

□ Procedure No.: PS/00181/2020

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00181/2020, instructed by the Spanish Agency for Data Protection, to the entity, VIDEOTRAVEL S.L. with CIF.: B38756854, (in addition before, "the entity claimed"), by virtue of a complaint filed by A.A.A. (hereinafter plaintiff, "the claimant"), and based on the following:

### BACKGROUND

FIRST: On 10/17/19, you entered this Agency in writing, submitted by the claimant, in which, among others, he indicated:

"I contracted a vacation with the Mundo Senior Plus Agency from April 16 to 25, 2019. During my stay in Tenerife, I booked an excursion to Teide that took place on 21 April 2019, organized by the same Agency. On April 17, 2019, we were told called for a briefing in the hotel lounges, but at no point in the meeting we were informed that the excursion was going to be recorded, so the Agency He did not ask for verbal or written authorization at any time. In the hotel hall there was an explanatory sheet of the excursion, but neither in any section of it is It indicated nothing about the recording of the tour.

Upon boarding the bus, the guide reported that they would proceed to make a recording of the excursion, but in no case requested verbal or written authorization to carry out the same. From this point on, the technician recorded what he wanted, when he wanted and to whom he wanted and At the end of the trip, the guide and the technician sold the recording among the assistants. tents, charging the report in advance".

Together with the written complaint, the responses of the entities are attached: "World Senior Plus UTE" and "NOVO TOURS AIE", to the respective claims presented by

the claimant, for the organization of the trip.

Among the responses given by the entity NOVO TOURS AIE, to the claimant, res-

Regarding the recording made on the excursion to Teide, the following stands out:

“(…) Likewise, contacted with the company that organizes the reports of the excursion to Teide, Videotravel, S.L. it has informed us that after the introduction of the guide who makes the excursion, the person who makes the film is introduced to the group. video which reports on their activity before starting the recording, explaining considering the work to be done, as well as the content of the final product, being the acquisition of the same totally voluntary. At the end of that presentation Emphasis is placed on observing that the person who does not want to be recorded must do so know and his decision is always respected, recommending that so that he does not feel excluded when making the tours is placed behind the camera so that person pass first and in this way it is not recorded (…).”.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the Data Inspection SG proceeded to carry out tions for clarification, in accordance with article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the rights digital data (hereinafter LOPDGDD). Thus, dated 12/02/19, and reference number N/Ref.: E/11356/2019, a written request for information was addressed to the entity ity MUNDOSENIOR PLUS U.T.E.

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THIRD: On 12/30/19, the entity MUNDO SENIOR PLUES UTE., sends to

this Agency, written, in which it informs, among others, of:

“That, upon receipt by the UTE MUNDOSENIOR PLUS of the letter of re-

claim filed by the claimant dated May 14, 2019, it was decided

transfer the same to LEISURE AND TOURISM NOVOTOURS AIE, agency that organizes the

excursion to the Teide National Park object of claim and to VIDEOTRAVEL S.L.,

company that makes and markets the videos in the aforementioned park as the only company

is authorized to make recordings in the Timanfaya National Park and in the

Teide National Park, since the UTE MUNDOSENIOR PLUS and OCIO Y TU-

RISMO NOVOTOURS, AIE are not responsible or in charge of the treatment of di-

many recordings, so they do not carry out the capture, treatment or co-

marketing of the video images of the excursion to the National Park.

The response from OCIO Y TURISMO NOVOTOURS AIE was sent to the complainant with

dated September 18, 2019, which is attached to the file of this AEPD, in

the complaint, in its annex 2. This response included the corresponding explanations

cations requested from VIDEOTRAVEL S.L. about the procedure followed by the same

ma to make the recordings during the aforementioned excursion. that in no

moment the interested party has expressed his intention to exercise one of the rights

Regulated in articles 15 to 22 of the RGPD.

That the causes that have motivated the claim may have their origin in the fact that the

complainant did not adequately receive and understand the information provided on

the aspects related to the development of the excursion to Teide, the recording in

video and subsequent marketing of the same among those attending the excursion through

part of VIDEOTRAVEL, S.L.

That in order to prevent similar incidents from occurring, the company has been insisted

VIDEOTRAVEL S.L. in that it must clearly inform about the recordings,

offer a simple mechanism to allow people who do not want it not to

appear in the video and make sure everyone attending the tour has received and understood the information that is transferred to them in this regard.

On the other hand, the workers of LEISURE AND TOURISM NOVOTOURS

AIE that, by providing the descriptive information of the excursion to travelers in the moment of your hiring, report the possible existence of the recording service carried out by VIDEOTRAVEL S.L.

That neither the UTE MUNDOSENIOR PLUS, nor LEISURE AND TOURISM NOVOTOURS AIE, in under no circumstances do they commission or participate in any way in the collection, treatment and commercialization of the images of the video of the excursion to Teide. that none of

The two entities hold the figure of Responsible or Person in Charge of the Treatment about these recordings, which are the sole responsibility of the company VIDEOTRAVEL S.L”.

