



- Procedure No.: PS/00554/2021

RESOLUTION SANCTION PROCEDURE

Of the actions carried out ex officio by the Spanish Agency for the Protection of

Data before the entity, BURWEBS S.L., with CIF.: B09414913, owner of the website

***URL.1, due to the alleged violation of data protection regulations:

Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16,

Regarding the Protection of Natural Persons with regard to the Treatment of

Personal Data and the Free Circulation of these Data (GDPR) and the Organic Law

3/2018, of December 5, Protection of Personal Data and Guarantee of

Digital Rights (LOPDGDD), and Law 34/2002, of July 11, on Services of the

Information Society and Electronic Commerce (LSSI) and attending to the

following:

BACKGROUND

FIRST: Dated On 03/11/21, the Director of the Spanish Agency for

Data Protection agreed to open preliminary investigation proceedings against

to the entity, BURWEBS S.L., owner of the website ***URL.1, in accordance with the

investigative powers that the supervisory authority may have for this purpose,

established in section 1), of article 58 of the GDPR, and in relation to the possible

treatment of personal data of minors under fourteen years of age, obtained during the

navigation through the web page and the possible profiling of the same, opening for

This is the file: E/02422/2021.

SECOND: On 03/24/21 and 04/13/21, by this Agency, in relation to

what is stipulated in article 65.4 of the LOPDGDD Law, was sent to the entity, both

writings requesting information on the management of the website in relation to the

processing of personal data, expressly indicating the following:

"(...) it is requested that, within fifteen business days, you present the following information regarding possible access by minors to the website

***URL.1, the collection of data from minors and the actions

carried out to avoid it: - The management of risks associated with the activities

of treatment in which illegitimate access of a minor to

the content they offer; - The protection impact assessment

of data regarding risk analysis; - Technical and organizational measures

implanted in your entity that supposes limitation of access of minors of

age to the contents offered; - Limitations for minors to access

said contents; - Privacy policy and public location of the same; -

Technical and organizational measures to be taken in your entity in case of eventual

verification of improper access by a minor to its contents; - Measures

that reflect the protection of personal data and the processes of verification and

evaluation of the effectiveness of the measures and whether they carry out profiling of the

personal data of those who access its contents (...)"

THIRD: On 04/26/21, the entity BURWEBS S.L, sends this Agency,

written response to the request made, in which, among other things, it indicates the

following:

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"The company BURWEBS S.L., is the owner of different domains in

internet, created with adult content. I understand that reference is made

to one of our web pages, and at this moment we do not know exactly

to which page or domain the Control Authority refers that may fail to comply.

We would need more accuracy to be able to provide more information about

what you request in your letter.

In any case, and in a general way, it should be noted that BURWEBS S.L. does not treat

personal data of minors. 2.- In relation to the commercial

BURWEBS S.L. We only process personal data, in a

specific section "register for free", and to access a username is requested.

USER and PASSWORD, and a MAIL. In order to have access to that

specific section, a form is used to collect basic data from

contact. Not requesting in our data collection forms, any

Sensitive data that can be framed in Art. 9 of GDPR 679/2016.

The link to the web page that includes the section register for free is at <https://>

***URL.1: I have taken a screenshot so that you can see that it is

fully collected on this website of ours.

Answering your request in point number EIGHT, neither do we

any DATA PROFILING, in relation to the data you may give us

our clients, in any case our cookies, as indicated by our

cookies policy what they do is an analysis of the visits we receive,

mainly where users browse our pages. Our

business and so we say it is the advertising that they insert on our websites

brands in the adult website market.

The company BURWEBS S.L., has my advice as Delegate of

Data protection, and with a department formed and in charge of supervising

that all our websites provide adequate information and comply with it,

reporting both adult content and the obligation to have more than

18 years.

There is an affirmative click, noting that the website is only for adults, informing that to enter it is mandatory to have at least 18 years of age and the age of majority in the jurisdiction in which you are located, all this with the purpose of putting an entry barrier in a web of content for adults.

At the time, it was decided to implement said measure as a control measure of access or at least notify through this measure that the content is for adults. We refer even in writing saying "you have to have more than 18 years to see it ", on our websites, just as we warn that everything what appears on the website is made by professionals (actors and actresses) and that they are all over 18 years of age. Fact that we collect in each one of the contracts we have to record the movies.

Regardless of the mandatory click to enter.

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In the case of our website that we have used to answer this letter,

Although the rest are the same way, we post videos from other production companies with which we have agreements for the exhibition of these, and in no case,

No member data is transferred to these producers, nor are they in charge of the treatment of these.

In relation to your requirement in POINT TWO AND THREE, at the time the information that was collected and processed automatically in the

MEMBERS section, and of course, it was verified in relation to the

need to carry out a PIA or EIPD, in relation to the data that

we tried

We thought convenient that the information we stored did not justify the

have an obligation to carry out a DPIA. What if it was done, as indicated by the

legislation on data protection, was a risk analysis in relation to

with privacy and data management and always in relation to obtaining,

treatment, conservation of the data that we attach to you in a document

apart.

DOCUMENT Nº 1 RISK ANALYSIS OF CUSTOMER DATA

MEMBERS In relation to the RISK OF ACCESS BY MINORS in

our web pages: At the time, we saw that it could be a problem, but

a problem that should not be in our purview. The Code was analyzed

Civil, and the control that our entity could have over the acts of minors

of age to connect to our website, reaching the conclusion that the

The most drastic and effective measure to take in Spain was to use the electronic DNI

to access web pages, but this a priori effective and possible solution of

implement to all the people who connect to our websites, it is

impossible to implement for several reasons: a) The people who connect

They are not all located in Spain in countries that lack this system of

valid identification. b) In Spain (if we limit ourselves to people who access

from Spain) the possession and use of the DNI is mandatory from the age of 14.

For what was decided at the time, how could it be otherwise, that

according to art. 1903 of the CC, in relation to the responsibility belongs to the

persons who hold parental authority, since they are minors.

We believed that we could not take a risk that we could not control

that the risk was assumable by implementing a control system by our part where it is remembered that the pages were for adults and have a banner indicating if the user is older or younger.

Just as minors cannot (by legal capacity) contract a service of the internet, nor be responsible for what our limitation does, according to our risk analysis remains at the moment when the parents have a duty of vigilance and responsibility for what minors do. Art. 154 and 269 of the Civil Code, there is a Responsibility In vigilando being able to implement in use applications specifically aimed at children that prevent for the minor to access other types of applications or any of the applications parental control offered by the system developers themselves operators, telephone operators and other companies, such as time control

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of device use, blocking access to applications, control of time of use by application, control of activity in social networks, remote management for parents and even GPS location of the child.

As an alternative to parental control applications, there are other Tools that allow you to prevent access to inappropriate content by the configuration of DNS servers that will filter and not resolve those requests that may direct the minor to this type of content. Therefore, We understood at the time that the formula is for parents to apply a PARENTAL CONTROL, as the AEPD itself, recommends in its

publication "DATA PROTECTION OF THE MINOR ON THE INTERNET" is a
element that makes our risk to these events decrease.

We do not advertise in media, other than for adults, our web pages
content for adults, so it is difficult for regular search engines
of use by minors are announced, if it is not accessed voluntarily.

We deliver the POLICY in a separate document as DOCUMENT N° 2
OF PRIVACY OF OUR WEBSITE. 6.- In response to your
requirement in point No. 6, and as we have explained in point No. 1,

We indicate again that we have proceeded to hold a meeting between the
Delegate of Data Protection, the Management of the company and the Director of
programming, where the result of it has been to carry out
immediately a check of all web pages owned by the
business affected, to correct the barriers that were agreed to incorporate
in order to protect a minor from accessing adult content.

We have taken from the Guide AEPD sends us ideas such as those
exposed in it, and that it can be a more robust solution to what
we have implemented. Like the YOTI tool that seems like the most
adequate.

In any case, understanding the business is vital to understanding why it is not
that tool implemented. If you need an extension of the
information required, let us know so that we can provide it and be able to
solve this matter as quickly and efficiently as possible.

FOURTH: On 01/09/22, this Agency carries out the following
checks on the website, https://***URL.1:

a).- Regarding access to the website and parental control:

When entering the web for the first time, a warning banner appears where

reports the following:

+ 18. WEBSITE FOR ADULTS: "The site you are accessing

contains pornographic material and its access is for adults. To access

at the same time you have to confirm that you meet the legal age of your country to be able to

access this type of content.

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"I am of legal age and I accept cookies <<Enter>>".

<<No, I want to leave the site>>

<<Legal Notice LSSI>>

Access to the web is free and open, not requiring any registration for the

video display.

(i).- There is no link to any type of parental control tool to

It can be used by parents or guardians. There is only the message

Warning that the website contains adult content.

(ii).- If the <<NO>> option is clicked, the website disappears, returning the user to the

browser browser that is being used.

(iii).- There is a defined area to declare that one is of legal age (<<ENTRAR>>)

where you must click to declare it and be able to enter the website. However, if

we click anywhere on the screen, the warning banner disappears and

The web allows access to its content without any impediment.

b).- On the possibility of obtaining personal data from users:

Once accessed to the page, through the "Register Free" tab, located on the

top of the main page, a form is displayed where you can

enter personal data of users, such as name and email.

Before sending the form to register, you must click on the button:

"_ I am not a robot".

At the bottom of the form, there is a pre-marked message:

"X I accept the terms of service."

c).- Regarding the Privacy Policy:

1.- If the "Privacy Policy" is accessed, through the existing links, in the

warning banner, in the registration form or at the bottom of the page

main, <<Legal Notice LSSI>>, the web redirects the user to a new page:

https://***URL.1/aviso/, where information is provided about: -the owner of the site

Web; the contact details of the data controller; the contact details of the

data protection officer (d.p.o.); - the intended purpose; - the international transfer of

data recipients of data transfers; - rights; - how to exercise your

rights; - how rights can be requested; - on the basic principles that

govern the privacy policy; - about confidentiality; - information about the

willingness to leave the data and its consequences; - information about the data that is

retained and for how long in relation to certain treatments and with

for what purpose data is kept.

d).- Regarding the Cookies Policy:

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1.- When entering the web for the first time, without accepting cookies or taking any action

on the page, it has been verified that cookies that are not technical or necessary, whose domain is "Google Analytics": _ga, _gid, _gat, but which is installed associated with the domain of the person responsible for the web.

2.- There is no type of banner that informs about cookies on the main page or first layer of the web. The only reference made to cookies on the page

The main one is in the "pornographic content page" warning banner, where it indicates "I am of legal age and I accept cookies <<Enter>>".

3.- There is no mechanism that makes it possible to reject cookies that are not technical or necessary. There is also no cookie control panel that

enables the management of these, in a granular way or by groups.

4.- If you choose to access the "Cookies Policy" through the existing link in the bottom of the main page, <<Legal Notice Cookies>>, the web redirects to

user to a new page: https://***URL.1/cookies/, where it is provided

information about what cookies are and what types of cookies exist, but it is not

informs about the cookies used by the page, if they are their own or from third parties, their purpose and the time they will be active.

Nor is there any mechanism that makes it possible to reject all the cookies that are not technical or, where appropriate, the possibility of managing cookies in a granular.

FIFTH: On 01/12/22, by the Board of Directors of the Spanish Agency for

Data Protection, the sanctioning procedure against the entity BURWEBS S.L begins,

when appreciating reasonable indications of violation of articles 6.1 GDPR and 22.2 LSSI.

SIXTH: Notification of the agreement to initiate the sanctioning file to the entity

investigated on 01/16/22, the latter by means of a letter dated 01/30/22 formulated, in summary, the following allegations:

"1.- That effectively and seeing the statement that the Agency notifies us, and

verifying the errors committed that the Inspection shows us, we have

verified that we do indeed have a form with the acceptance

premarked. Therefore, as it cannot be otherwise, we have proceeded to

rectify it immediately, to avoid that we can be imputed in the future

any matter related to obtaining consent in an irregular manner.

2.- In relation to cookies, and the installation of systems that allow granting

or reject the consent prior to the installation of the same, and to the

maybe we have a banner that allows us to give information about the installation

of cookies on the person's computer, we can say little, the Inspection

clearly he is right in his arguments, and the only thing and before we

urge to comply with the legislation, and in order to be able to reduce the sanctions

As much as possible, we indicate that we have proceeded to correct this fact,

placing those banners where they correspond with the functions described by the

statement of the Inspectorate of the Data Protection Agency. Whereby,

We understand that we have complied with the requirement.

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3.- Of course, and having as reference the art. 58.2 of the GDPR, and in the

power that the Agency in its functions has to be able to require the measures

corrective measures, indicate that we have corrected the deficiencies that the

Agency has found when inspecting our website, always with the

purpose of improving what already exists and fleeing quickly from a controversy that

does not help prosper in regulatory compliance. Also, and in the box

which should be blank for people to express their consent in the data forms, we have proceeded to leave it without premark.

4.- Indicate, finally, that in relation to the sanctions proposed by the Agency, they seem excessive to us, not for the amounts that we know could even be older, if not, because Burwebs S.L. is a small company, without personal and, therefore, we believe that even having made mistakes, that we recognize, they have never been produced intentionally or economically, nor with the will to commit them. In addition, we have corrected them immediately without the Agency having intervened requiring that rectification.

Pursuant to art. 58 of the GDPR, and within the powers of the Agency, In order for the Data Controller to comply with or cease certain behaviors of the latter, it should be noted that, in this case, and for part of the company, every effort has been made to try to meet strict with what the regulations impose on us as Responsible.

For all these reasons, we request that the Agency within its power of art. 58, 2 of the GDPR, and seeing everything done by the company as an attitude proactive, can impose a collected sanction such as the WARNING, a fact that made it not so

affected in the payment of a high amount of money that could jeopardize the economy of it. In addition, I think we should take into account the fact also favorable of never having been penalized. We understand that may be a reasonable request, in a tight application of the principle of proportionality, a general principle of public law that upholds the requirement that any action by the public authorities limiting or restrictive of rights responds to the criteria of necessity and adequacy to the

end pursued. In a stricter sense, it represents the existence of a due adjustment between the seriousness of the act constituting the offense and the sanction applied that can be considered in its normative aspect or in its application aspect by the Administration or the Courts.

The principle of proportionality has been treated in jurisprudence as a important mechanism of control before the Courts of the exercise of the disciplinary power of the Administration when the norm establishes for an infraction several possible sanctions or indicates a quantitative margin for setting the sanction imposed. In fact, both in the previous Law 30/1992

As in the current Law 40/2015, such principle is included as one of the informants of the sanctioning power of the Administration in its aspect regulations and application. Regarding the discretion of the Administration in the graduation of the sanction, it should be taken into account that, although the Administration may use some discretion in grading

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the sanction to accommodate it to the set of concurrent circumstances in the infringement, it is no less true that the principle of proportionality is subject to judicial control.

The discretion granted to the Administration must be developed weighing in any case the concurrent circumstances in order to achieve the necessary and due proportionality between the alleged facts and the responsibility required, given that any sanction must be determined in

consistency with the entity of the offense committed and according to a criterion of proportionality considering the objective circumstances of the fact, proportionality that constitutes a normative principle that is imposed as a precept more to the Administration and that reduces the scope of its powers sanctioning, since to the jurisdictional activity corresponds not only the qualification to subsume the conduct in the legal type, but also to adapt the sanction for the act committed, since in both cases the subject is the application of legal evaluative criteria embodied in the written norm, as they are in this sanctioning field, those of congruence and proportionality between the infraction and the sanction, which must be taken into consideration for that Agency, in view of the concurrent circumstances, described”.

SEVENTH: On 03/12/22, this Agency carried out the procedures pertinent in order to verify if, as stated in the allegations presented by the entity to the agreement to start the sanctioning procedure will be they had corrected the detected irregularities, obtaining the following results about the "Cookies Policy" and the "Privacy Policy" of the website:

1.- When entering the web for the first time, once the terminal equipment has been cleaned of cookies and without accepting cookies or performing any action on the page, it has been verified that cookies that are not technical or necessary are used with the following characteristics:

a).- Advertising Cookies: They are used by ad providers and allow manage the offer of advertising spaces on the website, adapting the content of the advertisement to the content of the requested service.

cookies

detected

user

Supplier

Description

Consent

addition

GmbH

technologies

Management

the

advertising space

in the web

installed

consent

without

b).- Analytical Cookies: Visitors, visits to the website and other data are

stored on the website to create browsing profiles and be able to know the

user preferences:

cookies detected

Supplier

Description

Consent

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_gat_gtag_

UA_2407138_5

_ga

_gid

Google

statistics collection

about visits and navigation

on website

installed

without

consent

of the user

2.- There is no type of exclusive banner that informs about cookies on the page

main or first layer of the web. The only reference made to cookies in the

main page is in the warning banner that the page is content for

Adults: "I am of legal age and I accept cookies <<Enter>>".

Therefore, in this area of confirmation of legal age, while declaring

that you are of legal age, the cookies used by the web are accepted, without the existence of

no mechanism that enables the user to voluntarily reject cookies

that are not technical or necessary.

3°.- There is a cookie control panel that makes it possible to manage them, in a

granular or in groups. If you access it, through the existing link in the

banner of the main page, <<configure cookies>>, the web redirects to a new

page, https://***URL.1/cookies

/ , where, it is verified that the cookies that, the web

states that they are used, are pre-marked in the "accepted" option:

"CONFIGURATION OF INDEPENDENT COOKIES - You must take into account

Note that denying any of the cookies may make it not work
correctly the website.”

Cookie name: acc4

Cookie expiration: 24 hours

Cookie Name: coocfg

Cookie expiration: 60 days:

Cookie name: pucam

Cookie expiration: 24 hours

Cookie name: scrm

Cookie expiration: 60 days

Cookie name: user

Cookie expiration: 365 days

Cookie name: usercomm Cookie expiration: 365 days

Cookie name: favs

Cookie expiration: 365 days

Cookie name: avscoo

Cookie expiration: 365 days

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

<<Save Settings>>

If you choose to disable all the cookies indicated, moving the cursor from the "ON" position to the "OFF" position, in order to reject the use of Cookies that are not technical, is checked as the option "Save the configuration" disappears, making it impossible for the user to reject all cookies.

The only way to keep the "save settings" option from disappearing is enabling a cookie, but even, in this case, if some cookies are left enabled and the others are rejected, it is verified that the "Save Configuration" option is disabled. That is, it doesn't work.

In addition, the cookies that, initially, the web page claims to use and that are the indicated in the control panel (acc4; coocfg; pucam; scrm; user; usercomm; favs and avscoo) do not match the ones actually used by the page even before requesting user consent (_gat_gtag_; UA_2407138_5; _ga and _gid).

