion, the associated public comments, and other information gathered through law enforcement and experts. In particular, we detail the mechanics of online lead generation and potential benefits and concerns associated with lead generation for both businesses and consumers.



The Mechanics of Online Lead Generation

What Is Lead Generation?

Lead generation is the process of identifying and cultivating individual consumers who are potentially interested in purchasing a product or service. The goal of lead generation is to connect companies with those consumers so that they can convert “leads” into sales. A *lead* can be any consumer who has indicated interest – directly or indirectly – in buying a product or service by taking some action. During the Workshop, we focused on consumers who voluntarily submitted some information online – typically on a website form (see Appendix Figure 1). Such leads may consist of little more than a consumer’s name and contact information. Some industries like consumer lending, however, may solicit much more detailed and sensitive consumer information, like Social Security and bank account numbers.

A lead is someone who has indicated – directly or indirectly – interest in buying a product.

Lead generation is not new: merchants and other advertisers have long sought to identify individual consumers receptive to a sales pitch. As consumers increasingly research and shop for products and services online, however, lead generation has become more sophisticated, rapid, and data-intensive. And lead generation has become a key marketing technique used in a variety of industries, particularly lending, postsecondary education, and insurance.

Who Is Collecting Leads Online, and What Happens to Them After Consumers Press “Submit”?

The process of collecting, preparing, and selling consumer leads can be quite complex, and the roles played by different entities in the lead ecosystem can vary and overlap significantly. Although the mechanics defy simple generalizations, some relatively common elements of lead generation are worth highlighting:

Leads Collected by a Publisher or Affiliate

Generally speaking, consumers’ first interaction with online lead generators starts with a website or sites operated by a *publisher* or *affiliate*. Publishers are the consumer-facing marketers in the lead generation ecosystem that promote products or services online. They encourage consumers to submit additional information about themselves to learn more and connect with *merchants* or *advertisers* (like retailers or lenders) that can sell them the products or services they are seeking. A publisher’s website typically contains marketing claims and a web form requesting consumer information (see Appendix, Figure 1). While these websites sometimes expressly identify the merchant brands to which they sell consumers leads, others do not – and instead make more generic marketing claims (as in Figure 1).

Often, publishers are small companies that simply collect consumer information and pass it on to larger, more sophisticated actors in the lead ecosystem. Adding complexity to the process,

however, some publishers oversee networks of *sub-publishers* or *sub-affiliates* that feed them leads, and with which they contract to create marketing websites and web forms.

Once a consumer expresses interest in a product or service by submitting her personal information into a web form, that information becomes a “lead” and a variety of things can happen to it (see Appendix Figure 2). In some cases, the publisher may sell leads directly to the end-buyer merchants that offer the products or services, and those companies contact consumers directly. In other instances, publishers sell consumer leads to intermediaries like lead aggregators that are less visible to consumers.

Leads Transmitted to Aggregators

Once publishers have collected consumer leads (whether directly or through sub-publishers), they frequently send them to *aggregators*. Aggregators, generally speaking, are intermediaries that take in leads collected by multiple website publishers and prepare them for sale to their clients – merchants or other aggregators. Aggregators frequently maintain contractual relationships with these clients, the terms of which specify the types of leads the buyer is willing to purchase from the aggregator. One aspect of the aggregator’s role is to identify the leads that would be most valuable or relevant to their clients and to package the leads accordingly. Unless an aggregator chooses to operate its own websites or engage in consumer-facing marketing, its role may be largely invisible to consumers who fill out online forms.

Once an aggregator has processed a batch of leads, it may sell those leads directly to an end-buyer merchant that can offer products and services. Alternatively, it may sell that batch to yet another aggregator – adding more layers to the lead ecosystem (see Appendix Figure 2).

Leads Sold to End-Buyer Merchants

Ultimately, the leads that publishers collect, and that aggregators frequently prepare, are sold to end-buyer merchants or advertisers that can sell consumers the products and services they are seeking. With the leads in hand, merchants will frequently contact consumers directly to provide additional marketing materials and more specific information about a potential transaction.

