

□ Procedure No.: PS/00464/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00464/2019, instructed by the Spanish Agency for Data Protection, to the entity YOUPLANET PICTURES, S.L. with CIF: B67120550, (hereinafter, "the entity claimed"), in view of the complaint filed by Ms. A.A.A., (in hereinafter, "the claimant"), and based on the following,

BACKGROUND

FIRST: On 10/14/18 and 10/15/18, you entered this Agency in writing, pre-seated by the claimant, in which she stated, among others, the following:

"The last festival of ***LOCALIDAD.1 a screening of "Sandwich" was held by production company You Planet, for which many people had bought tickets.

das, The description of the projection in the ticket sales was: Synopsis "Fa un parell d'anys, l'Ismael will decide fer-se vegetarià. Arrel d'això, most of the situations everyday, eating outside the house, is going to turn into extremely complicated fets.

cats. One good day qualsevol, looking for a bar to have lunch a entrepà apt for him, començarà a great adventure full of drama, romances, comedy and action".

In no case in the purchase of tickets is there a reference to the recording of images in the room. At the entrance they put up a sign, which safely and knowingly no one read the dynamics of the festival, because when you enter the films you have to run to get a seat and it is not possible to read signs. At no time at the beginning of

The projection was informed to the public that it was going to be recorded, nor was it offered to the attendees.

You get a refund of the price of their tickets if they didn't want to be recorded.

There was no express consent of the attendees for the recording, but

further, it was an experiment that consisted of angering the attendees to

then record their reactions and make a movie with them, to enrich

lie of the producer itself.

In addition to the tease, none of the attendees signed authorizing the use of their images and more after causing them a clear anger, which threatens the Right to self-image.

A misunderstood art cannot be an excuse to violate personal rights.

them of people, but this company blatantly ignores data protection

not only at the Retiro cinema in Sitges, but also on its website, where in no

In some cases, it informs what uses will be given to the data collected from the form on the page.

on the web, nor do they inform of the exercise of rights, they do not even have a legal notice

in which the required data is provided according to the LSSI ***URL.1

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the investigative powers

tion granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (GDPR). Thus, with dates 11/12/18, 11/23/18 and 09/26/19, it is addressed requiring

informative information to the claimed entity, (YOUPLANET PICTURES, S.L).

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THIRD: According to a certificate from the Electronic Notifications Service and Address

Electronic Enabled, the request sent to the claimed entity, dated

11/12/18, through the Notific@ service, was rejected, dated 11/23/18.

According to a certificate from the State Post Office, the notification sent to the company

claim, dated 11/23/18, through the SICER service, to the address: c/ Bal-month 243, attic; 08006 Barcelona. was returned to origin by, "unknown", with fecha 04/12/18.

According to a certificate from the State Post Office, the notification sent to the company claim, dated 09/26/19, through the SICER service, to the address: Paseo of Grace 26, pta. 4; 08007 Barcelona, was delivered, dated 10/01/19.

FOURTH: On 10/10/19, the entity claimed, (YOUPLANET PICTURES, S.L), directs a written response to the request made by this Agency, in which indicates, among others, the following:

“The recording made at the ***LOCALIDAD.1 Festival is provided as it has been incorporated into the documentary "Vosotros sons mipelícula" [for clarification purposes, note that “Bocadillo” was the film that was screened at the ***LOCALIDAD.1 Festival and “You are my film” is the documentary that was shot during said screening”] and that is attached to this document as Doc1, this being the only conserved on that day.

2. Regarding the method of obtaining consent for personal data processing of the participants, as well as, in the case of minors, of the method of proof that the companions were their parents or legal guardians, during the filming of the documentary "You are my movie", it is necessary to explain simultaneously mind the special circumstances surrounding the shoot:

(Yo)

(iii)

(iii)

The film “Bocadillo” (hereinafter, the “Film”) that was screened at the ***LOCALIDAD.1 Festival on October 12, 2018 is a

“fake movie” starring the Youtuber known as

“Wismichu”, in which the same scene was shown for more than an hour.

loop dinner with slight modifications.