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4.- If you choose to access the "Cookies Policy" through the existing link in the bottom of the main page, <<Legal Notice Cookies>>, the web redirects to user to a new page: https://***URL.1/cookies

/ , where is provided

information about: what cookies are and what types of cookies exist, but it is not informs about the cookies used by the page.

EIGHTH: On 06/20/22, this Agency agrees to open a period of practice of evidence, according to the provisions of article 77 and 78 of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations

(LPACAP) and practice the following tests:

- Consider reproduced for evidentiary purposes the documents obtained and generated evaluated during the previous phases, and the report on investigative actions that are part of procedure E/02422/2021.

- To consider reproduced for evidentiary purposes, the allegations to the initiation agreement of the disciplinary procedure PS/0554/2021, presented by the entity BU-RWEBS, S.L., and the documentation that accompanies them.

- Consider reproduced for evidentiary purposes the proceedings carried out for verify if, as stated in the allegations presented by the entity BU-RWEBS, S.L. to the agreement to start the disciplinary procedure have corrected detected irregularities.

- Require the entity BURWEBS, S.L. so that within ten working days computed from the reception of this letter send a report on the following following aspects:

a) Regarding access to the website, without the need to register: When a user accesses the web page, determine what user data collect. Purpose of data collection. indication of what it is about actions made with said data. Assignments made of the data. Of-expiration of the period of conservation of the data collected and justified tion of the conservation period. Contribution of the RAT in relation to the treatment storage of personal data of users who access and browse the page gina web. Mechanisms implemented to confirm that they are treated only adult data. Description of technical and organizational measures tives that are established and their operation to limit the access of minors to the website. Report on risk analysis that, After evaluating the risks and assessing them, they have determined the choice

tion of such technical and organizational measures. On the website it appears a banner that must be clicked affirmatively to reveal that one is of legal age. Mechanisms established to confirm that he's older. Specification of whether post-testing is carried out above, after clicking affirmatively on the banner, to ensure that whoever has accessed the website is of legal age.

b) Regarding the access to the website of registered users: In case of contradiction between the information supplied to the AEPD in the reply

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to our requirements (April 26, 2021) in relation to the information tion that appears in the Legal Notice and the content of the RAT: (Determine what User data collected with registration and subsequent navigation through the website in the area of registered users, in addition to those willing in the form (in the response to the requirement and in the RAT it is indicated that username, password, mail and IP address are collected; in it legal notice is indicated by the company that contact data is collected, such as first name, last name, e-mail, telephone, etc. and also that sometimes they process browsing data such as IP, Wi-Fi, etc.; purpose of collection the data; indication of what treatments are carried out with said data; cesium-data analysis; determination of the period of conservation of each of the data collected and justification of the conservation period tion). Technical and organizational measures established to verify and confirm

sea the age of the user who is going to register.

- Carry out diligence related to the access of the web page and the operation of the banner set to warn and confirm that the majority of age to access pornographic content.

- Perform diligence regarding access to the registered area of the website to proceed to the registration and verify if the age of the user who intends to register or registered and if data of minors is processed.

NINTH: On 07/01/22, the procedures related to access to the web page and the operation of the banner established to warn and confirm that the age of majority is required to access pornographic content and access to the restricted area of the web page to verify if the age of the user who intends to register or registered and if data of minors is processed.

a).- Regarding access to the website and parental control:

When entering the web for the first time, a warning banner appears where reports the following:

+ 18. WEBSITE FOR ADULTS: "The site you are accessing contains pornographic material and its access is for adults. To access at the same time you have to confirm that you meet the legal age of your country to be able to access this type of content.

"I am of legal age and I accept cookies <<Enter>>".

<<No, I want to leave the site>>

<<Legal Notice LSSI>> <<Configure Cookies>>

Access to the web is free and open, not requiring any registration for the video display.

(i).- There is no link to any type of parental control tool to

It can be used by parents or guardians. There is only the message

Warning that the website contains adult content.

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(ii).- If you click on the option <<NO, I want to leave the site>>, the website disappears returning the user to the search engine of the browser that is being used.

(iii).- There is a defined area to declare that one is of legal age (<<ENTRAR>>)

where you must click to declare it and be able to enter the website. However, if we click anywhere on the screen, the warning banner disappears and

The web allows access to its content without any impediment.

(iv).- If you wish to read the "Privacy Policy", clicking on the option <<Notice

Legal LSSI>>, the website redirects the user to the page https://***URL.1/notice

/ but at

time it continues to display the initial warning banner without allowing access to the "Privacy Policy" as it appears faded in the background.

Only when you click anywhere on the page, such as when you

declares that, if you are of legal age, the banner disappears exposing the

information on the privacy policy and making it possible to read it.

If you then click on the link <<***LINK.1>>, located at the top

The right of the page allows access to the web https://***URL.1/ without any type of requirement of the age of majority.

b).- On the possibility of obtaining personal data from users:

Through the "Register Free" tab, located at the top of the page

main screen, a form is displayed where you can enter personal data of

users, such as name and email. It is also requested that you create

a password and its confirmation. Before submitting the form to

To register on the website, you must click on the button:

"_ I am not a robot".

At the bottom of the form, there is a message marked with the following

message, which must be checked before the form can be submitted:

"_ I accept the terms of service." <<Legal notice LSSI>>

To proceed with the registration, no type of requirement or accreditation is requested.

about coming of age.

Once registered, the user accesses his profile, in which he shares with others, his

username, age, sex, as well as the country and city of this (location).

You can put a photo on your profile.

It is possible to subscribe to the user profile. Also the possibility of giving a

"like" or "unlike" and contains the number of videos uploaded by the user.

The user can share videos and view the videos shared by other users and

their profiles in the previously expressed terms.

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There are user profiles under the age of 18. on errands

practiced there is a user profile "(...)" that indicates that it is 2 years old.

c).- Regarding the Privacy Policy:

1.- If the "Privacy Policy" is accessed, through the existing links, in the

initial banner of age warning, in the registration form or in the

bottom of the main page, (<<Legal Notice LSSI>>), the web redirects to the user to a new page: https://***URL.1/notice/ , where the information about: -the owner of the website; the contact details of the person in charge of treatment; the contact details of the DPO; - the intended purpose of the data personal obtained; - international data transfer; - the recipients of data transfers; - the rights that assist the users of the website and how to exercise them; - on the basic principles that govern the privacy policy; - about confidentiality; - information about the willingness to leave the data and its consequences; - information about the data that is kept in relation to certain treatments and for how long.

In the section entitled "1.2 Privacy Policy-Duty of information in accordance with the RGD 679/2019 and LO 3/2018" expressly indicate that, "The client who accesses Put your data in the contact forms of this web page, in accordance with the exposed in this paragraph of this legal notice, DECLARES AND REPRESENTS EXPRESSLY THAT:

"Expressly authorizes the entity BURWEBS S.L. residing in AVENIDA DEL CID Nº10 3ºD of - BURGOS (Burgos to the collection and treatment of the personal data of the person who signs, or acts as legal representative, guardian or curator, of a minor person. So himself declares that he has been duly informed about the table presented in relation to the right contained in art. 13 of the GDPR"

In the same section and under the heading "Basic information on data protection client data file" is indicated with respect to the "Recipients of transfers of data" which will be to:

"Companies of the same group.

No data will be transferred unless it is necessary to comply with the

requested benefit.

No data will be transferred except by legal mandate.

Tax and accounting advice (in case of purchase through the web).

Transport companies to be able to deliver the purchases made".

Next, in relation to "How to exercise your rights", it is indicated: "Request our forms for the exercise of rights in: ***EMAIL.1".

In the information provided regarding the customer data file, although it is indicates that legitimization will be obtained through the express consent of the concerned, it is not indicated that it can be revoked at any time by the interested.

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Likewise, in a separate paragraph, they indicate that "It is prohibited for minors under 14 years of age to put the data in our data collection forms, since it is contrary to art. 8 GDPR, in case you need the consent of a minor, you must give it and Therefore, collect data from the person who holds the Parental Authority and/or guardianship of the minor".

In section 1.4 related to "How can I request the rights" it is stated that can be exercised by sending your request to exercise rights "to or by mail postal to our address that we put in accordance with art. 10 of the LSSI-CE. You We ask that, always for the exercise of these, take into account the following: Upon presentation of their national identity document or passport, the holders of personal data (interested parties) may exercise their rights of access,

rectification, deletion, opposition, portability and limitation of treatment”.

However, the foregoing, in the "Privacy Policy", in addition to the imprecision

regarding the data that is kept, not the ones collected (it is indicated in the section

2.3 that "they are merely collected in the forms that are on the page

website such as contact information (basic character): name, surname, e-mail,

phone etc ... Sometimes we collect browsing data, such as IP data,

Wi-Fi, etc.") It does not specify whether there is a subsequent collection of personal data,

once the registration is done. Neither is it indicated the purpose to which the

data collected from the user's IP or Wi-Fi, as indicated in the "legal notice":

“(...) Sometimes, we collect browsing data, such as IP data, Wi-Fi,

etc.”.

In section 2.4 of the Privacy Policy it is stated "DURING HOW LONG

TIME" indicating that "Data collected for the delivery of our newsletter:

From the subscription to the moment the user requests the cancellation of the service

by sending an email. User data uploaded to pages and networks

social: From the moment the user offers his consent until he communicates his

will to remain in the same.

d).- About the Cookies Policy:

1.- When entering the web for the first time, once the terminal equipment has been cleaned of cookies

and without accepting cookies or performing any action on the page, it has been verified

that cookies that are not technical or necessary are used with the following

characteristics:

a).- Advertising Cookies: They are used by ad providers and allow

manage the offer of advertising spaces on the website, adapting

the content of the advertisement to the content of the requested service.

cookies

detected

user

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Supplier

Description

Consent

addition technologies

GmbH

Management

advertising on the web

the spaces

installed

without

consent

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b).- Analytical Cookies: Visitors, visits to the website and other data are

stored on the website to create browsing profiles and be able to know the

user preferences:

cookies detected

`_gat_gtag_`

`UA_2407138_5`

`_ga`

`_gid`

Supplier

Google

Description

statistics collection

about visits and navigation

on website

Consent

installed

without

consent

of the user

2.- There is no type of exclusive banner that informs about cookies on the page

main or first layer of the web. The only reference made to cookies in the

main page is in the warning banner that the page is content for

Adults: "I am of legal age and I accept cookies <<Enter>>".

Therefore, in this area of confirmation of legal age, while declaring

that you are of legal age, the cookies used by the web are accepted, without the existence of

no mechanism that enables the user to voluntarily reject cookies

that are not technical or necessary.

3°.- There is a cookie control panel that makes it possible to manage them, in a

granular or in groups. If you access it, through the existing link in the

banner of the main page, <<configure cookies>>, the web redirects to a new

page, https://***URL.1/cookies/, where, it is verified that the cookies that, the web

states that they are used, are pre-marked in the "accepted" option:

"CONFIGURATION OF INDEPENDENT COOKIES - You must take into account

Note that denying any of the cookies may make it not work

correctly the website:”

Cookie name: acc4

Cookie expiration: 24 hours

Cookie Name: coocfg

Cookie expiration: 60 days:

Cookie name: pucam

Cookie expiration: 24 hours

Cookie name: scrm

Cookie expiration: 60 days

Cookie name: user

Cookie expiration: 365 days

Cookie name: usercomm Cookie expiration: 365 days

Cookie name: favs

Cookie expiration: 365 days

Cookie name: avscoo

Cookie expiration: 365 days

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

OFF ☐ ON

<<Save Settings>>

If you choose to disable all the cookies indicated, moving the cursor

from the "ON" position to the "OFF" position, in order to reject the use of Cookies that are not technical, is checked as the option "Save the configuration" disappears, making it impossible for the user to reject all cookies. The only way to keep the "save settings" option from disappearing is enabling a cookie, but even, in this case, if some cookies are left enabled and the others are rejected, it is verified that the "Save Configuration" option is disabled. That is, it doesn't work.

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In addition, the cookies that, initially, the web page claims to use and that are the indicated in the control panel (acc4; coocfg; pucam; scrm; user; usercomm; favs and avscoo) do not match the ones actually used by the page even before requesting user consent (_gat_gtag_; UA_2407138_5; _ga and _gid).

4.- If you choose to access the "Cookies Policy" through the existing link in the bottom of the main page, <<Legal Notice Cookies>>, the web redirects to user to the page https://***URL.1/notice

/ , but still showing the banner

initial warning without allowing access to the "Cookies Policy" because it appears faded in the background. Only when you click on any point of the page, how when you declare that you are of legal age, the banner revealing the information of the cookie policy and enabling your reading, providing information about what cookies are and what types of Cookies exist, but the cookies used by the page are not reported.

Also in this case, if you then click on the link <<***LINK.1>>, located in the upper right part of the page access to the web is possible https://***URL.1/ without any type of requirement on the age of majority.

Also in this case, if you then click on the link <<***LINK.1>>, located in the upper right part of the page access to the web is possible https://***URL.1/ without any type of requirement on the age of majority.

TENTH: On 06/20/22, the entity BURWEBS, S.L. writing of the practice of tests requiring information on the points indicated in the section "eighth".

ELEVENTH: On 07/12/22, the entity BURWEBS, S.L. presents writing responding to the request for information, in which they allege:

“2.- Regarding the web page, and NO NEED FOR REGISTRATION.

It must be indicated that personal data is not collected and stored. only and in relation to this aspect, the IP is collected only in the connection with the sole purpose of knowing the State or Country from which the person. Specifically, this data is collected through the cookie called USER, whose function is the following: "Controls the logging or login of users in the website. The cookie saves the device used to access the website, a security encryption assigned to the user by the website, the user's IP, the country of the user, continent of the user, the browser and the operating system”

In the case of use of this IP data, this DPD understands that this is not the case of being an identified person, and doubtfully identifiable without having more data that a number without access to the data of the database that in each country corresponds to a specific user. We do not have access to that data, not even Of course we analyze profiles in relation to those IPs.

These are the only data that are collected through this cookie, and therefore

both these are the data to which we have access. An IP number, with a

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series of data that in principle I doubt can be considered as data

personal except the IP number.

Regarding the Record of Treatment Activities, in this case, attached

the only activity that occurs within the web page, and through a cookie,

because the rest are necessary cookies.

BASIC INFORMATION ON FILE DATA PROTECTION

OF CUSTOMER DATA

RESPONSIBLE

BURWEBS S.L.

INTENDED PURPOSE

Management of data collected by cookies. The IP, the system

operating, the country from where it connects.

D.P.O. (Data Protection Officer)

A.A.A., lawyer (...) and with an office for notifications in HONOS

LAWYERS S.L.P. in Calle Langreo nº 2, 1º d of Gijón. with phone

608781399 and email: ***EMAIL.1

LEGITIMATION

Express consent of the interested party. By accepting use

of cookies.

INTERNATIONAL DATA TRANSFER

No international data transfer will be made

RECIPIENTS OF DATA TRANSFERS

There is no transfer of data, except by legal mandate or exercise of the power of the courts.

State security forces and bodies, in cases of collaboration with them to control crimes in the network.

RIGHTS

Right to request access to personal data relating to the interested party, or Right to request its rectification or deletion, or Right to request the limitation of your treatment, or Right to oppose the treatment, o Right to data portability o Right to advertising exclusion.

ADDITIONAL INFORMATION

You can view our privacy policy at: www.burwebs.com

HOW TO EXERCISE YOUR RIGHTS

Request our forms for the exercise of rights at:

***EMAIL.1

In relation to the duration of data processing, it must be indicated in this extent that said data is maintained (as indicated in the cookie that

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collects) that are for 365 days and the purpose is merely statistical, as well to be able to offer other types of productions to certain countries.

In the control of minors once they have accessed the web page, the mechanisms implemented to confirm that only data from of legal age: We understand that all possibilities apply technology in force for this and the existing recommendations, existing greater ease and availability for this in the field of security services parental control through applications on mobile devices and in other proactive liability measures in apps for mobile devices published by that Agency. If you know of any reinforcement system, please notify us because this company does not know more than those that effectively applied, making all reasonable efforts from the outset to verify the data provided by the user, taking into account the available technology.

2.- Regarding the website, and REGISTERED USERS.

As can be verified, the following data is collected:

USERNAME

EMAIL ADDRESS

PASSWORD

CONFIRM PASSWORD

The IP is collected only in the connection with the sole purpose of knowing the

State or Country from which the person connects. Specifically this data

It is collected through the cookie called USER, whose function is the following:

“Controls the login or login of users on the website. The cookie saves the device used when accessing the website, a security encryption assigned to the user by the website, user's IP, user's country, continent of user, the browser and its version of the user and the operating system”

In the case of registration data, the data is processed solely and exclusively

to access and be a member of "the community", generate a file for you
add videos and also be able to comment on the videos with people who are
within the community.

In the case of use of this IP data, this DPD understands that this is not the case
of being an identified person, and doubtfully identifiable without having more
data that a number without access to the data of the database that in each
country corresponds to a specific user. We do not have access to that data, not even
Of course we analyze profiles in relation to those IPs.

These are the only data that are collected through this cookie, and therefore
both these are the data to which we have access. An IP number, with a

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series of data that in principle I doubt can be considered as data
personal except the IP number.

Regarding the Record of Treatment Activities, in this case, attached
the only activity that occurs within the web page, and through a cookie,
because the rest are necessary cookies.

BASIC INFORMATION ON FILE DATA PROTECTION

OF CUSTOMER DATA

RESPONSIBLE

BURWEBS S.L.

INTENDED PURPOSE

Management of data collected in the data collection form

"Sign up". To comment on videos. Management of data collected by the cookies. The IP, the operating system, the country from which it is connect.

D.P.O. (Data Protection Officer)

A.A.A., lawyer (...) and with an office for notifications in HONOS

LAWYERS S.L.P. in Calle Langreo nº 2, 1º d of Gijón. with phone

608781399 and mail: ***EMAIL.1.

LEGITIMATION or express consent of the interested party, through the

Click confirming having read the legal notice and privacy policy.

By accepting the use of cookies.

INTERNATIONAL DATA TRANSFER

No international data transfer will be made

RECIPIENTS OF DATA TRANSFERS

There is no transfer of data, except by legal mandate or exercise of the

power of the courts. o Security Forces and Bodies of the

State, in cases of collaboration with them to control

online crimes.

