

□ File No.: PS/00098/2022

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: On March 14, 2022, the Director agreed to initiate a procedure
sanctioning RAMONA FILMS, S.L (hereinafter, RAMONA FILMS), through the
Agreement that is transcribed:

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AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for Data Protection, and in
based on the following

FACTS

FIRST: On March 11, 2021, it was signed by the Director of the Agency
Spanish Data Protection an Internal Note to initiate actions ex officio
Preliminary Investigation against the entity RAMONA FILMS, S.L with CIF B87763405
(hereinafter, RAMONA FILMS).

SECOND: There were indications of a possible breach of the provisions of the
Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter
RGPD), for which the General Subdirectorate of Data Inspection proceeded, in the
framework of action E/02426/2021, to the performance of previous actions of
investigation to clarify the facts in question, by virtue of the
investigative powers granted to the control authorities in article 57.1 of the

RGPD, and in accordance with the provisions of Title VII, Chapter I, Section second, of the aforementioned LOPDGDD.

SECOND: Within the framework of said investigative actions, it was sent to RAMONA FILMS a request for information so that within ten days working days to submit to this Agency the information and documentation contained therein pointed. The request was registered as output on March 13, 2021.

FOURTH: The request for information, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, on Administrative Procedure

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Common of Public Administrations (hereinafter, LPACAP), was collected by RAMONA FILMS dated March 15, 2021, as stated in the certificate of Notific@ that works in the file.

Although the notification was validly made by electronic means, a copy by mail that was reliably notified on June 4, 2021. In said notification, he was reminded of his obligation to relate electronically with the Administration, and they were informed of the means of access to said notifications, indicating that the receipt of the request was certified carried out by RAMONA FILMS without any response to it in this Agency Spanish Data Protection. Likewise, the infraction that could behave to persist in breach of the obligation to respond to said requirement and the sanctions that could apply.

FIFTH: Regarding the required information, RAMONA FILMS has not sent

any response to this Spanish Data Protection Agency.

SIXTH: According to the report collected from the AXESOR tool, the entity RAMONA FILMS, S.L. is a Microenterprise, established in 2017, and with a turnover of 441,078 euros in 2019.

FOUNDATIONS OF LAW

Yo

Competition

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

unfulfilled mandate

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that RAMONA FILMS has not procured the Spanish Agency Data Protection the information you requested.

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With the indicated conduct of RAMONA FILMS, the power of investigation that the Article 58.1 of the RGPD confers on the control authorities, in this case, the AEPD, has been hampered.

Therefore, the events described in the "Events" section are deemed to constitute an infraction, attributable to RAMONA FILMS, for violation of article 58.1 of the RGPD, which provides that each control authority will have, among its powers of research:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, who provide any information that it requires for the performance of its functions; b) carry out investigations in form of data protection audits; c) carry out a review of the certificates issued under article 42, paragraph 7; d) notify the responsible or in charge of the treatment the presumed infractions of the present Regulation; e) obtain from the person in charge and the person in charge of the treatment access to all personal data and all the information necessary for the exercise of their functions; f) obtain access to all the premises of the person in charge and of the person in charge of the processing, including any data processing equipment and means, of in accordance with the procedural law of the Union or of the Member States.”

Typification and qualification of the infraction

III

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the

investigation, it is considered that the exposed facts could constitute a
infringement, attributable to RAMONA FILMS.

This infringement is typified in article 83.5.e) of the RGPD, which considers as such: "no
facilitate access in breach of article 58, section 1".

In the same article it is established that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a
company, of an amount equivalent to four percent (4%) as a maximum of the
global total annual turnover of the previous financial year, opting for the
of greater amount.

For the purposes of the limitation period for infringements, the infringement charged
prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as
very serious the following conduct:

"ñ) Not facilitating the access of the personnel of the data protection authority
competent to personal data, information, premises, equipment and means of
treatment that are required by the data protection authority for the
exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the authority
of competent data protection."

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sanction proposal

According to the exposed facts, without prejudice to what results from the investigation of the

procedure, it is considered that it corresponds to charge RAMONA FILMS for the

violation of article 58.1 of the RGPD typified in article 83.5 e) of the RGPD. The

The sanction that should be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

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Consequently, the sanction to be imposed must be graduated according to the criteria

established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

In the initial evaluation it is appreciated that no mitigating factor is applicable, and

They have considered, as aggravating, the following facts:

- Art. 76.2.f) LOPDGDD: Affectation of the rights of minors. In the

unanswered request for information information is required on a series

of issues related to the access of minors to content

pornographic content that the claimed entity offers, the technical and organizational measures

implanted that limit the access of minors and those that they would take before the

possible verification of improper access by a minor, as well as the

procedures for correcting said eventual access, protocols and controls

to prevent its eventual recurrence in the future. Similarly, it was requested that

clarify issues regarding the profiling of the personal data of those who

access their pornographic content, with an impact on eventual access

illegitimate of a minor and the detail of the implications on special categories of

personal data: data relating to the sexual life or sexual orientations of a

Physical person. All these questions have not been answered to date.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: START A PUNISHMENT PROCEDURE against RAMONA FILMS, S.L, with NIF B87763405, for the infringement of article 58.1 of the RGD, typified in art. 83. 5 e) of the aforementioned RGD.

SECOND: APPOINT A.A.A. and, as secretary, to B.B.B., indicating that any of them may be challenged, where appropriate, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the request for information issued by the Subdirector General for Inspection of Data within the framework of the actions with reference code E/02426/2021, its reiteration by postal mail and the accreditation of having practiced the notification of both of them.

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FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 30,000.00 euros, without prejudice to what result of the instruction.

FIFTH: ORDER RAMONA FILMS that, in accordance with the power of investigation provided for in article 58.1.a) of the RGD, is provided, within a period of ten business days, the information required in the request made within the framework of the actions E/02426/2021 and to which he has referred in the description of the facts of this initial agreement.

SIXTH: NOTIFY this agreement to RAMONA FILMS, granting it a term of hearing of ten business days to formulate the allegations and present the tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears in the heading of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the sanction would be established at 24,000.00 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 24,000.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 18,000.00 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

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In case you chose to proceed to the voluntary payment of any of the amounts indicated above (24,000.00 euros or 18,000.00 euros), you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Agency for Data Protection in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency

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SECOND: On March 31, 2022, RAMONA FILMS has proceeded to pay the sanction in the amount of 18,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOURTH: In the Agreement to initiate this procedure, transcribed above, it is ordered RAMONA FILMS to respond, within ten business days, to the requirement made within the framework of actions E/02426/2021, in accordance with the power of investigation provided in article 58.1.a) of the RGPD.

Having received written entry number REGAGE22e00010375996 through which RAMONA FILMS provides a response to said request, for part of this Agency acknowledges receipt of the same, without this declaration implying no pronouncement on the regularity or legality of the reported measures.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each

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control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

According to what was stated,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00098/2022, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to RAMONA FILMS, S.L.

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

Resolution will be made public once it has been notified to the interested parties.

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Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

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