

Influencing the Internet: Lobbyists and Interest Groups' Impact on Digital Rights in Canada

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Abstract

This chapter provides a summary of empirical research investigating the relationships and perceptions of Members of Parliament, public policy professionals, and lobbyists engaged with technology files in Canada, and their understanding of digital rights. Findings from 16 qualitative elite interviews with professionals indicate various levels of trust between these actors, and various levels of understanding of technological business models and technology issues. The chapter examines the potential impacts of the political communication dynamics between actors on the digital rights agenda in Canada. It also examines the future of digital rights in Canada and the impacts of the public policy environment on the digital rights agenda by drawing on more recent public policy announcements in Canada, such as the release of the *Digital Charter* in 2019 and the subsequent federal election.

The Internet is an inseparable part of Canadian society with a 90 percent adult usage rate (CIRA, 2018). Internet-enabled tools, such as mobile phones, search engines, computers, software, and wearable technology, are the digital technology essential to modern life. Designating the Internet as a basic service was the Canadian

government's first active declaration of digital rights, which the Canadian Radio-television and Telecommunications Commission did in 2016 (Kupfer, 2016). Digital rights are human rights because they exist in the digital era and are an emerging concept in the human rights and technology fields (Hutt, 2015). However, there may be wider interpretations to rights that are emerging as extensions of known human rights as technology evolves, such as privacy, data protection, and sovereignty; discrimination in AI and machine learning; and Internet freedom and access (Gladstone, 2018).

Digital rights are becoming more urgent as Canadians experience harassment online, as the digital divide between rural and urban communities grows, and as Canadians participate in civic life and discussion all over the Internet (CIRA, 2018). Finding ways to appropriately regulate the Internet and manage the challenges it presents—not all of which are new, but many of which are larger in scale—is one of the great challenges of this medium. Understanding who influences that process is an important factor in better understanding the stakes. Digital rights are inherently linked to understanding citizenship in a digital context, as the civic experience is tied to laws, the rights citizens and residents have, and the practices that complement or violations that contradict those rights. In everything from privacy, services (see Amanda Clarke, Chapter 5, for more on digital government, data, and services), regulation of technology firms, and the role of AI in society, a government's relationship with digital rights can impact the civic experience and people's relationship with the state. The responsibilities that digital rights create could fundamentally change the types of technology built and further impact citizenship in a digital context because these rights could influence the mediated interaction between the citizen and civic society.

At the same time, the relationship between governments and technology firms in Canada and around the world has been tested as technology has integrated into every area of life. As governments and corporations have navigated their relationship, they have failed to prevent widespread scandals involving citizens and democratic processes. In Canada, the Minister of Democratic Institutions launched the Canada Declaration on Electoral Integrity Online (Government of Canada, 2019), with social media companies and search engines for the 2019 election (Sharp, 2017). Facebook moved data servers to escape regulation in Europe (Hern, 2018), and was called before Canadian

parliamentary committees to explain the data-sharing and election targeting scandal with Cambridge Analytica (House of Commons Standing Committee on Access to Information, Privacy and Ethics [ETHI], 2018). The company Uber has spread its app-based services across Canada over the last few years while violating many municipal government's regulations. Cities like Toronto were unable to shut down Uber's operations but instead wrote regulations accommodating Uber's business model (Canadian Press, 2015). The roles of technology firms and their influence on citizenship has also been highly debated in the case of Toronto's proposed smart city development, Sidewalk Labs (a subsidiary of Alphabet, alongside Google)—how their technology, integrated into infrastructure, can impact digital and physical citizenship. Critics have questioned how the government agreed to the project given the lack of regulations and new issues around data governance and surveillance that it introduces into the city (Shieber, 2019). These and other events have generated debate about digital rights. Digital rights broadly describe the extension and respect of human rights in digital realms (Mathiesen, 2014). While governments struggle to decipher the technological, economic, political, and value-laden decisions that come with regulating technology firms, issues around digital rights have emerged in these real-world contexts, further complicating discussion of regulation.

