

That Imperceptible Field: Live Animal Transport Challenges to International Air Law

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Up there in air-space, in that soft, imperceptible field which had been made possible by the century and which, thereafter, made the century possible, becoming one of its defining locations, the place of movement and of war, the planet- shrinker and power-vacuum, most insecure and transitory of zones, illusory, discontinuous, metamorphic, – because when you throw everything up in the air anything becomes possible¹

-Salman Rushdie

The transport of live animals by air has grown into a routine, commercially significant activity, yet the international legal architecture built to regulate air transport was designed around persons and property, categories into which animals now sit uneasily. This paper examines three areas where that mismatch produces concrete legal uncertainty. First, it considers biodiversity: despite nearly a decade of warnings before the International Civil Aviation Organization's Assembly about wildlife trafficking and the unregulated cross-border movement of species, the international response remains confined to non-binding guidance. Second, it turns to assistance animals, where the International Civil Aviation Organization and the International Air Transport Association apply incompatible definitions of "service animal," turning what is properly a disability-rights question into a matter of industry discretion, and leaving the disabled passenger to absorb the resulting cost and inconsistency. Third, it examines carrier liability under the Montreal Convention, whose uniformity depended on treating animals as property, a premise several legal systems no longer share, as recent case law illustrates. Across all three areas, the same structural defect recurs: non-binding instruments, competing definitions, and unresolved questions about the legal status of the animal leave uniformity, and the individuals who rely on it, exposed.

Key words: Aviation, Animals, Biodiversity, Accessibility, Liability

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¹ Salman Rushdie, *The Satanic Verses* (New York: Random House Trade Paperbacks, 2008) at 15.

INTRODUCTION

The transport of live animals by air is no longer a marginal feature of the aviation industry but an increasingly routine and commercially significant activity. It spans the relocation of species for conservation or zoological purposes, the carriage of animals for competition, the movement of assistance animals, and, most visibly, the transport of companion pets travelling with their owners.

According to the International Pet and Animal Transportation Association (IPATA), millions of pets and other live animals are transported by air annually worldwide.² Yet the true extent of the operation itself is difficult to establish. Even the International Air Transport Association (IATA), whose Live Animals Regulations (LAR) constitute the industry's principal operational standard, describes the scope of this activity only in qualitative terms, noting merely that the LAR today "caters to thousands of diverse species travelling the globe" without publishing an accessible aggregate figure for the number of animals actually transported.³

Moreover, where domestic reporting obligations exist, they do not fill this gap. For instance, in the United States, the reports published by the DOT publicly only show "incidents involving loss, injury, or death of animals during air transportation."⁴ The total number of animals transported, though also required under the same regulation,⁵ does not appear in the publicly available reports, leaving no straightforward way of gauging the true magnitude of this activity in quantitative terms.

Absent an official measure of scale, other indicators reveal how this activity can give rise to a legal relevant situation. For example, in 2020 the U.S. Department of Transportation overhauled its regulatory framework for service animals in response to, among other factors, a documented rise in fraudulent documentation submitted by passengers seeking to travel with animals under the guise of a disability accommodation. The new rule prohibited emotional support animals altogether and narrowed the recognized category of service animals to dogs, a distinction this paper returns to below.⁶

DOT justified the change on the basis that animals on aircraft "may pose a risk to the safety, health, and well-being of passengers and crew, and may disturb the safe and efficient operation of the aircraft."⁷ Alongside the differentiated legal classification of animals, as pets, service animals, or

² International Pet and Animal Transportation Association, "IPATA Statement: Addressing the Safety of Pet Travel" (25 July 2024), online: <ipata.org/ipata-statement-addressing-the-safety-of-pet-travel>.

³ International Air Transport Association, "The Evolution of Standards for Live Animals Transported by Air Over the Last 50 Years" (14 December 2023), online: <iata.org/en/publications/newsletters/iata-knowledge-hub/celebrating-50-years-the-evolution-of-standards-for-live-animals-transported-by-air>.

⁴ United States, Department of Transportation, Office of Aviation Consumer Protection, *January 2026 Air Travel Consumer Report* (Washington, DC: DOT, 2026), online: <transportation.gov/resources/individuals/aviation-consumer-protection/january-2026-air-travel-consumer-report>, "Airline Reports of the Loss, Injury, or Death of Animals During Air Transportation".

⁵ United States, *Reports by Air Carriers on Incidents Involving Animals During Air Transport*, 14 CFR § 235.3 (2026), online: <ecfr.gov/current/title-14/chapter-II/subchapter-A/part-235>.

⁶ United States, Department of Transportation, *Traveling by Air with Service Animals*, Final Rule, 14 CFR Part 382, Docket No DOT-OST-2018-0068 (2020) at 4–5.

⁷ *Ibid* at 5.

emotional support animals, each governed by distinct rules, this pattern of misuse is itself evidence of the operational challenge that the air transport of animals poses to the aviation industry.

Another important factor, highlighted by IATA in Working Paper 199 presented to the 40th ICAO Assembly in 2019, recognizes illegal wildlife trafficking as an unresolved problem that has evolved, shifting from a phenomenon once concentrated in cargo shipments to one increasingly found in passengers' own baggage, accounting for at least 54 percent of seizures in carry-on and checked luggage.⁸

Also, it has been estimated that more than half of the world's population now owns a pet, with little sign of this growth slowing.⁹ This growth sits alongside a broader and unresolved shift in how animals are conceived in law: no longer uniformly treated as mere transactional goods, but increasingly recognized, in at least some jurisdictions, as sentient beings or even holders of rights.¹⁰ The result is a distinctive strain on aviation law. An international legal architecture built to unify the carriage of persons and property is now required, with growing frequency, to accommodate a category of traveler that sits uneasily within either.

This paper seeks to examine, identify, and explain three areas in which the transport of live animals poses a distinct legal and practical challenge for international civil aviation. The first concerns the relationship between international air transport and the protection of biodiversity: the obligations that States and the aviation industry bear toward biological diversity, and how adequately, or inadequately, those obligations have been translated into frameworks or initiatives that address the concerns the situation itself encompasses (I).

