

□ Procedure No.: PS/00221/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: DIGITORIUM SMALL COOPERATIVE SOCIETY (hereinafter, the  
claimant) dated June 18, 2019 files a claim with the Agency

Spanish Data Protection. The claim is directed against LVCENTVM

LEGAL, S.L. with NIF B42557306 (hereinafter, the claimed).

The reasons on which the claim is based are that the respondent is sending letters to  
the members that form part of DIGITORIUM SOCIEDAD COOPERATIVA  
SMALL, claiming an amount of money, after obtaining your personal data  
in a Preliminary Proceedings procedure, which exceeds the purpose of the  
treatment that defines article 259.4 LEC.

The communication took place within the framework of a civil judicial procedure of  
claim of intellectual property rights, but the producer, CRYSTALIS  
ENTERTAINMENT UG, has used it to send letters to IP holders  
requesting the extrajudicial payment of an amount.

SECOND: The present claim was transferred to the respondent on August 21,  
2019, requiring him to send to this Agency, within a period of one month,  
information on the response given to the claimant for the facts denounced, as well as  
as the causes that have motivated the incidence and the measures adopted.

In response to said request, the respondent stated that the claimants are  
alleged infringers of the rights of our client, whose identity and other  
contact details have been disclosed by express order of the Commercial Court No.

\*\*\*COURT.1, first by Order of September 3, 2018 (by which admits the practice of the requested diligence) and, later, by Order of 5 of February 2019 (by which the opposition filed by the provider of Internet services and the practice of diligence is ordered), all within the framework of the preliminary proceedings procedure No. \*\*\* PROCEEDINGS.1

LVCENTVM LEGAL, S.L. declares that in the exercise of our activity professional, it is usual that, before going to court, the rights of our clients are claimed by friendly means. To them we are summoned not only by the legislator, but also by the principles of procedural economy and good faith.

In the judicial procedure initiated by this party, therefore, the judicial body has already weighed the rights that in terms of data protection may assist the now claimants, by complying with the requirements that the Law provides specifically for this, and has assessed the possibility of adopting the measures

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adequate for its protection, which is also foreseen by the Law when regulating the specific preliminary diligence adopted.

Indeed, according to art. 258.1 LEC, the measure is only agreed "If the court

I will appreciate that the diligence is adequate to the purpose that the applicant pursues and that fair cause and legitimate interest concur in the request".

Therefore, the competent judicial body has already determined that in the claim of my client concurs legitimate interest and that having the data of the presumed offenders is a claim appropriate to the purpose pursued by him, which is no other

than the protection of their intellectual property rights.

For this reason, it considers that none of the specific precepts that in the claim are considered violated:

The data has been transmitted by the internet service provider in compliance with a court order. The purposes for which they have been obtained data, after having been exposed by this party in the procedure of preliminary proceedings and submitted to the assessment of the competent judicial body, have been declared legitimate by said judicial body by virtue of the Order provided.

The purpose of the subsequent treatment is identical to that for which the request was made. preliminary diligence: the protection of the intellectual property rights that it holds our client, which translates into two claims: a) the cessation of the infringement; and b) compensation for the damages that the infringement has caused our client.

THIRD: On September 21, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning procedure to the claimed, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 14 of the RGPD, typified in article 83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on October 5, 2020, where it states that both obtaining the data object of the present case, as its use is legitimate in accordance with the established by the head of the Mercantile Court \*\*\*COURT.2 in order no.

\*\*\*AUTO.1 of January 8.

In relation to the breach of article 14 of the RGPD for not informing the owners of all the points of said precept, the claimed entity, it is admitted that although the IP addresses are reported, what is the source from which the

data, the purposes of the treatment, and the identity and contact details of the responsible, but not for other points of art. 14 RGPD as the right to exercise the data protection rights before the data controller, or the right to file a claim with the AEPD, as provided for in art. 14.2, letters c) and and).

The claimed entity informs the Spanish Agency for the Protection of Data that before knowing the complaint that has given rise to this procedure

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this part had already updated its communications model to third parties, so that the information on data protection that was coming providing in such communications.

Attached is one of the letters that has been sent with the information regarding updated data protection (censoring personal data).

FIFTH: On October 21, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/07581/2019, as well as the documents provided by the claimant.

SIXTH: On October 28, 2020, a resolution proposal was formulated, proposing that the defendant be imposed for an infringement of article 14 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning, in in relation to article 74.a) of the LOPDGDD.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

## PROVEN FACTS

FIRST: The claimed party is sending letters to the claimants, demanding a amount of money, after obtaining your personal data in a legal proceeding

The communication took place within the framework of a civil judicial procedure of claim of intellectual property rights.

SECOND: In accordance with the provisions of the head of the Court of the Mercantil nº \*\*\*COURT.2 in order nº \*\*\*AUTO.1 of January 8, both obtaining of the data and its use are legitimate.