There are also high levels of skepticism about the role of lobbying in Canadian politics; consequently, Canada's lobbying system is transparent and strictly regulated (Office of the Commissioner of Lobbying of Canada [OCL], 2018). There has been less critique, however, about the role of technology firms in the public policy process in Canada. Over the last few years, firms such as Google, Twitter, and Facebook have hired former political staff and candidates, high-level civil servants, and consulting firms to staff their lobbying teams (Piliéci, 2018). There is a clear growth in the technology industry's government relations practice in Canada, all while technology scandals are mounting concerns to the point that governments can no longer ignore the impact of unregulated digital technology on Canadians' lives (Ingram & Volz, 2018). These two dynamics—the growth of technology industry engagement in public policy through lobbying, and the importance and risks of technology in Canadians' lives—are worth examining together.

In this chapter, I focus on factors influencing the discussion of digital rights among politicians, public policy actors, and lobbyists

in Canada. I rely on findings from sixteen interviews conducted in the spring of 2018, as part of my MSc thesis (Beretta, 2018) and build from that study with new information related to the 2019 federal election. I conclude with a discussion of the policy proposals around digital rights which have been released in 2019.

Lobbying in Context

Registering lobbyists was a controversial concept introduced in a wide package of public sector reforms by Brian Mulroney's government in 1985, which achieved royal assent three years later (Rush, 1994). Since then, the new *Lobbying Act* of 2006 came into effect. This act is based on the principle that since "free and open access to government is an important matter of public interest" and lobbying is a legitimate activity, it is desirable for public office holders and the public to know who is engaged in lobbying. It is also desirable that paid lobbyists should not impede open access to government (OCL, 2015). The Lobbying Registry (OCL, 2020) is a public database that reveals who is being paid to lobby and on what subjects, as well as the connections between parent and subsidiary organizations and coalitions.

The Lobbying Registry is limited in transparency and effectiveness through its structure. High penalties for the offence of misregistering encourages lobbyists to be careful, often causing firms to over register their communications and lobbyists on a file (Rush, 1994). This dynamic weakens the chain of investigation if the Office of the Commissioner for Lobbying were to suspect any malfeasance. The registry system also does not capture the entirety of the government relations industry. Many consultant firms offer a variety of services which fall outside the scope of the registry, including polling, monitoring and attending committees, offering strategic advice, and hosting events. Though only one service is registered, there may not be a measurable difference in purchasing direct representation or purchasing strategic advice, as they both provide a critical advantage in the policy process (Rush, 1994). Despite critiques, this registry is still viewed favourably worldwide as a comprehensive and well-implemented system (Furnas, 2014; Organization for Economic Cooperation and Development [OECD], 2014). However, open data still only capture what the system asks of it, and that leaves something to be desired for transparency and accountability that are even more comprehensive.

Literature and Existing Research Agenda

There has been very little work that examines lobbying or technology firms or has a consistent understanding of interest groups in the policy process in Canada, which leaves comparative politics and grounding in political communication theories as assets for theoretical grounding for this study. In the 1960s, Lester Milbrath first identified lobbying as a communication process. Where Milbrath (1960) and subsequent authors fall short, based on their own descriptions and analysis, is in failing to examine the impact of communication flow on policy. In further research on lobbying, the nuance and power of political communication has been inadequately studied as a domain.

I frame lobbying as a political communication issue because lobbying is a communication process that can influence the selection of issues for political attention by signalling issue salience and using persuasion to primarily move the dial on issue attention (De Bruckyer, 2014). In a context such as Canada's, agenda setting as a function of lobbying is a much more convincing account of the main purpose of lobbying given that individual legislators' votes on bills are not as vital to the legislative system, and there are few benefits that lobbyists can provide to decision makers outside of information. This is directly related to Canada's pluralistic policy process because information tools are used to shape and legitimize public ideas over instrumental forces like taxes or legislation in democracies where negotiation and compromise are more vital to the process (Deschamps, 2017).

In pluralist understandings of democracy, the politics of interest groups plays an important role in political dynamics. The participation of specialist policy communities, which operate outside the public's view and provide specialist information to the policy development process, is a normal part of Canadian public policy development (Smith, 2014). Lobbyists are part of interest groups and are portrayed particularly badly in the media, suffering a crisis of illegitimacy as they are depicted receiving undeserved favours from the government (Montpetit, 2010). Technology firms hold a distinct role as an interest group due to their emergence as not just part of telecommunications infrastructure and consumer products, but as playing a role in every facet of society.