The second turns to assistance animals as the central challenge to accessibility and facilitation in international air law. Drawing on the principles established by the International Civil Aviation Organization (ICAO), it examines the difficulties that arise when a passenger's access to air travel depends on the presence of an assistance animal, the differences between service, emotional support, and therapeutic animals, and, ultimately, whether the framework currently in place is sufficient to address the range of situations these distinctions produce (II).

The third analyses the conflict that arises when rules designed to secure uniformity in matters of carrier liability are applied to a category the drafters never contemplated, the evolving legal status of the animal, and considers how this tension puts at risk the very principle of uniformity that the Montreal Convention seeks to achieve (III).

I. BIODIVERSITY AT STAKE

Biodiversity, in ordinary terms, refers to the variety of life on Earth. From a legal perspective, the Convention on Biological Diversity defines it as the variability among living organisms from all

⁸ International Air Transport Association, *Prevention of Illegal Wildlife Trafficking via Commercial Aviation*, A40-WP/199 (2 August 2019), online: <[icao.int/Meetings/a40/Documents/WP/wp_199_en.pdf](https://www.icao.int/Meetings/a40/Documents/WP/wp_199_en.pdf)>.

⁹ HealthforAnimals, "Global Trends in the Pet Population" in *Global State of Pet Care: Stats, Facts and Trends* (September 2022), online: <healthforanimals.org/reports/pet-care-report/global-trends-in-the-pet-population>.

¹⁰ Anne Peters, "Toward International Animal Rights" in Anne Peters, ed, *Studies in Global Animal Law* (Berlin: Springer, 2020) 110 at 110–111.

sources including terrestrial, marine, and other aquatic ecosystems; and the ecological complexes of which they are part.¹¹ This variability is generally understood across three dimensions: genetic diversity, the variation between populations within a single species; species diversity, spanning the range of animals, plants, fungi, lichens, and microorganisms; and ecosystem diversity, the variety of biotopes and the elements that provide the basic conditions for life.¹²

Threats to biodiversity continue to increase as a result of human action; the disturbance and destruction of natural habitats, in particular, drive the decrease or outright extinction of genetic diversity. According to the fifth edition of the *Global Biodiversity Outlook* (GBO-5), the principal drivers of biodiversity loss include the destruction of natural habitats, the introduction of invasive alien species, the overexploitation of biological resources, pollution, and global warming.¹³

Among these drivers, the aviation industry bears a particular relevance. Pollution and global warming have already been the subject of multiple international efforts, sustainable aviation fuels (SAF), the CORSIA program, and Annex 16 to the Chicago Convention.¹⁴ Other drivers, however, remain largely unaddressed. The unregulated introduction of species into new ecosystems, for instance, may disturb the natural balance of those ecosystems, a risk squarely implicated by the cross-border movement of live animals by air.

One of the central problems for biodiversity protection is the lack of certainty as to which animals may be transported by air. Which species are permitted on board is largely a matter of each State's internal regulation, and this divergence, compounded by cultural differences among States, itself creates risks to biodiversity. Even domestically, the classification of an animal as a pet can be contentious: foxes and raccoons, for instance, are accepted as pets in some U.S. states but not others.¹⁵ The same species, moreover, may be treated as a pet in one country and as a strictly forbidden in another, rodents are accepted as travel pets under United States regulation,¹⁶ while Colombian regulation expressly prohibits their transport as such.¹⁷

Industry awareness of aviation's role in biodiversity protection can be traced to June 2015, when IATA signed a Memorandum of Understanding with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).¹⁸ The MoU committed both organizations to strengthen cooperation against the illegal trade of protected

¹¹ *Convention on Biological Diversity*, 5 June 1992, 1760 UNTS 79, art 2.

¹² Hulya Altuntas, "Biodiversity Management" in T Hikmet Karakoc et al, eds, *Sustainable Aviation* (Cham: Springer, 2019) 81 at 81–82.

¹³ Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 5* (Montreal: SCBD, 2020) at 12.

¹⁴ *Convention on International Civil Aviation*, Annex 16, Environmental Protection, vol I, 8th ed (Montreal: ICAO, 2017).

¹⁵ WiseVoter, "Pet Raccoon Legal States", online: <wisevoter.com/state-rankings/pet-raccoon-legal-states>; WiseVoter, "Pet Fox Legal States", online: <wisevoter.com/state-rankings/pet-fox-legal-states>; Born Free USA, "Summary of State Laws Relating to Private Possession of Exotic Animals", online: <bornfreeusa.org/campaigns/animals-in-captivity/summary-state-laws-exotic-animals>.

¹⁶ United States, Department of Agriculture, Animal and Plant Health Inspection Service, "Definition of a Pet", online: <aphis.usda.gov/aphis/pet-travel/definition-of-a-pet/definition-of-a-pet>.

¹⁷ Colombia, *Reglamento Aeronáutico Colombiano*, RAC 3.10.3.11(a)(24) (Aerocivil).

¹⁸ International Air Transport Association, *Memorandum of Understanding [with CITES]* (8 June 2015), online: <iata.org/contentassets/adfc0ea8044648fcbff13d79dceff7ae/cites-iata-mou.pdf>.

species, exchange information, and jointly develop guidelines and standards, including, specifically, the promotion of IATA's Live Animals Regulations (LAR) alongside the CITES Guidelines for the Non-Air Transport of Live Wild Animals and Plants, now incorporated as Appendix G of the LAR.¹⁹

One year later, in June 2016, the 72nd IATA Annual General Meeting adopted a *Resolution on the Illegal Trade in Wildlife*, denouncing the illegal trade in wildlife and wildlife products and calling on member airlines to raise passenger and staff awareness of its scale and consequences.²⁰ The resolution also acknowledged that the concealed carriage of wildlife and wildlife products within the air transport system may pose a risk to health and safety, and called on airlines, airports, freight forwarders, and other stakeholders to work proactively with enforcement agencies and conservation organizations to address the problem.²¹

The issue was taken up again in 2017, when the UN General Assembly adopted Resolution 71/326 on tackling illicit trafficking in wildlife. In addition to recognizing the significance of the problem and its detrimental economic, social, and environmental impacts, the Assembly called upon UN organizations to continue supporting Member States' efforts to fight illicit wildlife trafficking and to improve cooperation with all relevant stakeholders in order to facilitate a holistic and comprehensive approach by the international community.²²

