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An Awareness Study on Judicial/Administrative Crimes That May Occur During Web-Based Education Process

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Abstract. Within the current pandemic environment, distance education has become a process where those who teach and learn by using information technologies come together in virtual classrooms regardless of location. However, users inevitably face ethical and security problems. Therefore, a teacher who uses information technologies should be aware that they can negatively affect the individual and the society. The study covers the descriptive analysis of crimes regarding violation of education and training rights in the 2019-2020 academic year with document analysis technique. In the study, by examining the constitution, law, regulation, declaration, international treaty and contract, statutes, regulations, customs, scientific opinions, judicial decisions, etc. that guarantee the rights and freedoms related to education, the articles concerning obscenity, insult, privacy, the right to education and freedom and limits of communication were taken as themes, and some judgments were made. These articles formed the main data source. The study is limited to the articles of law examined on education rights and freedoms and the possible participant words and behaviours on the web. The validity and reliability of the study were carried out by seeking expert opinion. The study is important in terms of the awareness of education stakeholders about possible judicial/administrative crimes related to education rights and freedoms in web-based applications. The results showed that both teachers and students may display negative behaviours that prevent students' education rights, restrict communication freedom, violate family privacy, involve obscenity and insult, etc. Thus, it is recommended that cyber awareness training should be given to teachers about data privacy and behaviours.

Keywords. Web-based education process, education rights and freedoms, judicial/administrative crimes.

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Today, the use of distance education has become inevitable due to compulsory reasons such as natural disasters. In this age, when communication and information technologies are used frequently, almost all kinds of jobs and functions are shifting to the digital environment, and information and behaviour management is evolving. Distance education, especially making use of information technologies, is an education designed to establish instructional interaction between learner and teacher on certain digital platforms. Today, virtual classroom applications with information technologies take place in digital environments where participants can access their teaching processes synchronously or asynchronously. Administrative problems, social interaction, academic competencies, technological access cost, learner motivation, time management and technical problems can be experienced in these environments from time to time. These problems may generally determine the effectiveness and efficiency of the process, affect the process, may consist of words and behaviours, and cause serious problems in educational experiences. Especially in this process, the place, importance and responsibility of the pivotal person, the teacher, have increased. In addition to the teaching skills of the teacher, digital literacy and behaviour management skills should also be developed in order to manage the teaching process remotely (Birkök & Vuranok, 2010; Durak, 2017, Çelen, et al., 2011; Gökdaş & Kayri, 2005; Can, 2020; Orhan & Akkoyunlu, 1999; Karaca, 2007).

In web-based distance education, it is hardly possible to transfer teaching contents without appropriate technological infrastructure; besides, pedagogical infrastructure and distance behavior management should be done academically and administratively because, although solutions are produced for problems that may arise from lack of interaction and communication, other unforeseen or ignored problems may arise in the process (Bilgiç et al., 2011; Yamamoto & Altun, 2020; Yıldız, 2020; Özçınar & Öztürk, 2008).

Crimes arising from information technologies used in distance education can be seen as a fairly new type of crime. These crimes occur directly with the aim of victimizing the other person by using informatics or indirectly with the criminal element of the unpredictable or ignored words and behaviours. With distance education, individuals and institutions may experience moral and judicial / administrative problems due to spatial privacy and uncontrollable words and behaviours depending on discipline (Gözler & Taşçı, 2015). According to Cerrah (2002), the potential of information technologies to lead to violations such as disrupting the integrity of society, ignoring moral principles, and affecting individuals has increased. According to Çalık and Pınar (2009), frequent use of informatics has reduced communication within the family, and the fact that what is

shared with informatics becomes open to all segments has led to ethical problems. According to Ayas and Horzum (2013), the negligent attitudes of families have an important role in children's computer and internet addiction. According to Ilgaz and Aşkar (2014), students experience serious lack of orientation in their online education experiences. Sümer (2016) stated that students experience adaptation problems due to lack of experience and online courses do not fully meet their expectations. Dinçer et al. (2015) found that prospective teachers' computer literacy is not sufficient. Ilgaz (2014) determined that virtual classrooms are open to abuse in many ways. Öztaş and Kılıç (2017) stated that differences in technical infrastructure create problems.