Recently, authors have started publishing work describing the power of technology firms. Rasmus Kleis Nielsen sees the

development of platform power in addition to hard and soft power and describes five dynamics within its development as a realm of power: “the power to set standards; power to make and break connections; power of automated action at scale; power of secrecy; and power that operates across domains” (2018). This account of platform power convincingly describes the dynamics present in this study, particularly the power to set standards and decide on measures that can affect entire industries and social dynamics that operate on top of the platforms. Furthermore, the implications of this allow discussion of the problematic dynamics that emerge when technology firms lobby the government: there is powerlessness on the side of government when it has an institutional and individual dependency on the service these firms provide.

These complex political and policy dynamics are important to further investigate, given the immense role digital technology plays in society and the challenges it has already presented in the realm of policy. A better understanding of who is influencing this field of policy and how it interacts with Canada’s unique lobbying and government relations environment can contribute to thinking critically about technology policy. The specific research questions that guided the interviews were:

1. How does lobbying activity inform and shape the way that government policy actors understand technology and digital rights in Canada?
2. What are the implications of these interactions on citizens’ digital rights in Canada?

These questions are answered with empirical research and an analysis of emerging policy in the context of these questions.

Methods

The research that underlies this chapter was designed to investigate individuals from multiple groups that are active in policy development: consultant and in-house lobbyists, Members of Parliament (MPs) on technology committees, and public policy actors and advocates (hereafter, public policy professionals). The recruitment efforts required significant persistence and creativity for these three groups of elite participants (Esselment & Marland, 2018). I interviewed six

current and former MPs, six registered lobbyists¹ and four public policy professionals.² To recruit participants, I crafted a list of every MP who served on a committee related to science and technology since the first session of the 41st Parliament of September 2013 or since the creation of the committee or department (approximately 150 MPs). The committees and ministries were: Public Services and Procurement; Infrastructure and Communities; Industry, Science and Technology; Access to Information, Privacy and Ethics; Canadian Heritage; Treasury Board Secretariat; and Innovation, Science and Economic Development. I contacted sitting MPs via email, and I researched online those who were no longer in Parliament and contacted them where available. As a result, I contacted 82 current or former MPs, and through a mixture of personal connections, emails, phone calls, and attending their committees, I was able to interview six of them. In the half-hour interviews, I spoke to participants about three main subject areas related to the research questions: (1) how they perceive their roles and experience with lobbying; (2) their knowledge about technology and level of comfort with issues of technology; and (3) their understanding and perceptions of digital rights. These themes facilitated discussion around lobbying and digital rights, while allowing an understanding of each participant's level of experience and expertise on the topic.

Notably, the MPs were the most difficult to recruit; it was much easier to recruit lobbyists and public policy professionals. The variance in response and participation rates are not unexpected: MPs are notoriously difficult to interview, given their schedules and commitments, and may be wary of junior researchers with whom they are unfamiliar. Personal referrals and attending committees were more effective than cold contacting for recruiting. Many lobbyists were reluctant to participate because of client confidentiality, whereas public policy professionals were more enthusiastic to share their experiences. Elite interviews present challenges for validity, given the power imbalance between participant and researcher, and because of the challenges of recruiting these participants (Esselment & Marland, 2018). Due to their elite status, I was limited to interviewing whoever responded to my requests, which means it is likely those whom I interviewed are more invested in the field of technology and rights than an average committee member. This potential bias of the information is vital to consider when evaluating the data. However, it also reflects the reality that they are the ones

invested in shaping this field, and their biased opinion may be most important to analyze.

Research Findings

The findings of the study are characterized by conflicting accounts of the state of technology lobbying; the evidence demonstrates the differing positions of the participants. All participants are anonymous, and all have been given labels matched with a random number under 10, where LB represents lobbyists, PP represents public policy professionals, and MP represents Members of Parliament. Here, specific quotes complement the summarized data across interviews. These themes are just a sample of those investigated.