In 2019, the illegal wildlife trade was brought before ICAO's 40th Assembly, where IATA presented Working Paper 199 as an information paper under agenda item 21 on the UN 2030 Sustainable Development Goals.²³ The paper documented the scale of the problem: wildlife trafficking incidents reported at airports in over 130 states since 2009, with at least 54 percent of seizures linked to passengers rather than cargo, and noted that concealed wildlife and wildlife products bypass health and sanitary checks, creating a heightened risk of spreading infectious disease.²⁴

This sanitary dimension connects the problem directly to the states' existing treaty obligations: article 14 of the Chicago Convention commits contracting states to take effective measures to prevent the spread, by means of air navigation, of communicable disease, and to remain in close consultation with the bodies responsible for the sanitary regulations applicable to aircraft.²⁵

¹⁹ International Air Transport Association, *Live Animals Regulations*, 52nd ed (Montreal: IATA, 2026); CITES, *Guidelines for the Non-Air Transport of Live Wild Animals and Plants* (2022), online: <cites.org/sites/default/files/eng/resources/transport/E-FINAL_CITES_Non-air_transport_Guidelines.pdf>.

²⁰ International Air Transport Association, *72nd IATA Annual General Meeting Resolution on the Illegal Trade in Wildlife* (June 2016) at 1, online: <iata.org/contentassets/adfc0ea8044648fcbff13d79dceff7ae/resolution-agm-2016-wildlife.pdf>.

²¹ *Ibid.*

²² *Tackling Illicit Trafficking in Wildlife*, GA Res 71/326, UNGAOR, 71st Sess, UN Doc A/RES/71/326 (2017) at para 27.

²³ International Civil Aviation Organization, *Prevention of Illegal Wildlife Trafficking via Commercial Aviation*, Working Paper A40-WP/199 (2 August 2019) (presented by the International Air Transport Association) at 1–2, online: <iata.org/contentassets/e45e5219cc8c4277a0e80562590793da/prevention-illegal-wildlife-commercial-aviation.pdf> [A40-WP/199].

²⁴ *Ibid* at para 2.6.4.

²⁵ *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, art 14 (entered into force 4 April 1947).

Framed this way, curbing illegal wildlife trafficking through commercial aviation is not merely a conservation objective but also a matter of compliance with states' pre-existing public health commitments under the Convention.

This institutional pressure eventually prompted a response: Recommended Practice 8.51, added to Annex 9, Facilitation, through Amendment 29. The Recommended Practice was proposed by the Twelfth Meeting of the Facilitation Panel in 2021; approved 9 March 2022, effective 18 July 2022, applicable from 18 November 2022, and provides that "Contracting States should ensure that procedures are in place to combat wildlife trafficking, including clear reporting systems and relevant competent authorities' points of contact for airport and airline operators."²⁶ As a Recommended Practice, however, this measure is non-binding: compliance remains entirely at each state's discretion, with no obligation to implement it or even to report non-compliance, unlike Standards, for which article 38 of the Chicago Convention requires states to notify ICAO of any differences between domestic practice and the Standard.²⁷

The matter returned to the ICAO Assembly in October 2022, when ACI and IATA jointly submitted Working Paper 144 to the 41st Session, proposing that Resolution A40-16 (Consolidated Statement of Continuing ICAO Policies Related to Facilitation) be amended to reinforce Recommended Practice 8.51 and promote a more collaborative approach to combatting wildlife trafficking.²⁸ The Executive Committee agreed, and the resulting Resolution 13/4, which superseded A40-16, and now urges member states, in Appendix C, "to establish between all involved stakeholders an efficient information sharing and collaboration system in the prevention of wildlife trafficking."²⁹ Once again this was framed as a mere exhortation rather than a binding obligation, consistent with the broader pattern of soft, non-mandatory instruments that has characterized ICAO's response to wildlife trafficking throughout.

This gap was placed before ICAO once again in 2025, when Colombia, supported by fourteen other Latin American Civil Aviation Commission (LACAC) member states, submitted Working Paper 447 to the 42nd ICAO Assembly.³⁰ At its core, the proposal sought a uniform international framework to provide legal certainty to all parties involved in the air transport of animals, carriers, handlers, and owners alike. To that end, the paper asked the Assembly to agree on three concrete binding measures, each tied to a distinct problem it identified:

1. A new chapter in Annex 9 defining animals as sentient beings and clarifying the legal distinctions between service, emotional support, and therapeutic animals. This

²⁶ International Civil Aviation Organization, *Annex 9 to the Convention on International Civil Aviation: Facilitation*, 16th ed (Montréal: ICAO, 2022) at 8-7, para 8.51.

²⁷ *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, art 38; Paul Stephen Dempsey, *Public International Air Law* (Montréal: McGill University Centre for Research in Air and Space Law, 2017) ch 3 at 71.

²⁸ Airports Council International & International Air Transport Association, *Supporting Effective Mechanisms to Fight Wildlife Trafficking*, Working Paper A41-WP/144 (2 August 2022) at 1, 4, online: <aci.aero/wp-content/uploads/2022/08/wp_144_en.pdf>.

²⁹ International Civil Aviation Organization, *Assembly — 41st Session, Executive Committee, Report and Minutes*, Doc 10183, A41-EX (2022) at 32–34, Resolution 13/4, Appendix C, para 17.

³⁰ Colombia, *Legal Protection of Pets in International Air Transport*, Working Paper A42-WP/447 (29 July 2025) (supported by 15 LACAC member states) at 1, online: <icao.int/sites/default/files/Meetings/a42/Documents/WP/wp_447_en.pdf> [WP/447]. The author advised the Colombian delegation in the preparation of this working paper.

responds to a broader legal shift: domestic systems increasingly depart from the traditional view of animals as mere transactional goods, though they do so along different theoretical lines, some, including Colombia's, characterize animals as sentient beings, the predominant approach but not the only one, while others go further and recognize them as legal subjects endowed with rights of their own. No international standard reflects any version of this shift, and the resulting definitional inconsistency, layered on top of the unclear distinctions between categories of assistance animals, leaves animals' legal treatment uncertain from one jurisdiction to the next.³¹

