

Procedure No.: PS/00321/2020

□ RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 04/06/2020 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against CONSORCIO LÓPEZ DE AYALA with NIF V06206379 (hereinafter, the  
reclaimed). The reasons on which the claim is based are in summary: that the  
04/06/2020, at 13:45 received an email from the Administration of the  
López de Ayala Theater Consortium, in which it is informed that by the current Decree by  
which is in force the State of Alarm declared in the country, proceeded to the  
cancellation of an event for which he had purchased seats. The mail is  
sent to a plurality of affected whose electronic addresses, as well as the  
mine, appear visible for having avoided the use of the CCO when carrying out the  
electronic communication and unprotected the privacy to which I am entitled,  
since personally, I don't want my email address to be  
consulted, used or disseminated by third parties to whom I have not provided it in  
first person.

SECOND: Upon receipt of the claim, the Subdirector General for  
Data Inspection proceeded to carry out the following actions:

On 06/03/2020, the claim submitted was transferred to the defendant for analysis  
and communication to the affected party of the decision adopted in this regard. Likewise, it  
required so that within a month it would send to the Agency determined  
information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

After the indicated period, the respondent has not responded to the request.  
done.

THIRD: On 09/17/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

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2/8

FOURTH: On 10/23/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringements of articles 5.1.f) and 32.1 of the RGPD, sanctioned in accordance with the provided in articles 83.5.a) and 83.4.a) of the aforementioned RGPD.

FIFTH: Once the initiation agreement was notified, the claimant on 11/04/2020 submitted brief of allegations stating in summary the following: that on 04/14/2020 he received email of the claimant indicating that the email sent on 04/06/2020 was made to a plurality of clients without making use of blind copies; that was answered

to the claimant that same day requesting an apology, indicating that everything was due to a punctual error; that the respondent has not been aware of the requirement of information referred to by the AEPD in its start-up agreement; the letter sent is provided to the claimant about the decision adopted regarding the transfer of the claim, and accreditation that the claimant has received the same and decisions adopted to prevent similar incidents from occurring.

SIXTH: On 11/10/2020, a period of practice tests began, remembering the following

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services that are part of file E/03747/2020.
- Consider reproduced for evidentiary purposes, the allegations to the agreement of beginning PS/00321/2020 presented by the claimed party and the documentation that they accompany.

SEVENTH: On 11/19/2020, a Resolution Proposal was issued in the sense that by the Director, the person claimed for infraction of articles 5.1.f) and 32.1 will be sanctioned of the RGPD, typified in articles 83.5.a) and 83.4.a) of the RGPD, with a warning.

After the term legally indicated at the time of this Resolution, the Respondent had not submitted a pleadings brief.

EIGHTH: Of the actions carried out in this proceeding, they have been accredited the following:

#### PROVEN FACTS

FIRST: On 04/06/2020, the claimant submitted a letter to the Spanish Agency for Data Protection, noting that on 04/06/2020 he received an email from the claimed in which he is informed that due to the Decree by which he is In force the State of Alarm declared in the country, proceeded to the cancellation of a

event for which he had purchased some seats; that the e-mail sent is sent to a plurality of affected parties whose electronic addresses, like yours, appear visible for having avoided the use of the hidden copy when making the electronic communication.

SECOND: A screenshot of the email in question is provided, sent from the address \*\*\*EMAIL.1, on Monday 04/06/2020, at 1:45 p.m., without a copy hidden, to a plurality of email addresses among which is the address owned by the claimant, for the reason stated in the proven fact first.

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3/8

## FOUNDATIONS OF LAW

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

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II

In the first place, article 5 of the RGPD establishes the principles that must be govern the processing of personal data and mentions among them that of "integrity and confidentiality".

The cited article states that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized processing or against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")".

(...)

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

III

Second, article 32 of the RGPD "Security of treatment", establishes that:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

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4/8

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore availability and access to data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to taking into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the controller or the manager and has access to personal data can only process said data

following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States”.

#### IV

The facts proven in the procedure show the disclosure of the email addresses when an email is sent to the claimant without hidden copy with violation of the technical and organizational measures and violating the confidentiality of the data.