THIRD: On 07/20/20, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the entity claimed, by virtue of the established powers, for failing to comply with the provisions of articles 13 and 7 of the RGPD, imposing an initial sanction of warning.

FOURTH: Once the initiation agreement has been notified, the entity claimed, by means of a document of faith dated 08/03/20, made, in summary, the following allegations:

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“That the activity of our company consists of the elaboration of documentaries of the Island, personalized to each group of visitors, since 2004:

1. That in the previous meeting that takes place the day before, everyone is informed that the

have contracted, that the excursion is going to be recorded, it is also reported that if any

Someone who does not want to be recorded indicates so that the cameraman does not record it. 2. That at

next day when you get on the bus, you are informed again and it is requested that if any-

If someone does not want to be recorded, please indicate so that this does not happen. 3. In re-

In relation to this we have to say that we are surprised by the denouncer's exposition, since

it denies what happens every day in the different excursions that we cover. Both in the

prior meeting such as on the bus if the recording is reported and it is requested that if any-

someone does not want to be recorded to say it and it is not recorded. The recorded documentary

offered exclusively to the components of the excursion, who have already seen each other

them and have shared the event.4. It is kept for 30 days. At 30 days they are

destroyed. 5. That the sole purpose of the recording is to propose a memory to the

attendees to the excursions, and of the magnificent environment that they visit and circumscribe ex-

Exclusively to attendees who do not mind being recorded in order to carry out the

Totally private documentary for these people.6. That in the parks of our

environment, visitors are recorded in the different attractions without them having the possibility

to say no, then they buy or not and of course it is equally destroyed. 7.

In no case do the images leave the private sphere of the group, they are not uploaded to re-

undisclosed or exposed on the internet.

For these reasons, we understand that our action criteria regarding the LOPD,

is correct, however, please would we be willing to improve our performance

tion, indicate in what topics and we will proceed to update the protocol. The recordings

broadcasts on public streets by television stations do not require express authorization.

only from passers-by if they see the camera and do not agree with being recorded

they warn the producer in the same way at sporting events soccer concerts

bulls etc. take out the public without prior authorization, so we understand that

is our own environment and always indicating to clients that they will be taxed and

who do not want it can communicate it so that they do not do it.

FIFTH: On 10/27/20, the entity claimed was notified of the proposed resolution in which it is proposed that, by the Director of the Spanish Agency for Pro-Data protection is sanctioned with "WARNING" for violation of articles 13 and 7 of the RGPD, in accordance with the provisions of article 58.2) of the aforementioned Re-glament.

SIXTH: After notification of the proposed resolution, dated 11/09/20, the entity claimed entity presents a brief of allegations, in which it is indicated: "answer to your procedure ps/00181/2020 received on 10/27/2020 having received from the Spanish agency for data protection, resolution proposal before the file I open you with number ps / 00181/2020, we present ". However, in it, it is not do not attach any annexed document to it.

Of the actions carried out in this procedure, of the information and do-documentation presented by the parties, the following have been accredited:

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## PROVEN FACTS

1º.- The claimant denounces that, during his vacations in Tenerife, from 16 to 25 April 2019, contracted an extra excursion to Teide that took place on April 21, 2019.

2º.- On April 17, 2019, according to the complaint, he was called to an informative meeting in the halls of the hotel, but at no time during the meeting was he informed of what the excursion was going to be recorded, so the Agency did not ask him at any time

neither verbal nor written authorization. In the hotel hall there was a sheet explaining the excursion, but neither in any section of it was anything indicated about the gratification.

3º.- The complaint continues indicating that, when getting on the bus to start the excursion, the guide informed that they would proceed to make a recording of the excursion, but in no case. In no case did he request verbal or written authorization to carry out the same.

4º.- The claimant submitted written complaints to the organizing entities of the excursion, "Mundo Senior Plus UTE" and "NOVO TOURS AIE".

5º.- Among the responses given by the entity NOVO TOURS AIE, to the claimant, Regarding the recording made on the excursion to Teide, the following stands out:

"(...) Likewise, contacted with the company that organizes the reports of the excursion to Teide, Videotravel, S.L. it has informed us that after the introduction of the guide who makes the excursion, the person who makes the film is introduced to the group. video which reports on their activity before starting the recording, explaining considering the work to be done, as well as the content of the final product, being the acquisition of the same totally voluntary. At the end of that presentation Emphasis is placed on observing that the person who does not want to be recorded must do so know and his decision is always respected, recommending that so that he does not feel excluded when making the tours is placed behind the camera so that person pass first and in this way it is not recorded (...)".

6º.- Open sanction file against the entity that made the filming of the excursion, Videotravel SL, this, in the period of allegations, presents written before this Agency in which, among others, indicates that:

-In the previous meeting that takes place the day before, all those who have attended it are informed contracted, that the excursion is going to be recorded, it is also reported that if someone you do not want to be recorded that you indicate so that the cameraman does not record it.

-The next day when you get on the bus, you are informed again and asked if someone does not want to be recorded, please indicate so that this does not happen.