The purpose of the film was to document the reaction of the audience

during its viewing, to later show it in the documentary “Vo-

you are my film” (hereinafter, the “Documentary”), which, among other things,

aspects, analyzes the impact of fame on the public and the media

communication, highlighting the erosion of truth in the digital age.

such.

Although the nature of the Documentary prevented expressly reporting

He knows why the public attending the screening of the Film was going to be recorded

during its viewing, otherwise the purpose of the

Documentary, an attempt was made to include the recording notice in the entry, but for

the mechanics of the festival itself proved impossible. For this reason it was chosen

for placing the poster that is attached to us with the Requirement, this being

poster a common practice in the audiovisual sector to warn the public

assistant that a recording is going to take place in the room in order to prevent

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(iii)

(v)

(saw)

those who do not wish to appear, refrain from entering the

same.

Notwithstanding the foregoing, the recording team had instructions to take

wide shots of the room, do not record as much as possible unless

of age and to obtain in situ the written consent of all those

people who had a prominent presence in the recording

(medium/close-ups where they were recognizable). are accompanied

by way of example, some of the authorizations obtained as Documents

ment n°2, this being the model usually used by Youplanet in

their productions, this serving as evidence of its use in this case.

After the recording, during the editing process of the Documentary

mental health, those people who had not signed the authorization were located.

tion on the day of the screening and its signature was obtained [It is necessary

point out that a large part of the audience were Youplanet contacts, or

relatives and guests of the team, which facilitated the location a posteriori].

As an additional measure, those persons were not included in the final edition.

persons who did not sign the consent, and those whose presence was

inevitable, his image was blurred so that he could not

They may be identifiable on the recording.

As for minors, although there were few minors under 14

years that they attended and despite the fact that the Organic Law 1/1982, of 5

May, Civil Protection of the Right to Honour, Privacy and Own

Image, establishes that "the consent of minors and those incapable of

should present themselves if their conditions of maturity allow it.

have, in accordance with civil legislation", in relation to article 162.1°

of the Civil Code, for the sake of a peaceful exploitation of the Documentary, the

production team chose to ask for the consent of parents or guardians.

res of those people who appeared to be under 18 years of age. For

This was asked directly to the minors' companions and it was obtained his signature, whose authorizations, by way of example, were accompanied as Document No. 3, this being the model with minors used to usually by Youplanet in its productions, serving as evidence evidence of its use in this case.

(viii)

Youplanet obtains in all its audiovisual productions the consent written training of the participants through models similar to those we accompany

FIFTH: In view of the reported facts, the documentation provided by the parties and in accordance with the evidence available, the Data Inspection of this Spanish Agency for Data Protection considered that the performance of the entity claimed did not meet the conditions imposed by the regulations in force, therefore that the opening of a sanctioning procedure proceeds. Thus, on 09/01/20, the Director of the Spanish Agency for Data Protection agreed to initiate a procedure sanctioning the claimed entity (YOUPLANET PICTURES, S.L), for infraction of the article 13 of the RGPD, argued in it that:

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“In the present case, two situations are reported. In the first, it is claimed that the entity claimed did not warn those attending the screening of the film that they were going to be taxed by the company and by another it is denounced that on the page website of its ownership (**URL.1), there is no information on the treatment of the data

personal data that they collect in it.

Regarding the first part of the complaint, it has been verified that, in the poster announcing located at the door of the projection room provided by the claimant- you can read:

