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22 ICM Registry, LLC

23 UNITED STATES DISTRICT COURT  
24 CENTRAL DISTRICT OF CALIFORNIA

25 MANWIN LICENSING,  
26 INTERNATIONAL S.A.R.L. and  
27 DIGITAL PLAYGROUND, INC.

28 Plaintiffs,

vs.

ICM REGISTRY, LLC, d/b/a .XXX;  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS;  
and DOES 1-10

Defendants.

Case No. CV 11-9514-PSG (JCGx)

**DECLARATION OF STUART  
LAWLEY IN SUPPORT OF  
DEFENDANT ICM REGISTRY,  
LLC'S MOTION TO STRIKE  
PLAINTIFFS' STATE LAW CAUSES  
OF ACTION PURSUANT TO  
CALIFORNIA CODE OF CIVIL  
PROCEDURE SECTION 425.16**

Date: April 2, 2012  
Time: 1:30 p.m.  
Place: Courtroom 880

Hon. Philip S. Gutierrez

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Los Angeles, CA 90071

1 I, Stuart Lawley, hereby declare as follows:

2 1. I am the Chief Executive Officer of defendant ICM Registry, LLC  
3 (“ICM”), and have held that position since early 2004. I submit this declaration in  
4 support of ICM’s Motion to Strike Plaintiffs’ State Law Causes of Action Pursuant to  
5 California Code of Civil Procedure Section 425.16. I have personal knowledge of the  
6 facts set forth herein, unless otherwise stated, and, if called upon to testify as a  
7 witness, I could and would competently testify to these facts under oath. All Exhibits  
8 to this Declaration are maintained in ICM’s business records, in the ordinary course of  
9 business.

10 2. ICM was incorporated in June 1999 for the purpose of introducing  
11 certain top level domains (“TLD”) into the Internet root.

12 3. In 2000, the Internet Corporation for Assigned Names and Numbers  
13 (“ICANN”) issued a Request for Proposals (“RFP”) to operate new TLDs as part of a  
14 limited “proof of concept” test. I understand that ICANN operates under the authority  
15 of the Department of Commerce, pursuant to both a joint “Affirmation of  
16 Commitments” agreement and a contract with the Department of Commerce. These  
17 documents are publicly available at:

18 [http://www.ntia.doc.gov/files/ntia/publications/affirmation\\_of\\_commitments\\_2009.pdf](http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf)  
19 f; [http://www.ntia.doc.gov/files/ntia/publications/ianacontract\\_081406.pdf](http://www.ntia.doc.gov/files/ntia/publications/ianacontract_081406.pdf).

20 4. ICM Registry and two unrelated parties each submitted proposals to  
21 operate .XXX as an adult oriented TLD. ICANN did not select any of those  
22 applicants to participate in the limited “proof of concept” addition of new TLDs.

23 5. In December of 2003, ICANN issued a new RFP to operate “sponsored”  
24 TLDs (“sTLDs”) designed to serve specified communities.

25 6. In March of 2004, in response to ICANN’s RFP, ICM submitted an  
26 application to operate a “sponsored” TLD (“sTLD”) to create .XXX as a web space  
27 where members of a “Sponsored Community,” who share the same values, goals and  
28 business interests, could self-identify and engage in adult-themed, erotic expression.

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1 Information about the Sponsored Community is available on ICM’s website, at  
2 <http://www.icmregistry.com/about/sponsored-community/>. ICM’s vision behind the  
3 .XXX sTLD was not merely to create another place for adult-oriented content, for  
4 there have existed for many years adult-oriented sites on .com and .net. Rather, ICM  
5 envisioned a web space where web users could easily find (or avoid) adult content,  
6 free of scams, malware, viruses, and child abuse images that have plagued other  
7 TLDs.