2. Harmonized requirements for carrier design, certification, documentation, and ground and on-board handling, a direct response to the regulatory fragmentation created by the absence of binding ICAO rules since LARs are not binding and the World Organization for Animal Health's Terrestrial Animal Health Code was never designed for civil aviation.³²
3. Risk management strategies addressing unintentional release, injury, loss, aggressiveness, or death of animals in transit, grounded in documented, recurring safety concerns involving poor ventilation, unsafe containment, inadequate temperature control, undertrained personnel, incomplete documentation, and the absence of veterinary services during long waits and flight transfers.³³

The Assembly, upon the Executive Committee's recommendation, referred the paper to the Council, together with contributions from relevant technical bodies, for further study and a proposed way forward.³⁴

Within the year, ICAO published its *Eco Airport Toolkit: Biodiversity in Airport Management*, an e-publication addressed to airport operators that consolidates guidance on wildlife hazard management, biodiversity inventories, green space management, and, in a short, dedicated section, wildlife trafficking, pointing airports toward existing industry initiatives such as the ROUTES Partnership and the United for Wildlife Transport Taskforce.³⁵

The Toolkit is expressly non-binding: it is offered as general guidance rather than as a Standard, Recommended Practice, or Resolution, and it carries the customary disclaimer that ICAO “does not warrant the accuracy or completeness of the information” it contains.³⁶ Coming as it does less than a year after the 42nd Assembly, the Toolkit suggests that ICAO has begun to engage with the subject, even if it does not yet amount to a substantive regulatory advance.

³¹ *Ibid* at paras 2.1.4–2.1.5, 2.3.2–2.3.3.

³² *Ibid* at paras 1.3, 2.3.1.

³³ *Ibid* at 1 (Executive Summary)

³⁴ International Civil Aviation Organization, *Assembly — 42nd Session, Executive Committee, Report and Minutes*, Doc 10225, A42-EX (2025) at para 12.23.

³⁵ International Civil Aviation Organization, *Eco Airport Toolkit: Biodiversity in Airport Management* (Montréal: ICAO, 2026) at 5, 30.

³⁶ *Ibid* at 4.

Beyond wildlife trafficking, ICAO's engagement with biodiversity has otherwise been confined to passing references to aircraft noise under Annex 16 (Environmental Protection). The Toolkit itself, for instance, acknowledges in its concluding remarks that “evidence shows impacts on communication, reproduction, and stress responses in wildlife” from aircraft noise, while cautioning that “further long-term and robust research is still needed.”³⁷

However, in neither Annex 16 nor this passing observation has animal welfare been the driving concern, nor has either addressed any of the concerns previously brought before ICAO. Annex 16 exists to regulate noise exposure around airports for the benefit of surrounding communities, not wildlife, and the Toolkit's reference remains a brief aside within a broader environmental discussion rather than any dedicated regulatory response.

The same holds for the industry's own parallel efforts. From 2015 to 2022, the Airports Council International (ACI) and IATA were core partners, alongside TRAFFIC, the World Wildlife Fund (WWF), and the Center for Advanced Defense Studies, in the United States Agency for International Development's (USAID) Reducing Opportunities for Unlawful Transport of Endangered Species (ROUTES) Partnership, which funded staff training, e-learning modules, and reporting tools for airports and airlines across more than twenty countries.³⁸ Indeed, it was through ROUTES that ACI and IATA co-developed the working papers that led to Recommended Practice 8.51 and Resolution 13/4.³⁹

Useful and even influential as these efforts have been, they remain what they are: voluntary, donor-funded industry initiatives, not a legal framework, and none of them, individually or together, amounts to a binding response to the concerns repeatedly placed before ICAO. It is worth recalling that the UN General Assembly, as early as 2017, called upon United Nations agencies to support member states' efforts on precisely this issue.⁴⁰ Measured against that call, and against the nearly a decade that has since elapsed, a single Recommended Practice, a passing mention in an airport guidance document, and a set of donor-funded industry programs are, at present, the most concrete outcome the international system has to show for it.

II. ASSISTANCE ANIMALS: ACCESSIBILITY AND FACILITATION

ICAO has defined facilitation as the combination of measures and human and material resources intended to improve and optimize aircraft, crew, passenger, cargo, baggage, mail and stores flows through airports while ensuring compliance with relevant international and national legislation.⁴¹ The concept traces back to article 22 of the Chicago Convention, which establishes States' legal

³⁷ *Ibid* at 31 (Conclusion); International Civil Aviation Organization, *Annex 16 to the Convention on International Civil Aviation: Environmental Protection, Volume I — Aircraft Noise*, 8th ed (Montréal: ICAO, 2017).

³⁸ World Wildlife Fund, "The Legacy of the USAID ROUTES Partnership" (2022), online: <worldwildlife.org/projects/the-legacy-of-the-usaid-routes-partnership>.

³⁹ *Ibid*; Airports Council International & International Air Transport Association, *supra* note 30 at 2 (para 2.2).

⁴⁰ GA Res 71/326, *supra* note 22 at para 27.

⁴¹ International Civil Aviation Organization, *Model National Air Transport Facilitation Programme*, Doc 10042, 1st ed (Montréal: ICAO, 2015) at 1-1.

obligation to facilitate and expedite aircraft navigation and prevent unnecessary delays.⁴² Over the decades, ICAO has translated that treaty-level commitment into concrete regulatory form through Annex 9 (Facilitation), which includes the standards and recommended practices ICAO has issued in this regard and that guide each State's own program.⁴³

Accessibility, in turn, refers to the assistance States must guarantee to persons with disabilities so that they can access air travel on the same terms as other passengers, delivered in a manner that respects the dignity of the individual.⁴⁴ The concept is rooted in the broader recognition of disability rights under international human rights law, particularly the rights to full participation and non-discrimination recognized in the *UN Convention on the Rights of Persons with Disabilities*.⁴⁵ ICAO has translated that broader commitment into aviation-specific form through Annex 9, and elaborated on it through its own guidance material, the *Manual on Access to Air Transport by Persons with Disabilities*.⁴⁶

Unlike biodiversity, facilitation and accessibility are not areas on which international instruments have stayed silent, at least as it concerns the logistics of moving an animal through an airport. Annex 9 imposes a Standard requiring States to maintain animal quarantine facilities at international airports, and a Standard facilitating duty-free entry for aircrafts engaged in search, rescue, or accident investigation, even when it doesn't exempt the animals involved from quarantine.⁴⁷

Around these Standards sit softer layers: a Recommended Practice extending to animals in transit the same protection from infection risk owed to passengers, and, softer still, non-binding guidance recommending that airports provide accessible "relief areas" for animals.⁴⁸ Facilitation and accessibility, in other words, are already resolved on paper, at least at this operational level, even though some of that material still remains non-binding in nature.