How Information Is Exchanged

Sometimes it's by their request where they want us to come and sort of help fill in the gaps. Sometimes it is our request saying, "You guys are going to screw this up, please make sure that we're not abandoned in this process and can make sure we help you get it right."—PP6

Lobbyists and public policy professionals both describe their role and the need for their role as, providing education, and this information dynamic was acknowledged by most of the actors. The MPs mostly feel like they have excellent support from the Library of Parliament's research team, who provide non-partisan research support for information gathering. MPs demonstrated their own skills in independent information seeking, such as using travel time to read up on the technology industry or employing research assistants. Several described talking to public interest organizations, mentioned talking to academics, and discussed learning from committee testimony from experts and witnesses.

Trust

In a new policy area, you want to establish trust with government, so relationship building is key. —LB5

The participants indicated different trust dynamics. Public policy professionals held little trust in the intentions and motivations of technology companies and felt skeptical about the processes that should allow their voices to be heard in Parliament. MPs had mixed levels of trust: some did not mention any issues with the information they were being provided by interest groups; others pointed out technology firms were biased, so they cross-checked information with other sources, such as public policy organizations. One MP was critical of the current government's trust in technology firms, which they identified as misleading the government. When discussing the ethics and legal dimensions, three lobbyists mentioned that lobbying is a highly regulated field, one saying it was a benefit for the ethical and legal lines to be very clear. Other lobbyists stated that lobbying could be restrictive, hindering information through the registry and restricting opportunities to speak with MPs.

Perceptions of Digital Rights

The original question of the research was about emerging digital rights, and it was met with confusion and needed clarification. After being prompted with suggestions such as the right to be forgotten, data protection, and rights concerning algorithms, many participants then discussed rights in which they had interest, some of which were hot-button subjects of the day. MPs mostly mentioned AI ethics, and ethics around autonomous vehicles, save for two MPs who were more aware and politically active on the issue of digital rights.

It is noteworthy that "digital rights," as a term, is not top of mind for participants such as lobbyists and MPs. The public policy participants were all well informed and ready to discuss the topic because their work mostly centres on digital rights. One public policy participant highlighted that they and Google would both agree on some digital rights as vital, but their motivations differed: the participant for users' rights, and Google for corporate benefits. Only two participants framed companies' interest in human rights

as an altruistic pursuit, including the “Tech for Good”³ movement, where technology firms pursue civic-impact or charitable technology projects. Two MPs felt that digital rights were not particularly present in the conversation because they served no immediate political purpose. Thoughts were mixed on how government thinks about how technology may impact human rights, and whether technology has a negative effect on society and human rights. One MP felt that some colleagues in Parliament were unaware of these issues, and the colleagues would ask questions that demonstrated a lack of awareness of the state of technology.

Digital Rights in the Future

I think it really is an opportunity, because you have to be thoughtful and careful about it, and it’s probably not a discussion that should be left simply to technology companies and the government, quite frankly. It probably has to involve a lot of people.
—LB5

According to participants, there needs to be a societal discussion around digital rights and the power of technology firms within the public sector. Some discussed the need for enforcement, as regulation and laws are often flaunted or just ignored by technology firms due to disagreements over jurisdiction. Some participants discussed the typical government dichotomy of the urgent overtaking the important, and that digital rights are not on the agenda. Although most identified it indirectly, a few participants mentioned that there could be impacts on citizenship and democracy. Two public policy professionals discussed funding as a method to improve non-partisan education and awareness, and to build expertise in civil society. One public policy professional called for the government to see digital rights as normal rights, like those offline, and saw the digital aspect as obfuscating the obligations of decision makers. Overall, there was a lack of direction for the way forward on digital rights, except for the acknowledgement that a public conversation will be necessary to address values and ethics on this industry and its regulation.

Discussion

This data demonstrates that there is a high level of conflict in accounts about the environment around technology lobbying and little direction on a way forward for digital rights in Canada. Through the lobbying process, public policy professionals and lobbyists provide expertise in technology, which is considered and used by decision makers in public policy making.

Several MPs discussed bias in the information that lobbyists provide. However, a public policy professional said that they felt that companies were “pretty straight” with them, whereas another public policy group was discredited by a committee member; a reputation that spread to the Canadian telecommunications regulator. These very different expressions demonstrate a competitive environment with different levels of trust between members. Trust as a relationship of risk management, however, is only truly executed on action (Blöbaum, 2016). Trust, or a lack thereof, was demonstrated among the participants when some chose to consult additional sources after receiving information or invited those sources to private meetings. Trust in information, then, will have impacts on digital rights: setting public policy will be the moment where decision makers take risks associated with trusting interest groups and their information.