8 7. In its application, ICM stated, and at all relevant times thereafter  
9 intended, that the .XXX sTLD be voluntarily used by registrants as a location on the  
10 World Wide Web where adult content could be published and viewed by consenting  
11 adults who desired to view such material in an environment free of scams, malware,  
12 viruses and child abuse images. ICM further stated and intended that policy for the  
13 .XXX sTLD would be established by registrants with input from other stakeholders  
14 with expertise in online child safety, privacy, and freedom of expression. Documents  
15 and additional information relating to ICM’s application for the .XXX sTLD are  
16 publicly available on ICANN’s website, at:  
17 [http://www.icann.org/en/tlds/agreements/xxx/icm-xxx-application-related-documents-](http://www.icann.org/en/tlds/agreements/xxx/icm-xxx-application-related-documents-en.htm)  
18 [en.htm](http://www.icann.org/en/tlds/agreements/xxx/icm-xxx-application-related-documents-en.htm).

19 8. As part of the sTLD application process, ICM was required to choose a  
20 policy-setting board to serve as the “sponsoring” organization for the sTLD. ICM  
21 chose the International Foundation for Online Responsibility (“IFFOR”). IFFOR  
22 includes a Board and a Policy Council. The Policy Council is responsible for  
23 identifying and representing the values, goals, and interests of the Sponsored  
24 Community, and of the .XXX web space as a whole with input from other  
25 stakeholders with expertise in online child safety, privacy, and freedom of expression.  
26 The Sponsored Community is defined to include persons and entities that: (i) have  
27 determined that a system of self-identification would be beneficial; (ii) have  
28 voluntarily agreed to comply with all IFFOR policies and best practice guidelines; and

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1 (iii) provide online, sexually-oriented adult entertainment intended for consenting  
2 adults.

3 9. Although the 2004 sTLD process was completely open, ICM was the  
4 only applicant to seek approval of an adult-content oriented sTLD. Documents and  
5 additional information showing that the process allowed multiple applicants to submit  
6 proposals for the same TLD are publicly available on ICANN’s website, including at:  
7 <http://www.icann.org/en/announcements/advisory-31oct03.htm>; and  
8 <http://www.icann.org/en/tlds/stld-apps-19mar04/stld-public-comments.htm>. ICM had  
9 no input into the ICANN process.

10 10. The independent evaluators selected by ICANN to evaluate RFP  
11 responses initially rejected ICM’s 2004 application for the .XXX sTLD.

12 11. Thereafter, ICM petitioned ICANN in accordance with ICANN’s rules  
13 and regulations to obtain approval of .XXX as a sTLD. ICANN ultimately overruled  
14 the evaluators’ findings with respect to ICM and determined that ICM met ICANN’s  
15 criteria for identifying a defined sponsorship community that supported and would  
16 benefit from .XXX, and in June 2005 ICANN authorized its President and General  
17 Counsel to begin negotiations with ICM for the .XXX TLD. Subsequently, however,  
18 ICANN came under pressure from entities opposing the creation of a .XXX sTLD  
19 and, in May 2006, ICANN reversed its position, resulting in another rejection of  
20 ICM’s proposed contract to operate the .XXX.

21 12. ICM filed a request for reconsideration of ICANN’s May 2006 rejection  
22 pursuant to a process provided under the ICANN Bylaws. ICANN ultimately rejected  
23 ICM’s application in whole in March 2007.

24 13. ICM continued to pursue .XXX as an sTLD under the ICANN Bylaws  
25 with the filing of an Independent Review Proceeding in June 2008, challenging  
26 ICANN’s rejection of the ICM application. ICANN’s independent review proceeding  
27 is a non-binding arbitral process set forth in Article IV, Section 3 of ICANN’s  
28 Bylaws, that permits a person materially affected by a decision or action by the

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1 ICANN Board to request an independent review of a decision or action he or she  
2 asserts is inconsistent with the ICANN Articles of Incorporation or Bylaws. ICANN’s  
3 Bylaws, including information relating to the independent review proceeding process,  
4 is publicly available on ICANN’s website at:  
5 <http://www.icann.org/en/general/bylaws.htm#IV>. The Independent Review Panel  
6 vindicated ICM’s position, issuing a Declaration in February 2010 that ICANN had  
7 already, in June 2005, determined that ICM satisfied the sponsorship criteria and was  
8 therefore precluded by its own Bylaws from reopening the issue.