Leads Verified or Supplemented with Additional Information

Merchants and others in the lead generation ecosystem may seek more data about leads for a number of reasons, including to verify the accuracy and validity of the information consumers provide in web forms, to supplement consumer leads with additional data for a fuller picture of a consumer, or to score leads based on their potential qualifications or value. To obtain this additional information, lead sellers may reach out to consumers directly – for example, calling them over the telephone. In other instances, merchants, aggregators, or publishers may get some information from third-party data brokers.⁴ Industry representatives at our Workshop stated that companies involved in lead generation most frequently use data brokers merely to verify the information consumers submit. It remains unclear, however, the extent to which lead buyers and sellers may also use data brokers to supplement leads with additional pieces of information consumers did not provide in web forms.

* * *

As detailed above, between the time consumers first fill out online web forms and the time they are contacted by a merchant (often only a matter of seconds), their personal information can pass through a number of hands and undergo supplementation.

Payday or Short-Term Lending Lead Generation and the “Ping Tree”

The payday lending lead generation industry is a significant part of the lead marketplace, and has some relatively unique features that were discussed during our Workshop. According to industry representatives, payday lenders employ lead generators to cater to consumers seeking quick small-dollar, short-term loans. To immediately underwrite and fund such loans, lenders ask their lead generators to collect detailed personal and financial information associated with each loan application, including the consumer’s employers, Social Security number, and financial account numbers.

Once the publishers collect and electronically transmit these leads to aggregators, the aggregators use an automated, instantaneous, auction-style process – known as a *ping tree* – to sell the leads to lenders or other aggregators. Lenders that access the ping tree provide the aggregator with specific criteria, or filters, to identify the consumers with whom they would like to connect (for example, some lenders may limit their offers to consumers in certain states). The lenders also specify the prices they will pay for individual leads that meet their criteria. Using this information, the ping tree transmits leads through the automated lender network in real time – presenting leads to potential buyers electronically until the lead is matched with, and accepted by, a lender (often the highest bidding lender, according to our Workshop participants). That lender then purchases the lead, and presents the consumer with an offer for a loan. If no lender elects to purchase a particular lead following the auction process, that lead is described as a *remnant lead*. Although remnant leads do not result in offers for loans, at least in some past instances aggregators have sold them to clients who offered consumers alternative products they did not apply for, such as credit cards or debt relief programs. The process associated with the ping tree occurs almost instantaneously – so that consumers who fill out a payday loan application online can secure an offer immediately.

Potential Benefits to Consumers and Competition

At the Workshop, industry representatives stated that third-party lead generators provide potential benefits to both consumers and competition. Lead generators may have special expertise that connects merchants and interested consumers quickly and cost-effectively. By employing a large number of publishers – each operating its own website with information and offers to consumers – merchants can maximally and efficiently reach potentially interested consumers in the marketplace. Additionally, lead generators may benefit consumers by connecting them quickly with multiple merchants, and their associated offers, that consumers might not find as easily on their own.

The sale of consumer leads may also have positive benefits on price and competition. One of our Workshop participants presented a research study showing that, in the mortgage lending context, the ability to sell potential borrowers’ personal information from loan applications to third parties resulted in lenders offering cheaper loans to consumers.⁵ Additionally, the researchers who conducted this study concluded that lenders in jurisdictions with fewer restrictions on the sale of borrower information likely collected more underwriting data to maximize its value. These lenders also denied more mortgages as compared with lenders in jurisdictions with more limitations on selling borrower information, and had fewer delinquencies and home foreclosures, which the researchers linked to the ability to collect, and sell, more data.

Potential Concerns for Consumers and Competition

Participants in our Workshop also highlighted some concerns – and, in some cases, potentially unlawful conduct – associated with the lead ecosystem that may impact both consumers and competition.

