**Deontology & Professionalism**

**Deliverable 2**

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1 - Paco Pelaez.

Owner of the company “Paños Pelaez”.

Paco Pelaez, as the owner of the company, must comply with the GDPR regulations put in place by the European Union. One of these is the Active Responsibility principle, which delineates the approach that businesses must take regarding data protection and security.

It states that businesses must prioritise data protection by design and by default, establishing the necessary security checkpoints and appointing a Data Protection Officer. As per the requirements stated on the official GDPR website, the Data Protection Officer:

*“Must be appointed on the basis of professional qualities and, in particular, expert knowledge on data protection law and practices.”*

Remigio Astarlón hardly seems to fit the description of a data protection expert, as he is the responsible for the whole set of IT operations, not just the handling of sensitive information. This is evidenced by his inability to create a sound process for handling private data, implementing pseudonymisation and protecting the sensitive information of Pelaez’s clients, as he alone, as the weakest and only link of the chain, was able to leak all the information.

Having analysed the situation, we can conclude that Pelaez has at least some civil liability due to negligence when it comes to this situation. He might not have been directly involved in the leak, but he did have the responsibility to employ the services of a professional who is competent in data protection matters, as he was storing and analysing his customers’ personal information in a computerised manner.

2.-Remigio Astarlón.

Responsible computer contracted by Paco Peláez.

First of all, we have to establish that whichever crime committed Remigio, this one will be a **computer crime** also, since the computer has been used in the commission of the crime and it has been the target, too. This computer crime, would lie down in the classification of offences against **confidentiality**, **integrity** and **availability** of computer data and systems of the Budapest Convention on Cybercrime.

Considering this case more closely, we can clearly see that Remigio is involved in the leak of information of Paco Peláez company, although it was due to the blackmail of Emeterio. As we can see in the AEPD’s website, it is unlawful to leak information belonging to third parties knowing full well that it was obtained illegally. From the cases mentioned in that page, we can identify some that might appear familiar to us:

* Installation of programs that allow to monitor the device.
* Facilitating sensitive data whose access is restricted to third parties.

The Trojan installed by Remigio is capable of all of these cases.

He sold the data of Paco Peláez’s clients and that breaks the **principle of “limitation of purpose”** of the GRDP, that implies, on the one hand, the obligation that data must be treated with one or several specific, explicit and legitimate purposes and, on the other hand, that data collected for certain purposes is prohibited, explicit and legitimate are subsequently treated in a manner incompatible with those purposes. This principle is broken as selling data is a different purpose than the one might be agreed with Paco Peláez.

Remigio has also broken the **principle of “integrity and confidentiality”** that basically, it imposes on those who process data the obligation to act proactively in order to protect the data they handle against any risk that threatens their security. As we can see Remigio has broken this principle because he has sell the private data of Paco Peláez.

The **principle of “transparency”** is also tear down, since it implies that PD must be processed lawfully, fairly and in a transparent manner, and the PD of Paco Peláez’s clients is no more processed in a lawfully way.

The **principle of “data security”** is obviously ignored as it implies that PD must me processed in a manner that ensures appropriate security of those data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures, and with the actions of Remigio this data security is totally lost.

The last broken principle of the GRDP is the **“accountability” principle** that is based on that the controller is responsible for, and must be able to demonstrate compliance with the data protection principles, and as we have seen with the other principles, Remigio no more complies with the data protection principles.

Finally, it must be told that penalties, for multiple crimes of discovery and disclosure of secrets, range from 10 to 38 and a half years in prison, although compliance will not exceed ten years and six months at most.

3.- Pancracio Coscuyuelas.

Manager of the company "Fukushima Fabrics".

Pancracio, in the case, is the one who ask Emeterio to get the data of their rival company, in order to harm Paco and its company, committing a crime of blackmail to Emeterio, as he threat him to fire him if he refuses.

He is forming a criminal organization if we consider the following information:

“*El segundo párrafo del primer apartado del art. 570 bis del Código Penal en la redacción otorgada por la LO 5/2010, establece que “A los efectos de este Código se entiende por organización criminal la agrupación formada por más de dos personas con carácter estable o por tiempo indefinido, que de manera concertada y coordinada se repartan diversas tareas o funciones con el fin de cometer delitos, así como de llevar a cabo la perpetración reiterada de faltas”.”*

As it is said in the case: “*In this country you do not go to jail if you have a good sponsor, and a couple of politicians owe me favors.*”, he also is committing the crime of influence peddling:

“*Tal y como se recoge en la* [***Sentencia del Tribunal Supremo, de fecha 3 de mayo de 2012***](http://www.poderjudicial.es/search/documento/TS/6380236/Dolo/20120523)*, según la doctrina jurisprudencial* [***(STS 537/2002, de 5 de abril***](http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=TS&reference=3144964&links=&optimize=20030918&publicinterface=true)*, entre otras), "influir" implica que:*

* *Los actos de influencia han de poseer una verdadera naturaleza condicionadora.*
* *La actuación del funcionario sea fruto de la presión sobre el mismo.*
* *No puede consistir, sin más en simples y usuales solicitudes o sugerencias, sino en presiones eficientes.”*

As he also plans to sue Paco, if he is cited to go to the court as a witness he would also commits the crimes of perjury and false testimony.