9 14. In March 2011, ICANN finally signed a contract making ICM registry  
10 operator for .XXX.

11 15. Records of all of the relevant meetings, agreements, reports, policies,  
12 procedures and other documents relating to the approval and launch of .XXX are  
13 publicly available on the websites of Defendant ICANN, ICM, and IFFOR. *See, e.g.*,  
14 <http://www.icann.org/en/tlds/agreements/xxx/>, <http://www.icmregistry.com/policies/>,  
15 <http://www.iffor.org/policies.html>, [https://community.icann.org/display/tap/2007-02-12+-  
16 12+-  
17 +Consideration+of+Proposed+.XXX+Registry+Agreement+and+recent+public+com  
18 ment+period; www.ICMRegistry.com.](https://community.icann.org/display/tap/2007-02-12+-+Consideration+of+Proposed+.XXX+Registry+Agreement+and+recent+public+comment+period;)

19 16. Since March 2011, ICM has worked with IFFOR to finalize policies for  
20 the .XXX sTLD. IFFOR’s “Baseline Policies” are an expression of the values, goals,  
21 and interests of the Sponsored Community which include: combating child abuse  
22 images; facilitating user choice and parental control regarding access to online adult  
23 entertainment; promoting freedom of expression; and protecting the privacy, security,  
24 and consumer rights of consenting adult consumers of online adult entertainment  
25 goods and services. These Baseline Policies may be found at  
26 <http://www.iffor.org/baseline-policies>. Five members of the IFFOR Policy Council  
27 represent the interests of the Sponsored Community; one represents the interests of  
28 Freedom of Expression; one represents the interests of Child Protection; and one

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1 represents the interests of Privacy and Security. Collectively, the nine members of the  
2 IFFOR Policy Council identify and represent the values, goals, and interests of the  
3 Sponsored Community, and of the .XXX web space as a whole.

4 17. IFFOR also expresses the values, goals, and interests of the Sponsored  
5 Community through a grants program, funded by proceeds from registrations in  
6 .XXX, in furtherance of combating child abuse images, facilitating user choice and  
7 parental control regarding access to online adult entertainment, promoting freedom of  
8 expression, and protecting the privacy, security, and consumer rights of consenting  
9 adult consumers of online adult entertainment goods and services.

10 18. Prior to executing the ICANN contract, ICM developed the “Founders  
11 Program.” In December 2010, a few months after the decision to proceed with the  
12 .XXX sTLD was made by ICANN, the Founders Program was formally launched and  
13 was available to leading companies within the online adult entertainment industry.  
14 ICM’s Founders Program was established to support expressive activities by members  
15 of the Sponsored Community, whereby early-adopters of the .XXX sTLD could  
16 secure and develop domain names in anticipation of the official launch; the Founder’s  
17 Program closed on July 31, 2011. Under the terms of the agreement applicable to  
18 participation in the program, “Founders” were allocated specific valuable .XXX  
19 domains, and agreed to post unique content and not merely to direct users to alternate  
20 TLDs. Attached as Exhibit 1 to this Declaration is a portion of the standard Founders  
21 Program agreement.

22 19. Prior to filing this lawsuit, Plaintiff Digital Playground, Inc. (“Digital  
23 Playground”) expressed interest in doing business with ICM, namely, as part of the  
24 Founders Program. Digital Playground’s Chief Operating Officer, Farley Cahen,  
25 worked with ICM’s Greg Dumas (“Dumas”) to facilitate Digital Playground’s  
26 participation in the Founders Program; at all times, I was aware that Digital  
27 Playground was communicating with Dumas regarding the Founders Program.  
28 However, Digital Playground did not act before the deadline for participation in the

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1 program passed. The deadline for participation in the Founders Program was  
2 established to provide for reasonable processing time before the start of the Sunrise  
3 period, which was the next phase of the .XXX launch. The Sunrise period for the  
4 .XXX sTLD commenced on September 7, 2011.