Complexity and Lack of Transparency

As detailed above, leads often pass through several hands before consumers are contacted by end-buyer merchants that can offer them products or services. Many participants in our Workshop observed that the pathway through which leads are collected, processed, and sold is often very complex and opaque.

Several key aspects of the lead generation process may be hidden or difficult to understand for consumers. At the outset, consumers who fill out web forms may not realize they are operated by lead generators and instead assume that they are submitting information directly to a merchant or other advertiser. Even if consumers understand that they are submitting their information to a lead generator, they may not know that this information can be sold and re-sold multiple times – and further that, as a result, they may be contacted by numerous marketers that are unfamiliar to them. Additionally, consumers may not be aware that lead generators sometimes sell their information to the companies willing to pay for it (or pay the most for it), as opposed to those best suited to offering them the products or services they seek. Moreover, consumers may not understand that the information they provide in web forms can potentially be verified or supplemented with additional information they did not provide on these forms. Companies should disclose this type of information to consumers clearly and conspicuously to add transparency to the lead generation process, and allow consumers to make informed choices about when and how to share their personal information.

Disclose clearly to consumers who you are and how you will share their information.

Aggressive or Potentially Deceptive Marketing

Participants in our Workshop expressed concern that lead generators may engage in aggressive, or even deceptive, marketing techniques to entice consumers into filling out web forms. For example, a few participants stated that some website publishers associated with postsecondary education marketing deceptively claim that they can connect consumers with jobs or government assistance in order to entice them into submitting their personal information. Publishers and aggregators may then target these deceived consumers with numerous, aggressive telemarketing calls to convince them to agree to be contacted by an educational institution. Indeed, after our Workshop, the FTC announced an action against Expand, Inc. and its CEO for misrepresenting to consumers that they were applying for job openings when in fact defendants were selling consumers’ personal information – for up to \$125 per lead – to schools and career training programs.⁶ Beyond education marketing, the FTC also has brought law enforcement actions against lead generators for making deceptive promises to consumers regarding a variety of products and services, including mortgage loans⁷ and credit card debt relief assistance.⁸

One industry expert at our Workshop explained that the complexity and opacity of the lead generation ecosystem makes it ripe for problematic marketing techniques. Given the many steps that can separate the publisher making the marketing claims to consumers from the end-buyer merchants, lead generators may feel emboldened by this lack of transparency to make questionable claims.

In response to these concerns, some lead generation industry representatives stated that lead buyers are increasingly making efforts to discover and reject leads obtained through deceptive or other problematic marketing practices, in part because these consumers are less likely to actually purchase their products or services – and are thus less valuable as leads. For example, according to industry experts at our Workshop, some merchants and lead aggregators employ technologies that identify and monitor the publisher websites that are collecting their leads or marketing their products or services. Additionally, at least one vendor in the industry said it provides a tool that assigns each consumer lead a unique identifier – akin to a VIN for automobiles – through which it can track the history of a lead (including, for example, all of the companies who have purchased or sold it). While useful, our participants acknowledged that not all industry members have adopted tools that would allow the tracking of leads and monitoring of lead generator marketing claims, making the effectiveness of these tools somewhat limited.

In another effort to target deceptive claims, the Better Business Bureau’s Electronic Retail Self-Regulation Program (ERSP) has also attempted to curb such practices by some lead generators. The ERSP receives complaints from both members and non-members, and also independently monitors advertisers and merchants for deceptive claims. ERSP conducts investigations and may issue findings when it determines that advertising claims are unsubstantiated or false.

Monitor lead sources for deceptive claims and other warning signs like complaints.

To avoid doing business with companies obtaining leads through deception, lead buyers should take measures such as those described above – reviewing claims to consumers and any available information about which publishers or lead generators have engaged in deception. Additionally, by tracking consumer complaints and the sources of leads, merchants may be able to link specific

entities to any problematic practices and make more informed decisions about whether to continue doing business with particular intermediaries or terminate those relationships. If an entity deals with sensitive information such as Social Security or financial account numbers, the importance of monitoring increases significantly. Companies who choose to ignore warning signs and look the other way may be at risk of violating the law themselves.