4.- Emeterio Pancetas.

Head of IT of "Fukushima Tissues".

Emeterio is the head of the computer department in Pancracio Coscuyuelas’ company. In the case, he is asked by Pancracio to use his computer knowledge to harm Paco Pelaez’s company, or else he will lose his job.

In order to carry out this set of actions, Emeterio blackmails Remigio, who works for Paco, in order to get him to act against his boss and his company: he uses an old sex tape concerning Paco’s wife and offers 10000€ to get Paco to perform these acts.

This is a clear case of blackmail, which is contemplated by the Spanish legal code, although it is not contemplated in the LOPDGDD, and, additionally, the AEPD search engine returns no relevant results for the keyword “chantaje” or similar that are applicable to this situation.

However, upon further investigation, we were able to conclude that Emeterio was engaging in what is called *Delito de Chantaje,* which is contemplated in article 171.2 of the Spanish legal code and states that he was engaging in a “Delito de amenaza” by threatening Susana to:

*“revelar o difundir hechos o material referente a su vida privada o relaciones familiares que no sean públicamente conocidos y puedan afectar a su fama, crédito o interés.”*

The Spanish legislation has since advanced, and now this kind of act could also be considered to infringe some of the legislation related to “Revenge Porn”, especially to the infringement of rights related to personal image and intimacy, which are contemplated in the Spanish Civil code and in the *Ley Orgánica de Protección Jurídica del Derecho al honor, a la intimidad personal y familiar y a la propia imagen.*

5.- Rossanna do Grandeconcha.

Well-known Brazilian data trafficker.

Rossana is established outside the EU but is processing the data of people inside the EU so the GDPR is applied to her. Trafficking with the personal data is a crime which is contemplated in Spanish Penal Code, more specifically in article 197.2 with aggravation of article 197.3:

*“Apoderamiento, utilización o modificación de datos registrados (artículo 197.2 del CP, inciso 1.º) /Acceso, utilización o alteración por cualquier medio de datos reservados de carácter personal (artículo 197.2 del CP, inciso 2.º)”*

*“Difusión, revelación o cesión de secretos (artículo 197.3 del CP).”*

6 - Susana, Mrs. of Astarlón (Remigio’s wife).

Old girlfriend of Emeterio

As we have seen in the story, Susana was involved in the leak as an accomplice. She was fully aware of the actions of her husband and the blackmail carried out by Emeterio. As mentioned in Remigio Astarlón’s case, a quick visit to the AEPD’s website will reveal that it is unlawful to leak information belonging to third parties knowing full well that it was obtained illegally.

Besides all the civil liabilities incurred by her husband, like breaking the principle of limitation of purpose as well as that of integrity and confidentiality, there are also the criminal implications explained below.

As an accomplice, she could be accused of some of the crimes carried out by Emeterio, Remigio and Pancracio. In Article 197 of the Penal Code, the following punishments are specified (quotation in Spanish, emphasis added for the purposes of this paper):

*“1. El que, para descubrir los secretos o vulnerar la intimidad de otro, sin su consentimiento, se apodere de sus papeles, cartas, mensajes de correo electrónico o cualesquiera otros documentos o efectos personales,* ***intercepte sus telecomunicaciones*** *o utilice artificios técnicos de escucha, transmisión, grabación o reproducción del sonido o de la imagen, o de cualquier otra señal de comunicación, será castigado con las penas de prisión de uno a cuatro años y multa de doce a veinticuatro meses.”*

*“2. Las mismas penas se impondrán al que, sin estar autorizado, se apodere, utilice o modifique, en* ***perjuicio de tercero****, datos reservados de* ***carácter personal*** *o familiar de otro que se hallen registrados en* ***ficheros o soportes informáticos****, electrónicos o telemáticos, o en cualquier otro tipo de archivo o registro público o privado. Iguales penas se impondrán a quien,* ***sin estar autorizado****, acceda por cualquier medio a los mismos y a quien los altere o utilice en perjuicio del titular de los datos o de un tercero.”*

Furthermore, the AEPD also specifically addresses the following points as violations of the law that may incur in civil liability:

* Obtaining the personal data of a person in an illicit, fraudulent and deceiving manner.
* Leaking personal data to third parties without the consent of the owner of said data.
* Using personal data for purposes other than those that they were originally collected for.

Susana was involved in all three of the above bullet points, and as such she should be held responsible for the damages to Pelaez’s company due to the leak.

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