Another participant brought up the small size of the Canadian market providing no incentive for large technology firms to comply with government regulatory or enforcement measures. Participants identified a lack of solutions for enforcing any regulation that was developed. This demonstrates the risks of platform power. It also demonstrates that the power may not lie just with certain companies, but in the way that they do business relying on user consent for their information and data (Culpepper & Thelen, 2018). Though platform companies, particularly, are monopolies, that is not the only risk factor to the rights of their community, rather as one lobbyist noted, “It’s not just about size, but it’s about the responsibility that you carry with the size of a company.” This speaks directly to the concerns, noted previously, of a growing platform power that is resonating with this community, especially given that interviewees from each participant group identified it as their main concern.

The second research question probed the implications of the above dynamics on citizens’ digital rights in Canada. The clear answer that emerged from the uncertainty in the data is that there

is not yet a clear government agenda on digital rights, and decision makers are just in the process of understanding the importance of digital rights as they begin to make decisions on technology policy. While interest groups vie for attention, no significant resources are being allocated institutionally to these issues; much of the work is being done by individually motivated MPs and committees.

Outside of the public policy professionals who were experts on digital rights, there were very few statements from participants that recognized the risks to citizenship and democracy. Those public policy participants did not feel that they were competitive enough with technology firms in terms of the extent to which they could lobby or engage in government relations to advocate. However, decision makers were aware of the public policy advocates' policy positions and trusted them as educators and witnesses on committees, which indicates the advocates are being heard and included, at least by committee members. However, when final directions and decisions are often set by the Cabinet, that trust may be less impactful.

The implications identified speak to the problematic dynamics that emerge in the issue of technology firms lobbying the government: there is a powerlessness on the side of government when there is institutional and individual dependency on the service these firms provide. MPs in the committee who saw Facebook executives testify spoke of their own use of the social networking site and how important it had become to their work as politicians (ETHI, 2018). One lobbyist stated that lobbying for technology procurement business is not a good business to be in as a lobbyist, as you assume great risk of public scrutiny in trying to procure the best possible product for government needs. This is an interesting reflection of this dynamic and brings the conversation back to the idea of infrastructural power that Sabeel Rahman et al. (2018) describe as similar to a public utility and the platform power, described by Kleis Neilson (2018), that is more powerful than governments. It is possible that this conflict, and the now inextricable relationship that all people have with the Internet, not to mention the electoral motivations of governments, will necessitate a new approach to policy processes, consultation, procurement, and regulation.

In 2018, I recommended (Beretta) that there should be a Canada-wide project about digital rights, where neutral voices are mixed with key players, which would strengthen the impact of these messages to resonate, not just as opinions but as necessities. The participants

in this study, from all groups, felt strongly that public discussion on digital rights was necessary to deal with these complex issues, which are not just technical, but ethical and value-laden. With loaded stakes, power must shift to the people and their representatives to create a collective understanding of interests so that power cannot be exerted in ignorance. Public conversation and debate on digital and societal values, and thus digital rights, is necessary.

The *Digital Charter* and Public Policy Ahead

Two years after this data was collected and this analysis made, is there a further public agenda for digital rights? The Liberal government's *Digital Charter* was announced in May 2019, following the international meeting at which Canada committed to the Christchurch Call to Action (ISED, 2019) and consultations with the public and industry. The Liberal government, along with six appointed digital engagement leaders, held 30 roundtables with 580 participants, and there were around 2,000 comments on their consultation website and other platforms. It is not a significant enough sample of the population in Canada to consult on this type of declaration of potentially new rights, and certainly major regulations, that will affect everyone. From the consultation documents and report, we do not know who participated in the consultations, who was invited to take part, or how they were engaged. It is unclear whether digital rights experts, human rights organizations, or privacy experts took part in the process leading to the development of the *Digital Charter*. Further, there is no discussion of human rights within the report, nor does the *Digital Charter* promise digital rights or any bold legislation that will hold companies to account. Finally, framing the *Digital Charter* as key to digital innovation, the marketplace, and the economy fails to take into account a rights agenda.