“IN THIS SPACE SHOOTING AND RECORDING OF THE DO-CU-
MENTAL “EL BOCADILLO” (“THE DOCUMENTARY”) [...] IN WHICH THEY WILL BE RECORDED
IMAGES OF THE PUBLIC THAT IS IN THIS SPACE. WITH YOUR IN-
TRADA IN THIS SPACE AUTHORIZES THE RECORDING OF ITS IMAGE AND VOICE
DURING HIS PARTICIPATION IN THE SHOOTING AND RECORDING OF THE DOCUMENTARY,
TRANSFERRING PERSONALLY AND FREE OF CHARGE YOUR IMAGE RIGHTS TO THE
PRODUCER FOR THE CORRECT USE AND EXPLOITATION OF THE REFERRED
RECORDING IN THE PROGRAM, WITHOUT TEMPORARY OR TERRITORIAL LIMIT AL-
GUNO, WITH THE AUTHORITY TO ASSIGN TO THIRD PARTIES AND FOR ITS EXPLOITATION IN
ANY FORMAT. SUPPORT AND/OR MEDIUM IN WHICH THE
EXPLOITATION OF THE DOCUMENTARY REVOCATION OF THIS AUTHORIZATION
IT WOULD CAUSE SERIOUS HARM TO THE PRDDUC-TDRA, SO IT IS
PLEASE REFRAIN FROM ENTERING INSIDE THIS SPACE IF YOU DO NOT
YOU WANT YOUR IMAGE TO BE CAPTURED. REPRODUCED AND EXHIBITED IN THE DO-
CUMENTAL.
REMEMBER THAT YOU CAN EXERCISE YOUR RIGHTS AT ANY TIME
ACCESS, RECTIFICATION, DELETION AND OPPOSITION OF YOUR PERSONAL DATA
NALES ADDRESSING THE MANAGEMENT FREE OF CHARGE AND IN WRITING
OF THE PRODUCTION COMPANY AT THE FOLLOWING ADDRESS YOUPLANET PICTURES C/
PASEO DE GRACIA 26, 4th FLOOR 08007 BARCELONA”

Request for information made to YOUPLANET, it is stating, among other non-relevant aspects, that although the nature of the Documentary prevented informa-

state in an express way why the audience attending the screening was going to be recorded of the Film during its viewing, otherwise the purpose of the film would be distorted.

Documentary, it was decided to place the poster, referred to in the complaint, on the front door trada, this sign being a common practice in the audiovisual sector to warn the attending public that a recording is going to take place in the room in order to prevent those who do not wish to appear refrain from entering it.

They add that the recording team had instructions to obtain consent on the spot. written statements of those people who had a prominent presence in the recording (media or close-ups in which they were recognizable).

Regarding the consent of parents or legal guardians of minors for the treatment improvement of its image, YOUPLANET alleges that the production team chose to ask the consent of the parents or guardians of those persons who appeared to be under 18 years old. To do this, the companions of the minors and their signature was obtained. The recording provided confirms the presence of

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which could be minor, but there is no sufficiently reasonable assessment to Make sure they are under 14 years old. It is also observed that some faces have been blurred. From all this, it follows that there is no violation tion to current legislation.

However, regarding the second part of the complaint, in relation to the website property of the claimed entity (YOUPLANET PICTURES, S.L):, ***URL.1, is notes, as of 01/09/20, that there is no information on the "Privacy Policy",

when collecting personal data, through a form, existing in the "contact" link.

to", (name; e-mail and telephone), without obtaining consent for post-processing.

interior of the same and without there being a document that collects the privacy policy

of the company".

SIXTH: Once the initiation agreement has been notified, the person claimed, by means of a letter of faith

on 01/20/20, made, in summary, the following allegations:

"The Administration has caused an error by initiating a sanctioning procedure against the

entity YOUPLANET PICTURES, S.L. for the infringement of article 13) of the RGPD,

since said entity is not the owner of the website ***URL.1 and, consequently,

cia, is not responsible for the processing of personal data collected in di-

cha website, and for which reason it cannot be held responsible for the described infringement.

If we look at the legal texts that appear on the website www.youpla-

net.es (page that has given rise to this sanctioning procedure), appears

as the owner thereof, the entity YOUPLANET, S.L. and not YOUPLANET PICTURES,

S.L., which perhaps due to similarity in their denominations, has led to causing error to the

Management. In proof of the foregoing, they are attached as DOCUMENT 1 captur-

Screenshot of the aforementioned legal texts.

For clarification purposes we must point out that in the "Pictures" section of said page

website a description of the activities of "Youplanet Pictures" is made, with the sole

in order to report the existence of this film distributor, which is part of the

group of which YOUPLANET, S.L. is a part. This fact cannot incur responsibility.

ity on the web to YOUPLANET PICTURES, S.L. since, as I have already

As indicated, it is an entity independent of YOUPLANET, S.L. In the AC-

reality, YOUPLANET PICTURES, S.L. does not have a website.

