

□ File No.: PS/00185/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated February 26, 2021

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the entity MINISTRY OF CULTURE AND SPORTS, with

NIF S2800237F (hereinafter, the claimed party, the Ministry or MCD), as

responsible for the "eBiblio" platform. The reasons on which the claim is based are  
the following:

a) You question whether you are required to register as an Adobe user if you wish to use

"eBiblio" in your "ereader", and interprets it as a transfer of data to Adobe.

b) You state that your comments and scores are shared with the company

"Babelius".

c) Next, it details a series of anomalies that it deduces from the information that is

included in the documents "eBiblio Terms of Use and Privacy" and "Policy of

eBiblio Privacy" (indicates the links that lead to these documents, which

declares to have obtained on 01/28/2021), and indicates the regulatory breach

that occurs, in his opinion, for each of these anomalies:

1. "The role of the successful bidder (Distribuidora Digital de Libros, S.A.U., hereinafter

LIBRANDA; company belonging to the Canadian business group "De Marque") is

of person in charge of the treatment and not deco-controller or co-responsible", according to the Law

9/2017, of November 8, on Public Sector Contracts, additional provision

twenty fifth. It supposes a breach of article 28.10 of the GDPR, since the

The person in charge of the treatment determines the means and purposes of the treatment.

On this same point, it warns that if there is co-responsibility in the treatment of personal data between the MCD entity and the Autonomous Communities and Cities,

These entities breach the provisions of Article 26 of the GDPR, which requires publish the co-responsibility agreement and identify all co-responsible parties.

2. "The identification of the data controller is incorrect and incomplete."

The complaining party understands that article 13 of the GDPR is breached by not informing of all the data of the controller and co-responsible parties, if applicable. And he adds that "in the

In the event that Librandia is considered co-responsible for the treatment, it is also

would breach the LSSICE as Librandia is a provider located in Spain" (article 10.1

b)

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3. "To provide the services, Adobe's participation is necessary (create a account) and Babelio as data controllers since it is necessary to deliver data and accept independent privacy policies and conditions".

You understand that these are transfers of data that the user is forced to accept in order to use the service.

And if those entities are managers, they cannot collect data as managers.

In addition, the complaining party points out that the Ministry has the means to avoid having than to force the user to register with Adobe.

4. "It is indicated that they can collect location data without specifying the purpose, legitimization, conservation period, etc.", contrary to the provisions of article 13

of the GDPR.

5. "Use of third-party statistical cookies without complying with the obligations of consent for its installation", which violates, according to the claimant, the Articles 7 and 13 of the GDPR and Article 22 of the LSSICE, in the event that it is application.

6. "Use of third-party statistical cookies with possible accommodation in the US without informing of the due guarantees applied". It is indicated that the information It is "usually" stored on secure servers in Europe, which suggests that in some cases you can stay outside, without specifying it. The Articles 13, 6, 7 and 44 of the GDPR.

7. Consent is not the basis that legitimizes the collection, transfer, storage, use and control of personal information, as stated in the Policy of Privacy: the causes of legitimacy in Public Administrations are other and, specifically, in this case. Article 6 of the GDPR is breached.

8. The service cannot be accessed if the Privacy Policy is not accepted in your set; there is no granular consent that validates each issue in a way independent, contrary to the provisions of article 7 of the GDPR.

9. Storage in the US and/or Canada without specifying the measures taken to comply with the GDPR regarding international transfers, in accordance with the Article 44 of said Regulation.

Regarding the security measures, he points out that as they are providers of Administrations Public must apply the security measures contained in the Scheme National Security (first final provision of the LOPDGDD).

10. Conservation period of 6 years not justified.

11. The "Terms and Conditions" document does not appear to have been originally written in Spanish, which makes it difficult to understand (article 12.1 of the GDPR).

12. In the "Your content" section of the "Terms and conditions" document, the an irrevocable, perpetual, non-exclusive, transferable, free license to copy, modify, display or use its content": Articles 7 are breached (consent

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revocable) and 13 (does not indicate the possible recipients) of the GDPR.

Provide screenshots of creating a user in Adobe from the

"Help" section of the "eBiblio" website and of the information on "Babelio" offered before inserting a comment or criticism.