ICAO has addressed assistance animals directly. *The Manual on Access to Air Transport by Persons with Disabilities* provides that a service animal must be permitted to accompany its handler free of charge.⁴⁹ It requires seating with sufficient floor space for the animal, and extends the same no-extra-charge principle to ground transportation, including transfers to remote aircraft stands, where service animals must be permitted to accompany their handler in the vehicle.⁵⁰ On

⁴² *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, art 22 (entered into force 4 April 1947).

⁴³ International Civil Aviation Organization, *Annex 9 to the Convention on International Civil Aviation: Facilitation*, 16th ed (Montréal: ICAO, 2022) at 8-4, paras 8.18–8.19.

⁴⁴ International Civil Aviation Organization, *Annex 9 to the Convention on International Civil Aviation: Facilitation*, 16th ed (Montréal: ICAO, 2022) at 8-4, para 8.23.

⁴⁵ *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3, art 3(c).

⁴⁶ International Civil Aviation Organization, *Manual on Access to Air Transport by Persons with Disabilities*, Doc 9984, 1st ed (Montréal: ICAO, 2013).

⁴⁷ International Civil Aviation Organization, *Annex 9 to the Convention on International Civil Aviation: Facilitation*, 16th ed (Montréal: ICAO, 2022) at paras 6.35, 8.4.

⁴⁸ *Ibid* at para 6.38; International Civil Aviation Organization, *Manual on Access to Air Transport by Persons with Disabilities*, Doc 9984, 1st ed (Montréal: ICAO, 2013) at paras 5.24–5.26.

⁴⁹ International Civil Aviation Organization, *Manual on Access to Air Transport by Persons with Disabilities*, Doc 9984, 1st ed (Montréal: ICAO, 2013) at paras 1.7, 3.22–3.23.

⁵⁰ *Ibid* at paras 11.4–11.5.

paper, then, the assistance animal is not an afterthought: ICAO has built out a fairly complete operational regime around it, covering cost, space, and movement through the airport.

That apparent completeness, however, rests on an unstable foundation: it assumes a shared understanding of what a "service animal" is, and no such shared understanding exists. Today, two competing definitions coexist. *The Manual on Access to Air Transport by Persons with Disabilities* defines a service animal broadly, as one, "normally being dogs or other animals," that accompanies a person with a disability to provide physical or emotional support, without requiring any formal training or certification, so long as it does not endanger the safety of flight operations, is not a threat to other passengers, and does not raise hygiene concerns.⁵¹

IATA, for its part, takes a narrower view. Its *Guidance on Service Dogs*, issued in 2026, defines the category as limited to dogs "individually trained to do work or perform tasks for the benefit of a person with a disability," with that training "completed by an organization recognized by a competent national authority or accredited by an international assistance dog organization." All other species are, in IATA's own words, "generally excluded for the purposes of this guidance."⁵²

These two definitions do not correspond, and the mismatch is not merely academic. But before getting into their practical consequences there is another major disagreement between IATA and ICAO's approaches: the concept of disability itself in relation to the need of an animal. *The Convention on the Rights of Persons with Disabilities* defines it broadly: persons with disabilities "include" those with long-term impairments that, combined with barriers, limit full participation in society.⁵³ Nothing there requires the impairment to be treatable by a trained task. While ICAO's Manual follows that same broad approach: a service animal simply provides physical or emotional support, with no task requirement, so long as it does not endanger the safety of flight operations, is not a threat to other passengers, and does not raise hygiene concerns.⁵⁴ IATA's Guidance is much more restrictive.

IATA's Guidance excludes emotional support, comfort, therapy, and companionship animals by name, because they are not trained to perform a specific task and it requires the training to be certified by an external source.⁵⁵ In practice, this replaces disability with trainability as the real test, and it excludes real, limiting conditions the Convention itself would recognize, simply because the person's need is for the animal's presence, not necessarily a trained task. Certification might not be free, and the cost of meeting IATA's standard falls on the very person already carrying the burden of the condition itself. A framework built on gratuity as its flagship guarantee gains little if the animal must be externally certified, at the passenger's expense, before it ever reaches the gate.⁵⁶

⁵¹ International Civil Aviation Organization, *Manual on Access to Air Transport by Persons with Disabilities*, Doc 9984, 1st ed (Montréal: ICAO, 2013) at (xiii) (Definitions)

⁵² International Air Transport Association, *Guidance on Service Dogs*, 1st ed (2026) at 5, s 1.1.

⁵³ Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3, art 1.

⁵⁴ International Civil Aviation Organization, *Manual on Access to Air Transport by Persons with Disabilities*, Doc 9984, 1st ed (Montréal: ICAO, 2013) at (xiii) (Definitions, "Service animals").

⁵⁵ International Air Transport Association, *Guidance on Service Dogs*, supra note 52 at 5–6 (ss 1.1–1.2).

⁵⁶ *Manual on Access to Air Transport by Persons with Disabilities*, supra note 49.

This is not just a definitional disagreement; it is a rights question. And that is exactly why the two problems that follow matter so much: if neither definition is binding, nothing actually forces anyone to honor the broader right the Convention protects; and if States and airlines can swap the narrower definition in for the broader one, a right that exists on paper can quietly disappear in practice. This raises two distinct problems: first, the same question of bindingness already seen in the biodiversity context, since neither definition carries binding force; and second, and more consequentially, what happens when States treat these non-equivalent definitions as interchangeable within their own domestic frameworks.

Regarding bindingness, the problem is a familiar one. Neither definition carries binding force: the Manual is guidance material, not a Standard or even a Recommended Practice, and IATA's *Guidance on Service Dogs* is, by its own admission, an industry document with no legal authority over States. Nor can a passenger travelling with a service animal invoke it as an enforceable right. This gap has not gone unnoticed, not only with respect to service animals specifically, but with respect to accessibility more broadly.

