

□ Procedure No.: PS/00269/2020

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00269/2020, instructed by the Spanish Agency for

Data Protection, to the entity, ORNA COMUNICACION, S.L. with CIF.:

B64508955, owner of the website <https://www.catalunyapress.es/>, (hereinafter, "the

claimed entity"), by virtue of a complaint filed by D. AAA, (hereinafter, "the

claimant") and based on the following:

BACKGROUND

FIRST: On 01/13/20, he entered this Agency, filed a complaint

by the claimant, in which he indicated, among others, the following:

"The page <https://www.catalunyapress.es/>, despite having a policy available

of privacy (integrated in the Legal Notice), collects personal data to publish co-

comments to the news that it publishes and to subscribe to its "newsletter", without in di-

many forms it is necessary to give consent for the treatment of the

personal data through any box or showing a link to the privacy policy.

thereby contravening the provisions of current regulations.

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the investigative powers

tion granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (GDPR). Thus, on 02/27/20, an informative request was addressed to the

ity claimed.

According to a certificate from the Electronic Notifications and Electronic Address Service, the

request made to the claimed entity, through the notification service

NOTIFIC@, made on 02/27/20, was originally accepted on 02/28/20.

THIRD: Dated, 08/05/20, and not having received any type of information from this Agency information or documentation of the claimed entity, referring to the real requirement lized, an admission agreement was issued for processing by the Board of Directors of the Agency Spanish Data Protection.

FOURTH: On 09/20/20, this Agency verified that the page reported website contains the following aspects, regarding its privacy policy ness and consent requested from subscribers:

1º.- The denounced web page has the option of subscribing to the "newsletter" of the day-digital river, "catalunyapress", through the link indicated with the "mail" logo, which is located at the top right of the page, from where the web redirects to a new page, <https://billing.bigpress.net/visitorsubscribe/subscribe/457> , where may collect the personal data of the subscriber, name, surname, date of birth lie and email.

However, in order to subscribe, the interested party must previously accept the "policy". privacy policy" and the information exists in the "legal notice" .

You must also check the box: " _ by clicking on subscribe you

You are accepting to receive communications from catalunyaspress".

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28001 – Madrid

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2/7

2º.- If the "privacy policy" is accessed through the link on this page, page, the web is redirected to the page: https://bigpress.net/index/legal_privacidad, in the that information is displayed on: the applicable regulations; the data that is collected;

about data processing; about the purpose of the personal data collected;

on the Rights of users and on complementary legislation.

FOURTH: In view of the reported facts and the evidence observed in the

website, the Director of the Spanish Data Protection Agency, dated

09/30/20, agreed to initiate a sanctioning procedure against the entity claimed, by virtue of

of the established powers, for failing to comply with the provisions of articles 13 and 7 of the

GDPR.

FIFTH: Once the initiation agreement has been notified, the entity claimed, by means of a document of faith

on 10/21/20, made, in summary, the following allegations:

“The notified agreement is motivated by a claim raised by a user and,

According to the legal grounds contained in the resolution, the sanctioning procedure

The question arises due to two aspects related to the adaptation to the legislation

in force in the collection of data for the subscription to the "newsletter" of the website, as well

as the purpose for which the consent of the affected party is requested for the sending of

communications.

Well, as detailed in the notified resolution, the link by which they are collected

the data of the interested party, and their consent is requested both for their treatment,

as for sending communications, directs to the website www.bigpress.net, who re-

turns out to be the hosting in which the website of my client is hosted, this is www.catalunyapress.es, as well as being responsible for adapting to current regulations

the terms of its privacy policy.

Therefore, ORNA COMUNICACIÓN, S.L. is not responsible for any type

of infraction or inadequacy of the current regulations that are hosted on the website

www.bigpress.net since it is not owned by you. However, the above, currently

te, the privacy policy of the website www.bigpress.net, complies with the stipulations

tions contained in the General Regulation on Data Protection (RGPD

2016/679), as well as in the current Organic Law 3/2018, of December 5, and, in particular, cular, the provisions of article 13 and concordant of the Regulation.

It is attached, as DOCUMENT ANNEX NUMBER TWO, privacy policy of the website www.bigpress.net, which can be accessed for the purposes of its timely verification. As can be seen, said privacy policy includes all the information training prescribed by current regulations, making express reference to the Regulations EU 2016/679, as well as Organic Law 3/2018, including information to the interested party about the data collected, its purpose, the quality of these and their treatment, as well as all the rights available to you, including information about the possibility of making a claim before the competent authority.

ORNA COMMUNICATION, S.L. has made the appropriate decisions at the time that has been notified of the agreement to start the sanctioning file, communicating the possible incidence to the person in charge of the website www.bigpress.net and, therefore, it has been I guide the proactive attitude regarding incidents that may affect the protection of data" that is established in the Regulation.