Likewise, provide a copy of the documents "eBiblio Platform. Conditions of Use" and eBiblio platform. Privacy Policy", the content of which is reviewed in Annexes 2 and 3.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to the claimed party and to the awardee entity LIBRANDA, so that they proceed to their analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements set forth in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected by both entities on the date 05/25/2021 as stated in the acknowledgment of receipt in the file.

1. On 06/11/2021, this Agency received a written response from the Ministry

claimed, in which he reported the following:

“eBiblio” is a free online electronic book lending service offered to through Spanish public libraries. It is coordinated and promoted by the MCD in collaboration with the library services of the Autonomous Communities. HE based on cooperation between administrations by which the Ministry offers the CC.AA. the platform in charge of managing the service and a fund of titles common. The Communities adapt and increase the collection based on the interests and particularities of its users. This allows the CCAAs to offer a electronic document loan service (books, magazines and audiobooks), to through their respective networks of public libraries.

The service is accessible "24x7" through the Internet and allows reading both online as via download. In addition, it has a free application for mobile devices that manages all activities related to the loan and reading documents.

It indicates that to use the service "the contribution is not required at any time of personal data", but it would be enough to have a device reading compatible with the content publication format, access to internet and the card of any of the public libraries that participate in the service or equivalent.

To make use of the service, the user must authenticate himself by means of the number of library card and a password. For this, the platform uses a web system already developed by the Ministry that the different integrated systems have

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library management systems used by the CCAA library networks participants in the "eBiblio" service. This system connects with the database that contains the identification data of public library users in each network to validate them and are used solely for said users to carry out the loan service.

The MCD acquires the "eBiblio" service management platform through open procedure, in order to award it to a bidder who, complying with the requirements of the Technical Specification Sheets and the Clauses Sheet

Private Administrative, provide a commercial platform for managing licenses for electronic books and digital content.

Regarding the "eBiblio" service, it is clear that the Ministry does not requires the user of the same no personal data and therefore does not stores information subject to the GDPR on its servers. User data are collected by the libraries when applying for the card and these data are incorporated into the database of the regional library network.

The aforementioned Ministry understands that it is not responsible for the treatment of the data of the users of the service, since it does not possess such data.

Regarding the function of the Ministry, in addition to the contracting of the platform and the acquisition of most of the content, this consists of facilitating contact between the winning company and the CCAA, which are competent in the matter.

The MCD, with its response to the transfer, provides a copy of the Contract signed by said Ministry with the entity LIBRANDA, dated 12/16/2020, which is in charge of this entity the "implementation of the computerized management system of the loans of electronic books "eBiblio" that allows the loans of the electronic documents hosted on it (ebook, audio, periodicals,

video, etc.", as well as a copy of the Specific Administrative Clauses and Sheet of Technical Requirements that govern this contract (Proven Facts Third to Fifth). The content of the Technical Specifications Sheet consists of outlined in Annex 1.

2. On 06/26/2021, a response to the transfer of the LIBRANDA entity was received, in which states the following:

. Privacy Policy

In March 2021, a review and update of the Privacy Policy was carried out.

Privacy that resolved some of the deficiencies revealed in the claim. Indicates that the claim is based on a Privacy Policy outdated.

. Role of LIBRANDA as successful bidder

In accordance with the formalized contract, LIBRANDA provides the platform "eBiblio" with a series of technical and functional peculiarities.

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LIBRANDA must have a system to identify a user with the library or library network, so it accesses library management systems to contrast the library card numbers with those inserted by users when register on the "eBiblio" platform. Use this card number to make the authentication through library management systems, but in no way moment stores said data.

It indicates that it has adjusted the content of the Privacy Policy to reflect with

greater clarity of LIBRANDA's role as data processor

personal, taking into account the twenty-fifth second additional provision of the

Law 9/2017 of November 8 on Public Sector Contracts ("LCSP"), which

states that "2. In the event that the contract implies access by the

contractor to personal data whose processing is responsible for the

contracting entity, that one will be considered as the person in charge of the treatment".