However, the company YOUPLANET PICTURES, S.L. has communicated with the

of the web page, so that it can correct the breaches to which it refers.

the Administration.

If the company YOUPLANET PICTURES, S.L. has not committed any offense and, therefore,

Therefore, he lacks responsibility for the commission of the alleged acts, it is evident

that there is no passive standing, so the agreement to initiate the procedure

to sanction YOUPLANET PICTURES, S.L. becomes null, as

provided in article 47 of Law 39/2015, of October 1, of the Ad-

Common Administrative Law of Public Administrations, and consequently, it is appropriate to

declare the nullity of the sanctioning file.

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Based on the foregoing, it is agreed to nullify the sanctioning procedure initiated against the

company YOUPLANET PICTURES, S.L., leaving it without effect, as well as the file of the

present performances”.

SEVENTH: On 04/01/20, it is verified by this Agency that, in the

web “privacy policy” page: ***URL.2 the following information exists:

"1. Responsible for the treatment:

Identity: YOUPLANET, S.L. – NIF: B-95815783

Postal Address: Paseo de Gracia, 26, 4 2ª – 08007 Barcelona

Phone: ***PHONE.1

E-mail: ***EMAIL.1

2. For what purpose do we process your personal data?

At YOUPLANET we process the personal data and information provided to us by the

users in order to manage their queries and requests when they have authorized it.

users. So:

The data you provide us in the "Contact" section will be used solely and exclusively-
mind in order to manage the query or request that you pose us.

The data you provide us in the section "Become part of Youplanet Network:
START NOW" will be treated solely to manage the request and your possible
incorporation to our Network service.

3. How long will we keep your data?

The personal data you provide us will be kept for one year or as long as necessary.
necessary for the processing and response of the query or request, if a
top time.

4. What is the legitimacy for the treatment of your data?

The legal basis for the treatment of the personal data that you provide us for the fi-
nes described is your consent.

5. To which recipients will your data be communicated?

The data will not be communicated or transferred to third parties, except (i) to other companies in the
group to which YOUPLANET belongs if this is necessary for the purposes
critas, (ii) that there is a legal obligation.

6. What are your rights when you provide us with your data?

Anyone has the right to obtain confirmation about the treatment of their
personal data that is held by YOUPLANET.

You can exercise your rights of access, rectification, deletion and portability of
your data, of limitation and opposition to its treatment, as well as not to be subject to

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decisions based solely on the automated processing of your data, when proceed, before YOUPLANET, at the postal or email address described in the first section, providing in both cases National Identity Document or equivalent that proves your identity.

In any case, you have the right to file a claim with the Spanish Agency of Data Protection (<https://www.agpd.es/>), especially when you have not obtained nest satisfaction in the exercise of your rights.

7. Modification of the Privacy Policy:

YOUPLANET reserves the right to modify, update or revise this Privacy Policy.

Privacy due to changes in the Website or in the applicable regulations.

We will inform you of any changes that occur in it so that you can return to give your consent. In case you do not give your consent, the data personal information will be deleted (or blocked, where appropriate) and it cannot be guaranteed fulfillment of the purpose for which they were provided.

8. Third Party Links and Services.

This Website may contain links to third-party websites, whose privacy policies emptiness are foreign to YOUPLANET.

Therefore, we recommend that you read the privacy policies of these websites. of third parties before browsing them and providing them with your data.

YOUPLANET is not responsible for the acts or actions of said third parties with relation to the use of your personal data or for any other reason.

EIGHTH: On 06/23/20, and once the existence of "privacy policy" vacidad" on the website ***URL.1, and whose owner is the entity YOUPLANET, S.L., CIF: B-95815783 and not the entity YOUPLANET PICTURES, S.L. CIF: B67120550 denounced, the proposed resolution was notified with the proposal that, by the Director

of the Spanish Agency for Data Protection proceeded to the FILE of the presentation

sanctioning procedure as there is no violation of the provisions of the RGPD.

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

documentation presented by the parties, the following have been accredited:

PROVEN FACTS

1º.- On 08/15/18, the claimant denounced the entity, YOUPLANET PICTURES, S.L. with CIF: B67120550, indicating that "on its website ***URL.1, no information is form that uses will give to the data captured from the form of the web page, nor in form of the exercise of rights, they do not even have a legal notice in which provide the required data according to the LSSI".