At the 42nd ICAO Assembly in 2025, member States acknowledged that "there is no coordinated international approach" to accessibility standards, and the Assembly's response, once again, was not to mandate uniformity but merely to "encourage" member states "to strive for uniformity in their air transport accessibility regulations, standards and procedures, to the greatest extent practicable."⁵⁷ The qualifier does the damage: uniformity remains aspirational, contingent on what each state deems practicable, not a shared obligation, and service animals are simply where this broader deficiency is felt most acutely.

The disconnect goes deeper, it is compounded by the fact that ICAO and IATA do not even operate at the same normative rank. ICAO's Manual treats "service animal" as a single umbrella category, drawing no legal distinction between an animal trained to perform a task and one that merely provides emotional support, and it does so as an elaboration of Annex 9, an instrument states have a correlative duty to keep their domestic regulations aligned with "to the greatest possible extent."⁵⁸

Moreover, article 37 of the Convention frames uniformity not merely as compliance with individual SARPs, but as a standing undertaking to collaborate toward the highest practicable degree of uniformity across regulations, standards, procedures, and organization, wherever doing so would facilitate and improve air navigation.⁵⁹ Read this way, guidance material like the Manual, though it carries no binding force of its own, still falls within the spirit of that collaborative undertaking even if nothing compels States to follow it.

⁵⁷ Denmark on behalf of the European Union and the European Civil Aviation Conference, co-sponsored by Australia, Canada and Japan, *Accessibility to Persons with Disabilities: Addressing Operational Challenges Under a Unified Action Plan*, Working Paper A42-WP/184 (29 July 2025) at para 2.5; International Civil Aviation Organization, Assembly — 42nd Session, *Resolution A42-14: Accessibility in International Civil Aviation* (2025) at para 4.

⁵⁸ *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, art 12 (entered into force 4 April 1947); Paul Stephen Dempsey, *Public International Air Law* (Montréal: McGill University Centre for Research in Air and Space Law, 2017) ch 3 at 74.

⁵⁹ *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, art 37 (entered into force 4 April 1947).

On the other hand, IATA's Guidance on Service Dogs draws a different line entirely, narrowing the category to trained dogs alone, but it does so purely as private industry guidance, binding, at most, IATA's own member airlines, with no corresponding obligation on States whatsoever.⁶⁰ The result is not merely two mismatched definitions but two mismatched sources of authority: a State that conscientiously follows ICAO's broader standard can still find itself confronted by an airline applying IATA's narrower one, imposing a training requirement the State's own regulations never contemplated and has no obligation to recognize. At best, this produces confusion and contradiction among the stakeholders involved: the State, the airline, and the passenger caught between them.

The United States offers the clearest illustration of how deep this mismatch runs: In 2020, the DOT amended its regulations under the Air Carrier Access Act to redefine "service animal" as "a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." The same provision excludes, by name, "animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training" from the category altogether.⁶¹ Carriers may still permit these animals to fly, but only as ordinary pets, subject to whatever fees and restrictions apply to pets generally.

According to the US regulation, a carrier may ask only two questions to determine whether an animal qualifies: whether it is required because of a disability, and what task it has been trained to perform; it may not ask the animal to demonstrate that task.⁶² Beyond two DOT self-attestation forms, carriers are expressly barred from demanding any further documentation, including proof of certification from a training organization.⁶³ Nor does the animal need to have been trained by one: DOT's own form simply asks the handler to name whoever trained the animal, without requiring that trainer to be an accredited organization at all. The DOT considered and explicitly rejected IATA's request to require certified training, reasoning that doing so would impose an undue burden on service animal users.⁶⁴

The deeper lesson lies in what this makes possible. Neither the Manual nor IATA's Guidance matches United States law, and the reason is that none of their instruments bind the United States. The more serious problem is that IATA's guidance does not just fill a gap ICAO left open; it actively contradicts what ICAO's own Manual sets out, and that contradiction is not neutral. IATA cannot enforce its stricter standard against anyone, and no passenger has a legal claim against it, but it can still work against that same passenger, conditioning access on a certification a State has deliberately chosen not to require. IATA is not ICAO, and only ICAO is legally positioned to close that gap.

⁶⁰ International Air Transport Association, *Guidance on Service Dogs*, 1st ed (2026) at 3 (Introduction).

⁶¹ United States, Department of Transportation, *Traveling by Air with Service Animals*, Final Rule, 14 CFR § 382.3, Docket No DOT-OST-2018-0068, 85 Fed Reg 79774 (10 December 2020).

⁶² *Ibid* at 14 CFR § 382.73(a)(1).

⁶³ *Ibid* at 14 CFR § 382.75(c).

⁶⁴ United States, Department of Transportation, *Traveling by Air with Service Animals*, Final Rule, *supra* note 61 at 85 Fed Reg 79757 ("The Department similarly rejects the suggestion from IATA that every service animal user must obtain a certification of training from a specific organization, as this requirement could impose an undue burden on service animal users.").

Colombia partially flagged this difficulty in its own working paper, calling the distinction between service, emotional support, and therapeutic animals "unclear" and noting that it is "essential to determine legal effects", which is precisely why Colombia urged ICAO leadership toward a more coherent framework.⁶⁵ What that framework would offer is legal certainty: a shared baseline of expectations that lets passengers, airlines, and States operate from the same understanding, rather than leaving accessibility and facilitation to whichever combination of domestic policy and private industry preference happens to apply on a given flight.

This makes the whole problem a rights problem: it is a disabled passenger, who needs an animal, who is left to navigate that inconsistency alone, and who carries the consequences. Not ICAO, which built a broad unenforceable definition. Not IATA, which built a narrower one and issued it as guidance for private stakeholders, with no authority over passengers at all. The passenger, who has a genuine need and now faces an additional, unnecessary burden: figuring out which requirement applies, whose definition governs, what proof will be accepted, and by whom; all of which might change from flight to flight.