THIRD: The entity claimed acknowledges the breach of article 14 of the RGPD for not informing the holders of all the points of said precept such as the right to exercise data protection rights before the data controller. treatment, or the right to file a claim with the AEPD, as provides in art. 14.2, letters c) and e).

The respondent entity states that it has updated its communications model to third parties, in accordance with the requirements of article 14 of the RGPD.

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In particular, it states that the information currently offered in the communications sent by this professional firm is, verbatim, the

Next:

“Your personal data is processed for the exclusive purpose of exercising the rights of CRYSTALIS ENTERTAINMENT UG claimed through this communication.

Your data will be kept for five years from the resolution of this conflict (understood as judicial or extrajudicial satisfaction), with the exception of the essential identification data to fulfill the possible commitment not to claim again or not to contact you again.

We inform you that you have the right to request access to your personal data object of treatment, its rectification, the limitation of its treatment and the portability of the same (without the possibility of deletion, opposition or limitation in this case) of treatment that prevents the satisfaction of the legitimate interest pursued by our client).

For the exercise of your rights you can direct communication, attaching a copy of your DNI or equivalent document, to \*\*\*EMAIL.1 or to LVCENTVM LEGAL S.L. on the address at the bottom of this letter. Also, and especially if you consider that has not obtained full satisfaction in the exercise of their rights, they may present a claim before the national control authority by contacting the Agency Spanish Data Protection”.

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 GDPR and in the art. 47 and 48.1 of LOPDGDD.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

Article 14 of the RGPD regulates the right to information that must be provided when the personal data has not been obtained from the interested party, indicating the

Next:

1. When the personal data has not been obtained from the interested party, the person in charge

of the treatment will provide you with the following information:

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 any;

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c) the purposes of the treatment to which the personal data is destined, as well as the basis

legal treatment;

d) the categories of personal data in question;

e) the recipients or the categories of recipients of the personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a recipient

beneficiary in 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 the

adequate or appropriate warranties and the means to obtain a copy of them or to

fact that they have been borrowed.

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

The process will provide the interested party with the following information necessary to guarantee a

Fair and transparent data processing with respect to the interested party:

a) the period during which the personal data will be kept or, when that is not

possible, the criteria used to determine this period;

b) when the treatment is based on article 6, paragraph 1, letter f), the legal interests

legitimate of the person in charge of the treatment or of a third party;

c) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, and to oppose the treatment, as well as the right to portability

of the data;

d) 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 in any

any time, without affecting the legality of the treatment based on consent.

lie before your withdrawal;

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

f) the source from which the personal data comes and, where appropriate, if they come from

public access fountains;

g) the existence of automated decisions, including profiling, to which

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

on the applied logic, as well as the importance and the foreseen consequences

of said treatment for the interested party.

3. The data controller shall provide the information indicated in sections 1 and

two:

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a) within a reasonable time, once the personal data has been obtained, and no later than

give within one month, taking into account the specific circumstances in which



process such data;

b) if the personal data is to be used for communication with the interested party,

at the latest at the time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time

that the personal data is communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the data

personal data for a purpose other than that for which they were obtained, will provide the

interested party, before such further processing, information about that other purpose and any

any other pertinent information indicated in section 2.

5. The provisions of paragraphs 1 to 4 shall not apply when and to the extent

in what:

a) the interested party already has the information;

b) the communication of said information is impossible or supposes an undue effort.

provided, in particular for processing for archiving purposes in the public interest.

co, scientific or historical research purposes or statistical purposes, subject to the

conditions and guarantees indicated in article 89, paragraph 1, or to the extent that

the obligation mentioned in section 1 of this article may make it impossible or

seriously impede the achievement of the objectives of such treatment. In such cases, the

responsible shall take appropriate measures to protect the rights, freedoms and in-

legitimate interests of the interested party, including making the information public;

c) the obtaining or communication is expressly established by the Law of the

Union or of the Member States that applies to the data controller and that

establish adequate measures to protect the legitimate interests of the interested party, or

d) when the personal data must remain confidential on the basis of the

basis of an obligation of professional secrecy governed by Union law or

of the Member States, including a statutory secrecy obligation.

In the present case, it is stated in the first place that the defendant, once he has of the personal data of the clients, instead of using the personal data that has achieved in the Preliminary Proceedings to obtain exclusively jurisdictional protection as required by art. 259.4 of the LEC sends you a letter demanding an amount of money.

Therefore, the claimant considers that the data has been used by the respondent. for purposes other than those specifically provided for in the regulations, producing a violation and infringement of data protection regulations.

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In this sense, this Spanish Data Protection Agency considers that, in relation to the lack of legitimacy for the treatment of the personal data of the Euskaltel customers, it is necessary to take into account the response of the head of the Court of the Mercantile No. \*\*\*JUZGADO.1, in order No. \*\*\*AUTO.1 of January 8, 2019, at the Euskaltel's opposition to the provision of personal identification data holders of the requested IPs.