With 3.1 billion hit-rate since March 3rd, when it started to be actively used in distance education, EBA has become the 10th most visited website in Turkey and the 3rd most visited education site of the world. 7 million 383 thousand 213 students and 1 million 30 thousand 516 teachers have actively used EBA (Anatolian News Agency, 2020). However, Web-based distance education study is something teachers haven't known or experienced before. Distance education teachers need to undergo practical training in real terms and understand the differences between live distance education and face-to-face education. In particular, teachers should receive continuous training for crimes that can be committed through informatics, and take necessary precautions against online behavioural problems and judicial/administrative crimes. The fact that digital data have also started to be used as evidence to prove the crime and that computers record this data could be evidence that can be used for a criminal investigation in the future. With the introduction of information technologies into our lives, crimes committed through informatics have also appeared (Orakçı et al, 2016). These include illegally recording personal data shared through images and sounds, blocking communication, defamation, obscenity, violation of privacy, deprivation of education right, blocking of rights and freedoms, using prohibited devices or common networks, etc. These violations, which are crimes according to the Turkish Penal Code, can confuse both educators, students, and parents.

Teachers conduct their lessons as web-based remotely (synchronous/asynchronous) over the EBA system within a certain program. Within the scope of the education process, apart from routine activities like students' admission, rejection, turning their voices on and off, sharing a link/password related to the course, scheduling etc., teachers undertake additional duties such as managing the words and behaviours of themselves and students, organizing the environment, and ensuring the protection of personal privacy and security. This, in turn, forms a chain of measures that include judicial and administrative responsibilities due to access right to education in international land

national law, customs, scientific opinions, judicial decisions, ensuring equality of opportunity, availability, accessibility, acceptability, adaptability, personal data security, privacy, freedom of expression and communication and the regulations of EU (European Union), OSCE (Organization for Security and Co-operation in Europe), ECHR (European Court of Human Rights), COE (European Social Rights Committee), OHCHR (United Nations Children's Rights Committee/United Nations Human Rights Committee), Constitution and etc. (Henkoğlu, 2017).

The most critical factor in eliminating the problems that may occur in the web environment with distance education is human. In order to minimize such problems, especially teachers should have the awareness of digital data security, cybercrime, preparing video and audio media for digital education, providing visual and sound control management, and gaining digital competence to intervene in the words and behaviours of the other stakeholders (Yılmaz, Şahin, & Akbulut, 2016).

This study includes awareness raising about possible judicial/administrative problems that may be encountered in distance education and judicial/administrative measures to be taken in distance education. The study is important in terms of knowing the legal sanctions of the problems that may be encountered in online education.

Method

In the study, the data collected by document analysis, one of the qualitative analysis methods, were described and analysed.

Research Model

Document analysis helps the researcher to reach the data source directly, making detailed descriptions and making generalizations from the inferences in these descriptions (Çepni, 2010). Rights and freedoms related to education have been secured by legal means through constitution, law, regulations, declarations, international treaty and contracts, customs and traditions, scientific opinions, judicial decisions, etc.

Data Collection Tools

Within the scope of the study, the situations that may be criminal in terms of judicial and administrative law were associated with the relevant legal articles, namely institutional documents, and were selected in accordance with the purpose of the study and the criteria (which would constitute a crime). No sampling method was used in the study because it was aimed to reach the entire study sample, so The Turkish Penal Code, the Constitution, the Universal Declaration of

Human Rights, the Basic Law of National Education, the Children's Rights Convention, the European Union Fundamental Rights Charter and the Civil and Political Rights Convention were all included in the sample. Thus, the articles containing legal sanctions such as obscenity, insult, privacy, the right to education and freedom of communication and barriers were taken as themes and within the framework of these themes, the articles were interpreted in association and some judgments were made.

Data Analysis

Within the scope of the study, these items constituted the main data source regarding forensic/administrative crimes that may occur through informatics. The study is limited to the articles of law examined on education rights and freedoms and predictions of the possible participant words and behaviours in the web environment. The validity and reliability of the study were carried out by seeking expert opinion. The approaches known as Modus Operandi, The Search for Evidence and Undesired Cases, Member Check and Quasi-Statistics Approach (Maxwell, 2010) were used to ensure the reliability and validity of the study. For this purpose, besides the researcher, a lawyer who is an expert in qualitative research also reviewed the procedures performed with the checklist. In addition, it was tried to search and reveal negative situations different from and contradictory to the situations that had arisen, and their accuracy was confirmed by sharing the legal articles in the sample and possible criminal charges.

