

Procedure No.: PS/00015/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

A.A.A.

and B.B.B. (WWW.YELLOWELEPHANT.ES), by virtue of a claim

presented by C.C.C. and based on the following:

BACKGROUND

FIRST: C.C.C. (hereinafter the claimant) on 04/04/2018 filed

claim before the Spanish Data Protection Agency. The claim is

directed against A.A.A. and B.B.B. (WWW.YELLOWELEPHANT.ES and hereinafter

YELLOWELEPHANT). The reasons on which he bases his claim are: that in the aforementioned

web page personal data is collected from those who access

to it and want to register, without there being any reference to the LOPD.

SECOND: In view of the facts denounced and the actions of

The investigation carried out revealed the following:

YELLOWELEPHANT provides a report prepared by S&Y Consultores de Calidad y

Information security in which they make recommendations about the information

that you must provide on the page.

It has been verified that to send the data from the form you must accept the policy

of data protection that informs the interested party in the link:

<http://www.yellowelephant.es/informacion-detallada-sobre-proteccion-de-datos/> sobre

the person in charge of the web, the purpose for which it delivers your data, the legitimacy, the

data recipients and how to exercise their rights.

At the foot of all the pages of the site there is also a link called "Protection of

data" that bears the address <http://www.yellowelephant.es/proteccion-de-datos/> where

Basic information on data protection is collected.

YELLOWELEPHANT has corrected in a timely manner the reported aspects of
in accordance with the provisions of article 13 of the RGD.

THIRD: On 01/30/2019, the Director of the Spanish Protection Agency
of Data agreed to initiate a sanctioning procedure for the presumed infraction of the
article 13 of the RGD, in accordance with the provisions of article 58 section 2 of
the same norm, considering that the sanction that could correspond would be
WARNING, without prejudice to what may result from the investigation.

FOURTH: Once notified of the start-up agreement, YELLOWELEPHANT has not contributed,
date of this resolution, written allegation.

Of the actions carried out in this proceeding, there have been
accredited the following:

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PROVEN FACTS

FIRST: On 04/04/2018 there is a written entry in the AEPD from the claimant in which
denounces YELLOWELEPHANT because the aforementioned website collects data from
personal nature of people who access it and want to register, without
there is any reference to data protection regulations.

SECOND: YELLOWELEPHANT provides a report prepared by S&Y Consultores
Information Quality and Security in which they make recommendations on
the information that must be provided on the page and has corrected the aspects put in
manifest in the claim in accordance with the provisions of article 13 of the

GDPR.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

YELLOWELEPHANT is accused of violating the provisions of article 13 of the RGPD that determines:

II

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

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a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible

consequences of not providing such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of

personal data for a purpose other than that for which it was collected,

will provide the interested party, prior to said further treatment, information

for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in

to the extent that the interested party already has the information.

YELLOWELEPHANT has incurred in violation of the regulations on

data protection materialized in the defective configuration of the page in what

regarding the information offered in terms of data protection of those

people accessed and registered in it, as indicated by the claimant.

The exposed facts constitute an infraction attributable to the

claimed, YELLOWELEPHANT, for violation of article 13, Information that

It must be provided when the personal data is obtained from the interested party, of the RGPD.

However, YELLOWELEPHANT in response to the request made by

the Inspection Services certify that they have corrected the deficiencies observed in

its privacy policy aimed at preventing future reoccurrence

situations such as the one revealed in the claim.

III

Article 83.5 b) of the RGPD considers that the infringement of “the rights of

interested parties under articles 12 to 22” is punishable, in accordance with the

“with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation,
administrative fees of €20,000,000 maximum or, in the case of a company, a
amount equivalent to a maximum of 4% of the total global annual turnover of the
previous financial year, opting for the highest amount.

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At the same time, in the LOPDGDD its article 74 "Infringements considered
mild", states that "They are considered mild and the remaining ones will expire after a year.
infractions of a merely formal nature of the articles mentioned in the
paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the
following:

a) Failure to comply with the principle of transparency of information or the
right to information of the affected party for not providing all the information required by the
Articles 13 and 14 of Regulation (EU) 2016/679".

However, article 58.2 of the REPD provides the following: "Each authority
of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with
warning when the processing operations have violated the provisions of
this Regulation;

(...)

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its Recital 148 of Regulation 2016/679, which establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

It should be noted that after the request made to the accused party, has accredited the correction of the deficiencies observed in the configuration of the website in relation to the privacy policy and legal notice.

IV

In the same way, the adoption of any specific measure is not urged to take, since the adoption of measures for the correct installation of the video surveillance system and its adaptation to the new principles that the GDPR.

To conclude, given the absence of intent, the absence of damages, the behavior of the defendant and the diligence displayed

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by entering the information referred to in the RGPD on their website, they mitigate more

if his guilt fits in the present case, for which it is appropriate to sanction with the

warning.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A. and B.B.B. (WWW.YELLOWELEPHANT.ES), with

NIFs ***NIF.1 and ***NIF.2 respectively, for a violation of article 13 of the RGPD,

sanctioned in accordance with the provisions of article 83.5 of the aforementioned RGPD and, qualified

of mild in article 74. a) of the LOPDGDD, a sanction of WARNING of

in accordance with the provisions of article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to the A.A.A.

and to B.B.B.

(WWW.YELLOWELEPHANT.ES) with NIFs ***NIF.1 and ***NIF.2 respectively and,

according to art. 77.2 of the RGPD, INFORM the claimant, Ms. C.C.C. about him

result of the claim.

In accordance with the provisions of article 50 of the LOPDGDD, the

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.

114.1 c) of the LPACAP, 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 period of

month 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 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the
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