. Identification of LIBRANDA in the Privacy Policy

LIBRANDA's social data is clearly identified in the Privacy Policy,

indicating your company name, postal address, mailing address

email and a phone.

It adds that it has included in the repeated Privacy Policy the data of each

library as data controller, through a referral to the site

website of the corresponding library.

. Processing of personal data by third parties

Regarding access to Adobe's DRM (Digital Rights Manager) service, which

allows the download of contents for reading in "ereader" and in PC with the program

"Adobe Digital Editions", they assure that it was a function requested by the Ministry and the

different communities for users who prefer that method of reading.

Adobe registration is not an essential condition to access the service

provided by LIBRANDA, since it is possible to access the contents of the

streaming platform, through any browser with an internet connection, and

using smartphones or tablets, for which the user must download the

corresponding mobile application.

As for Babelio, he reports that it is a tool for rating books

that it has its own privacy policy, the acceptance of which is not mandatory for

access the "eBiblio" service. In addition, in March 2021 the form was adjusted



to publish evaluations related to the titles of "eBiblio", adding a box without premark so that the user can accept the conditions of "Babelio", as well as a link to that entity's privacy policy.

. location data

Location data is collected only through Google cookies

Analytics, to generate statistics and reports on browsing the platform.

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Notice that a link to the Google Analytics privacy policy has been added.

. Use of cookies

Regarding the use of third-party statistical cookies, you state that by providing the identity of Google and with the reference to the privacy policy of this entity is given compliance with the information obligation provided for in article 13 of the GDPR.

Likewise, it adds that it has adopted a system that makes it possible to accept, reject or revocation of consent for the use of Google Analytics cookies.

. International transfers

LIBRANDA indicates that the Privacy Policy refers to that of Google Analytics, and

that informs about the guarantees adopted with respect to the data stored in

USA by Google Analytics and on the use of standard contractual clauses

drawn up by the European Commission in the contracts signed between the parties that transfer personal data.

On the other hand, LIBRANDA points out that it expressly reports the location of the servers where the personal data collected in the section are stored

"Security Measures" of the Privacy Policy of the platform. It has been clarified in said Policy that the data collected is stored in Europe and it is specified when they are stored outside of it.

#### . Legitimate basis of processing

LIBRANDA indicates that nothing prevents the treatment from being based on more than one of the options established in article 6 of the GDPR, nor that a public administration cannot be based exclusively on consent to Process personal data from a public library access service.

It understands that consent is the legal basis that legitimizes the treatment of personal data. data, since it is the same legal basis used by public libraries in quality of data controllers. LIBRANDA holds the role of manager of the treatment, and, consequently, does not decide on the basis that legitimizes the treatment of the data.

#### . Consent for purposes

The purpose "to facilitate the loan of the documents included in the platform" provided in the "Summary-Table" of the Specific Administrative Clauses Specifications is the only purpose for which the consent of the user is required, not having other different purposes that require additional consent.

It informs that it has adjusted the Privacy Policy to clarify the purpose and explain the specific processing of personal data that is carried out.

#### . Security measures

Carried out a self-assessment regarding compliance with the national schemes of

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security and interoperability following the ICT Security Guide CCN-STIC

803, which is available to the AEPD if necessary.

. Data retention period

They consider that they made a mistake when indicating a data retention period of

six years, which has been modified in the update of the Privacy Policy

carried out in March 2021, having foreseen that once the service is finished

LIBRANDA will return or destroy the personal data, according to the request of each

library.

. Clarity and simplicity in the language of the Privacy Policy

LIBRANDA considers that, although the "original" Privacy Policy was drafted in a

foreign language, "the information provided is correct, clear and simple,

allowing the user to understand it. However, they have revised the language, improving

certain definitions and expressions.

. withdrawal of consent

The section "Your content" of the Conditions of Use refers to "the assignment of a

license on the possible intellectual property rights that fall on the

content shared by the user on the platform". It doesn't mean that the

consent to data processing cannot be withdrawn.

Of the documentation that LIBRANDA provides with its response, it is worth noting the following:

A) "Documentation accrediting the relationship between the managers of the platform eBiblio and the Ministry of Culture and Sports in the event that there is a relationship of manager-responsible...".