Results

Legal (constitution, education laws, and international treaties) articles related to education were examined and those related to themes are discussed below.

Education Right

The articles 10, 24, 42, 62, 130, 131 of the Constitution include the duties of the state regarding education. For example, according to Article 42, *“Nobody can be denied the right to education. The scope of the right to education shall be determined and regulated by law. Education is carried out under the supervision and control of the State in line with Atatürk's principles and reforms, according to the principles of modern science and education. Education establishments contrary to these principles cannot be opened. Education freedom does not eliminate the debt of loyalty to the Constitution.”* The Constitution of the Republic of Turkey (1982).

According to Article 7 of the National Education Basic Law No. 1739, *“Every Turkish citizen has the right to receive primary education. Citizens benefit from educational institutions after primary education to the extent of their interest and abilities.”* (METK, 1973).

According to the 26th article of the 1948 Universal Declaration of Human Rights, *“Everyone has the right to education. Education is free, at least in primary and basic education. Primary education is compulsory. Technical and vocational education is open to everyone. Higher education should be open to everyone in full equality according to their abilities.”* (Universal Declaration of Human Rights 1948).

According to the 28th article of the 1989 Convention on the Rights of the Child, *“Every child is supported and protected to be able to complete their education. Primary education is free and is a right and compulsory for all children without any discrimination.”* Besides, Article 23 of the UN Convention on the Rights of the Child clearly guarantees the education rights of children with mental and physical disabilities: Article 23.- ... 2. *“Party States recognize the right of children with disabilities to benefit from special care and, upon application, encourage and guarantee to provide assistance to the eligible child and those responsible for his or her care, in accordance with the child's situation and the circumstances of the parents or caregivers, to the extent of the resources available.”* (Convention on the Rights of the Child, 1989).

According to Article 2 of the 1953 European Convention on Human Rights, *“Nobody can be deprived of the right to education.”* (European Convention on Human Rights, 1953).

Article 14 of the EU Charter of Fundamental Rights is about the education right: *“1- Everyone has the education right and to benefit from vocational and continuous education. 2- This right includes the opportunity to receive free compulsory education.”* (EU Charter of Fundamental Rights, 2000).

According to Article 112 of the TCK (Turkish Criminal Law), *“By using force or threat or any other unlawful act,*

- a) preventing all kinds of education activities established by the state or carried out on the basis of permission granted by the public authorities,*
- b) preventing the person's right to education, and*

c) in the event that the students are prevented from entering or staying in the buildings where they live collectively or their annexes, the perpetrator is sentenced to imprisonment from two to five years.” (TCK, 2004).

However, the crime of preventing the right to education can only be committed by private intent. The perpetrator must have the consciousness and will to violate the victim's right to education. If the perpetrator does not have such a specific intention, the existence of the spiritual element of this crime cannot be accepted through interpretation.

In distance education applications, the teacher's not connecting to the web-based education on the determined course day and date, not making the necessary notifications about the course time in advance, being late, unable to start the lesson except for technical problems, taking the student out of the system, etc. practices may contradict the constitutional article on the right to education. The right to education is guaranteed in a number of internationally recognized human rights conventions. International conventions regulate not only the right to education but also human rights in education.

Communication Freedom

According to the article 28/2 of the Constitution, *“The state takes measures to ensure freedom of press and information” and the freedom of communication is accepted as a collective freedom, a social right.”*

In addition, according to Article 26 of the Constitution, *“Everyone has the right to express and disseminate his thoughts and opinions individually or collectively by speech, writing, painting or other means. This freedom includes the freedom to receive or give information or ideas without the intervention of official authorities.”*

Since the Constitution uses the concept of "communication", all kinds of personal communication that are closed to the public by means such as letter, telephone, telefax, telegraph, pager, electronic mail and computer are under constitutional protection.