It is attached, as DOCUMENT ANNEX NUMBER THREE, a document signed by the person in charge of the website www.bigpress.net, for which they assume their responsibility regarding possible incidents. Therefore, ORNA COMUNICACIÓN, SL. he has www.aepd.es

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3/7

deployed all due diligence in terms of possible incidents, complying with compliance with the stipulations of the current regulations.

For all of the above, we understand that ORNA COMUNICACION, SL., on the one hand, does not

can be considered responsible for the inadequacies presented by the privacy policy.

emptiness of the website www.bigpress.net, since it is not owned by it and does not depend the adequacy of its privacy policy and, on the other hand, has taken the necessary measures regarding incidents that may have been detected.

Consequently, we understand that it is appropriate to issue a resolution by which the archive of the file, without further processing”.

With regard to the documents provided by the claimed entity, among others, it specifies:

a).- Document No. 2.- In the "Privacy Policy" of the website www.bigpress.net (https://bigpress.net/es/legal_privacidad), it is specified that: “Responsible for the Treatment Lie: BIGPRESS S.L. (hereinafter THE COMPANY); Tradename: BIGPRESS; CIF: B94186517

“At Bigpress CMS we help you make a digital newspaper up to the big ones.

A CMS for online newspapers that facilitates the professional life of journalists. Nunca designing your newspaper was so easy.

An online content manager with which you can design covers, edit news and images. An online newsroom for digital publications that allows you to organize centralized way the work of your editors, photographers, publicists, etc.”

b).- Document No. 3.- document signed by the person in charge of the website www.bigpress.net,

“BIGPRESS S.L. is a supplier of ORNA COMUNICACION, S L, hereinafter the CLIENT. In addition, it is the company in charge of developing the website www.catalunypress.es belongs to the CLIENT. Therefore, it is responsible for the implementation technical specification of the measures that the CLIENT indicates for the correct adaptation of your website to the legal regulations regarding data protection. as manager of data processing will be responsible for the data processing adapting to the

agreement to be signed with the CLIENT".

SIXTH: On 12/01/20, by this Agency, it is verified that on the page on the complaints website, its "privacy policy": (<https://www.catalunyapress.es/estati-ca/legal-warning>), has been modified, now adjusting it to current regulations on protection of personal data.

SEVENTH: On 12/10/20, the respondent entity is notified of the proposed resolution in which it is proposed that, by the Director of the Spanish Agency for Protection of Data is "APERCIBA" to the entity for violation of article 7 of the RGPD, in regarding the collection of the consent of the users of the digital newspaper, for the treatment of your personal data when said treatment is for purposes different from the sending of the "newsletter" of the newspaper and for infraction of article 13 of the RGPD without requirement of measures to take.

EIGHTH: After notification of the proposed resolution, no document has been received type of allegations to the proposed resolution, in the time granted for this purpose.

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28001 – Madrid

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4/7

PROVEN FACTS

1.- On 09/20/20, it was verified by this Agency that the page <https://www.catalunyapress.es/>, had the option of subscribing to the "newsletter" of the digital newspaper, "catalunyapress", through the link indicated with the <<mail>> logo, located at the top right of the page. Through that link, it was redirected to the page, <https://billing.bigpress.net/visitorsubscribe/subscribe/457> , where, in the for-existing form, could collect personal data from subscribers, such as the name

name, surnames, date of birth and email.

It was also verified that, in the privacy policy of the reported website

reference was still made to the repealed Organic Law 15/1999, of December 13

bre, Protection of Personal Data.

2.- In order to subscribe to the "newsletter" of the digital newspaper, the interested party had to accept

previously read the "privacy policy" and the information exists in the "legal notice",

previously marking the corresponding box, but it was also compulsory to mark

check the box: " _ by clicking subscribe you are agreeing to receive communications

cations of catalunyapress".

3.- In the allegations of the entity claimed, it was indicated, among others, that: "the link

ce by which the data of the interested party is collected, and their consent is requested as soon as possible.

to for its treatment, as for the sending of communications, directs to the website

www.bigpress.net , who turns out to be the hosting where my rep's website is hosted.

presented, this is www.catalunyapress.es (...).

Therefore, ORNA COMUNICACIÓN, S.L. is not responsible for any type

of infraction or inadequacy of the current regulations that are hosted on the website

www.bigpress.net, since it is not owned by them (...)".

4.- In the "Privacy Policy" of the website www.catalunyapress.es, consulted at

01/12/20, through the link, <<legal notice>>, located at the bottom of the page,

(https://www.catalunyapress.es/estatica/aviso-legal), the following information is provided

Information: "owner of the website: ORNA COMUNICACIÓN, SL CIF: B64508955"

"PRIVACY POLICY: ORNA COMUNICACIÓN, SL guarantees the privacy of

the personal data provided, according to the General Protection Regulation

of Data (GDPR).