2º.- On 12/11/19, the General Subdirectorate for Data Inspection proceeded to recarry out actions to clarify the facts denounced, indicating that,

In relation to the privacy policy of the website (***URL.1), it is verified that there is

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have breaches of the RGPD regarding the protection of personal data, since they recollect data through a form without obtaining consent for the treatment.

to, without there being a document that includes the privacy policy.

3º.- On 01/09/20, the Director of the Spanish Data Protection Agency agreed to initiate a sanctioning procedure against the person claimed for infraction of art.

Article 13 of the RGPD, argued in it, regarding the privacy policy of

the web page denounced that: "there is no information on the "Privacy Policy"

dad", when collecting personal data, through a form, existing in the link of

“contact”, (name; e-mail and telephone), without obtaining consent for the treatment

subsequent development of the same and without there being a document that includes the policy of

company privacy

4º.- On 01/20/20, the claimed entity (YOUPLANET PICTURES, S.L. with

CIF: B67120550), submits a letter of allegations to this Agency, indicating in the

the same as:

- YOUPLANET PICTURES, S.L. is not the owner of the website ***URL.1 and, in

Consequently, it is not responsible for the processing of personal data that

collected on said website.

- In the legal texts that appear on the website itself ***URL.1 appears

The entity YOUPLANET, S.L.

- Currently, YOUPLANET PICTURES, S.L. does not have a website.

- YOUPLANET PICTURES, S.L. has contacted the owner of the page

web, so that you can correct the breaches referred to in the

Management.

5º.- On 04/01/20, the "privacy policy" of the reported website is accessed

***URL.2, checking that there is now information about your privacy policy,

among which is the identification of the person responsible for the page: “YOUPLA-

NET, S.L. CIF: B-95815783; Paseo de Gracia, 26, 4 2ª 08007 Barcelona”.

FOUNDATIONS OF LAW

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II

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in

the art. 47 of LOPDGDD.

The joint assessment of the documentary evidence in the procedure brings to

knowledge of the AEPD a vision of the denounced action that has been reflected

jada in the facts declared proven above related.

In the present case, the entity YOUPLANET PICTURES, S.L. with CIF:

B67120550, indicating in the letter that the web page of its ownership, ***URL.1, does not

complies with current regulations, verifying by this Agency that, said

website did not have information about its privacy policy, so it starts

sanctioning procedure against the claimed entity.

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However, in the period of allegations, the entity denounced, YOUPLANET PIC-

TURES, S.L., alleges that “she is not the owner of the reported website (***URL.1),

but nevertheless, the owner of said web page has been communicated, so that he can

rectify the non-compliances to which the Administration refers” .,

It was later verified, by this Agency, that the denounced website now existed

a link, to the “privacy policy”, ***URL.2. From the information provided on this page

na highlights, as point No. 1:

1.- Responsible for the treatment:

Identity: YOUPLANET, S.L. – NIF: B-95815783

Postal Address: Paseo de Gracia, 26, 4 2ª – 08007 Barcelona

Phone: ***PHONE.1

E-mail: ***EMAIL.1

Therefore, in the present case, after analyzing the information, the

documents provided and the concurrent circumstances, there is no evidence of a possible

violation of current legislation in relation to the protection of personal data.

be personal.

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

HE REMEMBERS:

FILE: procedure PS/00464/2019, initiated by the entity, YOUPLANET

PICTURES, S.L. with CIF: B67120550, for alleged violation of article 13 of the RGPD.

NOTIFY: this Agreement to the entity, YOUPLANET PICTURES, S.L.

In accordance with the provisions of article 82 of Law 62/2003, of December 30,

bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

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

established in articles 112 and 123 of the LPACAP, the interested parties may interpose

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification

fication of this resolution, or, directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

placed in article 25 and in section 5 of the fourth additional provision of the Law

29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the

two months from the day following the notification of this act, according to

the provisions of article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the interested party

do states its intention to file a contentious-administrative appeal. Of being

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In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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