Potential Misuse of Sensitive Consumer Information in Payday Lending Lead Generation

Online lead generators for payday lenders typically collect sensitive personal and financial information, including Social Security numbers and bank account information. Further, through their use of the ping tree, lead generators share this information with a network of lenders or other buyers. At our Workshop, industry representatives commented that the collection and use of this information is necessary for lenders to engage in quick underwriting and approval – so that consumers shopping online for loans can secure them instantaneously.

Other participants, however, expressed significant concern that lead generators’ collection and sharing of such sensitive information increases the risk of misuse and harm to consumers. For example, they suggested that lead aggregators may be failing to ensure that the companies that buy their leads (or otherwise have access to the ping tree) do not use this information for unauthorized or other unlawful purposes.

Avoid selling remnant leads to buyers with no legitimate need for sensitive data.

Indeed, the FTC has filed several law enforcement actions alleging that fraudulent operators have been able to obtain payday loan leads for nefarious purposes, such as making fake debt collection calls⁹ or charging consumers’ financial accounts without authorization.¹⁰ Some participants also expressed concern that, in some instances, lead generators sell remnant leads to non-lenders that target consumers unlawfully, as the FTC has alleged in its recent enforcement actions against two lead generators, LeapLab and Sequoia One.¹¹ Thus, lead sellers should be cautious when selling remnant leads. Depending on the circumstances, they could be liable under the FTC Act if the buyer has no legitimate need for the information. This is especially important given that participants also pointed out that the privacy policies on many publisher websites provide few restrictions on the use or sale of the consumer information they collect, leaving consumers vulnerable.

In response, industry representatives at our Workshop stated that some lead aggregators have adopted policies prohibiting the sale of Social Security numbers or financial account numbers other than for the purpose of originating a loan. For example, the trade association Online Lenders Alliance has put forth best practices, which include prohibitions against mishandling sensitive consumer information.¹² As FTC staff has noted previously, for self-regulatory programs to be effective, industry participants should ensure that such programs include mechanisms for robust monitoring and enforcement, such as dismissal from the program and referral to the FTC for companies that fail to comply with the standards outlined in the code.¹³

In addition to limiting the type of information collected and sold, publishers and aggregators should vet potential lead buyers before doing business with them and monitor their lead buyers for any misuse of consumer data. FTC staff has previously suggested such measures when

industry members are doing business with other consumer-facing companies.¹⁴ Such vetting could include making sure that lead buyers have not been subject to an FTC action or other legal action for misusing consumer information. Ignoring warning signs that third parties are violating the law and pleading ignorance will not shield companies from FTC actions. Furthermore, lead sellers should keep sensitive data secure and provide only the data that prospective buyers legitimately need.

*Vet potential
lead buyers and
keep sensitive
data secure.*

Conclusion

Although online lead generation is very common in the modern marketplace, many companies and consumers lack an understanding of how it operates, and the types of benefits and concerns it presents. Through the FTC’s “Follow the Lead” Workshop and this Staff Perspective, we hope to promote a greater public understanding of these issues, continue our dialogue with experts and stakeholders associated with this industry, and inform our ongoing law enforcement work to protect consumers from unlawful conduct.

Endnotes

¹ See, e.g., *FTC v. Intermundo Media, LLC*, No. 14-2529 (D. Colo. Sept. 12, 2014) available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3225/intermundo-media-llc-delta-prime-refinance>; *United States v. GoLoansOnline.com*, No. 14-1262 (S.D. Tex. May 7, 2014) available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3228/goloansonlinecom-inc>.

² *FTC v. Sequoia One, LLC*, No.15-1512 (D. Nev. Aug. 7, 2015) available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3253/sequoia-one-llc>; *FTC v. Sitemsearch, dba LeapLab*, No. 14-2750 (D. Ariz. Dec. 22, 2014) available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3192/sitemsearch-corporation-doing-business-leaplab>.