RIGHTS

Right to request access to personal data relating to the

interested,

Right to request its rectification or deletion,

Right to request the limitation of your treatment,

Right to oppose the treatment,

Right to data portability

Right to advertising exclusion.

ADDITIONAL INFORMATION

You can view our privacy policy at: www.burwebs.com

HOW TO EXERCISE YOUR RIGHTS

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Request our forms for the exercise of rights at:

***EMAIL.1

In relation to the duration of data processing, it must be indicated in this extent that said data is maintained (as indicated in the cookie that collects) that are for 365 days in terms of the IP, and in the case of data from REGISTER, they are kept for an indefinite time, since it is the person the one that is registered the one that grants or not the consent for its treatment.

In the control of minors once they have accessed the web page, the mechanisms implemented to confirm that only data from of legal age: We understand that all possibilities apply technology in force for this and the existing recommendations, existing greater ease and availability for this in the field of security services parental control through applications on mobile devices and in other proactive liability measures in apps for mobile devices published by that Agency. If you know of any reinforcement system, please notify us because this company does not know more than those that effectively applied, making all reasonable efforts from the outset to verify the data provided by the user, taking into account the available technology”.

TWELFTH: On 08/24/22, the Instruction formulated a proposal for resolution that proposed and submitted to the competent body to resolve, with the following proposal:

First: That by the Director of the Spanish Data Protection Agency proceed to penalize the entity, BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for infringement of article 5.1.a) of the GDPR, which constitutes an infringement classified in article 83.5.a) of the GDPR, classified as very serious for the purposes of the prescription in the article 72.1.a) of the LOPDGDD for lack of loyalty and transparency, with a sanction of 15,000 euros (fifteen thousand euros).

Second: That by the Director of the Spanish Data Protection Agency proceed to penalize the entity, BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for violation of article 5.1.b) of the GDPR, which constitutes an infringement classified in article 83.5.a) of the GDPR, classified as very serious for the purposes of the prescription in the article 72.1.a) of the LOPDGDD, with a penalty of 15,000 euros (fifteen thousand euros).

Third: That by the Director of the Spanish Data Protection Agency proceed to penalize the entity, BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the violation of article 5.1.e) of the

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GDPR, which constitutes an infringement classified in article 83.5.a) of the GDPR, classified as very serious for the purposes of the prescription in the article 72.1.a) of the LOPDGDD indefinite maintenance of the data of registered users, with a penalty of 15,000 euros (fifteen thousand euros).

Fourth: That by the Director of the Spanish Data Protection Agency proceed to sanction the entity BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the violation of article 13 of the GDPR, typified in article 83.5.b) of the GDPR and classified as mild to the effects of the prescription in article 74.a) of the LOPDGDD, for not informing interested parties of the possibility of revoking at any time the consent given by users to register through the form, of the possibility of presenting a claim before an authority of control and the period of conservation of the personal data of the users registered with a penalty of 3,000 euros (three thousand euros).

Fifth: That by the Director of the Spanish Data Protection Agency proceed to sanction the entity, BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the violation of article 12.2 of the

GDPR, typified in article 83.5.b) of the GDPR and classified as very serious to the effects of the prescription in article 72.1.k) of the LOPDGDD, by the requirement to provide the DNI or passport in any case and prior to the exercise of the rights conferred in the GDPR, regardless of whether there is reasonable doubts about the identity of the interested party, with a penalty of 5,000 euros (five thousand euros).

Sixth: That by the Director of the Spanish Data Protection Agency proceed to sanction the entity, BURWEBS S.L., owner of the website

***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the violation of article 30.1 of the GDPR, typified in article 83.4.a) of the GDPR and classified as mild to the effects of the prescription in article 74.l) of the LOPDGDD, for not incorporating the registration of processing activities all the information required by the art. 30.1 of the GDPR, with one with a penalty of 1,000 euros (one thousand euros).

Seventh: That by the Director of the Spanish Data Protection Agency proceed to penalize the entity, BURWEBS S.L., owner of the website

***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the violation of article 8 of the GDPR, typified in article 83.4.a) of the GDPR and classified as serious for the purposes of the prescription in article 73. a) and b) of the LOPDGDD, with one with a penalty of 6,000 euros (six thousand euros).

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Eighth: That by the Director of the Spanish Data Protection Agency proceed to penalize the entity, BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the violation of article 25 of the GDPR, typified in article 83.4.a) of the GDPR and classified as serious to those effects of the prescription in article 73.d) of the LOPDGDD, with a a penalty of 10,000 euros (ten thousand euros).

Ninth: That by the Director of the Spanish Data Protection Agency proceed to penalize the entity, BURWEBS S.L., owner of the website ***URL.1 in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), for the infringement of the article Infringement of article 22.2 of the LSSI, regarding the irregularities detected in the "Cookies Policy" of the website, with a penalty of 5,000 euros (five a thousand euros).

Tenth: That by the Director of the Spanish Data Protection Agency BURWEBS, S.L. to implant, within a month, the necessary corrective measures to adapt its performance to the regulations protection of personal data, as well as inform this Agency in the same term on the measures adopted.

Said resolution proposal was made available to the entity through the Electronic Notification Service, on 08/24/22 and after the 10-day period natural resources from its availability for access, as established in paragraph 2,

of article 43, of law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations, without access to the

document, the automatic rejection occurred on 09/04/22. have not been made

allegations to the proposed resolution.

PROVEN FACTS

Of the actions carried out in this procedure, of the information and

documentation presented by the entity have been accredited the following

facts:

First: From the verifications carried out by this Agency on the web page at

question, regarding access to the page and the processing of personal data, remain

proven the following facts:

Regarding the adult page warning banner, it has been detected that, when entering

for the first time on the site a pop-up window (banner) appears warning of the

adult content requesting the user to declare, before entering the site,

who is of legal age, there are three options:

1.- Option: "Enter": There is a clearly defined area to declare that you are older

of age (<<enter>>) and where you must click to declare it and be able to enter the

website. However, if we click on any empty part of the banner outside of the

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confirmation area, ("enter"), the web allows access without any kind of

impediment. In addition, in this area of majority declaration, ("I am older than

of age and I accept cookies"), while declaring that you are of legal age, you

implicitly accept cookies, without any possibility, in this banner,

to access the website by rejecting cookies.

2.- Option: "No, I want to leave the site": If you choose to leave the site,

clicking on the option <<No, I want to leave the site>>, the website returns the user

to browser

3.- "LSSI legal notice" option: If you choose to click on this option to read the notice

leave the page, the web does not respond, it goes into a loop, refreshing the banner and without

enable access to the legal notice on the LSSI of the web. Only when I know

click anywhere on the page, the banner disappears exposing

a new page, h ttps://***URL.1/notice/

where information about: -the

website owner; the contact details of the data controller; the data from

DPD contact; -the legitimacy for the processing of personal data; - the

intended purpose for the personal data obtained; - international transfer

of data; -The recipients of the data transfers; - the rights that attend the

users of the website and how to exercise them; - on the basic principles that govern

the privacy policy; - about confidentiality; - on the will to leave the

data and its consequences; - information about the data that is kept in

relation to certain treatments and for how long.

If you then click on the link <<***LINK.1>>, located at the top

right of the page https://***URL.1/notice/

, access to the web https://

***URL.1/ without any requirement of legal age.

Second: In relation to the possibility of obtaining personal data from the

users, it has been proven that, once the user has accessed the web page,

through the <<Register Free>> tab, located at the top of the page

main screen, a form is displayed where you can enter personal data of

users, such as name and email. Before submitting the form

you must click on the button:

"_ I am not a robot".

At the bottom of the form, there is a message marked with the following

message, which must be checked before the form can be submitted:

"_ I accept the terms of service." <<Legal notice LSSI>>

To proceed with the registration, no type of requirement or accreditation is requested.

about coming of age.

In the case of a minor under 14 years of age, under the terms

collected in the privacy policy, consent is not required from the person holding

parental authority or guardianship of the minor.

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Once registered, the user accesses his profile, in which he shares with others, his

username, age, sex, as well as the country and city of this (location).

You can share a profile photo.

It is possible to subscribe to the profile of another user. Also the possibility of

give a “like” or an “unlike”. It contains the number of videos uploaded by the user.

The user can share videos and view the videos shared by other users and

their profiles in the previously expressed terms.

There are user profiles under the age of 18. on errands

practiced there is a user profile "(...)" with the age of 2 years.

Third: Regarding the "Privacy Policy" it has been proven that as of

July 1, 2022, date of completion of the proceedings, that:

If the "Privacy Policy" is accessed, through the existing links, in the

initial banner of age warning, in the registration form or in the

bottom of the main page, (<<Legal Notice LSSI>>), the web redirects to the

https://***URL.1/notice/, where provided

user to a new page:

information about: -the owner of the website; the contact details of the person in charge of

treatment; the contact details of the DPO; -the legitimation for the treatment of

personal information; - the intended purpose of the personal data obtained; - the

international data transfer; -The recipients of the data transfers; - the

rights that assist users of the website and how to exercise them; - Over the

basic principles that govern the privacy policy; - about confidentiality; -

information about the willingness to leave the data and its consequences; - information

about the data that is kept in relation to certain treatments and during

how long.

In the section entitled "1.2 Privacy Policy-Duty of information in accordance with the

GDPR 679/2019 and LO 3/2018" expressly indicate that "The client who accesses

Put your data in the contact forms of this web page, in accordance with the

exposed in this paragraph of this legal notice, DECLARES AND REPRESENTS

EXPRESSLY THAT:

Expressly authorizes the entity BURWEBS S.L. domiciled at AVENIDA DEL

CID N°10 3°D de - BURGOS (Burgos to the collection and treatment of the data of

personal character of the person who signs, or acts as legal representative, guardian or curator, of

some minor person. Declare that you have been duly informed

about the table that is presented in relation to the right contained in art. 13

of the GDPR”.

In the same section and regarding the information provided to the interested parties

Regarding the customer data file, it is indicated:

"BASIC INFORMATION ON DATA PROTECTION FILE OF

CUSTOMER DATA

or RESPONSIBLE

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or BURWEBS S.L.

or INTENDED PURPOSE

o Management of the data entered in the data collection forms

website cough.

or D.P.O. (Data Protection Officer)

or A.A.A., lawyer (...) and with an office for notifications in HONOS

LAWYERS S.L.P. in Avenida del Mar Cantábrico nº 16, esc. 2, 3rd D,

33204- Gijón). With phone number 608781399 and mail:***EMAIL.1

or LEGITIMATION

o Express consent of the interested party.

o INTERNATIONAL DATA TRANSFER

o There will be no international transfer of data

o RECIPIENTS OF DATA TRANSFERS

o Companies of the same group.

o No data will be transferred unless it is necessary to comply with the pro-

pia service requested.

- o No data will be transferred except by legal mandate.
- o Tax and accounting advice (in case of purchase through the web).
- o Transport companies to be able to deliver the purchases made.

or RIGHTS

- o Right to request access to personal data relating to the interest

sado,

- o Right to request its rectification or deletion,
- o Right to request the limitation of your treatment,
- o Right to oppose the treatment,
- o Right to data portability
- o Right to advertising exclusion.

ADDITIONAL INFORMATION

either

- o You can view our privacy policy at: www.burwebs.com

or HOW TO EXERCISE YOUR RIGHTS

- o Request our forms for the exercise of rights at:

***EMAIL.1".

Under the heading "Basic information on data protection data file

clients" is indicated with respect to the "Recipients of data transfers" that will be to:

"Companies of the same group.

No data will be transferred unless it is necessary to comply with the requested benefit.

No data will be transferred except by legal mandate.

Tax and accounting advice (in case of purchase through the web).

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Transport companies to be able to deliver the purchases made”.

Next, in relation to "How to exercise your rights" they say "Request our forms for the exercise of rights in: ***EMAIL.1”.

In the information provided regarding the customer data file, although it is indicates that legitimation will be obtained through the express consent of the concerned, it is not indicated that it can be revoked at any time by the interested.

Likewise, in a separate paragraph, they indicate that "It is prohibited for minors under 14 years of age to put the data in our data collection forms, since it is contrary to art. 8 GDPR, in case you need the consent of a minor, you must give it and Therefore, collect data from the person who holds the Parental Authority and/or guardianship of the minor”.

In section 1.4 related to "How can I request the rights" it is stated that can be exercised by sending your request to exercise your rights "or by mail postal to our address that we put in accordance with art. 10 of the LSSI-CE. You

We ask that, always for the exercise of these, take into account the following:

Upon presentation of their national identity document or passport, the holders of personal data (interested parties) may exercise their rights of access, rectification, deletion, opposition, portability and limitation of treatment”.

However, the foregoing, in the "Privacy Policy", regarding the data that is preserved, it is indicated in section 2.3 that "they are merely collected in the forms that are on the web page such as contact information (character

basic), such as name, surname, e-mail, telephone, etc. ... Sometimes,
we collect browsing data, such as IP data, Wi-Fi, etc.") is not specified
if there is a subsequent collection of personal data, once the registration has been made.
Nor is it indicated the purpose for which the data collected from the IP of the user will be used.
user or Wi-Fi, as indicated in the "legal notice": "(...) Sometimes,
We collect browsing data, such as IP data, Wi-Fi, etc."

In section 2.4 of the Privacy Policy it is stated "DURING HOW LONG
TIME" indicating that "Data collected for the delivery of our newsletter:
From the subscription to the moment the user requests the cancellation of the service
by sending an email. User data uploaded to pages and networks
social: From the moment the user offers his consent until he communicates his
will to remain in the same.

Fourth: The entity BURWEBS, S.L., according to the document presented by it on
07/12/2022 in the framework of the test process indicates that the registration of activities
of the treatment of the data file of non-registered clients is the following:

"BASIC INFORMATION ON DATA PROTECTION FILE OF
CUSTOMER DATA

or RESPONSIBLE

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or BURWEBS S.L.

or INTENDED PURPOSE

o Management of data collected in the data collection form

"Sign up". To comment on videos. Management of data collected by the cookies. The IP, the operating system, the country from which it is connect.

or D.P.O. (Data Protection Officer)

or A.A.A., lawyer (...) and with an office for notifications in HONOS LAWYERS S.L.P. in Calle Langreo nº 2, 1º d of Gijón. with phone 608781399 and email: ***EMAIL.1

or LEGITIMATION

o Express consent of the interested party, by clicking confirming have read the legal notice and privacy policy. By means of the acceptance of the use of cookies.

o INTERNATIONAL DATA TRANSFER

o There will be no international transfer of data

o RECIPIENTS OF DATA TRANSFERS

o There is no transfer of data, except by legal mandate or exercise of the power of the courts. o Security Forces and Bodies of the State, in cases of collaboration with them to control online crimes.

or RIGHTS

o Right to request access to personal data relating to the interested,

o Right to request its rectification or deletion, o Right to request the limitation of its treatment,

o Right to oppose the treatment,

o Right to data portability o Right to exclusion advertising.

or ADDITIONAL INFORMATION

o You can view our privacy policy at: www.burwebs.com

or HOW TO EXERCISE YOUR RIGHTS

o Request our forms for the exercise of rights at:

***EMAIL.1".

Regarding the registration of the activities of the treatment of the client data file

registered is as follows:

"BASIC INFORMATION ON DATA PROTECTION FILE OF

CUSTOMER DATA

or RESPONSIBLE

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or BURWEBS S.L.

or INTENDED PURPOSE

o Management of data collected in the data collection form

"Sign up". To comment on videos. Management of data collected by the cookies. The IP, the operating system, the country from which it is connect.

or D.P.O. (Data Protection Officer)

or A.A.A., lawyer (...) and with an office for notifications in HONOS

LAWYERS S.L.P. in Calle Langreo nº 2, 1º d of Gijón. with phone

608781399 and email: ***EMAIL.1

or LEGITIMATION

o Express consent of the interested party, by clicking confirming
have read the legal notice and privacy policy. By means of the
acceptance of the use of cookies.

o INTERNATIONAL DATA TRANSFER

o There will be no international transfer of data

o RECIPIENTS OF DATA TRANSFERS

o There is no transfer of data, except by legal mandate or exercise of the
power of the courts. o Security Forces and Bodies of the
State, in cases of collaboration with them to control
online crimes.

or RIGHTS

o Right to request access to personal data relating to the
interested,

o Right to request its rectification or deletion,

o Right to request the limitation of your treatment, o Right to
oppose the treatment,

o Right to data portability

o Right to advertising exclusion.

or ADDITIONAL INFORMATION

o You can view our privacy policy at: www.burwebs.com

or HOW TO EXERCISE YOUR RIGHTS

o Request our forms for the exercise of rights at:

***EMAIL.1".

No mention is made in any of the records of the processing activities at the
period of deletion of personal data.

In the referenced letter of 07/12/2022, the entity states, regarding the duration

of the treatment of unregistered users that "In relation to the duration of treatment of the data, it must be indicated at this point that said data is kept (as indicated in the cookie that collects them) that are for 365 days and the

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purpose is purely statistical, as well as to be able to offer to certain countries other types of productions".

And, in relation to the duration of the treatment of the data of registered users that "In relation to the duration of data processing, it must be indicated in this extent that said data is maintained (as indicated in the cookie that collects) that are for 365 days in terms of the IP, and in the case of data from REGISTER, they are kept for an indefinite time, since it is the person who the one that grants or not the consent for the treatment of these is registered".

Likewise, it indicates that "In the case of registration data, the unique and exclusively to access and be a member of "the community", generate a file to add videos and also be able to comment on the videos with people who are within the community", in such a way that users add their videos and share with other registered users.

Fifth: In relation to the "Cookies Policy", it has been proven that:

When entering the web for the first time, once the terminal equipment has been cleaned of cookies and without accepting cookies or performing any action on the page, it has been verified that

Cookies that are not technical or necessary are used with the following characteristics:

user; _gat_gtag_; _ga; and _gid

There is no type of exclusive banner that informs about cookies on the page

main or first layer of the web. The only reference made to cookies in the

main page is in the warning banner that the page is content for

Adults: "I am of legal age and I accept cookies <<Enter>>".

Therefore, in this area of confirmation of legal age, while declaring

that you are of legal age, the cookies used by the web are accepted, without the existence of

no mechanism that enables the user to voluntarily reject cookies

that are not technical or necessary.

There is a cookie control panel that makes it possible to manage them, in a way

granular or by groups. If accessed through the existing link in the banner of

the main page, <<configure cookies>>, the web redirects to a new page,

https://***URL.1/cookies

/ , where, it is verified that the cookies that the web affirms

that are used, are pre-marked in the "accepted" option

If you choose to disable all the cookies indicated, moving the cursor

from the "ON" position to the "OFF" position, in order to reject the use of

Cookies that are not technical, is checked as the option "Save the

configuration" disappears, making it impossible for the user to reject all cookies.