"In accordance with the twenty-fifth second additional provision of the LCSP, Librandia to the acting as a contractor, would assume the position of "processor". Thus,

We understand that there is a manager-responsible relationship between Librandia and the Ministry of Culture and Sport.

Likewise, the provisions of article 28.3 GDPR are complied with through the signed Contract between Librandia and the Ministry of Culture and Sports dated December 16, 2020 (in hereinafter the "Contract"), in which reference is made to the provision of services by Librandia in accordance with the Specific Administrative Clauses and the Technical Prescriptions..., documents that as a whole govern the contracting of the service...

The Specifications establish that the order of the treatment will be carried out in accordance with the national and European Union regulations on data protection. In particular, the Sheets provide the following information:

Yo. The object of the treatment entrusted to Librandia is stipulated in section 3.3. of the sheet technical, in particular, it deals with the identification of the user of a library, being able to

Both the library card number and any other equivalent constitute personal data.

ii. The duration of data processing by Librandia is determined by the contract of

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provision of services awarded to it. That is to say, that, once the service is finished,

Librandia will return or destroy personal data, at the discretion of each library.

iii. The nature and purpose of the treatment are indicated, in addition to section 3.3 of the specifications technical, in section 17.bis of the Table-summary of the administrative document. In this,

It is clearly described that the purpose of processing the transferred data is "to facilitate the loan of the documents included in the platform".

iv. Likewise, the type of data subject to treatment and the category of interested parties are indicated in

the technical specifications, specifically in its section 3.3 when it is specified that the data will be "your library card number or equivalent", consequently, it is data of identification, and that the interested parties are "the users of each library network".

v. Finally, the particularities of article 28.3 a) to h) are included in the specifications administrative, clause 16 bis, by reference to the RGPD...".

B) Privacy Policy, according to its version updated on 06/23/2021. He content of this version is reproduced in ANNEX 4.

THIRD: On 07/30/2021, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: On 05/13/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate disciplinary proceedings against the claimed party, in accordance with

the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of the

Articles 28.3 and 13 of the GDPR, typified, respectively, in Articles 83.4.a) and

83.5.b) of the same Regulation; and classified as serious and mild for the purposes of prescription in articles 73.k) and 74.a) of the LOPDGDD.

In the opening agreement it was determined that the sanctions that could correspond,

if the violations are confirmed, it would be a warning; and it was noted that the

imputed violations may lead to the imposition of measures, according to the aforementioned

Article 58.2 d) of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

the LPACAP, the claimed party presented a pleading in which it requests the

procedure file based on the following considerations:

1. In relation to compliance with article 28.3 of the GDPR.

The MCD entity is not responsible for the processing of data collected by the

access and use of the eBiblio platform. This responsibility is assumed by the

Autonomous Communities that manage the service uniquely and exclusively in their

respective territories, becoming responsible for the data by incorporating into the

"Privacy Policy" of the eBiblio page of each territory a link to the website of

the corresponding library.

In other words, there is no usual dual relationship of contracting party-performer, which is

would correspond to the person in charge and person in charge of treatment, but some bodies

intermediates on which the relationship with the citizens and the loan of the

books (with the technical support of the contract performer), which are the Communities and

Autonomous cities.

Following the doctrine of the AEPD of 11/20/2019 and STS 772/2020, the concept of

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responsible for the treatment is not formal but functional, and Report 0064/2020 of the

Legal Office of the AEPD that is cited in the notification: "in most of the

assumptions must be taken into account the circumstances of the specific case (case by case)

attending to their real needs". In this specific case, the person in charge of the

treatment, from a functional point of view, cannot be the MCD since neither access nor

You need to access any data related to the users of the service.

The role of the MCD is that of "financier" of a loan management platform of

electronic content that it offers voluntarily to the Autonomous Communities, which are in

ultimately those who decide or not to use it and on what terms.

The AEPD report points out in that same Fundament II that "the MCD entity is

responsible for the processing of these data even if you do not have access to them.

Indicates that this is the case, following Directives 7/2020 of the European Protection Committee

of Data that refers to the case that a service activity had been outsourced

treatment, which is not the case in this case.

