

Procedure No.: PS/00028/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated June 21, 2019

filed a claim with the Spanish Data Protection Agency.

The claim is directed against CALLESGARCIA S.C., with NIF J10460640 (in

later, the claimed one) because you are using a photo from your wedding report,

made by the photographer B.B.B., to publicize his business, despite not having

with your permission to do so.

SECOND: It is about making the claimed party aware of this claim

on August 4, 2019, requiring you to send this document within a month

Agency, information on the response given to the claimant for the facts

denounced, as well as the causes that have motivated the incidence and the measures

adopted to adapt its "Privacy Policy" to article 13 of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016 (RGPD).

The Spanish Data Protection Agency sends its notifications and

electronic communications through the Notific@ platform that sends the

notifications to the Citizen Folder and Authorized Electronic Address systems of the

Ministry of Finance and Public Administration.

Having sent the attached document in relation to the file

E/07129/2019 through the Notific@ system, according to art. 43.2 and 43.3 of the aforementioned

LPACAP, the notification will be deemed rejected when ten days have elapsed

natural since the notification is made available without accessing its

content, understanding that the obligation to notify has been fulfilled with the disposition of the notification in the electronic headquarters or in the electronic address single enabled.

Given that you have not agreed to the aforementioned notification, exceptionally and informative title we proceed to its referral by postal mail on September 11, 2019, reminding you that, from now on, notifications will be made electronically under the LPACAP.

However, such request was returned by mail, alleging "absent distribution"

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THIRD: On February 25, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6 of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: On July 29, 2020, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction CALLESGARCIA S.C., with NIF J10460640, for an infraction of article 6 of the RGPD, typified in article 83.5 of the RGPD, in relation to article 72.1 b) of the LOPDGDD, with a fine of €4,000 (four thousand euros).

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The respondent has used a photo from the claimant's wedding report,

made by the photographer B.B.B., to publicize his business, despite not having with the authorization or consent of the claimant to do so.

SECOND: It is about informing the claimed party of this claim, without positive result, despite the repeated attempt by this Agency, by means electronically and through postal mail.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

Article 6.1 of the RGPD establishes the following:

1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

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- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;
- d) the processing is necessary to protect the vital interests of the data subject or of another natural person;
- e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the person responsible for the treatment;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the controller or by a third party, provided that on such interests do not override the interests or rights and freedoms fundamental data of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to treatment carried out by public authorities in the exercise of their functions.

In this sense, article 6.1 of the RGPD, establishes that “in accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, means consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you”.

### III

In accordance with the available evidence, it is considered that, the facts denounced, that is, using the photographic report of the wedding of the

claimant, for advertising purposes without the consent of the claimant,

constitute a violation of art. 6 of the GDPR.

IV

Article 72.1.b) of the LOPDGDD states that “according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

c) The processing of personal data without the concurrence of any of the conditions

of legality of the treatment in article 6 of Regulation (EU) 2016/679.”

Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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

warning when the processing operations have violated the provisions of

this Regulation;

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

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

in a certain way and within a specified period;

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

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum.

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 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but significant

identified assets (article 83.2 b)

☐ Basic personal identifiers are affected -image-, (art 83.2

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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.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CALLESGARCIA S.C., with NIF J10460640, for a

infringement of article 6 of the RGPD, typified in article 83.5 of the RGPD, in relation to

with article 72.1 b) of the LOPDGDD, a fine of €4,000 (four thousand euros).

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SECOND: NOTIFY this resolution to CALLESGARCIA S.C., with NIF

J10460640.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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

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 period of month 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of  
through the  
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