The only way to keep the "save settings" option from disappearing is

enabling a cookie, but even, in this case, if some cookies are left enabled and

the others are rejected, it is verified that the "Save Configuration" option is

disabled. That is, it doesn't work.

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In addition, the cookies that, initially, the web page claims to use and that are the indicated in the control panel (acc4; coocfg; pucam; scrm; user; usercomm; favs and avscoo) do not match the ones actually used by the page even before requesting user consent (_gat_gtag_; UA_2407138_5; _ga and _gid).

If you choose to access the "Cookies Policy" through the existing link in the bottom of the main page, <<Legal Notice Cookies>>, the web redirects to user to the page https://***URL.1/notice

/ but still showing the banner

initial warning without allowing access to the "Cookies Policy" because it appears faded in the background. Only when you click on any point of the page, how when you declare that you are of legal age, the banner revealing the information of the cookie policy and enabling your reading. Thus, the web redirects the user to a new page:

https://***URL.1/cookies

/ , where information is provided on: what are the cookies and what types of cookies exist, but there is no information about the cookies that uses the page, if they are their own or from third parties, their purpose and the time they will be active

Also in this case, if you then click on the link <<***LINK.1>>, located in the upper right part of the page access to the web is possible

https://***URL.1

/ without any type of requirement on the age of majority.

Sixth: From the actions carried out, it is verified that data is processed on the page personal information of the users, that is, the IP address, username, email address, age, sex, as well as the country and city of this (location), as well as the

image and voice (for the user profile photo, in addition to sharing videos on the web page that may be their own) and sexual tastes and preferences, since You can comment on the videos with people who are part of the community.

FUNDAMENTALS OF LAW

I.- Competition:

- About the GDPR:

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures.

- About the Cookies Policy:

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It is competent to resolve this Disciplinary Procedure, the Director of the Spanish Data Protection Agency, in accordance with the provisions of art. 43.1, second paragraph, of the LSSI Law.

II.- Processing of personal data.

Article 4 of the GDPR, under the heading "Definitions", provides the following:

"1) "personal data" means any information about an identified natural person or identifiable ("the data subject"); Any identifiable natural person shall be considered person whose identity can be determined, directly or indirectly, in by means of an identifier, such as a name, a number identification, location data, an online identifier, or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out on about personal data or sets of personal data, either by means of automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction".

7) "responsible for the treatment" or "responsible": the natural or legal person, public authority, service or other body which, alone or jointly with others, determines undermine the purposes and means of processing; if the Law of the Union or of the States States members determine the purposes and means of processing, the controller of the treatment or the specific criteria for its appointment may establish the law of the Union or of the Member States"

In this case, it is clear that BURWEBS S.L. is responsible for the processing data records referred to in the proven facts of the disciplinary procedure, since, according to the definition of article 4.7 of the GDPR, it is the one that determines the purpose and means of the processing carried out for the purposes indicated in its Privacy Policy.

The entity BURWEBS S.L. indicates in his letter dated 07/12/2022, answering the information requirement derived from the test process, which is not collected and save personal data through the website: https://***URL.1.

This is an obvious contradiction with reality:

In the first place, because it admits in that same letter that the IP of the person who accesses it is collected. yields to the web page (in open) and the IP and the name and email address of those who are registered in it. It also admits that the data is processed to generate a tab -the user profile- to be able to add videos and comment on them with other people nas.

To this we must add that, as proven by proven facts, the user profile contains more personal data than the user's name, as it per-

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allows sharing with the rest of the members the location, sex, age, tastes through comments and image and voice.

In addition, in the privacy policy they refer, they indicate, "on the data that is keep", to that "The data that we keep are those merely collected in the forms that are available on the web page such as contact information (basic character-co), such as name, surname, e-mail, telephone, etc. Sometimes we collect browsing data, such as IP data, Wi-Fi, etc."

Second, because they are all personal data, despite the fact that the entity expressly deny that the IP is.

Specifically, and with respect to the IP, it is uncontroversial that we are dealing with data

of a personal nature as it has been considered by the AEPD through its Reports of your Legal Office 327/2003 or of March 1, 2007 or widely by jurisprudence (for all, Judgment of the Supreme Court of 16/2014 of 30 January or October 3, 2014 or Judgment of the National Court of September 1, September 2011 or Judgment of the Court of Justice of the European Union of October 19, October 2016, case C-582/14).

Finally, we must indicate that, however, the entity asserts in its writ of 04/26/2021 responding to the requirement made by the AEPD that it is mandatory to be of legal age to enter and use the website - "...informing both the content adult, such as the obligation to be over 18 years of age. It also has a click affirmative, warning that the website is only for adults, informing that for Entering and using it is mandatory to be at least 18 years of age and older of age in the jurisdiction in which you are, all with the purpose of putting a barrier to the fact of entering a website with adult content"- and that In general, they do not process personal data of minors, the truth is that it is not You can affirm that you do not process personal data of minors.

Especially when in its privacy policy it states so by referring to reference to the fact that "it is prohibited for minors under 14 years of age to put the data in our data collection forms, since it is contrary to art. 8 GDPR, in case of need the consent of a minor, you must give it and therefore collect data from the person who holds the Parental Authority and/or guardianship of the minor".

In conclusion, the entity BURWEBS S.L. as data controller performs a processing of personal data through its website https://***URL.1, both adults and minors.

III.- On the lack of loyalty and transparency.

Article 5.1.a) of the GDPR provides that "Personal data will be: a) processed

lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transfer-appearance»);».

Recital 38 of the GDPR on loyalty and transparency determines that:

“All processing of personal data must be lawful and fair. For the people

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Physical data must be made completely clear that they are collecting, using, con-

revealing or otherwise processing personal data concerning them, as well

as the extent to which said data is or will be processed. The principle of

Transparency requires that all information and communication relating to treatment

of such data is readily accessible and easy to understand, and is used

simple and clear language. This principle refers in particular to information

information of the interested parties on the identity of the person responsible for the treatment and the

purposes of this and to the added information to guarantee a fair treatment and

transparent with respect to the natural persons affected and their right to

obtain confirmation and communication of personal data concerning them

nan that they are the object of treatment”.

Likewise, recital 60 of the GDPR states that.

“The principles of fair and transparent treatment require that the interested party be informed

informed of the existence of the processing operation and its purposes. The responsible-

The data controller must provide the interested party with all the complementary information

necessary to guarantee fair and transparent treatment, given

account of the specific circumstances and context in which the data is processed.

personal coughs”.

Article 12 of the GDPR establishes how the transparency of information is articulated and the communication to the interested party. And articles 13 and 14 of the GDPR specify the information specific information that must be provided to the interested party to guarantee loyalty and transparency.

The principle of transparency is not exhausted in the material concretion of supplying the information formation of articles 13 and 14 of the GDPR, under the terms of article 12 of the GDPR and 11 of the LOPDGDD.

The principle of transparency established in article 5.1.a) of the GDPR is much more and has ne entity in itself. Linked to the principle of loyalty, it implies effective knowledge of the precise information on the part of the interested parties that redounds in the power of disposition and control that the interested parties have regarding the processing of their data personal, in the terms provided in the Constitutional Court Judgment 292/2000, of November 30, 2000: "Luckily, without the guarantee that the right to appropriate information by fulfilling certain requirements legal requirements (art. 5 L.O.P.D.) would undoubtedly frustrate the right of the interested party to control and dispose of your personal data, since it is clear that they would prevent you from exercising other faculties that are integrated into the content of the fundamental right to which we are referring to”.

In this sense, the Guidelines of the Article 29 Working Group on transparency reference under Regulation (EU) 2016/679, adopted on November 29, 2017 and last revised and adopted on April 11, 2018 (WP 260) prevent that “10. A fundamental consideration of the principle of transparency outlined in these provisions is that the interested party must be able to determine in advance the scope ce and the consequences derived from the treatment, and that you should not be surprised in a later moment for the use that has been given to your personal data. It is, thus-

same, of an important aspect of the principle of loyalty under article 5, par-

Clause 1 of the GDPR and, indeed, it is related to recital 39...”.

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It is useless to formally provide the information required in the articles

13 and 14 of the GDPR if this does not agree with the reality of the treatment established in the re-

cord of processing activities or if the information is contradictory, obscure and

does not allow interested parties to really know what the treatment of their

personal information.

Regarding loyalty, CEPD Guidelines 4/2019 related to article 25 Protection

tion of data from the design and by default, adopted on October 20, 2020 dis-

they put that “69. Loyalty is a general principle that requires that personal data

are not treated in a manner that is unreasonably prejudicial, unlawfully discriminatory, unfairly

permissible or misleading for the interested party”. They continue to establish a manifestation of loyalty

will be that “The interested parties must have the maximum degree of autonomy possible

to determine the use made of your personal data, as well as the scope and

conditions of said use or treatment (...) The treatment must correspond to

the reasonable expectations of the interested parties (...) The data controller does not

will abuse the needs or vulnerabilities of the data subjects. (...) The person in charge

ble should not “force” the choice of its users unfairly (...) Those responsible

The data controllers must not transfer the risks of the company to the data subjects.

(...) The information and options for the processing of personal data must provide

act objectively and neutrally, avoiding any kind of language or deceptive design.

mischievous or manipulative (...) The person in charge must appreciate the general effects that the treatment on the rights and dignity of people. (...) The responsible must make available to the interested party the information related to the way in which personal data are processed, you must act as you have stated that you will, and not mislead the interested party”.

Thus, first of all, we can observe a clear inconsistency between the content of the registration of the treatment activities of the clients (of the users not registered).

two and registered users on the website https://***URL.1 referred to this

AEPD on 07/12/22) and the information provided to interested parties through the policy

Privacy policy of the web page.

In relation to the transfer of data, while in the registration of activities

of the treatment of unregistered users and in the registration of the activities of the

treatment of registered users is recorded with respect to the "RECIPIENTS OF

TRANSFER OF DATA" that

"There is no transfer of data, except by legal mandate or exercise of the power

of the courts. State security forces and bodies, in cases of co-

collaboration with them to control crimes in the network”.

However, in the privacy policy it is stated regarding the recipients of the

transfers of data that

“Companies of the same group.

No data will be transferred unless it is necessary to comply with the pre-requested ration.

No data will be transferred except by legal mandate.

Tax and accounting advice (in case of purchase through the web)

Transport companies to be able to deliver the purchases made”.

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As we can see, what is related to the transfer of personal data is not coincidental.

between the registration of processing activities and the privacy policy, the latter comprising many more transfers of data not included in the registry of the processing activities.

While the registration of treatment activities, transfers are prohibited except legal mandate or collaboration with justice, in the privacy policy it is provide for various transfers of data.

To the above we must also add the contradiction regarding the transfers of data in the privacy policy itself, because although it is stated that data will not be transferred except by legal mandate, transfers to companies of the same group are foreseen (without determining determine which these companies are and why their data is transferred), transfers to fulfill comply with the requested benefit (adding the great lack of definition of what the service requested), for tax and accounting advice in case of purchase through the website and transport companies to deliver the purchases made.

On the other hand, there is also vagueness, a lack of specificity and transparency regarding of the personal data processed and the information provided for this purpose to the users. rivers.

We will indicate that article 30.1 of the GDPR provides, regarding the content of the registry of the processing activities the obligation to include on the part of the person in charge of the treatment "c) a description of the categories of interested parties and of the categories streams of personal data".

Neither in the registration of the treatment activities of unregistered users nor in

the registration of the treatment activities of registered users is understood

such forecast.

The entity BURWEBS, S.L. limits itself in its brief of 07/12/2022 to asserting that it

Regarding unregistered users "personal data is not collected and stored. Alone-

mind and in relation to this aspect, the IP is collected only in the connection with the

sole purpose of knowing the State or Country from which the person connects".

And with respect to registered users that "As can be verified, it is reco-

Generate the following data: USER NAME E-MAIL ADDRESS PASSWORD

PASSWORD CONFIRM PASSWORD The IP is collected only in the connection with the

sole purpose of knowing the State or Country from which the person connects. ... In

In the case of registration data, the data is processed solely and exclusively to access

have and be a member of "the community", generate a file to add videos and also

more being able to comment on the videos with people who are within the community".

However, in the privacy policy of the referenced web page it is stated in the

section 2.3 "INFORMATION ON THE DATA THAT IS KEPT" that "are

those merely collected in the forms that are on the website such as

contact information (basic character), such as name, surname, e-mail, telephone,

etc ... Sometimes, we collect browsing data, such as IP data, Wi-Fi,

etc.").

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In view of the content of the privacy policy we can see how there are no differences between

difference between the data that is collected from unregistered and registered users.

two, it appears from the reading of section 2.3 transcribed above that these data refer to

They are only for registered users, when beginning the diction of said section making re-

Reference to the information collection forms established to register.

However, it is proven by the assertions of BURWEBS, S.L. that

Regarding non-registered users, at least "the IP is collected only in the co-

connection with the sole purpose of knowing the State or Country from which the

person".

On the other hand, the privacy policy informs the user that a se-

series of personal data that exceeds those indicated in their letter of

07/12/2022 that are collected for non-registered users (wifi) or that are collected

for users registered in the forms and in what they call a tab (profile of

user), such as the phone or Wi-Fi data.

In addition, it is not specifically informed of other personal data that is collected and

that are shared with other registered users, such as the contents in the tab

or user profile and that are, as stated in the proven facts, the age,

sex, as well as the country and city of this (location), the profile photograph and the videos

wishes that the user decides to share (image and voice), as well as the comments that

perform.

Likewise, and in accordance with the information provided in the privacy policy

Regarding the transfer of data, it seems that more personal data is collected than

those mentioned therein, specifically and with respect to purchases that may be made

on the web, the precise data to carry them out, which could include name and

surnames, DNI or NIE, account number or debit or credit card, address of

delivery etc

Furthermore, it should be noted that, in the privacy policy, when making

mention of the personal data that is collected and stored is used by two

times the abbreviation “etc.” as to their significance. This redounds again

in the lack of loyalty and transparency.

And that, regarding the collection of the IP data, which the company admits is collected

always, the privacy policy clarifies that it is "sometimes", without making explicit to the

users, registered or not, what are those occasions.

Second, and in relation to the registration of the activities of the treatment of the users,

unregistered records, the “Management of the data collected

by cookies. The IP, the operating system, the country from where it connects”.

Regarding the registration of the treatment activities of registered users

indicate that the "Planned purpose" is "Management of data collected in the form"

“register” data collection form. To comment on videos. Data management

collected by cookies. The IP, the operating system, the country from where you connected.

ta”.

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However, in the privacy policy, in addition to the fact that it does not differentiate between users

registered and unregistered, in the "basic information on data protection file-

client data collection", in the "Intended purpose" is limited to the "Management of personal data"

introduced in the data collection forms of the web page”.

As we can verify, in addition to the fact that the purpose of the record does not coincide

of the treatment activities with what is stated in the privacy policy, there is

a great vagueness as to what the purpose of the treatment consists of, since the

“management” itself does not determine what the personal data is processed for, since

All processing includes personal data management.

Especially if through the letter of 07/12/2022 that the entity BURWEBS, S.L. refers to

the AEPD briefly explains that "In the case of registration data, the

data solely and exclusively to access and be a member of "the community", generate-

You have a tab to add videos and also be able to comment on the videos with people

who are in the community."

It is not that they have not been sufficiently clear regarding the purposes of the treatment.

processing of personal data, is that they do not indicate what these purposes are to the users.

rivers, if a service is provided and what it consists of.

At this moment we simply have to point out that the lack of loyalty and trans-

transparency would affect the free provision of consent with respect to the users concerned.

registered, who do not receive the information in a fair and transparent manner.

In conclusion, the performance of the entity BURWEBS, S.L. lacks loyalty and trans-

transparency, since the information supplied to the interested parties through the policy

Privacy policy of the web page does not correspond to the treatment really

effected. Loyalty and transparency imply that the interested party is perfectly

aware that the processing of your personal data is taking place, with

what purposes and in what way.

For this reason, and in accordance with the evidence presented, the aforementioned facts presuppose

a violation of the provisions of article 5.1.a), which gives rise to the application of the

corrective powers that article 58 of the aforementioned Regulation grants to the Agency

Spanish Data Protection.

IV.- Violation

The facts exposed do not comply with the provisions of article 5.1.a) of the GDPR, with the

scope expressed in the above Fundamentals of Law, which implies the

commission of an offense classified in article 83.5.a) of the GDPR, which under the

section "General conditions for the imposition of administrative fines" provides the following: "5. Violations of the following provisions will be sanctioned, according to accordance with paragraph 2, with administrative fines of maximum EUR 20,000,000. 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 basic principles for the treatment, including the conditions for the consent

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ment according to articles 5, 6, 7 and 9".

In this regard, the LOPDGDD, in its article 72.1.a) considers as an infraction "very serious" for prescription purposes "1. Based on what is established in article 83.5 of the Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial infringement of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679".

V.- On the limitation of the purpose.

Article 5.1.b) of the GDPR provides that personal data will be "collected with specific, explicit and legitimate purposes, and will not be further treated in a manner incompatible with said purposes; Pursuant to Article 89 Paragraph 1, the processing further processing of personal data for archiving purposes in the public interest, research purposes scientific and historical research or statistical purposes shall not be considered incompatible with

the initial purposes ("purpose limitation").

The purpose limitation principle requires that personal data be collected both for specific, explicit and legitimate purposes.

Thus, the purposes must be perfectly identified so that the interested party can determine if the treatment carried out by the person in charge is within such purposes.

In addition, and linked to transparency, the fact that the purposes are explicit means that the affected understands what these are, in order to maintain real control over their personal data and can effectively exercise their rights. To understand which is the explicit purpose, this must be revealed to the interested party.

Without forgetting that the purposes have to be legitimate, that is, as permitted by the legal system.

In this sense, Opinion 3/2013 of the Working Group of the Article 29, adopted on April 2, 2013, on purpose limitation.

From all this it can be inferred that personal data processing cannot be carried out because they may be useful in the future to the data controller. They have to be linked to the determined, explicit and legitimate current purposes of the same and about their own treatments.

The entity BURWEBS, S.L. provided in its privacy policy, in relation to the "recipients of data transfers" that will be transferred for "tax and accounting advice (in case of purchase through the web)".