III. CARRIER LIABILITY: THE THREAT TO THE UNIFORMITY OF THE MONTREAL CONVENTION OF 1999

The Montreal Convention of 1999 is, at its core, an attempt to make sure that if something goes wrong on an international flight, whether to a passenger, their bags, or cargo like packages, mail, or a pet, the rules for who pays and how much are the same within the signatory States. It grew out of an earlier system, the Warsaw Convention of 1929, which tried to do the same thing but turned into a patchwork of amendments and exceptions over the decades; Montreal was meant to fix that by replacing it with one clean set of rules.⁶⁶ Without that kind of uniformity, an airline could face completely different obligations depending on which country's courts heard a claim, and a passenger would have no way of knowing, in advance, what a lost bag or an injury was actually worth.

Uniformity is not incidental to the Montreal Convention; it is close to its entire point. Animals were never meant to be a separate category in this system, but not because anyone thought carefully about them, because, for most of legal history, an animal was simply treated as another good: something a person could own, buy, sell, or lose, no different in the eyes of the law from a suitcase or a box of cargo. Under that assumption, there was no reason to write a separate rule for animals; they simply fell wherever the existing categories, baggage or cargo, happened to place them. For most of the Convention's history, and the Warsaw regime before it, this predictability rested on a premise that has deep roots in Roman law, which treated animals as mere transactional goods from the outset, a conception common law inherited and, for centuries, was left largely undisturbed.⁶⁷

⁶⁵ Colombia, *Legal Protection of Pets in International Air Transport*, Working Paper A42-WP/447, *supra* note 30 at paras 2.3.3, 3.4.

⁶⁶ Convention for the Unification of Certain Rules for International Carriage by Air, 28 May 1999, 2242 UNTS 309, Preamble, arts 17–18, 22 (entered into force 4 November 2003) [Montreal Convention].

⁶⁷ F Espitia Garzón, *Historia del Derecho Romano*, 5th ed (Bogotá: Universidad Externado de Colombia, 2016) at 335; FH Childs, *Principles of the Law of Personal Property, Chattels and Choses* (1914) at 35–36.

Courts applying carriage-by-air rules to animals accordingly treated them as another good, subject to the same notice periods, liability caps, and defenses available for a damaged suitcase. One case that attests to this is *Dalton v Delta Air Lines*: when five racing greyhounds died of suffocation in transit from Boston to Miami in 1973, the US Court of Appeals for the Fifth Circuit did not ask whether the airline had killed living creatures; it asked whether their deaths counted as loss, damage, or destruction within the meaning of the Warsaw Convention's cargo provisions, and it answered that question the same way it would have for a piece of luggage.⁶⁸

Over time, the way animals are understood in law has changed: they are no longer seen only as mere goods, or as objects that can simply be bought and sold, but as living beings that may deserve a different kind of legal treatment and protection simply because they are alive. Two broad ideas try to explain what that protection should look like. One says that animals themselves can hold rights. The other says that animals remain transactional goods, but that the law should still protect their wellbeing. This second idea splits, in turn, into two different versions of what that protection is actually for.⁶⁹

The first theory is the personification of animals, which proposes animals as holders of rights, though its proponents do not agree on the extent of this holding. Some conceive animals as subject to particular and specific rights, while others maintain that animals should be endowed with rights equivalent to those recognized for human beings. As part of this theory, some organizations advocate for a universal declaration of animal rights, comparable to what followed the Nuremberg trials for human rights.⁷⁰ Some legal systems have adopted this theory nonetheless. Argentina's Federal Chamber of Criminal Cassation did so in 2014, recognizing an orangutan named Sandra as a rights-holder in her own right.⁷¹ Ecuador's Constitutional Court followed a similar path in 2022, recognizing a woolly monkey named Estrellita as endowed with rights of her own, albeit rights distinct from those held by human beings.⁷²

The other two theories fall within the legal welfare approach. Under this approach, legal systems protect a legal interest, the welfare of the animal, without treating the animal as endowed with rights.⁷³ This approach considers the animal's living and dying conditions as they relate to its interaction with humans, seeking specifically that this interaction does not create unnecessary suffering for the animal. This does not mean that all animal suffering must be eliminated: natural, undisturbed conditions, such as predation, remain outside its scope. What the approach seeks is that humans actively avoid creating conditions that negate an animal's health, its functioning, and its natural way of living.⁷⁴

The welfare approach further divides into anthropocentric and ethical animal welfare theories, the latter being recently the more widely accepted of the two.⁷⁵ Anthropocentric welfare is animal

⁶⁸ *Dalton v Delta Air Lines, Inc.*, 570 F (2d) 1244 (5th Cir 1978).

⁶⁹ David S Favre, *Animal Law: Welfare, Interest, and Rights*, 3rd ed (2020).

⁷⁰ Anne Peters, "Toward International Animal Rights", *supra* note 10 at 110–111.

⁷¹ *Orangután Sandra s/ habeas corpus*, *supra* note 2.

⁷² Corte Constitucional del Ecuador, *Caso Mona Estrellita*, Sentencia No 253-20-JH/22, 27 January 2022.

⁷³ David S Favre, *Animal Law: Welfare, Interest, and Rights*, 3rd ed (2020) at 6.

⁷⁴ Guillaume Futhazar, "Biodiversity, Species Protection, and Animal Welfare under International Law" in Anne Peters, ed, *Studies in Global Animal Law* (2020) 96 at 96–97.

⁷⁵ *Ibid.*

protection aimed solely at achieving human purposes, or merely a means to that end; under this conception, welfare is motivated by economic, scientific, entertainment, medical, or cultural purposes, and understands the animal in terms of its value to humans.⁷⁶ Ethical welfare, by contrast, also called humane or animal-centric welfare, recognizes the value and importance of the animal regardless of its role in human life; the underlying idea rests on the moral perception that animals are, themselves, a matter of social concern. Under this conception, animals must be protected and respected as living, sentient beings, a responsibility owed by humans on account of their intellectual superiority; moral welfare is the majority-accepted position in most Western legal systems.⁷⁷

The uncertainty starts before liability is even at issue, in the basic fact that each Party to the Convention conceives the animal differently as a non-human person, a sentient being, or a rights-holder, and that disagreement destabilizes categories the Convention treats as settled. It reaches even the term "passenger" itself. Under EU Regulation 261/2004, the Court of Justice of the European Union (CJEU) has had to decide when someone travelling free of charge, without an allocated seat, and not named on the reservation still counts as a passenger.⁷⁸