The economic frame is difficult to reconcile with a digital rights agenda because it fails to identify the connections between the problematic business models of technology firms, which are identified as challenges to democracy in the present chapter. Without mentions to regulation, new legislation, or rights (Birch, 2019), the *Digital Charter* so far has no legal value and is taking a risk-averse, economic-centric approach familiar to this Liberal government's tenure. The *Digital Charter* came without any significant implementation agenda at the end of a mandate with no push to implement it before the end of the

Parliament. The only reference to implementation in the documentation around the *Digital Charter* has been a strengthened Privacy Commissioner and “other key enforcement bodies” (ISED, 2019).

The government seems to want to set an agenda with the *Digital Charter*; however, the government is perhaps not yet sure of its interests. Without any plans for implementation or larger debate during the 2019 federal election, the digital rights agenda that the Liberal government is attempting to set does not seem to be truly a part of an agenda in Canadian politics. For digital rights to be about people’s needs, from a human rights framework perspective, it appears there needs to be a greater pluralistic policy process and greater public engagement. However, it is possible that announcing a vague *Digital Charter* gives the government a better opportunity to improve its policy positions and arguments, in preparation for an upcoming negotiation process. Lobbyists and public policy groups now have an opportunity to craft their positions suited to at least one party, and possibly others who may follow the Liberals’ more thematic promises. This positioning may also help prepare public servants to work on policy so they are prepared for the upcoming challenges the technology industry poses to public policy. Finally, civil society can start conversations on digital rights with this opportunity, directing citizens’ engagement toward policy.

Conclusion

There are significant implications of this research: There is no consensus around the trustworthiness of the information around technology, there is a lack of understanding of the business models of digital technology, and platform power is growing in a market where there are few incentives for companies to comply with local regulation. This research also coincides with the Liberal government winning the 2019 federal election and implementing their proposed *Digital Charter*. There continues to be an opportunity for public policy-makers, MPs, and lobbyists to set an agenda on the actions and implementations of the digital rights agenda that the Liberal government is putting forward. This research has shown that Canada should act now to address the challenges identified and to ensure that there is a dynamic discussion of digital rights involving diverse actors. These policy recommendations capture the evidence in this research (see Clarke, Chapter 5, for more policy recommendations

related to data governance). The federal government and partners should implement the following measures:

1. Foster an active discussion and review of the *Digital Charter* in Parliament and engage in cross-party discussion of what items should be prioritized to implement during this Parliament;
2. Perform public opinion research that can provide data as to what Canadians expect and need from citizenship in a digital context, which can inform the progression of digital rights in Canada;
3. Host extensive consultation sessions on citizenship in a digital context and digital rights with representative groups, which includes education about these issues, so that a wider audience who may not have pre-existing literacy on the issue can still take part and have their voices included;
4. Implement digital literacy education for MPs, and senior public servants;
5. Fund a digital research institute that would provide multi-partisan or non-partisan expert research from multidisciplinary technology researchers, one that is trustworthy for decision makers and the Canadian public.

Finally, there should be further research into the digital rights space, and the contributions of different policy actors should be closely followed during any further negotiations on a digital charter or rights agenda. Following the change to privacy legislation in Canada—who is included in the conversation, who it benefits, and who suffers—will be important to understanding the public policy environment. Further, studying more deeply the public service's actions, in which public servants may work with or support technology companies, will indicate how they involve, partner with, and rely on these companies to self-regulate and co-operate. It is essential to better understand where expertise lies in the government, and whether there are enough decision makers who understand the nuance of technology issues and have the power to impact it, because it will impact the process and development of balanced and necessary public policy.

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Notes

1. I used a publicly available lobbying registry to identify lobbyists registered to technology companies and contacted active lobbyists through their firms' websites. As I worked at a small lobbying firm in 2016, I used personal contacts and snowball sampling for recruitment. While lobbyists were easier to contact than MPs, they were reticent to participate for client confidentiality concerns. I contacted 18 lobbyists and interviewed six of them.
2. I recruited public policy professionals by researching organizations working on digital human rights in Canada. After learning that most organizations would be attending the global RightsCon 2018 conference in Toronto, I acquired a ticket to do my research. I recruited ten participants attending the conference by contacting eight organizations and interviewed four people.
3. For an example of the "Tech for Good" corporate movement, see: <https://canadianinnovationspace.ca/tech-for-good/>.

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