This shows that the person responsible for the treatment carries out a treatment of data for a purpose other than those collected in the record of processing activities sent by letter of 07/12/2022 and in the privacy policy. Purpose

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consisting of the treatment of user data to make purchases, this

is, to maintain a contractual relationship with the user, with a legal basis that is not

The consent; purpose that is not expressly provided for in or in the registration of

treatment activities or in the privacy policy, nor is it explicitly reported

to the interested party

In conclusion, everything made explicit supposes a violation of the principle of limitation of

the purpose, gives rise to the application of the corrective powers that article 58 of the

aforementioned Regulation grants the AEPD.

VI.- Violation.

The processing of personal data in accordance with an external purpose, not made explicit to the

interested and willing with the intention of using the data as long as

may be required in the future, fails to comply with the provisions of article 5.1.b) of the

GDPR, with the scope expressed in the above Fundamentals of Law, which

supposes the commission of an infraction typified in article 83.5.a) of the GDPR, which

under the heading "General conditions for the imposition of administrative fines"

provides the following:

"5. Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of maximum EUR 20,000,000.

mo or, in the case of a company, of an amount equivalent to 4% as

maximum of the overall annual total turnover of the preceding financial year

rior, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the

consent in accordance with articles 5, 6, 7 and 9".

In this regard, the LOPDGDD, in its article 72.1.a) considers as an infraction "very serious" for prescription purposes

"1. Based on what is established in article 83.5 of Regulation (EU)

2016/679 are considered very serious and will prescribe after three years the

offenses involving a substantial violation of the articles

mentioned therein and, in particular, the following: a) The treatment of

personal data violating the principles and guarantees established in the

Article 5 of Regulation (EU) 2016/679".

VII.- Conservation of personal data.

Article 5.1.e) of the GDPR establishes that:

"Personal data will be: e) maintained in a way that allows identification;

cation of the interested parties for no longer than necessary for the purposes

of the processing of personal data; personal data may be kept

be stored for longer periods as long as they are treated exclusively with

archival purposes in the public interest, scientific or historical research purposes or

statistical purposes, in accordance with article 89, paragraph 1, without prejudice

of the application of the appropriate technical and organizational measures that im-

poses this Regulation in order to protect the rights and freedoms of the

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resado ("retention period limitation").

Recital 39 refers to the fact that: "Personal data must be adequate, but

relevant and limited to what is necessary for the purposes for which they are processed. It re-

In particular, it wants to ensure that its retention period is limited to a strict minimum.

ation", which implies that, in any case, personal data must be deleted

when these purposes have been fulfilled.

Adds recital 39 that: "To ensure that personal data is not con-

longer than necessary, the data controller must establish plans

zos for its suppression or periodic revision".

From all this it can be inferred that the indefinite maintenance of

the personal data of a data subject.

However, the entity BURWEBS, S.L. states in his brief of 07/12/2022, he answered

Based on the requirement of proof made by the AEPD, and in relation to the data

obtained from registered users, that "In relation to the duration of treatment of

the data, it must be indicated at this point that said data is maintained (as

indicates in the cookie that collects them) that they are for 365 days in terms of the IP, and in

In the case of REGISTRATE data, they are kept for an indefinite time, since

It is the person who registers who grants or not the consent for the treatment.

all of the same".

We must mean that, although the legitimizing basis of the treatment is the consent

this does not cover the indefinite maintenance of the data collected

by the person responsible for the user, especially when such provision is not even recorded in the registry.

other of the treatment activities, nor has the user been informed through the Po-

Privacy policy of the referenced web page, of this individual.

In conclusion, the performance of the entity BURWEBS, S.L. keeping with character

undefined the data collected from users registered on the website <https://>

***URL.1 supposes a violation of the RGPD, which gives rise to the application of the

corrective powers that article 58 of the aforementioned Regulation grants to the Agency

Spanish Data Protection.

VIII.- Violation.

The indefinite maintenance of personal data breaches the established in article 5.1.e) of the GDPR, with the scope expressed in the Previous legal grounds, which supposes the commission of an infraction typified in article 83.5.a) of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides the following:

"5. Violations of the following provisions will be penalized, according to with paragraph 2, with administrative fines of maximum EUR 20,000,000. mo or, in the case of a company, of an amount equivalent to 4% as maximum of the overall annual total turnover of the preceding financial year rior, opting for the one with the highest amount:

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a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9".

In this regard, the LOPDGDD, in its article 72.1.a) considers as an infraction "very serious" for prescription purposes "1. Based on what is established in article 83.5 of the Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial infringement of the articles mentioned therein and, in particular, the following: a) Data processing violating the principles and guarantees established in article 5 of the Regulation (EU) 2016/679".

IX.- Lack of information to the interested party about the revocation of consent, about the

right to file a claim with the supervisory authority and regarding the period of conservation of data of registered users.

Article 13 of the GDPR establishes what information must be provided when the personal data is obtained from the interested party,

"1. When personal data relating to him or her is obtained from an interested party, the responsible for the treatment, at the time they are obtained, will provide you with

It will contain all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of his representative;

b) the contact details of the data protection officer, in his case;

c) the purposes of the processing for which the personal data is intended and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the controller or of a third party;

e) the recipients or categories of recipients of the personal data final, if any;

f) where appropriate, the intention of the person responsible for transferring personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph do 1, second paragraph, reference to adequate or appropriate guarantees days and the means to obtain a copy of these or the fact that have been borrowed

2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party, at the time the data is obtained,

personal data, the following information necessary to guarantee a treatment

Fair and transparent data retention:

a) the period during which the personal data will be kept or, when

where this is not possible, the criteria used to determine this term;

b) the existence of the right to request the data controller the

access to personal data relating to the interested party, and its rectification

or deletion, or the limitation of its treatment, or to oppose the treatment

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to, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter

a), or Article 9(2)(a), the existence of the right to withdraw

consent at 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 control authority;

e) if the communication of personal data is a legal or con-

tractual, or a necessary requirement to sign a contract, and if the inter-

resado is obliged to provide personal data and is informed of

the possible consequences of not providing such data;

f) the existence of automated decisions, including the elaboration of

profiles, referred to in article 22, sections 1 and 4, and, at least in

such cases, significant information about the applied logic, as well as

the significance and expected consequences of such processing for

the interested.

3. When the controller plans the subsequent processing of data

personal items for a purpose other than that for which they were collected, provided

provide the interested party, prior to said subsequent processing, information

about that other purpose and any additional information pertinent under paragraph

tado 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in

to the extent that the interested party already has the information”.

Article 6 of the GDPR provides that:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions: a) the interested party gave his consent for the treatment of his

personal data for one or more specific purposes”.

Regarding the conditions for consent, article 7.3 of the GDPR establishes

states that "The interested party shall have the right to withdraw their consent at any time.

to. The withdrawal of consent will not affect the legality of the treatment based on the

consent prior to its withdrawal. Before giving consent, the interested party

will be informed of it. It will be as easy to withdraw consent as to give it.

Thus, article 13.2.c) of the GDPR obliges the data controller to provide information

training on the revocation of consent when it is the legitimate legal basis

treatment provider: "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 the con-

feeling at any time, without affecting the legality of the treatment based on

given in the consent prior to its withdrawal”.

Based on the proven facts, it is verified that the entity BURWEBS, S.L. does not inform the

interested in the possibility of revoking the consent given at any time.

provided by users to register using the form provided for this purpose in the

website https://***URL.1.

On the other hand, article 13.2.d) of the GDPR also obliges the data controller to

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consent to provide information to interested parties on the right to file a

claim before a control authority, an issue that does not appear in any section

of the privacy policy.

In addition, art. 13.2.a) of the GDPR requires that the person responsible inform the interested party about

“the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this term”.

it is verified

Well, from the Privacy Policy of the website https://***URL.1

that the period of conservation of the data of the registered users is not indicated.

two, which are the name and email, as well as all those that are shared

have through the profile (in addition to the name, profile photograph, if applicable, gender,

age, location, etc.). It does not appear in what they call "Basic information on

data protection client data file”.

In the privacy policy and respect for the conservation period, it only appears in the

section 2.4 for how long they keep the data collected for the delivery of

your newsletter and user data uploaded to pages and social networks.

In conclusion, the performance of the entity BURWEBS, S.L. by not supplying all the information

precise training to the interested parties supposes a violation of the RGPD, which gives rise to

to the application of the corrective powers that article 58 of the mentioned Regulation

granted to the Spanish Data Protection Agency.

X.- Violation.

The accredited facts breach the provisions of article 13 of the GDPR, with the scope expressed in the above Fundamentals of Law, which implies the commission of an offense classified in article 83.5.b) of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides:

"5. Violations of the following provisions will be penalized, according to paragraph 2, with administrative fines of maximum EUR 20,000,000. or, in the case of a company, of an amount equivalent to 4% as maximum of the overall annual total turnover of the preceding financial year prior, opting for the one with the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22".

In this regard, the LOPDGDD, in its article 74, considers as a "minor" offense prescription effects "the remaining infringements of a merely formal nature 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 lack of information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679".

XI.- On the exercise of rights and the presentation of the DNI by the interested party.

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The rights of individuals regarding the protection of personal data are re-

regulated in articles 15 to 22 of the GDPR and 13 to 18 of the LOPDGDD. are contemplated the rights of access, rectification, deletion, opposition, right to limitation of the treatment and right to portability.

The formal aspects related to the exercise of these rights are established in the articles Articles 12 of the GDPR and 12 of the LOPDGDD.

Article 12 "Transparency of information, communication and modalities of exercise of rights" of the GDPR establishes the following:

"1. The person in charge of the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and simple language, in particular any information directed specifically a child. The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by the interested party, the information may be provided verbally provided that prove the identity of the data subject by other means.

2. The data controller will provide the interested party with the exercise of their rights under articles 15 to 22. In the cases referred to in the article 11.2, the person in charge will not refuse to act at the request of the interested party in order to exercise your rights under articles 15 to 22, unless can demonstrate that it is not in a position to identify the interested party.

3. The person responsible for the treatment will provide the interested party with information regarding its actions on the basis of a request under articles 15 to 22, and, in any case, within one month from receipt of the application. This period may be extended by another two months if necessary, taking into account the complexity and number of requests. The responsible

will inform the interested party of any of said extensions within a period of one month from receipt of the request, indicating the reasons for the delay.

When the interested party submits the application by electronic means, the Information will be provided by electronic means where possible, unless that the interested party requests that it be provided in another way.”

4. If the person responsible for the treatment does not process the request of the interested party, he will will inform without delay, and no later than one month after receipt of the application, the reasons for not acting and the possibility of presenting a claim before a control authority and to exercise actions judicial.

5. The information provided under articles 13 and 14 as well as any communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to its repetitive nature, the responsible for the treatment may: a) charge a reasonable fee based on administrative costs incurred in providing the information or

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communication or perform the requested action, or b) refuse to act with respect to of the request. The controller shall bear the burden of proving the manifestly unfounded or excessive nature of the request.

6. Without prejudice to the provisions of article 11, when the person responsible for the treatment has reasonable doubts as to the identity of the person

Physicist who files the request referred to in art. 15 to 21, you can request provide additional information necessary to confirm the identity of the interested.

7. The information that must be provided to the interested parties by virtue of the Articles 13 and 14 may be transmitted in combination with standardized icons that make it possible to provide in an easily visible, intelligible and clearly readable an adequate overview of the planned treatment. the icons submitted in electronic format shall be machine readable.

8. The Commission shall be empowered to adopt delegated acts in accordance with article 92 in order to specify the information to be submitted to through icons and the procedures for providing standardized icons”.

For its part, article 12 “General provisions on the exercise of rights” of the LOPDGDD, in its sections 2 and 4, adds the following:

"2. The person in charge of the treatment will be obliged to inform the affected party about the methods God at your disposal to exercise the rights that correspond to you. The means of- They must be easily accessible to the person concerned. The exercise of the right may not be denied for the sole reason that the affected party opted for another means”.

"4. Proof of compliance with the duty to respond to the request to exercise their rights formulated by the affected party will fall on the person responsible”.

It also takes into account what is stated in Recitals 59 et seq.

GDPR

In accordance with the provisions of these regulations, the data controller must arbitrate formulas and mechanisms to facilitate the exercise of their rights by the interested party. rights, which will be free (without prejudice to the provisions of articles 12.5 and 15.3 of the GDPR); is obliged to respond to requests made no later than a month, unless you can demonstrate that you are not in a position to identify the interested party.

do; as well as to express their reasons in case they did not respond to the request.

From the foregoing it can be deduced that the request for the exercise of rights made by the interested party must be answered in any case, with the person responsible for the proof of the fulfillment of this duty.

This obligation to act is not enforceable when the data controller can demonstrate that it is not in a position to identify the interested party (in cases referred to in article 11.2 of the GDPR). In cases other than those provided for in this article, in which the data controller has reasonable doubts regarding the identity of the applicant, may require additional information necessary to confirm that identity.

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In this regard, Recital 64 of the GDPR is expressed in the following terms:

“The data controller must use all reasonable measures to verify the identity of the interested parties who request access, in particular in the context of online services and online identifiers. The responsible

You should not retain personal data for the sole purpose of being able to respond to possible requests.

Regarding the question related to verification of the identity of rights applicants, the rules set forth above are clear in pointing out that this verification process should be limited to specific cases in which the controller has “reasonable” doubts in relation to the identity of the natural person making the request.

Article 12.6 of the GDPR refers to all requests for rights and admits the possibility of

possibility of requiring, in those cases, "additional information" necessary to confirm the identity of the interested party. In particular, in relation to requests of access in the context of online services, Recital 64 of the same Regulation refers to the possibility that the person in charge uses all the "measures reasonable" to verify the identity of the interested parties.

The rules that regulate the exercise of rights do not establish, therefore, the need to provide any specific identification document so that they can be attended to. they do not even require that verification of identity be carried out through documents. mentation. They refer to the possibility of collecting "additional information" and the use tion of "reasonable measures", corresponding to the person in charge to determine what information and what measures are reasonable in each case, given the circumstances competing and always resorting to the least invasive means for the privacy of the applicants. All this, under the prior condition that it is a sub-position in which there are "reasonable doubts" about the identity of the applicant.

The entity BURWEBS, S.L. set out in its privacy policy in relation to "HOW CAN I REQUEST THE RIGHTS" that will be done "After presentation of your national identity document or passport, the holders of personal data (interested parties) may exercise their rights of access, rectification, opposition, portability and limitation of treatment".

Well then, we can verify that it is established with a general character and *conditio sine qua non*, the contribution of the DNI or passport of the interested party as a requirement to attend right to be exercised. The rights management procedure designed by the entity itself, in its capacity as responsible, requires the aforementioned documentation in all cases, without previously analyzing whether or not these doubts were raised. reasonable.

Neither the procedure designed by BURWEBS, S.L. contemplate the possibility

to verify the identity of the applicant through other information or measures other than the contribution of those accrediting documents.

Consequently, in accordance with the evidence presented, the aforementioned facts imply a violation of the provisions of article 12.2 of the GDPR, due to the

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requirement to provide the DNI or passport in any case and prior to the

exercise of the rights conferred in the GDPR, regardless of whether there are doubts

Reasonable assumptions about the identity of the interested party, which gives rise to the application of the corrective powers that article 58 of the aforementioned Regulation grants to the AEPD.

XII.- Violation.

The accredited facts breach the provisions of article 12.2 of the GDPR, with the

scope expressed in the above Fundamentals of Law, which implies the

commission of an offense classified in article 83.5.b) of the GDPR, which under the

section "General conditions for the imposition of administrative fines" provides

the following: "5. Violations of the following provisions will be sanctioned, according to

accordance with paragraph 2, with administrative fines of maximum EUR 20,000,000.

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:

b) the rights of the interested parties in accordance with articles 12 to 22".

In this regard, the LOPDGDD, in its article 72 considers as a "very serious" infraction

sees" for the purposes of prescription "infringements that involve a substantial infringement

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

k) The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679”.

XIII.- On the mandatory content of the record of processing activities.

Article 30 of the GDPR provides that:

"1. Each manager and, where appropriate, their representative shall keep a record of the treatment activities carried out under its responsibility. said record

It must contain all the information indicated below:

a) the name and contact details of the person in charge and, where appropriate, the correspondent person responsible, the representative of the person responsible, and the data protection delegate data;

b) the purposes of the treatment;

c) a description of the categories of data subjects and the categories of data personal coughs;

d) the categories of recipients to whom the information was communicated or will be communicated; personal data, including recipients in third countries or organizations international purposes;

e) where appropriate, transfers of personal data to a third country or an organization international organization, including the identification of such third country or organization international transfer and, in the case of transfers indicated in article

49, section 1, second paragraph, the documentation of adequate guarantees;

f) when possible, the deadlines set for the suppression of the different data categories;

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g) where possible, a general description of the technical and organizational measures security measures referred to in article 32, paragraph 1".

Thus, keeping and maintaining the record of processing activities is a obligation of the controller for the sake of proactive liability, and which serves to demonstrate compliance with the obligations of the controller in relation to tion with the provisions of the GDPR. In this sense, recital 82 of the GDPR provides states that "to demonstrate compliance with this Regulation, the person responsible for o The processor must keep records of the processing activities.

I lie at your own risk. All those responsible and in charge are obliged to cooperate with the supervisory authority and to make available, upon request, di- such registries, so that they can be used to monitor processing operations. I lie".

Regarding the obligation on the part of the data controller to describe in the registration of processing activities "c) a description of the categories of interested parties and the categories of personal data", it should be noted that in the registry of the activities of the treatment of users not registered or in the registry of the activities of the treatment of the registered users are included in such provision.

On the other hand, the record of processing activities must establish, when possible, the deadlines for the deletion of the different categories of data cough. There is also no provision in the registry of the activities of the treatment of the users. unregistered users and registered users what is the period of conservation of personal data, especially when it is provided for by the data controller

I lie.

Thus, the entity asserts in its letter of 07/12/2022 responding to the requirement of test carried out by the AEPD, in relation to the data obtained from users not registered states that "In relation to the duration of data processing, it is necessary to indicate at this point that said data is maintained (as indicated in the cookie that collects them) that are for 365 days and the purpose is merely statistical as well to be able to offer other types of productions to certain countries".

And in relation to the data obtained from registered users, that "In relation to with the duration of data processing, it must be indicated at this point that said data are kept (as indicated in the cookie that collects them) that are during 365 days in terms of IP, and in the case of REGISTER data, they are kept for an indefinite time, since it is the person who registers who grants or not the consent for the treatment of these".

Finally, the absence of determination of the general description of the technical and organizational security measures article 32.1 of the GDPR; although he precept determines that such measures will be included in the register of activities of the treatment "when possible", the person in charge of the treatment does not integrate them into registration without explaining to us what the impossibility is.

