

938-0419

Procedure No.: PS/00154/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00154/2019, instructed by the Spanish Agency for Data Protection, before C.C.C. (JMA FILM DISTRIBUTIONS, S.L) (hereinafter, "the person claimed"), by virtue of a complaint filed by A.A.A. and B.B.B. (hereinafter, "the claimants") and based on the following:

BACKGROUND

FIRST: On 10/15/18, you had entry to this Agency in writing, submitted by the claimants, in which it states, among other things, the following: "On 03/03/18 the signatories of this document were the subject of a civil lawsuit by the person who in this writing appears as an infringer of data protection regulations. is provided the document 1 as proof of the notification of the Decree of April 26, 2018 by the that the lawsuit filed by Cinematographic Distributions is admitted for processing IMA, SL., and by which it is transferred. In exercise of the right of defense, we proceeded to answer the lawsuit on 05/31/18. It is provided as document 2 the submitted Answer.

After becoming aware of said reply, the respondent has proceeded to the complete communication of the Answer (along with the documentation that serves as support), to some of his former clients and now ours.

The communication of the response to the demand to the recipients of the emails has course the disclosure of various information containing personal data of the defendants and third parties that are mentioned in the answer itself. A) Yes, It contains names, addresses, emails, ID numbers, etc.

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 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 11/30/18 and 02/08/19, an information request is addressed to the respondent.

THIRD: On 03/15/19, the respondent sends to this Agency, among others, the following information: "The request is made by the AEPD without specifying C.C.C.

clearly to whom it is done. Thus it is forwarded to:

(DISTRIBUCIONES CINEMATOGRAFICAS JMA, S.L.); ***ADDRESS.1 what we suggests that it has been sent to DISTRIBUCIONES CINEMATOGRAFICAS JMA, in the person of his legal representative. However, the complaint filed indicates, under the heading "DATA OF THE ALLEGED RESPONSIBLE" which is C.C.C.

This lack of definition in the person to whom the AEPD request is addressed is cause of defenselessness as it is contrary to the principle of consistency.

Therefore, before answering this request by the AEPD

It should be made clear who should answer it.

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For the sole purpose of complying in time with the response to the request, and considering that the complaint is filed with C.C.C. as a natural person

We want to point out that the alleged infraction committed is not protected by the LOPD, this is established in its article 2. Clearly the performance of C.C.C., is outside the

scope of application of the LOPD since there has been no data processing of the complainants, nor the support used is susceptible to such treatment. I know may discuss whether the action may be ethically or criminally subject to disapproval, but the truth is that it does not fit into the scope of application of the LOPD, since it does not We are dealing with a personal data file.

It is true, as stated in the complaint, that the claimant and DISTRIBUCIONES CINEMATOGRAFICAS JMA, S.L. have a legal dispute over the misappropriation of a computer program owned by it, and that is processed before the Court of First Instance number seven of Bilbao, and that currently Judgment is pending, but it is categorically false that C.C.C. is sought to harm the complainant.

We cannot understand that affirmation made to the contrary before the AEPD that a document, such as the answer to the claim, prepared by the whistleblower, may be detrimental to the whistleblower. This complaint. it seems like a misplaced response to the legitimate aspiration of DISTRIBUCIONES CINEMATOGRAFICAS JMA, S.L. to be compensated for the misappropriation of a computer program of its exclusive property. What is truly true is that the reported fact is limited to the communication made by the respondent to 8 people of the situation in which your claim is against the complainant. Yes examine in detail who these people are, it becomes even clearer that this complaint should not prosper, since contrary to what the complainant affirms, the document has not been sent to "former clients of yours and today ours", but to people who maintain a family relationship, employment relationship or a relationship of friendship, which in some cases or have no relationship with the business of the cinematographic distribution and in others they are the product of the more than thirty years that worked in this sector.

FOURTH: On 05/17/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the person claimed, for alleged infringement of article 5.1.f) of the RGPD with a sanction of warning, and granting a hearing period of ten business days to formulate the allegations and Submit whatever evidence you deem appropriate.

FIFTH: According to a certificate issued by the Post Office, it is confirmed that the letter of initiation of disciplinary proceedings was notified to the person claimed on 05/20/19.

SIXTH: The respondent has not submitted to this Agency any documentation or information, within the period of allegations, granted for this purpose.

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

In the present case, we proceed to examine the claim for sending data from personal character of third parties, by email, to 8 different people, among children, friends and employees of the company of the claimed person

II

Current regulations indicate that personal data will be treated in such a way that your safety is guaranteed, including protection against unauthorized processing authorized or unlawful and against loss, destruction or accidental damage, through the application of appropriate technical or organizational measures. Furthermore, those responsible and those in charge of data processing, as well as all the people who intervene in any phase of this will be subject to the duty of confidentiality

The "facts" described above may imply a violation of art. 5.1.f)

RGPD, since the claimed person sent personal data of the claimants to third parties without their consent.

III

Article 83.5) of the RGPD provides that: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount: a) the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9;

However, when motivating the sanction, it has been taken into account that it is a particular, which justifies that the initial proposal was a warning, in application of what is stipulated in art. 58.2.b) and in recital 148 of the aforementioned RGPD.

In accordance with the above, the Director of the Spanish Agency for the Protection of Data,

HE REMEMBERS:

NOTICE: to C.C.C. (DISTRIBUCIONES CINEMATOGRAFICAS JMA, S.L), for the infringement of article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD; typified in art. 83.5 section a) of the RGPD and qualified as very serious, for the purposes of

prescription, in art. 72.1.i) of the LOPDGDD

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C.C.C.

(DISTRIBUTIONS

NOTIFY:

CINEMATOGRAFICAS JMA, S.L)

the

this Agreement to

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

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

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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