5 20. In connection with the launch of .XXX, ICM provided a variety of  
6 mechanisms to facilitate registration of .XXX domains by members of the Sponsored  
7 Community based on either trademark registrations or on the operation of websites in  
8 other TLDs, whether or not the names were formally trademarked. ICM also provided  
9 an opportunity for trademark holders who did not wish to become members of the  
10 Sponsored Community to file a reservation request in order to block third party  
11 registrations of corresponding strings in .XXX, including non-infringing registrations  
12 of such strings.

13 21. ICM, as the registry responsible for the creation and continued operation  
14 of the .XXX sTLD, creates and facilitates designated space on the World Wide Web  
15 where expressive activities of the Sponsored Community, including ICM, can  
16 flourish. Thus far, through the Founders Program or otherwise, ICM has accepted  
17 over one hundred thousand (100,000) .XXX domain name registrations. A significant  
18 portion of these registrations are affirmative (as opposed to defensive) registrations, of  
19 operators who intend to use their sites as a means of adult expression. Accordingly,  
20 ICM has already enabled and facilitated the expressive activities of thousands of  
21 registrants who have chosen to become a member of the Sponsored Community  
22 through registration of a .XXX domain, and who, in doing so, have affirmed their  
23 support for the IFFOR Baseline Policies identified above. These registrants have  
24 expressed their interest in not only sharing adult-oriented content on the Internet  
25 (which they could have done, or already do, elsewhere on the Internet, for example on  
26 .com or .net), but also in sharing their content in a web environment designed to  
27 protect viewers' privacy and minimize their exposure to viruses, malware, and child  
28 abuse images.

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1           22. On July 9, 2010, while ICM was in the midst of trying to secure  
2 ICANN’s approval of the .XXX sTLD, Manwin’s Managing Partner, Fabian  
3 Thylmann (“Thylmann”) contacted me via private electronic message. Thylmann was  
4 seemingly interested in investing in ICM’s potential .XXX Registry business.  
5 Attached as Exhibit 2 is a true and correct copy of the private electronic message. In  
6 response, I informed Thylmann that ICM was, and has always been a closely held  
7 entity, with a small group of investors, and was not seeking new investors at that time.

8           23. A few months later, Dumas and Claudio Menegatti (“Menegatti”), both  
9 ICM consultants, met with Thylmann. This meeting occurred sometime during the  
10 Venus Tradeshow in Berlin, Germany, which took place on October 21-24, 2010.  
11 After the meeting, Dumas and Menegatti reported to me on what had happened. I  
12 recall there to have been two statements of note. First, I understand that Manwin  
13 representative Thylmann informed the ICM representatives that Manwin viewed the  
14 introduction of the .XXX sTLD as a threat to its dominance over the adult Internet  
15 industry. Second, I understand that Thylmann said Manwin would file a lawsuit  
16 against ICM, should the .XXX sTLD be approved by ICANN, so as to disrupt ICM’s  
17 ability to conduct its business.

18           24. Several months later, in June 2011, ICM received a letter from Manwin’s  
19 attorneys, threatening Lanham Act claims against ICM if it failed to unilaterally take  
20 action to prevent third parties from registering any domain which infringed on  
21 Manwin’s supposed trademarks, “or any similar misleading names.” ICM responded  
22 to this threat in July 2011 by pointing out that any such litigation would be baseless —  
23 ICM stated that no viable claim existed under the Lanham Act against a domain name  
24 registry, explained the innovative mechanisms available for preventing infringing  
25 registrations, and explained the limitations on ICM’s ability to register or prevent  
26 others from registering domain names through third party registrars once the Registry  
27 launched its activities. Attached as Exhibits 3 and 4 to this Declaration are true and  
28 correct copies of Manwin’s letter and ICM’s response, respectively.



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1           25. In September 2011, Thylmann again approached ICM, ostensibly  
2 interested in doing business with us. On September 23, 2011, I had two meetings with  
3 Thylmann.