Consequently, in accordance with the evidence presented, the aforementioned facts imply a violation of the provisions of article 30.1 of the GDPR, since the registration of activities the treatment does not include all the information

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required by the standard, which gives rise to the application of the corrective powers that the

Article 58 of the aforementioned Regulation grants the Spanish Agency for the Protection of data.

XIV.- Violations

The accredited facts breach the provisions of article 30.1 of the GDPR, with the scope expressed in the above Fundamentals of Law, which implies the commission of an offense classified in article 83.4.a) of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of maximum EUR 10,000,000.

or, in the case of a company, of an amount equivalent to 2% as

maximum of the overall annual total turnover of the preceding financial year

above, opting for the one with the highest amount: a) the obligations of the person responsible and of the manager in accordance with articles 8, 11, 25 to 39, 42 and 43".

In this regard, the LOPDGDD, in its article 74, considers as a "minor" offense prescription effects "the remaining infringements of a merely formal nature of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

I) Have a record of processing activities that does not include all the information required by article 30 of Regulation (EU) 2016/679".

XV.- On the request for the consent of the person who holds parental authority or guardianship that of minors.

In the GDPR there are specific mentions in relation to minors in care of the special protection that children deserve, as provided for in recital 38 of the GDPR: "Children deserve specific protection of their personal data, who may be less aware of the risks, consequences, guarantees and rights rights concerning the processing of personal data. Such specific protection

should apply in particular to the use of personal data of children for the purpose of marketing or elaboration of personality or user profiles, and to obtaining of personal data relating to children when using services offered directly- mind a child The consent of the holder of parental authority or guardianship must not be necessary in the context of preventive or advisory services offered directly straight to the children."

Article 8 of the GDPR refers to the conditions applicable to the consent of the child in relation to information society services:

"1. Where Article 6(1)(a) applies in relation to the offer of direct provision of information society services to children, the treatment of a child's personal data will be considered lawful when it has as its minimum 16 years. If the child is under 16 years of age, such treatment is only shall be considered lawful if the consent was given or authorized by the owner of the patria potestate or guardianship over the child, and only to the extent that it was given or authorized.

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Member States may establish by law an age lower than such figures, provided that this is not less than 13 years.

2. The data controller will make reasonable efforts to verify in such cases that the consent was given or authorized by the holder of the parental authority or guardianship over the child, taking into account the available technology.

3. Section 1 shall not affect the general provisions of Contract Law of the Member States, such as the rules relating to the validity, form-

tion or effects of contracts in relation to a child”.

Complete the previous provision of article 7 of the LOPDGDD that determines that “1.

The processing of personal data of a minor may only be based on

with your consent when you are over fourteen years of age.

The cases in which the law requires the assistance of the owners of the country are excepted.

authority or guardianship for the celebration of the act or legal business in whose context

obtain consent for treatment.

2. The treatment of the data of minors under fourteen years of age, based on the consent

consent, it will only be lawful if there is evidence of the holder of parental authority or guardianship, with the al-

term determined by the holders of parental authority or guardianship”.

Article 8 of the GDPR establishes in which cases it is applicable. let's examine

if in the case now examined we find ourselves in this situation.

First, it requires that the treatment be related to services of the society of the

information offered directly to a child.

Regarding what is understood by information society service, the Directive

goes (EU) 2015/1535 of the European Parliament and of the Council of September 9, 2015

which establishes a procedure for information on regulatory matters

technical rules and regulations relating to the services of the information society, dis-

puts in its article 1.1.b) what is meant by service: "service": any service of the

information society, that is, any service normally provided in exchange for

a remuneration, remotely, electronically and at the individual request of a destination

service tarry. For the purposes of this definition, the following shall be understood as: i) «at a distance

cia", a service provided without the parties being present simultaneously, ii) "by

electronically" means a service sent from the source and received by the recipient by

through electronic processing equipment (including digital compression) and storage

data storage and that is transmitted, channeled and received entirely by wires, radio,

optical means or any other electromagnetic means, iii) "at the individual request of a recipient of services' means a service provided by transmission of data to individual request".

Examining the web page, it complies with the forecasts of being a company service. information ciency.

Second, the services are required to be offered directly to a child. This assumed not to be offered directly to a child if the provider of these services makes it clear to users that it offers them only to people of legal age (18

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years).

Well, although the entity BURWEBS, S.L. warns in its banner that the website is for adults, stating that they do not process the data of minors and that there is an obligation

legality of being over 18 years old, the truth is that in the privacy policy of the

The web page now examined clearly states that "It is prohibited for minors to

14 years old, put the data in our data collection forms, since

It is contrary to art. 8 GDPR, in case you need the consent of a minor, de-

must give it and therefore collect data from the person who holds the Parental Authority and/or or guardianship of the minor.

In this way it becomes clear that the service is offered directly to a child in the meaning of the GDPR, for which reason article 8 of said article is clearly applicable. legal text.

Based on the processing of personal data consisting of the user's registration in

the consent of the interested party, when he is under 14 years of age his consent

This will only be lawful if there is evidence of the holder of parental authority or guardianship. So it determines regulations and endorses the jurisprudence (for all Judgment of the National Court of January 2, 2013, RJCA 2013, 100).

It turns out that the registration system established by the entity BURWEBS, S.L. In the pa-web page https://***URL.1 does not establish any provision regarding the provision consent by the holders of parental authority or guardianship.

It is established in the proven facts that there are profiles of minor registered users old and 14 years old.

But there is more, because if it is the consent given by people over 14 years of age,

The person responsible for the treatment must establish reasonable measures that allow him to Verify that the minor is over 14 years of age, since he does not require more than his own consent. feeling. There is also no instrument on the website that verifies that the

The user who intends to register is over 14 years of age.

Consequently, in accordance with the evidence presented, the aforementioned facts imply a violation of the provisions of article 8 of the GDPR, in relation to the conditions applicable to the consent of the child in relation to the services of the information society, since neither the consent of the data holders is required.

parental authority or guardianship if they are children under 14 years of age or established mechanisms to ensure that a child over the age of 14 is registered, which results in the application of the corrective powers that article 58 of the mentioned Regulation granted to the Spanish Data Protection Agency.

XVI.- Violations

The accredited facts breach the provisions of article 8 of the GDPR, with the scope expressed in the above Fundamentals of Law, which implies the commission of an offense classified in article 83.4.a) of the GDPR, which under the

The heading "General conditions for the imposition of administrative fines" provides:

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Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of maximum EUR 10,000,000.

For natural persons, or, in the case of a company, of an amount equivalent to 2% as

maximum of the overall annual total turnover of the preceding financial year

or, opting for the one with the highest amount:

a) the obligations of the person in charge and the person in charge according to articles 8,

11, 25 to 39, 42 and 43".

In this regard, the LOPDGDD, in its article 73, considers as a "serious" offense

prescription effects "infractions that involve a substantial violation of

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

a) The processing of personal data of a minor without obtaining their consent.

feeling, when he has the capacity to do so, or that of the owner of his country

testate or guardianship, in accordance with article 8 of Regulation (EU) 2016/679.

b) Not accrediting reasonable efforts to verify the validity of the

consent given by a minor or by the owner of his country

testament or guardianship over it, in accordance with the requirements of article 8.2 of the

Regulation (EU) 2016/679".

XVII.- Privacy by design

Article 25 of the GDPR establishes that "Taking into account the state of the art, the

cost of the application and the nature, scope, context and purposes of the treatment, as well as

as the risks of varying probability and severity involved in the treatment for the rights and freedoms of natural persons, the data controller applies will be, both at the time of determining the means of treatment and at the time of the processing itself, appropriate technical and organizational measures, such as the pseudonymization, designed to effectively apply the principles of protection data minimization, such as data minimization, and integrate the necessary safeguards into the treatment, in order to comply with the requirements of this Regulation and to protect the rights of the interested parties”.

It is complemented by the provisions of recital 78 of the GDPR, which indicates that “The protection of the rights and freedoms of natural persons with respect to the processing of personal data requires the adoption of technical and organizational measures appropriate in order to ensure compliance with the requirements of this Regulation.

glament. In order to be able to demonstrate compliance with this Regulation, the controller must adopt internal policies and implement measures that comply in particular with the principles of data protection by design and by definition.

fect. These measures could consist, among others, of minimizing the treatment of personal data, pseudonymize personal data as soon as possible, transfer parity to functions and the processing of personal data, allowing interested parties responsible for supervising the data processing and for the data controller to create and measure improve security elements. When developing, designing, selecting and using applications, services and products that are based on the processing of personal data or that process personal data to fulfill their role, data producers should be encouraged products, services and applications that take into account the right to protection

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tion of data when they develop and design these products, services and applications, and that they ensure, with due regard to the state of the art, that those responsible responsible and those in charge of the treatment are in a position to fulfill their obligations. tions on data protection. The principles of data protection by design and by default must also be considered in the context of the public contracts”.

The principle of privacy by design is an example of the transition from reactivity to the proactivity and risk approach imposed by the GDPR. Clear reflection of the res-proactive responsibility, imposes that, from the most initial stages of planning of a treatment must be considered this principle: the person responsible for the treatment from the moment an eventual data treatment is designed and planned. personal cough must determine all the elements that make up the treatment, carried out through an exercise of analysis and detection of risks during the entire cycle of data processing, with the first and last purpose of protecting personal data and the rights and freedoms of the interested parties and not only when treatment actually takes place. This is expressed in Guidelines 4/2019 of the CEPD related to article 25 Protection of data from the design and by default, adopted held on October 20, 2020.

The aforementioned Guidelines indicate in this regard that “35. The "moment to determine" the means of treatment» refers to the period of time in which the person responsible ble is deciding how it will carry out the treatment and how it will occur this, as well as the mechanisms that will be used to carry out said treatment. In the process of making such decisions, the controller must assess the appropriate measures and guarantees to effectively apply the principles

rights and rights of the data subjects, and take into account elements

such as the risks, the state of the art and the cost of application, as well as the nature, scope, context and purposes. This includes the time of acquisition and the implementation of software and hardware implementation and data processing services.

36. Taking PDDD into consideration from the beginning is crucial for the correct application of the principles and for the protection of the rights of the interested parties.

In addition, from the point of view of profitability, it is also of interest to those responsible for treatment take PDDD into consideration as soon as possible, since later it may be difficult and costly to make changes to plans already formulated and operational. pre-designed treatment goals”.

To do this, when designing the treatment, you must resort to the principles contained in the article 5 of the GDPR, which will serve to assess effective compliance with the GDPR. Thus, the aforementioned Directives 4/2019 of the CEPD provide that “61. To make the PDDD effective, Those responsible for the treatment must apply the principles of transparency, legality, loyalty, purpose limitation, data minimization, accuracy, term limitation conservation, integrity and confidentiality, and proactive responsibility. These principles are included in article 5 and recital 39 of the GDPR”.

The AEPD Guide to Privacy by Design provides that "Privacy must be form an integral and indissoluble part of the systems, applications, products and services, as well as the business practices and processes of the organization. not a cape additional or module that is added to something pre-existing, but must be integrated

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in the set of non-functional requirements from the moment in which the conceives and designs (...) Privacy is born in the design, before the system is in functioning and must be guaranteed throughout the entire life cycle of the data”.

For this reason, privacy by design, an obligation of the data controller who born before the system is up and running, they are not patches that go away based on a system built with its back to the GDPR.

Linked to the construction of a true culture of data protection in the organization tion, also implies for the sake of proactive responsibility the ability to document monitor all decisions that are adopted with a “privacy design thinking” approach, demonstrating compliance with the GDPR in this regard as well.

Well then, all the facts described and proven in this resolution proposal solution to which we refer, added to the allegations made by the entity BURWEBS, S.L. throughout the procedure, reveal the total absence of privacy by design.

It seems, rather, as if the entity had started to process personal data of the users of its website directly, without stopping to evaluate the treatment cycle. processing of personal data, what personal data will be processed, what it consists of exactly the intended purpose of the processing, together with the assessment of the terms of conservation of personal data in all cases, the transfers of data, the risks present, the adoption of appropriate technical and organizational measures, given to avoid its materialization, how and what has to be supplied as information, the procedure for managing the exercise of rights or the request for consent and its accreditation, among other issues. And all this ignoring the principles collected in article 5 of the GDPR.

XVIII.- Violations

The accredited facts breach the provisions of article 25 of the GDPR, with the

scope expressed in the above Fundamentals of Law, which implies the commission of an offense classified in article 83.4.a) of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be penalized, according to paragraph 2, with administrative fines of maximum EUR 10,000,000.

or, in the case of a company, of an amount equivalent to 2% as maximum of the overall annual total turnover of the preceding financial year prior, opting for the one with the highest amount:

a) the obligations of the person in charge and the person in charge according to articles 8, 11, 25 to 39, 42 and 43".

In this regard, the LOPDGDD, in its article 73, considers as a "serious" offense prescription effects "infractions that involve a substantial violation of the articles mentioned therein and, in particular, the following:

d) The lack of adoption of those technical and organizational measures that result appropriate to effectively apply the principles of data protection

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data from the design, as well as the non-integration of the necessary guarantees in the treatment, in the terms required by article 25 of the Regulation (EU) 2016/679".

XIX.- About the Warning of content for adults and the "Policy of the Protection of the Minor on the Internet".

Opinion 2/2009 of the Working Group of Article 29 on the protection of

personal data of children (General Guidelines and special reference to the schools) tells us that: "A child is a human being in the broadest sense of word. For this reason, you must enjoy all the rights of the person, including the right to the protection of personal data. Now the child is in a particular situation that must be considered from two perspectives: static and dynamic. From the static point of view, the child is a person who has not yet reached physical and psychological maturity. From a dynamic point of view, it He is in a process of physical and mental development that will make him an adult. The rights of the child and their exercise - including the right to data protection - should express themselves with both perspectives in mind.

Thus, the Article 29 Working Group highlights not only the importance of the child for the inherent dignity of the child as "a human being in the broadest sense of the word", but it shows the need for protection of this, also from the Fundamental Right to the Protection of Personal Data, by the situation of inferiority and risk in which he finds himself by not having reached full maturity and being in the process of developing towards adulthood.

Recital 39 of the GDPR highlights that "Children deserve protection specific to your personal data, as they may be less aware of the risks, consequences, guarantees and rights concerning data processing personal. Said specific protection should apply in particular to the use of personal data of children for marketing or profiling purposes personality or user, and to obtain personal data relating to children when using services offered directly to a child".

Regarding the risks, recital 75 of the GDPR exemplifies some of the present in our society, without prejudice to many others who may at the same time materialize, harm the rights and freedoms of natural persons. we will call

the attention in which it includes between the vulnerable people to the children, whose processing of personal data constitutes a risk in itself.

Thus it provides that "The risks to the rights and freedoms of natural persons, of variable severity and probability, may be due to the processing of data that could cause physical, material or immaterial damages, in particular in cases where the processing may give rise to problems of discrimination, identity theft or fraud, financial loss, damage to reputation, loss of confidentiality of data subject to professional secrecy, reversion not of pseudonymization or any other economic or social harm significant; in cases in which the interested parties are deprived of their rights and freedoms or are prevented from exercising control over your personal data; In the cases in which the personal data processed reveal ethnic or racial origin, opinions

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political, religious or philosophical beliefs, union membership, and treatment of genetic data, data relating to health or data on sexual life, or the criminal convictions and offenses or related security measures; in cases where in which personal aspects are evaluated, in particular the analysis or prediction of aspects related to work performance, economic situation, health, preferences or personal interests, reliability or behavior, situation or movements, in order to create or use personal profiles; in cases where personal data of vulnerable people, in particular children, are processed; or in the cases in which the processing involves a large amount of personal data and

affect a large number of stakeholders.

Not only the processing of personal data of a child as a vulnerable person is a risk, but in the case of children, the risks that would affect any group are amplified by their situation of vulnerability, so that the dangers per se are older than if they affect an adult. This implies that, from the point of view of risk, a fundamental pillar of the GDPR, it is necessary to enable technical and organizational security measures to avoid the materialization of very high risk causing an injury to their rights and freedoms, taking into consideration as starting point that we find ourselves with the processing of personal data of children.

Recital 76 supports it by understanding that "The probability and severity of the risk for the rights and freedoms of the data subject must be determined with reference to the nature, scope, context and purposes of data processing. The risk should be weighted on the basis of an objective evaluation through which it is determined whether data processing operations involve a risk or if the risk is high".

The risks to which children are affected and their avoidance are based on the best interests of the child, enshrined in the United Nations Convention on the Rights of the Child (article 3) and subsequently confirmed by Convention 192 of the Council of Europe (article 6) and the Charter of Fundamental Rights of the EU (article 24, N.2).

In Opinion 2/2009 of the Working Group of Article 29 on the protection of children's personal data, it is provided that "The justification for this principle is that a person who has not yet reached physical and psychological maturity needs more protection than other people. Its purpose is to improve the conditions of the child and reinforce the right of the latter to develop his personality".

Such provision is also contained in Spanish law. Thus, we can cite the Law

Organic 1/1996, of January 15, of Legal Protection of Minors, of modification part of the Civil Code and the Civil Procedure Law or Organic Law 8/2021, of June 4, comprehensive protection for children and adolescents against violence.

Article 2 of Organic Law 1/1996 determines that "Every minor has the right to that their best interest is valued and considered paramount in all actions and decisions that concern you, both in the public and private spheres. In the application of this law and other regulations that affect it, as well as in the measures concerning minors adopted by institutions, public or

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private companies, the Courts, or the legislative bodies, the best interests of the themselves over any other legitimate interest that may arise".

The same protection is projected in data protection regarding minors.

It is significant that art. 76.2 of the LOPDGDD considers as criteria of graduation of sanctions the affectation of the rights of minors, which shows that the Spanish legislator, following in the wake of the law legal, refers to a vital importance in its protection, in the relevance and in the sensitivity of minors.

In the case that we are examining, pornography is considered by our legislator as a specific risk with respect to minors. Article 45 of the Law

Orgánica 8/2021 affirms that it is a risk "the access and consumption of pornography among the underage population". Especially in an interconnected world where minors dive into the internet from ever younger ages.

This is understood in Opinion 02/2013 of the Working Group of Article 29 on applications of smart devices, which in relation to children establishes the following: «(...) 3.10 Children. Children are avid users of applications, either on their own devices or on shared devices (with their parents, siblings or in an educational institution), and there is clearly a large market of various applications for them. But, at the same time, the children hardly understand or know, if at all, the scope and sensitivity of the data that applications can access, or the scope of the data shared with third parties for advertising purposes.”