³ A transcript and videos of the Workshop are available at <https://www.ftc.gov/news-events/events-calendar/2015/10/follow-lead-ftc-workshop-lead-generation>.

⁴ In 2014, the Commission issued a report examining the data broker industry, entitled “Data Brokers: A Call for Transparency and Accountability.” See Press Release, “FTC Recommends Congress Require the Data Broker Industry to be More Transparent and Give Consumers Greater Control Over Their Personal Information,” May 2014, available at <https://www.ftc.gov/news-events/press-releases/2014/05/ftc-recommends-congress-require-data-broker-industry-be-more>.

⁵ See Jim-Hyuk Kim & Liad Wagman, “Screening Incentives and Privacy Protection in Financial Markets: A Theoretical and Empirical Analysis,” *The RAND Journal of Economics*, Vol. 46, Issue 1 (2015).

⁶ *FTC v. Expand, Inc.*, 6:16-cv-00714-CEM-TBS (M.D. Fla. Apr. 28, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3124/expand-inc-gigats>.

⁷ *FTC v. Intermundo Media, LLC*, No. 14-2529 (D. Colo. Sept. 12, 2014) available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3225/intermundo-media-llc-delta-prime-refinance>; *United States v. GoLoansOnline.com*, No. 14-1262 (S.D. Tex. May 7, 2014) available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3228/goloansonlinecom-inc>.

⁸ See, e.g., *FTC v. Ryan Golembiewski*, 212-cv-00893 (S.D. Ohio Oct. 17, 2012) available at <https://www.ftc.gov/enforcement/cases-proceedings/112-3079/golembiewski-ryan-united-debt-associates-llc-et-al>; *FTC v. Christopher Mallett*, 111-cv-01664 (D.D.C. July 3, 2012) available at <https://www.ftc.gov/enforcement/cases-proceedings/112-3079/golembiewski-ryan-united-debt-associates-llc-et-al>.

⁹ See, e.g., *FTC v. K.I.P., LLC*, 15-cv-02985 (N.D. Ill. Nov. 4, 2015) available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3048/kip-llc-payday-loan-recovery-group>; *FTC v. Broadway Global Master Inc.*, 212-cv-00855 (E.D. Cal. Sept. 16, 2015) available at <https://www.ftc.gov/enforcement/cases-proceedings/1123215-x120020/broadway-global-master-inc>.

¹⁰ See, e.g., *FTC v. Ideal Financial*, 213-cv-00143 (D. Nev. Mar. 9 2016) available at <https://www.ftc.gov/enforcement/cases-proceedings/1123211-x130044/ideal-financial-solutions-inc-et-al>.

¹¹ *FTC v. Sitemsearch, dba LeapLab*, No. 14-2750 (D. Ariz. Dec. 22, 2014) available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3192/sitemsearch-corporation-doing-business-leaplab>; *FTC v. Sequoia One, LLC*, No.15-1512 (D. Nev. Aug. 7, 2015) available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3253/sequoia-one-llc>.

¹² See Online Lenders Alliance, Best Practices (April 2016), available at <http://onlendersalliance.org/best-practices/>

¹³ See, e.g., FTC Staff Report, “Protecting Consumer Privacy in an Era of Rapid Change,” March 2012, at 72-73, available at <https://www.ftc.gov/reports/protecting-consumer-privacy-era-rapid-change-recommendations-businesses-policymakers>.

¹⁴ See, e.g., FTC Staff Report, “Mobile Cramming,” July 2014, at 26-27, available at <https://www.ftc.gov/reports/mobile-cramming-federal-trade-commission-staff-report-july-2014>.

Appendix

Figure 1

FICTIONAL EXAMPLE OF A PUBLISHER WEBSITE AND WEB FORM

ONLINE
UNIVERSITY FINDER

GET YOUR DEGREE TODAY.