Visiting this web page does not imply that the user is obliged to provide any

information about yourself, however, during the visit you may be asked

personal data through forms.

Said data will be incorporated into a file that is the responsibility of ORNA COMUNICACIÓN, SL and will be used for the purpose of answering the request made by your part and to send them information about our company and services by any means Communication. By sending us this form, you are explicitly accepting receiving these. These data will be canceled at your request or once satisfied the purpose for which they were collected.

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5/7

5.- In the "Privacy Policy" of the web,

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(https://bigpress.net/es/legal_privacidad) , it is specified that the data controller

data processing of the website, is BIGPRESS S.L. The purpose of the website, according to

It is specified in the same that, "help to make a digital newspaper at the height of the large. A CMS for online newspapers that facilitates the professional life of journalists.

you. Designing your newspaper has never been so easy. An online content manager with which

you can design covers, edit news and images. An online writing for publi-

digital cations that allows you to centrally organize the work of your editors.

tors, photographers, advertisers, etc."

www.bigpress.net

6.- In document No. 3, provided by the entity claimed in its allegations, it is

indicates: "BIGPRESS S.L. is a supplier of ORNA COMUNICACION, S L, hereinafter the

CLIENT. In addition, it is the company in charge of developing the website

press.es belongs to the CLIENT. Therefore, it is responsible for the implementation technical specification of the measures that the CLIENT indicates for the correct adaptation of your website to the legal regulations regarding data protection. as manager of data processing will be responsible for the data processing adapting to the agreement to be signed with the CLIENT”.

FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

II

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD, a vision of the denounced action that has been reflected in the facts declared proven above reported. However, it must indicate the following:

1º.- Consultation of the privacy policy of the reported website, dated 12/01/20, it has been found that it has been modified, being adapted to the new current regulations on data protection collected in the RGPD.

2º.- However, regarding the allegations presented by the claimed entity, It should be clarified that, in the same RGPD, article 4.7 and 4.8, the person in charge is identified of the processing of personal data as, "the natural or legal person, authority public, service or other body that, alone or jointly with others, determines the purposes and means of treatment (...)" and the person in charge of processing personal data as, "the natural or legal person, public authority, service or other body that process personal data on behalf of the data controller".

Therefore, in the present case, the person responsible for the processing of personal data

that are collected through the website www.catalunyapress.es, is the owner of the said page, that is, ORNA COMUNICACION, S.L., regardless of where said page is hosted, since the purpose of said treatment is for the sending of the "newsletter" of the digital newspaper, in addition to receiving "communications of catalunyaspress".

C/ Jorge Juan, 6

28001 – Madrid

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6/7

www.catalunyapress.es, is hosted on the website

If the web page

www.bigpress.net, the latter would act as data processor, and

always based on the indications received from the data controller.

data, and as specified in document No. 3, attached by the claimed entity:

"BIGPRESS S.L. is a supplier of ORNA COMUNICACION, S L, hereinafter the CUSTOMER", in addition to being the company in charge of developing the web www.catalunyapress.es belonging to the CLIENT.

Therefore, the entity BIGPRESS SL, is responsible for the technical implementation of the measures that the CLIENT (ORNA COMUNICACIÓN SL), indicates for the correct adaptation of your website to the legal regulations on data protection, because as the person in charge of data processing, it will be responsible for the treatment of data adapts to the agreement with the CLIENT.

Therefore, as indicated in article 7 of the RGPD, "When the treatment is based on the consent of the interested party, the person in charge must be able to demonstrate that he consented to the processing of his personal data. 2.If the consent of the

concerned is given in the context of a written statement that also refers to other matters, the request for consent shall be presented in such a way as to clearly distinguishable from other matters, in an intelligible and easily accessible form and using clear and simple language. No part of the declaration that constitutes an infringement of these Regulations. 3. The interested party will have right to withdraw your consent at any time. The withdrawal of consent will not affect the legality of the treatment based on the consent prior to his withdrawal. Before giving their consent, the interested party will be informed of it. It will be as easy to withdraw consent as it is to give it. 4. When evaluating whether the consent has been freely given, it will be taken into account to the fullest extent possible whether, among other things, the performance of a contract, including the provision of a service, is subject to consent to data processing personal data that are not necessary for the execution of said contract.

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

NOTICE: to the entity ORNA COMUNICACION, SL. with CIF.: B64508955, holder of the website <https://www.catalunyapress.es/> for infringement of articles 7 and 13 of the GDPR.

NOTIFY: this resolution to the entity ORNA COMUNICACION, SL.

In accordance with the provisions of article 50 of the LOPDPGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

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7/7

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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