

□ Procedure No.: PS/00399/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: MADRID MUNICIPAL CONSUMER INSTITUTE (hereinafter, the
claimant) dated June 26, 2020 filed a claim with the Agency
Spanish Data Protection.

The claim is directed against RM CANALES INTERACTIVOS, S.L. with NIF
B85845113 (hereinafter, the claimed one).

The reasons on which the claim is based are the breach of the web

<https://www.antenistasmadridtv.com/> as it lacks a Privacy Policy.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), with reference number E/06526/2020, transfer of
said claim to the claimed, on August 12, 2020, to proceed to
its analysis and inform this Agency within a month of the actions carried out
carried out to adapt to the requirements set forth in the regulations for the protection of
data.

THIRD: On February 12, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written
allegations of February 17, 2021, in which, in summary, it stated that it has already
solved the deficiencies of its web page.

FIFTH: On April 9, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/06526/2020.

SIXTH: On April 12, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency direct the RM CANALES INTERACTIVOS, S.L., with NIF B85845113, for the infringement of the article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SEVENTH: On April 12, 2021, arguments are presented to the proposal for resolution, sending a document with the data protection policy of said recently updated web page, correcting the errors indicated by this Agency, from that very moment.

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Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: It is revealed

<https://www.antenistasmadridtv.com/> as it lacks a Privacy Policy

SECOND: The respondent states on February 17, 2021, that he has already proceeded to its remedy.

breach of

the Web

the

THIRD: Despite the allegations presented to this initial agreement, this

Agency notes that the Organic Law is mentioned in the privacy policy

15/1999 on data protection, currently repealed.

FOURTH: In response to the proposed resolution, on April 12, 2021, it was

They present new allegations by the defendant alleging a second update

of the claimed website.

FIFTH: The recent update of the web page denounced after

receive the proposed resolution of this penalizing procedure, correcting the

deficiencies indicated.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free

circulation of these data (General Data Protection Regulation, hereinafter

RGPD) recognizes each control authority, and according to what is established in the articles

47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD), the

Director of the Spanish Data Protection Agency is competent to initiate

this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the

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

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."

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of April 27, 2016, regarding the protection of natural persons in what

regarding the processing of personal data and the free circulation of these data

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(General Data Protection Regulation, hereinafter RGPD), under the rubric

“Definitions”, provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) “processing”: any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with these definitions, the collection of personal data

personal through forms included in a web page constitutes a treatment

of data, with respect to which the data controller must comply with the

provided for in article 13 of the RGD, a precept that has moved since May 25 of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection of Personal Data.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

“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 any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;

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f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the 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 these or to the fact that they have been borrowed.

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

- a) the period during which the personal data will be kept or, when it is 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 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 portability of the data;
- 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 in any time, without affecting the legality of the treatment based on the 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

provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

a) The identity of the data controller and his representative, if any.

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b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

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) send a warning to any person responsible or in charge of the treatment 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;”

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 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 largest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;”

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered mild 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.”

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In this case,

website

<https://www.antenistasmadridtv.com/> did not have an adequate privacy policy, since that reference was made to the Organic Law on data protection 15/1999, standard currently repealed.

it has been found that the

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Throughout this sanctioning procedure, measures have been adopted that have been correcting the deficiencies that originated its opening.

It has been found that the respondent has recently updated said web page,

Therefore, it is currently in accordance with data protection regulations.

Despite this, it should be noted that the warning for the data continues to be maintained.

data that were collected without adequately informing clients, which constitutes an infringement of article 13 of the RGPD.

However, a warning will be sent without the need to adopt measures by of the claimed, since it has already been proceeded by this to the generation of a policy of adequate privacy.

SAW

Faced with this infraction, a warning is issued, 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 be levied in accordance with the provisions of Article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the treatment of personal data, since there is no record of the commission of any previous infraction in matter of data protection.

In view of the foregoing, the Director of the Spanish Agency for Data Protection

RESOLVES:

FIRST: ADDRESS RM CANALES INTERACTIVOS, S.L. with NIF B85845113, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to RM INTERACTIVE CHANNELS,

SL with NIF B85845113

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 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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