The Constitutional Court has accepted that the internet is under the guarantee of freedom of expression regulated in Article 26 of the Constitution. According to the Court 183, *“considering the importance of other rights and freedoms related to internet freedom, especially freedom of expression and press, in a democratic society, it is clear that the authorities and courts using public power in the internet issue should be very sensitive.”*

According to the article 12 of the Children's Rights Agreement, *“Every child has the right to express his/her views freely and to ask his/her views to be taken into account in all matters concerning him/her. Everyone has a responsibility to listen to children, learn their opinions and respect them.”*

According to Article 8/1 of the European Convention on Human Rights, everyone has the right to demand respect for their correspondence.

According to Article 134/1 of the crime of preventing communication in the 7th Chapter titled Crimes Related to Freedom of the part of Crimes Committed against Persons of the TCK, *“If communication between persons is illegally prevented, imprisonment from six months to two years or a judicial fine will be imposed.”*

According to Article 12 of the Constitution, *“Everyone has inherent, inviolable, inalienable fundamental rights and freedoms”*. Article 13 of the Constitution regulates the limitation of fundamental rights and freedoms. According to this article, *“Fundamental rights and freedoms can only be restricted by law and depending on the reasons specified in the relevant articles of the Constitution, without affecting their essence. These restrictions cannot be against the word and spirit of the Constitution, the requirements of the democratic social order and the secular Republic, and the principle of proportionality”*.

Except for a technical problem, not giving the student the right to speak during the course, interrupting the flow of information between the students and their teacher, silencing the students, muting the whole class throughout the session, interrupting their speech, rejecting without listening to its content, etc. can hinder students' communication freedom.

Privacy Related to Private Life

According to Article 20 of the Constitution, *“Everyone has the right to demand respect for his private and family life. The privacy of private and family life cannot be touched.”* In case of violation of this principle, that is, if the privacy of private life is violated, the act will be considered a crime according to the new Criminal Code.

For these reasons, acts of violating confidentiality in various ways are criminalized and subjected to penal sanctions.

According to the articles 134/1 and 134/2 of the TCK, *“Any person who violates the privacy of the private life is sentenced to imprisonment from one to three years or to a judicial fine. If*

privacy is violated by recording images or sounds, the penalty to be imposed is increased one fold. The penalty for violating the privacy of private life over the internet or social media, that is, committing a crime by disclosing voice or images belonging to someone else, is 2 to 5 years in prison.”

According to Article 8 of the European Convention on Human Rights, *“Everyone has the right of respect for private and family life, home and correspondence. The interference of a public authority in the exercise of this right is valid only if the interference is prescribed by law and is a necessary measure in a democratic society for national security, public security, the economic well-being of the country, the protection of order, the prevention of crime, the protection of health or morals or the rights and freedoms of others.”*

According to Article 12 of the Universal Declaration of Human Rights, *“Nobody’s private life, family, home or correspondence can be arbitrarily interfered with, and their honour and name can’t be attacked. Everyone has the right to be protected by law against such interference and attacks.”* In the ECHR Article 8, it is mentioned together with the private life of the person. One's home cannot be regarded as a sub-component of private life in the context of privacy alone. As in communication, the protection of the privacy of the home is not necessarily dependent on the condition of protecting the privacy of a private life event. The 11th article of the American Convention on Human Rights and the 24th article of the European Security and Cooperation Organization Human Dimension Conference are the leading basic international provisions regulating the right to private life (Korkmaz, 2014). "Private life" in international law first appeared in Article 12 of the Universal Declaration of Human Rights as *“No one may be subjected to arbitrary interference in his privacy, family, residence or correspondence, or to rape against his honour and reputation. Everyone has the right to be protected by law against this interference and rape”*.

In addition, Article 17/1 of the International Covenant on Civil and Political Rights also includes the concept of private life. It is seen that these contracts protect family life, dwelling and the right to communication together within the concept of "private life" (Polater, 2009: 7). Private life is mentioned in Article 20 of our Constitution as *“Everyone has the right to demand respect for his private and family life. The privacy of private and family life cannot be touched.”*

The name, surname, telephone number, motor vehicle license plate, social security number, passport number, CV, picture, voice, fingerprints, genetic information, health status information are

considered as the main personal data (Keklik, 2012: 25- 28). Personal data are secured in Article 20 of the Constitution; *“Everyone has the right to request the protection of personal data about him. This right includes being informed about personal data about the person, accessing these data, requesting their correction or deletion, and learning whether they are used for their purposes. Personal data can only be processed in cases stipulated by law or with the express consent of the person. Principles and procedures regarding the protection of personal data are regulated by law”*.