We will also cite the Agreement of the National Markets Commission and the Jurisdiction of June 16, 2022 in relation to the complaint against a pornography video sharing platform for the alleged breach of the obligation to establish age verification mechanisms, in which specifies the early age of access to these platforms, in the middle of the process of development of minors: "It must be taken into account that in the Spanish case, access to pornography on the internet is really worrying since more 50% of Spanish adolescents between the ages of 14 and 17 usually watch regularly pornography on the Internet, that the average age of initiation in the consumption of pornography is 14 years among male adolescents and 16 years in the case of women and that, however, at least one in four men has started before the age of 13 and the earliest age of access is already anticipated at 8 years.

Pursuant to the aforementioned Agreement of the National Markets Commission and the Competition, it describes the characteristics of pornography in internet in relation to the risks to which minors are subjected: “Among the main characteristics of Internet pornography is that the It is easily accessible at any time and from anywhere. The

New technologies and the proliferation of devices for personal use have allowed a practically immediate degree of accessibility to this type of content by minors.

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Another characteristic is that the supply of pornography is affordable, all time that it is perceived as mostly free, although it is undeniable the connection that pornography has with the advertising of services or articles sexual, paid content (live, on request, by catalogue), paid contacts, among others.

Related to the above, you can find various levels of end-user interaction, from minimal anonymous interaction (visualization of videos) to an intense interactivity of a face-to-face relationship face from distance contact, in a new context of access to prostitution (paid contacts), going through modalities of diverse implication.

Another important aspect to highlight is that part of the sexual practices that displays pornography on the internet displays sexual intercourse in a stereotyped, the satisfaction of male sexual desire and the representation of male sexual fantasies. They also include high-risk practices such as unprotected sex or those in which there is physical or verbal violence.

Access by minors to this type of internet pornography

especially concerned with the way in which the minor can come to understand interpersonal relationships and sex.

Indeed, the representation of stereotyped sexual relations, give foot to the sexual objectification of women, the exhibition of characters with predefined physical attributes negatively impacts the self-esteem of the minors (girls feel physically inferior and boys doubt their virility) and the normalization of certain extreme practices alter the perception of those on their acceptability.

The characteristics of Internet pornography described above favor and facilitate that there is a high interest on the part of minors to access pornographic content. In turn, the consequences of such access and mass consumption can have an important influence on the formation of the character of minors, whose protection must prevail”.

As we can see, and being fully applicable to the protection procured by the GDPR, each of the characteristics defined in this Agreement pose a clear risk to the psychological development of minors.

Without prejudice to the obligations that the legal system imposes on parents with respect to minors, under the provisions of art. 154 of the Civil Code in

Regarding watching over them, educating them and providing them with an integral formation, this does not rob the responsible for the treatment compliance with the obligations imposed by the GDPR regarding minors and the risks of these involved in the treatment of personal data that concerns them.

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In this sense, CEPD Guidelines 4/2019 provide for the principle of loyalty that "The data controllers should not transfer the risks of the company to interested parties.

The risks to which minors are affected, inherent to their development, must be considered by data controllers, and not only by those who direct services directly and specifically to children, but by all those who carry out personal data processing aimed at other groups in which the minors can interact or intervene (in an increasingly technological society) and see their physical or psychological integrity at risk and their rights and liberties.

When the service is aimed exclusively at adults, when the responsible for the treatment limits its treatment to adults, with respect to services that may pose a risk to minors, then also their Efforts, derived from their obligations, must be aimed at guaranteeing that only treat data of adults.

The latter is the case in which we find ourselves, in which BURWEBS, S.L. repeatedly asserts in its allegations that the content of the web is directed exclusively to adults and that it is mandatory to be of legal age, despite what established in their privacy policy regarding minors.

When designing a treatment, the data controller determines, among other things questions, what are the categories of data subjects and the categories of data personal concerned in the treatment in relation to the purpose pursued by the same.

The entity decides that the categories of interested parties are limited to those of legal age, Therefore, it is up to you to implement the technical and organizational measures

appropriate so that the treatment is carried out only with respect to interested parties

adults. This means that it also implements the technical measures and

appropriate organizational measures so that the data of minors are not processed.

In the case of the website in question, there is a certain risk that minors will access

directly and without limitations to such harmful content for them.

If we observe the limitations or precautions provided on the website, these are

clearly insufficient to limit access to minors, both directly through

the website (non-registered users) how to register on the website

(registered users).

While there are mechanisms in place to "declare" age, none exist to

verify it subsequently, nor any to verify it ab initio, which would constitute

an appropriate measure to avoid the materialization of high risks in the

rights and freedoms of minors who, as we have seen, are present. Amen

that the treatment conforms to what was decided by the person in charge of the treatment

(mandatory to be of legal age) and only data from the categories

of interested parties "of legal age".

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In addition, the mechanism to declare the age does not work properly, because even

clicking on the option <<No, I want to leave the site>>, if you click on any

another site on the page, the warning banner disappears and access to the

web content

As stated in the facts proven when entering the web for the first time,

a warning banner appears warning that the website

that you are trying to access contains pornographic material and asks for confirmation of

be of age:

“+ 18. WEBSITE FOR ADULTS: “The site you are accessing

contains pornographic material and its access is for adults. To access

at the same time you have to confirm that you meet the legal age of your country to be able to

access this type of content.

“I am of legal age and I accept cookies <<Enter>>”.

<<No, I want to leave the site>>

<<Legal Notice LSSI>>

<<Configure Cookies>>

However, if you choose to leave the site, clicking on the option <<No, I want to

leave the site>>, the web returns the user to the browser that is being used,

but if you click anywhere else on the page, the warning banner will

appears and access to the content of the web is possible.

In addition, Law 13/2022, of July 7, General Communication

Audiovisual, in which article 89 and, as regards what interests us for the purposes

illustrative and in force since July 9, 2022, in relation to the service of

exchange of videos, measures are established for the protection of users and

of minors in front of certain audiovisual content. It is established that “1.

The providers of the video exchange service through the platform, to

protect minors and the general public from audiovisual content

indicated in the previous article, will take the following measures: e) Establish and

operate age verification systems for users with respect to the

content that may harm the physical, mental or moral development of minors

that, in any case, prevent their access to the most

harmful, such as gratuitous violence or pornography” (emphasis added).

And it is that the entity BURWEBS, S.L. provides a video sharing service to through the web page in question, since registered users add and share videos with other users, being forced to establish and operate systems of age verification as a measure to protect minors. And this in the terms of the Agreement of the National Commission of Markets and Competition of 06/16/22.

Well, at this point, the data controller, as part of his proactive responsibility must meet and demonstrate compliance with the provisions of the RGPD and the LOPDGDD, among which are the legitimacy for the processing of personal data and the adoption of appropriate security measures to avoid risks to the rights and freedoms of natural persons.

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Article 24 of the GDPR establishes that:

“taking into account the nature, scope, context and purposes of the treatment, as well as risks of varying probability and severity for rights and freedoms of natural persons, the data controller apply appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the treatment is in accordance with this Regulation.

These measures will be reviewed and updated when necessary.

This precept does not limit the adoption of security measures to the subjects subject to the treatment, but rather, focusing on the risk derived from the treatment considering

the nature, scope, context and purposes of the treatment, imposes the adoption of the precise technical and organizational measures to guarantee that the treatment is compliant with the GDPR.

In attention to all of the above, the entity BURWEBS, S.L. must adapt the treatment of your personal data to the RGPD, so you must adopt measures of appropriate security by verifying the age of users, registered or not, who access the web page in question, guaranteeing that they are adults.

XX.- Measurements

Article 58.2 of the GDPR establishes the corrective powers available to a control authority. Section d) of the aforementioned precept establishes that it may consist in "ordering 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 of time.

Likewise, it is appropriate to impose the corrective measure described in article 58.2.d) of the GDPR and order BURWEBS, S.L. that, within a month, establish the adequate security measures to verify the age of users, guaranteeing that they are of legal age, preventing situations from occurring similar in the future.

The text of the resolution establishes the facts that determine the need to adapt to data protection regulations, from which it can be inferred clearly what are the measures to adopt, notwithstanding that the type of specific procedures, mechanisms or instruments to implement them corresponds to the sanctioned party, since it is the person responsible for the treatment who He fully knows his organization and has to decide, based on the responsibility proactive and risk-focused, how to comply with the GDPR and the LOPDGDD.

In any case, and for informational purposes only, we will indicate that it is mandatory implement age verification mechanisms by the entity BURWEBS, S.L. with respect to the provisions of article 89 of Law 13/2022, of July 7, General of Audiovisual Communication, such measures can also help the treatment carried out is in accordance with the GDPR, which, in any case, will have to be assessed by the responsible for the treatment.

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XXI.- Corrective powers of the AEPD

In the event that there is an infringement of the provisions of the GDPR, among the pos-corrective rights available to the Spanish Data Protection Agency,

As control authority, article 58.2 of said Regulation contemplates:

"2 Each control authority will have all the following corrective powers in-stated below:

(...)

b) Sanction any controller or processor with a warning when

If the processing operations have infringed the provisions of this Regulation, mento;"

(...)

d) order the person in charge or person in charge of the treatment that the processing operations compliance with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this paragraph, according to the circumstances of each particular case;"

According to the provisions of article 83.2 of the GDPR, the measure provided for in letter d) above is compatible with the sanction consisting of an administrative fine.

XXII.- Sanctions

In order to determine the administrative fine to be imposed, the forecasts must be observed.

nes of articles 83.1 and 83.2 of the GDPR, precepts that indicate:

"1. Each control authority will guarantee that the imposition of fines admissible

administrative pursuant to this article for violations of this Regulation.

regulations indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition or substitute for the contemporaneous measures

specified in article 58, section 2, letters a) to h) and j). When deciding the tax

of an administrative fine and its amount in each individual case will be determined

duly note:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question,

as well as the number of interested parties affected and the level of damages.

cios who have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the data controller or processor

to, taking into account the technical or organizational measures that have been applied

under articles 25 and 32;

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e) any prior infringement committed by the controller or processor

I lie;

f) the degree of cooperation with the supervisory authority in order to remedy the

gave to the breach and mitigate the potential adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously filed against the person in charge or in charge in question in relation to

relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms

of certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as the financial benefits obtained or the losses avoided, direct

or indirectly, through the infringement”.

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD provides

ne:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulations

Regulation (UE) 2016/679 will be applied taking into account the graduation criteria

tion established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU)

2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) Linking the activity of the offender with the performance of processing of personal data.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission of the offence.
- e) The existence of a merger process by absorption after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person in charge or person in charge, voluntarily party, to alternative dispute resolution mechanisms, in those positions in which there are controversies between those and any interested party".

In this case, considering the seriousness of the infractions verified, the imposition of a fine and, where appropriate, the adoption of measures.

In accordance with the precepts indicated, for the purpose of setting the amount of the sanctions to be imposed in the present case, it is considered appropriate to graduate the fines from according to the following criteria:

1.- Regarding the infringement of article 5.1.a) of the GDPR typified in article 83.5.a) of the GDPR, classified as very serious for the purposes of prescription in the article

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Article 72.1.a) of the LOPDGDD, the criteria are considered concurrent as aggravating established in art 83.2 GDPR:

- The scope or purpose of the data processing operation, as well as the affected stakeholders, (section a): The lack of loyalty and transparency affect to all the treatments carried out with respect to the users of the page website, whether or not they are registered. Constrains and limits the decision-making capacity of the users, who are thus losing control over their personal data.

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In relation to the number of interested parties affected, it is taken into account all those potentially affected, in accordance with Guidelines 4/2020 of the CEPD on the calculation of administrative fines in accordance with the GDPR, in its version of May 12, 2022, submitted to public consultation.

The intentionality or negligence of the infringement, on the part of the entity, (section b), assuming that it is an entity whose activity appears to be regado a continuous treatment of personal data of the users of the page-na web. It is considered of special importance to remember at this point, the SAN of October 17, 2007 (rec. 63/2006), where it is indicated that: "...the Court The Supreme Court has understood that there is imprudence as long as the of a legal duty of care, that is, when the offender does not behave with the due diligence. And in assessing the degree of diligence, it must weigh- especially the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the appellant's activity is of constant

and abundant handling of personal data must be insisted on the rigor and

the exquisite care to comply with the legal precautions in this regard".

Therefore, if we abide by the jurisprudence of the TS, we could even consider

this section as a qualified aggravating circumstance, when verifying the lack of diligence

should in this case, with regard to the management of personal data.

The categories of personal data affected by the infringement

(section g), since, at least among registered users, it affects data

Personal coughs relating to a person's sexual life or sexual orientation.

The type of videos that are added and shared, those that are viewed

other users (with the possibility to "give it a like") and add them to the mo-

entered in the user's profile, the comments that are expressed in this regard, possibly

reveal these personal data.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the

following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of

personal data, (section b), considering that in the activity that is developed

Rolla on the web involves the personal data of its users.

The affectation of the rights of minors, (section f), since the treatment

procedures carried out affect minors in the terms set out in the

Privacy Policy.

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Considering the exposed factors, the valuation that reaches the fine, for the violation of article 5.1.a) of the GDPR, is 15,000 euros (fifteen thousand euros).

2.- Regarding the infringement of article 5.1.b) of the GDPR typified in article 83.5.a) of the GDPR, and classified as very serious for the purpose of prescription in article 72.1.a) the criteria established in article are considered concurrent as aggravating

83.2 GDPR:

- The scope or purpose of the data processing operation, as well as the affected stakeholders, (section a):

The lack of identification of all the purposes of the treatment, which are inferred from manifestations of the entity, but that are not included explicitly or in the record of processing activities or in the privacy policy, nor is it expose the interested party in all its breadth, constrains and limits the ability to decision of the users, who are thus losing control over their data personal data, as well as the possibility of effectively exercising the rights that conferred by the GDPR.

In relation to the number of interested parties affected, it is taken into account all potentially affected of the five web pages, according to CEPD Guidelines 4/2020 on the calculation of administrative fines in accordance with the GDPR, in its version of May 12, 2022, subject to public consultation.

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The intentionality or negligence of the infringement, on the part of the entity, (section b), assuming that it is an entity whose activity appears to be regado a continuous treatment of personal data of the users of the pages

nas webs. It is considered especially important to remember at this point, the SAN of October 17, 2007 (rec. 63/2006), where it is indicated that: "...the Tri-
The Supreme Court has understood that there is imprudence as long as the
meets a legal duty of care, that is, when the offender does not behave
with the due diligence. And in assessing the degree of diligence, he must put
especially the professionalism or not of the subject, and there is no doubt that
that, in the case now examined, when the appellant's activity is
constant and abundant handling of personal data must be insisted
in the rigor and the exquisite care to adjust to the legal preventions to the
respect". Therefore, if we abide by the jurisprudence of the TS, we could
even consider this section as a qualified aggravating circumstance, when verifying the
lack of diligence should in this case, regarding the management of the data
personal.

The categories of personal data affected by the infringement
(section g), since, at least among registered users, it affects data

Personal coughs relating to a person's sexual life or sexual orientation.

The type of purchases that are made, including the subscription to certain
two sexual videos, show sexual habits and preferences.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the
following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of personal data, (section b), considering that in the activity that is developed rolla in the webs the personal data of the users of this.

The affectation of the rights of minors, (section f), since the treatment procedures carried out affect minors in the terms set out in the Privacy Policy.

Considering the exposed factors, the valuation that reaches the fine, for the violation of article 5.1.b) of the GDPR, is 15,000 euros (fifteen thousand euros).

3.- Regarding the infringement of article 5.1.e) of the GDPR typified in article 83.5.a) of the GDPR, classified as very serious for the purposes of prescription in the article Article 72.1.a) of the LOPDGDD, the criteria are considered concurrent as aggravating established in art 83.2 GDPR:

The scope or purpose of the data processing operation, as well as the affected stakeholders, (section a): The indefinite conservation of all personal data of registered users determines a lack absolute legal certainty and the loss of control over your data personal.

In relation to the number of interested parties affected, it is taken into account all those potentially affected, in accordance with Guidelines 4/2020 of the CEPD on the calculation of administrative fines in accordance with the GDPR, in its version of May 12, 2022, submitted to public consultation.

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The intentionality or negligence of the infringement, on the part of the entity,

(section b), assuming that it is an entity whose activity appears to be regado a continuous treatment of personal data of the users of the page-na web. It is considered of special importance to remember at this point, the SAN of October 17, 2007 (rec. 63/2006), where it is indicated that: "...the Court The Supreme Court has understood that there is imprudence as long as the of a legal duty of care, that is, when the offender does not behave with the due diligence. And in assessing the degree of diligence, it must weigh-especially the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the appellant's activity is of constant and abundant handling of personal data must be insisted on the rigor and the exquisite care to comply with the legal provisions in this regard". By Therefore, if we abide by the jurisprudence of the TS, we could even consider this section as a qualified aggravating circumstance, when verifying the lack of diligence should in this case, with regard to the management of personal data.

The categories of personal data affected by the infringement

(section g), since, at least among registered users, it affects data

Personal coughs relating to a person's sexual life or sexual orientation.

The type of videos that are added and shared, those that are viewed

other users (with the possibility to "give it a like") and add them to the mo-

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in the user's profile, the comments that are poured in this regard put

reveal these personal data.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of personal data, (section b), considering that the activity carried out

The personal data of its users are involved in the web.

The affectation of the rights of minors, (section f), since the treatments carried out affect minors in the terms collected

in the privacy policy, affecting the indefinite conservation of the data personal to them.

Considering the exposed factors, the valuation that reaches the fine, for the violation of article 5.1.e) of the GDPR, is 15,000 euros (fifteen thousand euros).

4.- Regarding the infringement of article 13 of the GDPR, typified in article 83.5.b) of the GDPR and classified as mild for the purposes of the prescription in the article 74.a) of the LOPDGDD, the criteria that establishes art 83.2 GDPR:

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The intentionality or negligence of the infringement, on the part of the entity, (section b), assuming that it is an entity whose activity appears to be

regado a continuous treatment of personal data of the users of the page-

na web. It is considered of special importance to remember at this point, the SAN

of October 17, 2007 (rec. 63/2006), where it is indicated that: "...the Court

The Supreme Court has understood that there is imprudence as long as the

of a legal duty of care, that is, when the offender does not behave with

the due diligence. And in assessing the degree of diligence, it must weigh-

especially the professionalism or not of the subject, and there is no doubt that, in

the case now examined, when the activity of the appellant is of constant

and abundant handling of personal data must be insisted on the rigor and

the exquisite care to comply with the legal precautions in this regard".