In the present case, the defendant is charged with the infraction of article 5.1.f) and 32.1 of the RGPD, typified in articles 83.5.a) and 83.4.a) of the RGPD.

As has been credited through the screenshot of the email email provided by the claimant sent from the address \*\*\*EMAIL.1, on Monday 04/06/2020 at 13:45, without blind copy, to a plurality of email addresses among which is the address owned by the claimant and through the which it was reported that due to the Decree by which the State of Alarm declared in the country, an event was canceled for which he had acquired some locations, supposes the violation of the regulations regarding the protection of personal data.

However, in order to clarify the terms of the claim presented and that has led to the opening of this sanctioning procedure, the claimed by letter of 11/04/2020 has not only provided information on the incidence produced indicating that on 04/14/2020 they received an email sent by the claimant indicating that the email sent by the administration of the claimed to a plurality of clients had been carried out without activate the blind copy which had allowed the addresses to be displayed [www.aepd.es](http://www.aepd.es)

mail of those affected; that the same day the respondent proceeded to answer the mail received from the claimant requesting her apologies and indicating that everything was had been due to a punctual, extraneous and exceptional error in the way of proceeding of the entity. It also attached a copy of the communication addressed to the claimant at Despite the fact that no request had been received from the AEPD in this regard, the causes that had motivated the incidence produced.

At the same time and in order to prevent similar incidents from occurring, the Users will send the recipient to the corporate email of the claimant and in a copy hides the final recipients, when there are two or more recipients.

making sure before sending your correct annotation.

That all the workers of all the departments of the claimed have received prior to the claim and after it, training to the respect to prevent events like the one that occurred.

That prior to the date of the claim, the respondent has implemented in your organization appropriate procedures for action in the collection and processing of personal data, the incident being a consequence of punctual and involuntary error in the operation of said procedures.

That he has not committed any infraction on this matter neither before nor after at the date of the claim.

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The violation of article 5.1.f) of the RGPD is typified in article 85.5.a) of the aforementioned Regulation.

Article 83.5 a) considers that the infringement of “the basic principles for the



treatment, including the conditions for consent under articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article 83 of the cited RGPD, "with administrative fines of €20,000,000 maximum or, in the case of of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount".

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates that:

"Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

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

(...)"

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6/8

The violation of article 32 of the RGPD is typified in the article 83.4.a) of the RGPD in the following terms:

"4. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43.

(...)"

For its part, the LOPDGDD in its article 71, Violations, states that:

"The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

And in its article 73, for the purposes of prescription, it qualifies as "Infringements considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679

are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

g) The violation, as a consequence of the lack of due diligence, of the technical and organizational measures that have been implemented in accordance to what is required by article 32.1 of Regulation (EU) 2016/679".

(...)"

However, article 58.2 of the REPD provides the following:

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"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)"

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2.b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations.

In the case that concerns us, as indicated previously, it has been accredited the disclosure of email addresses when referred to the

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7/8

claimant an email without a blind copy with violation of the measures security and violating the confidentiality of the data.

In accordance with the evidence available to said conduct constitutes by the claimed the violation of the provisions of articles 5.1.f) and 32.1 of the GDPR.

However, the respondent has indicated that although he had implemented measures prior to the claimed incidence and that everything had gone to a punctual and involuntary error, in order to avoid similar incidents have been adopted measures so that the emails destined for the final recipients are sent by means of a hidden copy, making sure before sending that they are correct annotation and execution; that the workers, although they had received training in matter of data protection prior to the claim, subsequently

has reinforced them to prevent events such as the one that occurred, so in the

In this case, it is not appropriate to urge the adoption of additional measures.

In addition, it must also be taken into account that there is no recidivism, for

not record the commission, within a year of more than one infraction of the same

nature.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CONSORCIO LÓPEZ DE AYALA, with NIF V06206379, for

an infringement of article 32 of the RGPD, typified in article 83.4.a) of the RGPD,

a warning sanction.

SECOND: IMPOSE CONSORCIO LÓPEZ DE AYALA, with NIF V06206379, for

an infringement of article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD,

a warning sanction.

THIRD: NOTIFY this resolution to CONSORCIO LÓPEZ DE AYALA.

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

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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8/8

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of  
through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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