-(...) Both in the previous meeting and on the bus if the recording is reported and requests that if someone does not want to be recorded, they say so and it is not recorded.(...).

## 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 awareness of the AEPD, a vision of the denounced action that has been reflected gives in the facts declared proven above related. However, on the allegations tions presented by the entity claimed at the initiation of the file, indicate what

Next:

On the one hand, article 13 of the RGPD establishes the information that must be provided.

inform the interested party at the time of collecting their personal data. In the pre-

In this case, before starting the video report of the excursion. In par-

particular, information must be provided on:

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

tant; 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 legal basis of the treatment.

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) recipients or categories

of recipients of personal data, where appropriate; f) if applicable, the intention of the

responsible for transferring personal data to a third country or international organization

and the existence or absence of an adequacy decision by the Commission, or, in the

case of the transfers indicated in articles 46 or 47 or article 49, section

1, second paragraph, reference to adequate or appropriate guarantees and means

to obtain a copy of these or to the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained,

them, the following information necessary to guarantee fair data processing and

transparent: a) the period during which the personal data will be kept or, when

where this is not possible, the criteria used to determine this term; b) existence

the right to request access to personal data from the data controller

relating 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 article 9,

paragraph 2, letter a), the existence of the right to withdraw consent at any

moment, without affecting the legality of the treatment based on the consent

prior to its withdrawal; d) the right to lodge a complaint with a law enforcement authority

control; 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 make

provide personal data and is informed of the possible consequences of not

provide such data; f) the existence of automated decisions, including the preparation

of profiles, 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 consequences

foreseen consequences of said treatment for the interested party.

On the other hand, article 6.1 of the RGD, indicates that the treatment will only be lawful if the in-

interested party gave their consent, "for the treatment of their personal data for one

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or several specific purposes", and of course, once you have been provided with all the

information established in article 13 of the RGD, cited above.

In relation to this article 6.1, article 7 of the RGD, indicates, on the consent

yup, the following:

"1. When the treatment is based on the consent of the interested party, the person in charge

You must be able to demonstrate that you consented to the processing of your personal data.

nals. 2. If the data subject's consent is given in the context of a declaration

written that also refers to other matters, the request for consent is pre-

will be laid out in such a way that it is clearly distinguished from other matters, in an intelligent way.

legible and easily accessible and using clear and simple language. It will not be binding

any part of the declaration that constitutes an infringement of these Regulations. 3. The

Interested party shall have the right to withdraw their consent at any time. the withdrawal-

The consent will not affect the legality of the treatment based on the consent.

lien prior to withdrawal. Before giving their consent, the interested party will be informed

mad of it. It will be as easy to withdraw consent as it is to give it. 4. In assessing whether the

consent has been freely given, it will be taken into account to the greatest extent possible.

whether, among other things, the performance of a contract, including the provision

of a service, is subject to consent to the processing of personal data that are not necessary for the execution of said contract”.

In relation to these last two articles cited, recital (32) of the RGPD, establishes that:

“Consent must be given through a clear affirmative act that reflects a Free, specific, informed, and unequivocal declaration of the interested party's accept the treatment of personal data that concerns you... Therefore, the silence, pre-ticked boxes, or inaction should not constitute consent. The Consent must be given for all processing activities carried out with the same or the same ends. When the treatment has several purposes, the consent for all of them...”

Article 6.2 of the LOPDGDD indicates, on the treatment based on the consent of the affected, that: “2. When it is intended to base the treatment of the data on the consent protection of the affected party for a plurality of purposes, it will be necessary to include specific and unequivocal way that said consent is granted for all of them.

Well, in accordance with everything stated above, the processing of data requires the existence of a legal basis that legitimizes it, as in this case, the consent of the interested party validly, expressly and affirmatively.

It is NOT valid, as in the case at hand, to claim that it was asked before starting the recordings of the report: "if someone does not agree with being filmed, to indicate it so as not to take him out in the report ...", since it is not proven that he was provided all the information on the processing of personal data that establishes article 13 of the RGPD.

Regarding the allegations of the entity claimed in which it indicates that: "(...) The Recordings on public streets by television stations do not require authorization. express consent of passers-by only if they see the camera and do not agree that

they were recorded, they warn the producer in the same way in sporting events with-  
certain soccer bulls etc. take out the public without prior authorization (...)", indicate that  
the ultimate goal of the reports made by the entity in the different excursions,  
is to do a job for a price, having nothing to do with the recordings

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tions made by the TV cameras when they carry out such work with an informa-  
mative.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency

Data Protection Sheet.

## RESOLVE

FIRST: Warn the entity VIDEOTRAVEL S.L. with CIF.: B38756854, for the in-  
fraction of articles 13 and 7 of the RGPD, regarding the information provided to  
customers about the processing of their personal data and collection of their consent  
I lie.

SECOND: Notify this resolution to the entity, VIDEOTRAVEL S.L

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution 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 the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,  
in accordance with the provisions of article 25 and section 5 of the additional provision  
Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-  
administrative, within a period of two months from the day following the notification  
tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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