In online education, students and teachers participate in the process from their homes. In this case, there may be some violations of dwelling immunity and private life. Controlling images and sounds is necessary so that distracting, immoral and ideological factors don't harm personal life, family and dignity. The home environment, whether virtual or real, is protected by the law against outside interference and attacks. Teachers and students are expected to take necessary precautions within the scope of the privacy of private life in the rooms where they teach.

Obscenity

Obscenity is regulated in Article 226 of the TCK. Accordingly, *“Any person who publishes or mediates publishing obscene images, texts or words through press and broadcasting is sentenced to imprisonment from six months to three years and a judicial fine of up to five thousand days”* (TCK 226/2). *“If the publisher also advertises the obscene product, the perpetrator should be punished by leaving the lower limit for the crime of publishing the obscene product, as the perpetrator commits the optional actions of both publishing and advertising”*. With reference to the crime of making obscene products public in a way that children can see and hear (TCK 226/1-ab), *“giving a child products containing obscene images, texts or words, or showing, reading or displaying their content to them (TCK 226/1-a), exhibiting their contents in places where children can enter or see them, (TCK 226/1-b) are considered as obscenity crimes against children. Penalty for the offense of displaying, reading or saying products that contain obscene images, texts or words to children is imprisonment from 6 months to 2 years and a judicial fine.”*

Cyber sexual crimes are on the rise and cyber sexual delinquency is becoming more common. The use of the internet for deviant sexual purposes and the increase in cyber sexual crimes have reasons stemming retrieve the nature of the internet. Privacy is personal and means not being disturbed by others sexually. In other words, "all kinds of sexual acts of a disturbing nature that are verbal or written but do not involve contact towards the sexuality of individuals." Verbal and graphic sexual harassment can also occur in passive forms. Verbal or visual content may be

broadcast on the internet (webcam flashing) aimed at potential victims, without targeting a specific addressee or addressees.

The voices shared with the moving or still images on the cameras used in e-learning should be controlled to the maximum extent and necessary precautions and arrangements should be made. Such images and sounds, no matter how good the intention is, may cause sexual harm to the other person and create victimization for the person's sexual identity.

Crimes Against Honour

"Crimes against Honour" is regulated in the Eighth Section of the Second Part of the Second Book of the TCK numbered 5237, titled "Crimes against Persons".

According to article 125 of the TCK, *"(1) Any person who attacks the honour and dignity of a person by a concrete act or cursing is punished with imprisonment from three months to two years or a judicial fine. In order for the insult to be punished in the absence of the victim, the act must be committed with at least three persons. (2) If the act is committed through an audio, written or video message addressed to the victim, the penalty specified in the above paragraph is imposed."*

Article 125/3 of the TCK also regulated the act of insult with a voice, written or video message as a crime, and the public commitment of the insult as a reason for increasing the penalty. Accordingly, insult, swearing and blackmail entail 3 months to 2 years' imprisonment, if the insult is committed publicly, it is increased by one sixth and one third in case of publication through press and broadcast. The offense of defamation can be committed by pointing the victim's clear identity information, or without disclosing it clearly. Article 126 of the law clarified this situation. Accordingly, even if the name of the victim is not clearly stated or the offense is committed implicitly, if there is a situation that will not be hesitated in terms of its nature, the insult is deemed to be disclosed. The criminal sanction for defamation on the internet and social media is a prison sentence of three months to two years or a judicial fine, and will be increased one sixth due to the public commitment. Moreover, if the qualified cases specified in the above-mentioned law article take place, the lower limit cannot be less than 1 year.

Threat is regulated in Article 106 of the TCK and this article stipulates a prison sentence of six months to two years for the person who says that he will commit an attack against the life, body and sexual immunity of the people. Insulting words of parents towards the teacher are considered a crime of insult. If these insults are made publicly, the punishment to be imposed is increased by one sixth. According to article 94 of the TCK, *"A public officer who acts against a person incompatible*

with human dignity, causing bodily or mental pain, affecting his/her perception or will ability, or humiliating him/her is sentenced to imprisonment from three to twelve years." (Gülseren, 2013).