In the SECOND Legal Reasoning, section 8, it is stated: "8. Application unnecessary information. The operator alleges that information is requested (landline, mobile, email) that is part of the privacy of users and exceeds necessary for the intended purposes.

The Judge does not share Euskaltel's assessment. The data referred to is necessary. to contact the users and to be able to formulate against them the judicial claim or,

in his case, extrajudicial.”

In addition, in section 9 the Magistrate states the following: “9.1. Legality. Alleges the operator that the report is the result of interference by a foreign company in the personal data and contents of the communications that constitutes a infringement of the European Data Protection Regulation. (...)”

In this case, there is no evidence that with the program for the protection of the rights of intellectual protection data other than the IP address has been obtained and it is being used to be able to claim before the civil courts for the infraction of such rights. Therefore, both the obtaining of the data and the its use.

In this sense, Regulation (EU) 2016/679 establishes as principles related to the treatment, the collection of data for specific, explicit and legitimate purposes for be treated in accordance with said purposes, and the limitation of the data to what is necessary in relation to the purpose for which they are processed (art. 5.1. b and c), and article 6 considers lawful processing necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not override interests or fundamental rights and freedoms. In Regarding the fundamental right to secrecy of communications, it is not affected for 'obtaining the data related to the IP address.'

#### IV

In this case, it is taken into account that the respondent must provide the information indicated in article 14 of the RGPD, when the personal data has not been obtained from the interested party.

The respondent, in particular, on October 5, 2020, has stated in response to the requirement of this Agency that the information currently offered in the [www.aepd.es](http://www.aepd.es)

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communications sent by this professional firm is, verbatim, the

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Your data will be kept for five years from the resolution of this  
conflict (understood as judicial or extrajudicial satisfaction), with the exception of  
the essential identification data to fulfill the possible commitment not to  
to claim again or not to contact you again.

We inform you that you have the right to request access to your personal data  
object of treatment, its rectification, the limitation of its treatment and the portability  
of the same (without the possibility of deletion, opposition or limitation in this case).  
of treatment that prevents the satisfaction of the legitimate interest pursued by our  
client).

For the exercise of your rights you can direct communication, attaching a copy of your  
DNI or equivalent document, to \*\*\*EMAIL.1 or to LVCENTVM LEGAL S.L. on the  
address at the bottom of this letter.

Likewise, and especially if you consider that you have not obtained full satisfaction in the  
exercise of their rights, they may file a claim with the national authority  
of control by contacting the Spanish Agency for Data Protection”

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By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for  
Data Protection, as a control authority, has a set of

corrective powers in the event of an infraction of the precepts of the

GDPR.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers

listed below:

(...)

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

when the treatment operations have violated the provisions of this

Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

“i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each

particular case;”

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Article 74.a) of the LOPDGDD, under the heading "Infringements considered minor

has:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in 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 of information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679.”

In accordance with the exposed facts, the respondent has violated article 14 of the RGPD, whose infringement is sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, when collecting through said form basic data of the users and consider that the administrative fine that could fall in accordance with the provided in article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the processing of personal data, since there is no record of the commission of any infringement above regarding data protection.

SAW

On the other hand, article 83.7 of the RGPD provides that, without prejudice to the corrective powers of the control authorities under art. 58, paragraph 2, each Member State may lay down rules on whether and to what extent impose administrative fines on authorities and public bodies established in that Member State.

The defendant has proceeded to resolve the facts that are the subject of this proceeding sanctioning, since currently in the communications sent it presents the following communication:

“Your personal data is processed for the exclusive purpose of exercising the rights of CRYSTALIS ENTERTAINMENT UG claimed through this communication.

Your data will be kept for five years from the resolution of this conflict (understood as judicial or extrajudicial satisfaction), with the exception of the essential identification data to fulfill the possible commitment not to

to claim again or not to contact you again.

We inform you that you have the right to request access to your personal data object of treatment, its rectification, the limitation of its treatment and the portability of the same (without the possibility of deletion, opposition or limitation in this case). of treatment that prevents the satisfaction of the legitimate interest pursued by our client).

For the exercise of your rights you can direct communication, attaching a copy of your DNI or equivalent document, to \*\*\*EMAIL.1 or to LVCENTVM LEGAL S.L. on the address at the bottom of this letter.

Likewise, and especially if you consider that you have not obtained full satisfaction in the exercise of their rights, they may file a claim with the national authority of control by contacting the Spanish Agency for Data Protection”

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Therefore, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE LVCENTVM LEGAL, S.L., with NIF B42557306, for a infringement of article 14 of the RGPD, typified in article 83.5 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to LVCENTVM LEGAL, 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.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, 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 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, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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