Therefore, if we abide by the jurisprudence of the TS, we could even consider

this section as a qualified aggravating circumstance, when verifying the lack of diligence

should in this case, with regard to the management of personal data.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the

following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of

personal data, (section b), considering that the activity carried out

The personal data of its users are involved in the web.

The balance of the circumstances contemplated above allows the fine to be assessed,

for the infringement of the aforementioned article in 3,000 euros (three thousand euros).

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5.- Regarding the infringement of article 12.2 of the GDPR, typified in article

83.5.b) of the GDPR and classified as very serious for the purposes of prescription in the

article 72.1.k) of the LOPDGDD, are considered concurrent as aggravating circumstances

criteria established in article 83.2 GDPR:

-

The intentionality or negligence of the infringement, on the part of the entity,

(section b), assuming that it is an entity whose activity carries out coupled with continuous processing of personal data of users of the Web page. It is considered especially important to remember at this point, the SAN of October 17, 2007 (rec. 63/2006), where it is indicated that: "...the The Supreme Court has understood that there is imprudence whenever disregards a legal duty of care, that is, when the offender does not behave with the required diligence. And in the assessment of the degree of diligence the professionalism or not of the subject must be specially considered, and it is not possible to doubt that, in the case now examined, when the activity of the appellant is of constant and abundant handling of personal data must insist on the rigor and the exquisite care to adjust to the preventions in this regard". Therefore, if we abide by the jurisprudence of the TS, we could even consider this section as a qualified aggravating circumstance, The lack of diligence should be verified in this case, with respect to the management of personal data.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of personal data, (section b), considering that the activity carried out is personal data of its users are involved.

Considering the exposed factors, the valuation that reaches the fine, for the Violation of article 12.2 of the GDPR, is 5,000 euros (five thousand euros).

6.- Regarding the infringement of article 30.1 of the GDPR, typified in article 83.4.a) of the GDPR and classified as mild for the purposes of the prescription in the article 74.l) of the LOPDGDD, the balance of the circumstances considered above

allows to value the fine, for the infraction of the mentioned article in 1,000 euros (one thousand euros).

7. Regarding the infringement of article 8 of the GDPR typified in article 83.4.a)

of the GDPR and classified as serious for the purposes of the prescription in article 73.a) and

b) of the LOPDGDD, the criteria established by the LOPDGDD are considered concurrent as aggravating factors.

establishes article 83.2:

The scope or purpose of the data processing operation, as well as the

affected stakeholders, (section a): In the case of registration as a user in

a web page that offers pornography, and in which identifiable data is shared

names, age, location and in which to share videos of se-

xual, among other issues, the consent to be given by the parents or

guardians of children under 14 years of age for them to register is essential

such. It is unusually serious that no mechanisms are established to so-

request the consent and to prove its obtaining, paying special attention to

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due to the special vulnerability of minors and the situation of exposure

situation that causes their registration as users.

In relation to the number of interested parties affected, it is taken into account

all those potentially affected, in accordance with Guidelines 4/2020 of the

CEPD on the calculation of administrative fines in accordance with the GDPR, in

its version of May 12, 2022, submitted to public consultation.

The intentionality or negligence of the infringement, on the part of the entity, (apparently

Table b), assuming that it is an entity whose activity involves

a continuous treatment of personal data of the users of the web page.

It is considered especially important to remember at this point, the SAN of 17

October 2007 (rec. 63/2006), where it is indicated that: "...the Supreme Court

has been understanding that imprudence exists whenever a duty is neglected

legal care, that is, when the offender does not behave with due diligence

callable. And in assessing the degree of diligence, special consideration must be given to

mind the professionalism or not of the subject, and there is no doubt that, in the case

now examined, when the appellant's activity is constant and abundant

dante handling of personal data must insist on rigor and ex-

I wanted care to comply with the legal provisions in this regard". Therefore,

if we abide by the jurisprudence of the TS, we could even consider this

separated as a qualified aggravating circumstance, when the lack of diligence was verified,

in this case, regarding the management of personal data.

The categories of personal data affected by the infringement

(section g), since, at least among registered users under the age of

age, affects personal data related to sexual life or sexual orientation

of a person. The type of videos that are added and shared, the

that are viewed from other users (with the possibility of "giving it a like") and

add them to those shown in the user's profile, the comments that are poured

Keep in this regard, reveal this personal data.

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It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the

following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of

personal data, (section b), considering that the activity carried out is

the personal data of the users of the website are involved.

Considering the exposed factors, the valuation that reaches the fine, for the

violation of article 8 of the GDPR, is 6,000 euros (six thousand euros).

8.- Regarding the infringement of article 25 of the GDPR, typified in article

83.4.a) of the GDPR and classified as serious for the purposes of the prescription in article

73.d) of the LOPDGDD, the criteria that

establishes article 83.2:

The scope or purpose of the data processing operation, as well as the

interested parties affected, (section a): The processing of personal data

It starts from the design of the treatment. The lack of design on the part of the

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responsible for the treatment affects in an immediate and direct way all

the rights of the interested parties recognized in the GDPR, as in the

present case; and this because instead of responding to the treatment to a logical

internally and to pre-established parameters following the

GDPR, studied and examined based on proactive responsibility and the

risk approach, it turns out that none of the actions of the entity

BURWEBS, S.L. fit together in such a way that they cause confusion and

disagreement among users.

In relation to the number of interested parties affected, it is taken into account

all those potentially affected, in accordance with Guidelines 4/2020 of the

CEPD on the calculation of administrative fines in accordance with the GDPR, in its version of May 12, 2022, submitted to public consultation.

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The intentionality or negligence of the infringement, on the part of the entity, (section b), assuming that it is an entity whose activity appears to be regado a continuous treatment of personal data of the users of the page-na web. It is considered of special importance to remember at this point, the SAN of October 17, 2007 (rec. 63/2006), where it is indicated that: "...the Court

The Supreme Court has understood that there is imprudence as long as the of a legal duty of care, that is, when the offender does not behave with the due diligence. And in assessing the degree of diligence, it must weigh-especially the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the activity of the appellant is of constant and abundant handling of personal data must be insisted on the rigor and the exquisite care to comply with the legal precautions in this regard".

Therefore, if we abide by the jurisprudence of the TS, we could even consider this section as a qualified aggravating circumstance, when verifying the lack of diligence should in this case, with regard to the management of personal data.

The categories of personal data affected by the infringement (section g), since, at least among registered users, it affects data

Personal coughs relating to a person's sexual life or sexual orientation.

The type of videos that are added and shared, those that are viewed other users (with the possibility to "give it a like") and add them to the mo-entered in the user's profile, the comments that are expressed in this regard, possibly reveal these personal data.

It is also considered that it is appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria, established in article 76.2 of the LOPDGDD:

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The linking of the activity of the offender with the performance of treatment of personal data, (section b), considering that in the activity that is developed Rolla on the web involves the personal data of its users.

The affectation of the rights of minors, (section f), since the treatment actions carried out and improperly projected and designed affect less-res of age in the terms collected in the privacy policy.

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Considering the exposed factors, the valuation that reaches the fine, for the violation of article 25 of the GDPR, is 10,000 euros (ten thousand euros).

XXIII.- About the "Cookies Policy" of the web:

a).- Regarding the installation of cookies in the terminal equipment prior to the consent:

Article 22.2 of the LSSI establishes that users must be provided with information clear and complete information on the use of storage devices and data recovery and, in particular, on the purposes of data processing.

This information must be provided in accordance with the provisions of the GDPR. Therefore,

When the use of a cookie entails a treatment that enables the identification of the user, those responsible for the treatment must ensure the compliance with the requirements established by the regulations on the protection of

data.

However, it is necessary to point out that they are exempted from compliance with the obligations established in article 22.2 of the LSSI those necessary cookies for the intercommunication of terminals and the network and those that provide a service expressly requested by the user.

In this sense, the GT29, in its Opinion 4/2012¹⁰, interpreted that among the cookies excepted would be the user input Cookies" (those used to fill in forms, or as management of a shopping cart); cookies from authentication or user identification (session); user security cookies (those used to detect erroneous and repeated attempts to connect to a site Web); media player session cookies; session cookies to balance load; user interface customization cookies and some of complement (plug-in) to exchange social content. These cookies would remain excluded from the scope of application of article 22.2 of the LSSI, and, therefore, it would not be necessary to inform or obtain consent about its use.

On the contrary, it will be necessary to inform and obtain the prior consent of the user before the use of any other type of cookies, both first and second third party, session or persistent.

In the verification carried out on the web page in question, it was possible to verify that, when enter your home page and without performing any type of action on it, you will They use third-party cookies that are not necessary, without the prior consent of the user.

b).- On the cookie information banner existing in the first layer (page major):

The first layer cookie banner should include information regarding the identification of the editor responsible for the website, in the event that their data identifies captives do not appear in other sections of the page or that their identity cannot be revealed.

clearly catch on to the site itself. You must also include an ID

description of the purposes of the cookies that will be used and if they are their own or

also from third parties, without it being necessary to identify them in this first layer. Ade-

plus, you will need to include generic information about the type of data to be collected

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and use in the event that user profiles are created and must include information

tion and the way in which the user can accept, configure and reject the use of

cookies, with the warning, where appropriate, that if a certain action is performed,

it will be understood that the user accepts the use of cookies.

Apart from the generic information about cookies, in this banner there must be an en-

clearly visible lace directed to a second informative layer on the use of the

cookies. This same link can be used to lead the user to the config panel.

configuration of cookies, as long as access to the configuration panel is direct, this

is, that the user does not have to navigate within the second layer to locate it.

In the case at hand, it has been found that there is no type of banner

that informs in a generic way about cookies that the web page uses, without being its own

and/or third parties and their mission.

c).- Regarding consent to the use of non-necessary cookies:

For the use of non-excepted cookies, it will be necessary to obtain the consent

user's consent expressly. This consent can be obtained by doing

clicking on, "accept" or inferring it from an unambiguous action carried out by the user that

denotes that consent has been unequivocally produced. Therefore, the mere

inactivity of the user, scrolling or browsing the website, will not be considered to be all effects, a clear affirmative action in any circumstances and will not imply the provision of consent itself. Similarly, access to the second layer if the information is presented in layers, as well as the necessary navigation to for the user to manage their preferences in relation to cookies in the control panel control, it is not considered an active behavior from which the cookie acceptance.

The existence of "Walls of Cookies" is not allowed either, that is, windows Pop-ups that block content and access to the web, forcing the user to accept the use of cookies to be able to access the page and continue browsing without offer the user any type of alternative that allows them to freely manage their preferences on the use of cookies.

If the option is to go to a second layer or cookie control panel, the link it should take the user directly to said settings panel. To facilitate the lesson, the panel can be implemented, in addition to a granular management system of cookies, two more buttons, one to accept all cookies and another to reject the all. If the user saves his choice without having selected any cookie, it will be

You will understand that you have rejected all cookies. Regarding this second possibility, In no case are pre-marked boxes admissible in favor of accepting cookies.

If for the configuration of cookies, the web refers to the browser configuration installed in the terminal equipment, this option could be considered complementary to obtain consent, but not as the only mechanism. Therefore, if the editor opts for this option, it must also offer and in any case, a mechanism that allows you to reject the use of cookies and/or do it in a granular way.

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On the other hand, the withdrawal of the consent previously given by the user de-

It should be able to be done at any time. To this end, the publisher must offer a

mechanism that makes it possible to easily withdraw consent at any time

to. This facility will be considered to exist, for example, when the user has access to

It is simple and permanent to the cookie management or configuration system.

If the editor's cookie management or configuration system does not allow avoiding the

use of third-party cookies once accepted by the user, will be facilitated in-

training on the tools provided by the browser and third parties, de-

Please note that if the user accepts third-party cookies and subsequently wishes to

delete them, you must do so from your own browser or the system enabled by the

third parties for it.

In the present case, it has been possible to verify that there is no mechanism that

makes it possible to reject cookies that are not technical or necessary at once and the

The way to manage the use of cookies is through the control panel. No

However, if the control panel is accessed, it is verified how the cookies that are

indicate (acc4; coocfg; pucam ; scrm; user; favs; avscoo), are premarked on the

"accepted" option, not coinciding with the third-party cookies detected when

enter the web (_ga ; _gid e gat_gtag_UA_2407138_5).

Within the control panel, if you choose to disable all cookies that are

indicated by moving the cursor from the "ON" position to the "OFF" position, with the

objective of not allowing the use of cookies that are not technical, it is verified

as the option to "Save the configuration" disappears, making it impossible to reject

the cookies.

The only way to keep the "save settings" option from disappearing is by enabling a cookie, but even in this case if a cookie is left enabled and the others are rejected, it is verified that the "Save Configuration" option is disabled, but it is found that this option does not work.

d).- Regarding the information provided in the second layer (Cookies Policy):

The Cookies Policy should provide more detailed information about the characteristics of cookies, including information about the definition and general function cookie code (what are cookies); about the type of cookies that are used and its purpose (what types of cookies are used on the website); the identification of who uses cookies, that is, if the information obtained by cookies is processed only by the publisher and/or also by third parties with identification of the latter; the period of conservation of cookies in the terminal equipment; and if so, information on data transfers to third countries and the elaboration of profiles that imply Apply automated decision making.

In the case at hand, the information on cookies provided in the second layer of the web, it has been detected that the identification of the cookies that are used, if they are their own or from third parties, nor the time that they are will be active in the terminal equipment.

XXIV.- Violation of the "Cookies Policy".

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The deficiencies detected in the "Cookies Policy" of the web page in question, suppose on the part of the entity BURWEBS S.L., the commission of the infringement of the art-

Article 22.2 of the LSSI, since it establishes that:

“Service providers may use storage devices and recovery of data in terminal equipment of recipients, provided that they have given their consent after they have been provided clear and complete information on its use, in particular on the purposes of data processing, in accordance with the provisions of the Ley Organica 15/1999, of December 13, protection of personal data nal.

When technically possible and effective, the recipient's consent to accept the processing of the data may be facilitated through the use of the appropriate parameters of the browser or other applications.

The foregoing will not prevent the possible storage or access of a technical nature for the sole purpose of transmitting a communication over a communication network. electronic communications or, to the extent strictly necessary, for the provision of an information society service expressly requested by the addressee”.

This infraction is typified as "mild" in article 38.4 g), of the aforementioned Law, which considered as such: "Use data storage and recovery devices when the information has not been provided or the consent of the destination has been obtained. notary of the service in the terms required by article 22.2.", and may be penalized nothing with a fine of up to €30,000, in accordance with article 39 of the aforementioned LSSI. XXV.- Penalty regarding the "Cookies Policy".

Regarding the infringement of article 22.2 of the LSSI, classified as "minor" in the Article 38.4 g), of the aforementioned Law, it is deemed appropriate to impose a penalty of 5,000 euros, (five thousand euros), for irregularities detected on the web page ***URL.1.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited, the Director of the

Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the infringement of article 5.1.a) of the GDPR, typified in article 83.5.a) of the GDPR, classified as very serious for the purposes of the prescription in the article 72.1.a) of the LOPDGDD, a penalty of 15,000 euros (fifteen thousand euros).

SECOND: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the violation of article 5.1.b) of the GDPR, typified in article 83.5.a) of the GDPR, classified as very serious for the purposes of the prescription in article 72.1.a) of the LOPDGDD, a penalty of 15,000 euros (fifteen thousand euros).

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THIRD: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the violation of article 5.1.e) of the GDPR, typified in article 83.5.a) of the GDPR, classified as very serious for the purposes of the prescription in article 72.1.a) of the LOPDGDD, with a penalty of 15,000 euros (fifteen thousand euros).

FOURTH: IMPOSE the entity BURWEBS S.L., owner of the website ***URL.1, for the violation of article 13 of the GDPR, typified in article 83.5.b) of the GDPR and classified as mild for the purposes of the prescription in article 74.a) of the LOPDGDD, a penalty of 3,000 euros (three thousand euros).

FIFTH: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the infringement of article 12.2 of the GDPR, typified in article 83.5.b) of the GDPR

and qualified as very serious for the purposes of the prescription in article 72.1.k) of the LOPDGDD, a penalty of 5,000 euros (five thousand euros).

SIXTH: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the infringement of article 30.1 of the GDPR, typified in article 83.4.a) of the GDPR and qualified as mild for the purposes of the prescription in article 74.l) of the LOPDGDD, one with a penalty of 1,000 euros (one thousand euros).

SEVENTH: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the infringement of article 8 of the GDPR, typified in article 83.4.a) of the GDPR and qualified as serious for the purposes of the prescription in article 73. a) and b) of the LOPDGDD, one with a penalty of 6,000 euros (six thousand euros).

EIGHTH: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the infringement of article 25 of the GDPR, typified in article 83.4.a) of the GDPR and qualified as serious for the purposes of the prescription in article 73.d) of the LOPDGDD, one with a penalty of 10,000 euros (ten thousand euros).

NINTH: IMPOSE the entity, BURWEBS S.L., owner of the website ***URL.1, for the violation of article Violation of article 22.2 of the LSSI, a sanction of 5,000 euros (five thousand euros).

TENTH: ORDER the entity BURWEBS, S.L. that implants, within a period of month, the necessary corrective measures to adapt its performance to the regulations of protection of personal data, as well as to inform this Agency in the same deadline for the measures taken.

ELEVENTH: NOTIFY this resolution to the entity BURWEBS S.L., with CIF.: B09414913

TWELFTH: Warn the penalized party that the sanction imposed must be made effective once this resolution is enforceable, in accordance with the provisions in article 98.1.b) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, within the voluntary payment term indicated in article 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 17 December, by depositing it in the restricted account number ES00 0000 0000 0000 0000

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0000, opened in the name of the Spanish Data Protection Agency in the entity bank CAIXABANK, S.A. or otherwise, it will proceed to its collection in executive period.

Once the notification has been received and once executed, if the execution date is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment term It will be until the 5th of the second following or immediately following business month.

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process (article 48.6 of the LOPDGDD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, interested parties may optionally file

appeal for reversal by the Director of the Spanish Agency for Data Protection in within one month from the day following the notification of this resolution

or directly contentious-administrative appeal before the Contentious-

of the National Court, in accordance with the provisions of article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, of the Contentious-Administrative Jurisdiction, within a period of two months from count from the day following the notification of this act, as provided in the Article 46.1 of the aforementioned legal text.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public, the firm resolution may be temporarily suspended in administrative proceedings if The interested party declares his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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