4           26. During the meetings, Thylmann mentioned that he and/or Manwin had  
5 spent about \$250,000 on attorneys’ fees to understand the ICANN process that led to  
6 the approval of .XXX. He also said that he was planning to start his own adult  
7 industry trade group, consisting of the two or three “powerhouses” of the industry  
8 (including Manwin), using organizations such as the Motion Picture Association of  
9 America (“MPAA”) and the Recording Industry Association of America (“RIAA”) as  
10 models.

11           27. After making these statements, Thylmann then set forth a list of “non-  
12 negotiable” demands to be met by ICM in order for Manwin to consider conducting  
13 business with ICM. Thylmann stated that he would “tie up ICM in litigation” if ICM  
14 did not meet all of his demands.

15           28. On October 12, 2011, I attended a follow-up meeting with Manwin at  
16 Manwin’s offices in Montreal, Canada.

17           29. During the meeting, Manwin’s representatives refined its list of demands,  
18 including (a) ICM’s allocation of several thousand .XXX domain names to Manwin,  
19 free of charge, (b) ICM’s commitment to circumvent the policy development process  
20 through which the Sponsored Community expressed its values with regard to policies  
21 concerning the operation of user-generated content “tube” sites in the .XXX domain,  
22 (c) across-the-board discounts on domain registrations, and (d) the allocation of  
23 certain ‘premium’ or high value domain names, such as “tube.xxx,” to be operated by  
24 Manwin through a revenue share arrangement with ICM.

25           30. Thylmann further stated that in order to explain Manwin’s change of  
26 heart regarding .XXX, ICM had to agree to concessions that would put a positive  
27 ‘spin’ on Manwin’s involvement, namely, that it would appear that Manwin  
28 accomplished some positive impact for the adult industry when news of the deal was

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1 announced. Thylmann said that if its demands were not met, Manwin would spend  
2 millions of dollars per year for the next several years tying up ICM in litigation.

3 31. ICM agreed to accommodate some aspects of the Manwin demands, and  
4 submitted a counter proposal on others. During the negotiations, Thylmann confirmed  
5 his intention of starting a new trade group like the RIAA or MPAA. He said that such  
6 a group was necessary because the Free Speech Coalition (a trade group representing  
7 certain segments of the adult industry) was not in a position to provide any real value  
8 for its members.

9 32. Leaving the negotiations, I understood that additional deal points would  
10 need to be refined, and that further discussions would occur after the execution of  
11 appropriate confidentiality agreements.

12 33. ICM received no further communication from Manwin in furtherance of  
13 the negotiations. The next it heard from Manwin was when it learned of the instant  
14 lawsuit.

15 34. Manwin recently announced a ban on all speech distributed via any  
16 .XXX domain by its affiliates and promoters. Thylmann asserted that, “The [instant]  
17 lawsuit was just the beginning” and that “[t]hrough this ban, we hope to make a strong  
18 statement against the .XXX domain.” *See* “Manwin Bans All Business With .XXX  
19 Websites,” XBiz, Dec. 2, 2011, available at <http://www.xbiz.com/news/141694>.

20 35. Since filing the Complaint, Manwin has announced its acquisition of  
21 Digital Playground. *See* “Manwin Acquires Digital Playground,” XBiz, January 17,  
22 2012, available at <http://www.xbiz.com/news/143303>. Based on information and  
23 belief, Manwin may have been in negotiations to acquire Digital Playground prior to  
24 the filing of the instant lawsuit.

25 36. ICM has its own .XXX presence at [www.icm.xxx](http://www.icm.xxx) and [www.gavin.xxx](http://www.gavin.xxx)  
26 where ICM publishes expressive content and other media, such as television and  
27 online media commercials. ICM also uses this presence to encourage others to use the  
28 .XXX forum for their own content.

1 37. ICM operates the .XXX sTLD under a contract with ICANN, the terms  
2 and conditions of which were the subject of intense public interest and input from the  
3 public in the course of numerous public comment periods spanning almost eight years.