Students, teachers or parents' insult, swear, threaten, etc. against each other on the web through words and behaviours can be detected much more easily due to the recording feature of information technologies. Therefore, all stakeholders should focus on the learning and teaching processes of distance education, and should not forget that even though they are connected virtually through internet, their addressee is a student, teacher and parent.

Recommendations

Regulations regarding children's education rights in the world and Turkish legal system are set on the legal basis. There are many legal regulations and jurisprudence on the rights of children in national and international platforms, on crimes that may occur against these rights of children and on situations that may be pushed to crime. Certain measures should be taken to protect the child's right to education, communication, and to prevent threats to both himself and his family integrity. The study investigated the behaviours that may cause judicial / administrative problems that teachers may encounter in the online education process. Accordingly, teachers should provide necessary guidance to students and parents about distance education places and tools, provide up-to-date information about learning time and processes, pay attention to all kinds of crimes against honour, family privacy, obscenity, education and communication rights, and take necessary precautions.

Literature review hasn't shown any research in Turkey and in the world covering the legal-administrative problems of teachers and their responsibilities upon a legal basis. However, the Civil Servants Law No. 657 is applied in any crime definition involving the teacher due to teachers' Responsibility to Respect the Constitution and the Law, Responsibility for Impartiality, Responsibility to Behave with Care and Cooperation, Responsibility to Obey Orders, and Responsibility to Fulfill Financial Responsibilities. According to Article 124 of DMK No. 657, one of the disciplinary punishments listed in Article 125 is given according to the nature and severity of the irregular behaviour to those who do not fulfill the duties duly ordered by laws and regulations as civil servants in order to ensure the proper execution of public services within the country or abroad, those who do not do the things that are obligatory to be complied with, and those who do the things that are prohibited" Accordingly, teachers are obliged to act in accordance with the disciplinary provisions stipulated in the 125th and following articles of the DMK. Teachers can be

penalized according to the nature and severity of their irregular behaviour when they do not fulfil the duties ordered by the legislation within the country or abroad, when they do not do the things that are obligatory to be complied with, or when they do the things that are prohibited (article 125).

In the event that they commit a crime (judicial) within the scope of the 24th article of DMK, the provisions of the "Law on the Prosecution of Civil Servants and Other Public Officials" No 4483 (MKGYK). The purpose of Law No. 4483 is to “specify the authorities authorized to give permission for civil servants and other public officials to be tried for crimes committed due to their duties and to regulate the procedure to be followed” (art. 1). The Law regulates matters such as those who are authorized for an investigation, forwarding the incident to the competent authority, notices and complaints not to be processed, preliminary examination, authorized court. Teachers are responsible for the nature and severity of the situation. Teachers are required to complete their web-based courses without any crime. The research aimed to increase the awareness of education stakeholders who may be the subject or object of cybercrime because teachers need to know well how mobile devices can be integrated in the forensic process, and which attitudes and behaviours can be considered as crimes, especially in the field of forensic informatics. It was also emphasized that due importance is given to the issues of legality and integrity of evidence, which are among the problems encountered in forensic security in Turkey. In addition, it was also stated that the basic level mobile device examination should be supported with trainings for appropriate work and operations. However, since the forensic training of teachers was not the subject of this study, these suggestions were ignored.

All in all, teachers should primarily use legal-based information technology infrastructures, shouldn't share their ID numbers from public social media addresses or their screen if not necessary, shouldn't admit participants whose identity they are not sure of, should arrange a class space before course time, should close applications open on the computer, shouldn't do personal work, should inform parents, should plan well what people can see and hear during the lesson, and should take necessary precautions. They should be trained in forensic informatics against judicial/administrative problems related to distance education, should be furnished with current/periodical information about the legal legislation on data protection, trainings should be given on the right to education, freedom of communication, personal privacy, words and behaviours that may be criminal, user awareness trainings should be given, responsibilities should be shared and the measures to be taken for information flow security should be evaluated both technically and administratively.

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Conflict of Interest

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Ethical Standards

No humans were used in the study. Research document analysis.

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