

□ Procedure No.: PS/00208/2020

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00208/2020, instructed by the Spanish Agency for Data Protection, to the entity, ELECTRICA DHARMA CB., with CIF.: E58142720, owner of the website, ***URL.1, (hereinafter, "the claimed entity"), by virtue of complaint filed by D. A.A.A., (hereinafter, "the claimant"), and having as base the following:

BACKGROUND

FIRST: On 11/07/19, you have entered this Agency, filed a complaint by the claimant in which he indicated, among others, the following:

"The ***URL.1 website does not comply with current Data Protection regulations, because it does not give the proper information about cookies, it lacks any type of policy Of privacy".

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 powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (GDPR). Thus, on 01/14/20 and 01/27/20, two separate information requirements to the claimed entity.

According to a certificate from the Electronic Notifications Service and Electronic Address Authorized, from the Ministry of Territorial Policy and Public Administration, the requirement sent to the claimed entity on 01/14/20, through the Notific@ service, was re-rejected by the entity on 01/25/20.

According to a certificate from the State Post and Telegraph Society, the request sent

to the entity claimed on 01/27/20, through the SICER service, was collected in destination on 01/30/20, being the receiver: D. B.B.B. - ***NIF.1.

THIRD

These aspects about the privacy policy and the cookie policy of the website:

: On 07/19/20 the website is consulted, checking the following

a).- The web page reported, can collect information on personal data of users, such as name and email address, through the tab <<contact>>, ***PAGE.1.

b).- Regarding the Privacy Policy: At the top of the home page of the web, through the link, "Privacy Policy", you access the page, ***PAGE.2, the which informs, in Catalan, only about the characteristics of cookies and how to eliminate them by configuring the browser of the terminal equipment.

c).- About the Cookies Policy of the website:

c.1.) When accessing the web page, ***URL.1 (first layer), there is an information banner information about cookies at the bottom of it, with the following legend:

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"We use our own and third-party cookies to improve our services and show you advertising related to your preferences by analyzing your browsing habits.

veg. If you go on surfing, we will consider you accepting its use. You can change the configuration or obtain more information in our "Cookies Policy". More information". <<Privacy Preferences>> <<ACCEPT>>

b.2.) If you access the cookie policy (second layer), through the link "Preferences"

Privacy”, the website redirects to the same page ***PAGE.2, referenced above.

subsequently.

FOURTH: On 08/12/20, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of the established powers, for failing to comply with the provisions of art. 13 of the GDPR, with a sanction of warning and for non-compliance with art. 22.2 of the LSSI, with a sanction warning tion.

FIFTH: Notification of the initiation of the file on 08/24/20, as of today, no There is evidence that no response has been given to the initiation of the file within, of the period granted for this, for the appropriate legal purposes by the claimed entity.

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

PROVEN FACTS

1º.- The reported website, ***URL.1 can collect information on personal data personal data of the users, such as the name and electronic address, through the tab-na <<contact>>.

2º.- The page that should inform about the "Privacy Policy" of the web, ***PÁGINA.2, is written in Catalan, and only informs about cookies.

3º.- About the Cookies Policy of the web, it has been verified that when accessing the page initial page, (first layer), there is an information banner about the installation of cookies but if you try to access the second layer through the link "preferences of privacy”, the web redirects again to the page, ***PAGE.2,

FOUNDATIONS OF LAW

Yo

Competition:

- About the Privacy Policy:

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 RGD in the art. 47 of LOPDGDD.

- About the Cookies Policy:

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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. art. 43.1, paragraph second, from the LSSI.

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 gives in the facts declared proven above related.

II

In relation to the "Privacy Policy", it is verified that, there is NO information regarding the privacy policy and that the link ***PAGE.2, which supposedly should redirect to it, it only provides information about cookies.

the known facts constitute an infraction, attributable to the defendant, for violation of article 13 of the RGD.

For its part, article 72.1.h) of the LOPDGDD considers it very serious, for the purposes of prescription, "the omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the RGD"

This infraction can be sanctioned with a maximum fine of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.5.b) of the RGPD.

However, Article 58.2) of the RGPD provides that: "Each supervisory authority

will have all the following corrective powers indicated below: b)

sanction any person responsible or in charge of the treatment with a warning when

treatment operations have violated the provisions of this

Regulation; (...); i) impose an administrative fine pursuant to Article 83,

in addition to or instead of the measures mentioned in this section, depending on the

circumstances of each particular case, therefore, the sanction that could

to correspond would be a warning, without prejudice to what results from the instruction

of this file.

In accordance with these criteria, it is considered appropriate to impose a sanction on the defendant

of "WARNING", for the violation of article 13 of the RGPD, regarding the

lack of privacy policy on its website.

III

In relation to the "Cookies Policy", of the claimed web page, it has been verified

that, in the first layer, the cookie banner, informs about the use of

own and third-party cookies, to improve services and display advertising

related to browsing preferences. It also indicates that, "if you continue

browsing, they consider that their use is accepted" and in the second layer it is returned to

display the same information that was provided in the "privacy policy", not

There is the possibility of rejecting all cookies.

The exposed facts suppose, on the part of the claimed entity, the commission of the

infringement of article 22.2 of the LSSI.

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This Infraction is typified as "minor" in article 38.4 g), of the aforementioned Law, which considers as such: "Use data storage and retrieval devices when the information has not been provided or the consent of the recipient of the service in the terms required by article 22.2.", and may be sanctioned with a fine of up to €30,000, in accordance with article 39 of the aforementioned LSSI.

Pursuant to these criteria, it is considered appropriate to impose on the defendant entity a sanction of "WARNING", for the infraction of article 22.2 of the LSSI, respect of the cookie policy made on the website of its ownership.

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

RESOLVE

NOTICE: to the entity, ELECTRICA DHARMA CB., with CIF.: E58142720, holder of the website, ***URL.1, for the infringement of article 13 of the RGPD in what respect to the privacy policy and for violation of article 22.2 of the LSSI, in what regarding the cookie policy of the website.

REQUEST: to the entity ELECTRICAL DHARMA CB., so that, within a period of one month, counting from the notification of this resolution, adapt the web page of its ownership to include information in its privacy policy, in accordance with the provisions of the article 13 of the RGPD, and include a mechanism that allows rejecting all cookies.

NOTIFY: this resolution to the entity ELECTRICAL DHARMA CB.

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 of this act, as provided for in article 46.1 of the aforementioned Law.

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Director of the Spanish Agency for Data Protection.

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