New opportunities.
New **future.**

REQUEST INFORMATION

Major:

Degree:

Name:

Email:

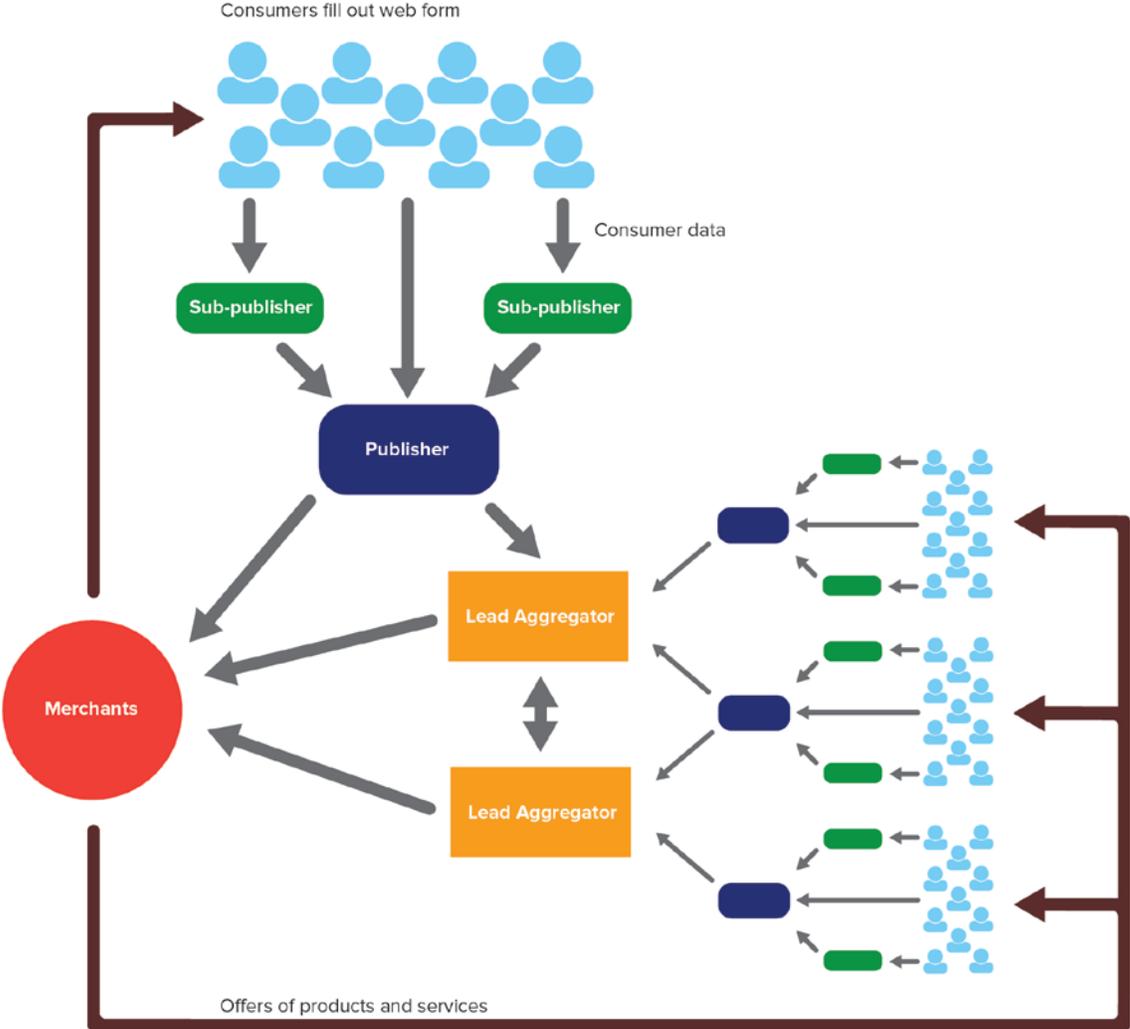
Phone:

SUBMIT

IT'S QUICK & EASY. APPLY TODAY!

Figure 2

THE FLOW OF LEADS THROUGH PUBLISHERS AND AGGREGATORS



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