In *YE and Others v Vueling Airlines SA*, it held that an infant travelling free of charge on a parent's lap, with no seat or boarding pass of its own, did not.⁷⁹ The criteria the Court relied on, payment and an allocated seat, are exactly what a number of carriers now sell to animal owners: JetBlue and JetSuiteX, among others, charge separately for a pet's own seat, distinct from the fee charged merely to carry the animal in the cabin.⁸⁰ If payment for a seat, rather than the physical characteristics of the traveler, is what determines passenger status under the Regulation's own case law, the same reasoning arguably extends to the animal for whom that seat has been bought, raising the question whether it should count as a passenger in its own right rather than as baggage or cargo.⁸¹

Another relevant case is *Felicitima v Iberia*. Here a passenger's dog escaped its carrier and was lost while checked as hold baggage on an Iberia flight; the Spanish court asked whether "baggage" under Article 17(2) and Article 22(2) of the Montreal Convention excludes pets. The CJEU held it does not: despite Spanish law's recognition of animals as sentient beings under Article 13 of the Treaty on the Functioning of the European Union (TFEU), a pet remains "baggage" for liability purposes, and the passenger's compensation was capped at the Article 22(2) limit.⁸²

Felicitima itself preserves the Convention's uniformity: the CJEU did not create a new category for animals or depart from the three categories Article 1 already recognizes: persons, baggage, and cargo. It placed the animal within the closest existing one. However, a CJEU ruling binds only within the European Union; it does not bind the Convention's other States Parties. A State that also

⁷⁶ David S Favre, *supra* note 73 at 6.

⁷⁷ *Ibid* at 7.

⁷⁸ Case C-686/20, *YE and Others v Vueling Airlines SA*, Order of the Court (Ninth Chamber), 11 October 2021.

⁷⁹ *Ibid*.

⁸⁰ Benjamyn I Scott, "How Many Legs on a Passenger: An Analysis of the Term 'Passenger' under Regulation 261/2004" (2025) 50: Special Issue Air & Space Law 489 at 493.

⁸¹ *Ibid* at 500–501.

⁸² Case C-218/24, *Felicitima v Iberia Líneas Aéreas de España SA Operadora Unipersonal and IATA España SLU*, Judgment of the Court (Seventh Chamber), 16 October 2025, paras 14–21, 46.

treats animals as sentient beings is not thereby obliged to follow *Felicitima's* reasoning, and nothing in the Montreal Convention forecloses that State from concluding that "sentient being" is a classification the Convention simply does not address, and from applying its own domestic category instead, including a system that understands animals as non-human persons and adjudicates the claim as though the animal were, in substance, a passenger. That divergence is the real threat to the uniformity Montreal was designed to secure.

CONCLUSIONS

This paper set out to delimit and expose the legal challenges that the air transport of live animals poses to the international community across three distinct areas: the protection of biodiversity (I), accessibility and facilitation (II), and the application of uniform rules to carrier liability (III)

Regarding biodiversity, nearly a decade after the United Nations General Assembly first called upon its agencies to support member states in confronting illicit wildlife trafficking, and after successive working papers pressed the same point before ICAO's own Assembly, the concrete institutional response remains a single Recommended Practice and a short, caveated passage in a guidance document addressed mostly to airports.

IATA's alliance with CITES has moved the needle further than ICAO itself, yet these advances remain non-binding. The same is true of ACI's participation, alongside IATA, in USAID's ROUTES Partnership: a useful operational tool for training and information-sharing, but, again, no substitute for the legal certainty this paper has argued is missing. The absence of mandatory, uniform standardization is precisely the gap: nine years of accumulated calls to action have produced no Standard, no binding obligation, and no international framework. That is not a record of measured progress; it is a record of institutional neglect that the time elapsed cannot justify.

Regarding accessibility and facilitation, assistance animals turn out to be what the chapter's title suggested: not an incidental complication but the point where the difference between them collapses. Facilitation is, at bottom, an obligation to keep the system running smoothly, to expedite navigation and avoid unnecessary delay. On that question, ICAO's regime for assistance animals is genuinely thorough: cost, space, and ground transport are all addressed. Accessibility asks something different: not how smoothly the system runs, but whether a passenger with a disability is guaranteed the same terms of access as everyone else, with dignity.

The real finding is that the accessibility question keeps being answered as though it were a facilitation question: what counts as a service animal, and who therefore has the right to bring one at all, has been left to guidance material and industry practice, as though it were a matter of operational convenience rather than a matter of rights. Seen this way, the Manual's broad definition, IATA's narrower one, and the complete discretion of each State are not competing logistical standards; they are competing answers to a rights question that facilitation's vocabulary was never built to hold. IATA cannot resolve that question on ICAO's behalf: it does not sit at the same normative rank, it cannot bind States, and the resulting gap is one only ICAO is positioned to close.

Left unresolved, that gap falls on one person: the passenger who needs the animal, left to navigate the whole tangle alone: which requirement applies, whose definition governs, what proof will be accepted, and by whom. That, ultimately, is the question this chapter leaves for the framework still to be built: why does this passenger travel with an animal, why do they need it, and what, specifically, do they need it for. Once those questions are answered, the framework should address what must be asked of the animal itself, so the passenger's need is met without compromising the safety and efficiency of the operation. Whatever the answer, it must not require the passenger to pay for it: equal treatment is not equal if only the passenger with a disability bears the cost of it, and a disability should not translate into an additional economic burden.

Finally, regarding carrier liability, the fragmentation found elsewhere in this paper recurs here too, but from a different direction: not the absence of a binding rule, but the erosion of the category a binding rule was built on. Montreal Convention's liability regime never needed to define what an animal is, because for most of its history no legal system disagreed: an animal was property, a mere transactional good no different from a suitcase.

That agreement no longer holds. Some legal systems now recognize animals as rights-holders, non-human persons or sentient beings. The same disagreement reaches even the Convention's own vocabulary, including whether an animal for whom a seat has been purchased should count as a passenger rather than baggage. A recent case ruled under this trend preserved uniformity, but only within the European Union. Nothing stops another State Party from applying its own domestic theory instead, even adjudicating the claim that the animal is a passenger. On the legal status of the animal it transports, the Convention currently has no answer, and every legal system left to supply one on its own is a threat to the uniformity Montreal Convention was designed to prevent.

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