4 38. ICM keeps a current list of some of the most recent news articles  
5 pertaining to ICM at <http://www.icmregistry.com/press/in-the-news/>. Some of these  
6 articles include articles from within the past several months concerning the .XXX  
7 sTLD published by national and international outlets such as *The Economist*,  
8 *ADWEEK*, *irishtimes.com*, *AVN*, *c/net*, *CBS News*, and the *Chicago Tribune*. The  
9 press coverage has heralded the benefits of the new registry and the underlying IFFOR  
10 policies, noting that the launch of .XXX “betokens the [adult entertainment] industry’s  
11 new respectability.” See “At a XXX-roads: The adult industry is seeking  
12 respectability – and profits,” The Economist, Oct. 1, 2011, available at  
13 <http://www.economist.com/node/21530956>. Articles have highlighted the registry’s  
14 “added security measures,” “making it easier for parents to block [adult] content” and  
15 “easier for consumers to avoid stumbling upon a porn website” (see “Over 100,000  
16 XXX Domain Names Are Going Live Tomorrow At 11 EST,” The San Francisco  
17 Chronicle, Dec. 5, 2011, available at [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2011/12/05/businessinsiderofficial-porn-domain.DTL)  
18 [bin/article.cgi?f=/g/a/2011/12/05/businessinsiderofficial-porn-domain.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2011/12/05/businessinsiderofficial-porn-domain.DTL)), as well  
19 as its focus on “child protection and regulation” (see “XXX Hits The Spot For Adult  
20 Industry Innovator,” The Irish Times, Sept. 23, 2011, available at  
21 <http://www.irishtimes.com/newspaper/finance/2011/0923/1224304574041.html>). Just  
22 last week, *CircleID* (an online news and opinion website for the Internet community)  
23 named the .XXX approval and launch as the second biggest domain name story of  
24 2011. See “2011 Domain Name Year In Review: Top 10 Biggest Domain Stories,”  
25 CircleID: Internet Infrastructure, Jan. 5, 2011, available at:  
26 [http://www.circleid.com/posts/20120105\\_2011\\_domain\\_name\\_year\\_in\\_review\\_top\\_1](http://www.circleid.com/posts/20120105_2011_domain_name_year_in_review_top_10_biggest_domain_stories/)  
27 [0\\_biggest\\_domain\\_stories/](http://www.circleid.com/posts/20120105_2011_domain_name_year_in_review_top_10_biggest_domain_stories/). I estimate that the full list of articles that have been  
28 written about ICM and the launch of the .XXX sTLD to number into the thousands. I

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1 understand that the public interest in the launch of ICM’s .XXX domains far exceeded  
2 that of any other sponsored TLD.

3 39. As a direct result of the filing of this lawsuit, ICM has received  
4 expressions of concern about the future of the .XXX domain name registry. ICM  
5 believes that the mere existence of the lawsuit has caused end users, and registrars  
6 with whom ICM does business, to question the continued viability of the .XXX  
7 domain. ICM further fears that untold numbers of potential customers may have  
8 reconsidered their initial decision to purchase a .XXX domain name based on the  
9 relief requested by Plaintiffs in this lawsuit.

10 40. ICM has incurred attorneys’ fees in filing this Motion to Strike, and  
11 anticipates the expenditure of further costs and attorneys fees as the proceedings move  
12 forward.

13 I declare under penalty of perjury, under the laws of the United States, that the  
14 foregoing is true and correct.

15 Executed on January \_\_, 2012 at \_\_\_\_\_.

\_\_\_\_\_  
Stuart Lawley

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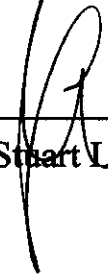
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9 relief requested by Plaintiffs in this lawsuit.

10 40. ICM has incurred attorneys' fees in filing this Motion to Strike, and  
11 anticipates the expenditure of further costs and attorneys fees as the proceedings move  
12 forward.

13 I declare under penalty of perjury, under the laws of the United States, that the  
14 foregoing is true and correct.

15 Executed on January 19, 2012 at Palm Beach, Florida.

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Stuart Lawley