The MCD considers that the Autonomous Communities and Cities participating in

the eBiblio service who are responsible for the data, as established

directly on the web pages of the service within their respective scopes

territorial and can be verified, according to the Ministry, in the document that

accompanies, which corresponds to the information available in "eBiblio Andalucía"

(selected according to alphabetical order). This document provided indicates:

<<Privacy and liability policy

In the eBiblio Privacy Policy designed by LIBRANDA, SA [available at:

<https://guiadeuso.ebiblio.es/confluence/ebiblio-user/es/preguntas-frecuentes/condiciones-generales/web-platform/web-platform-privacy-policy>], it is exposed:

"The local administration of your library (the Library) is responsible for the treatment of your personal information. You can find the identity and data of your Library, as well as the data of the corresponding data protection delegate, by accessing its website".

eBiblio Andalusia

In the "Information" tab of the eBiblio Andalucía portal [available at:

<https://andalucia.ebiblio.es/about>], the following section appears:

#### 1.1. Access data

How can I become a user?

The requirements to access eBiblio Andalucía are:

- Have a user card (reader card) of a library in the Library Network

Public of Andalusia. If you still do not have the user card you can go to the library network or process the online application, if you have a digital certificate.

- Have an active and unique email account (one per reader), which will be communicated to your library so that they can associate it with your user card.

- A password, which you probably received from your library when you registered as a reader (it is the same one that is used to enter the Catalog of the Network of Public Libraries of Andalusia).

When accessing the online user card process, it directs us to the following page of information from the Andalusian Library Network:

(The image of the page "Network of public libraries of Andalusia" is inserted, which includes

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links to request the user card).

At the bottom of the page, we find a data protection clause that indicates:

"In compliance with the provisions of the General Data Protection Regulation, we

We inform that:

a) The person responsible for the processing of your personal data is: General Directorate of

Historical and Documentary Heritage whose address is: C/ Levíes, 27. -- 41004 -- Seville

b) You can contact the Data Protection Officer at the email address

[dpd.ccul@juntadeandalucia.es](mailto:dpd.ccul@juntadeandalucia.es)

c) The personal data you provide us is necessary for: management of the services of

loan and consultation of the Network of Public Libraries of Andalusia, whose legal basis is

based on: Order of September 24, 2001 (BOJA no. 129, of 11.8.2001), which regulates the

access, services and loan service of the Network of Public Libraries of Andalusia,

amended by: Order of July 30, 2007, which modifies the order of September 24,

2001, which regulates the access, services and loan service of the Libraries of the

Network of Public Libraries of Andalusia (BOJA no. 170 of 8.29.2007) and Order of 29



December 2008, which establishes the requirements for obtaining the user of the Network of Public Libraries of Andalusia (BOJA no. 17 of 1.27.2009)">>.

The fact that the CCAAs appear as responsible on their web pages eBiblio, reveals this dissociation of competences and, therefore, of responsibilities. In other words, on the one hand, the MCD offers the Autonomous Communities the platform in charge of the management of the service, not having in any case, access to the data of a personal nature of the users nor expressing therefore any information about their treatment.

The Autonomous Community acts as the controller of the data that houses and connects with the integrated management systems of their respective libraries, since it is the one who ultimately determines the ends and means of the same, as manager of the user card of the respective library networks that they offer exclusively in their respective territories.

He considers that the confusion about the determination of the Ministry as responsible for the data may be due to an interpretation of the Specifications and Clauses Private Administrative for the contracting of the management platform of the service through open procedure. To avoid this interpretation, which obeys the spirit or the pursued object, we are going to improve the wording of said specifications and future clauses.

Although, in the specific administrative documents and clauses it is clear that the The objective is the implementation of the loan service management system of digital content so that the service at the national level is never left interrupted, not appearing at any time mention about the management of the personal data of users, which are carried out, as already indicated, between the libraries of the Autonomous Communities and Cities and the company currently awardee.

The CCAAs have jurisdiction over libraries of interest to them and are responsible for the management of the services they offer in their territories (Article 148.1.15 of the Spanish Constitution) and not the State. The MCD cannot, since it does not have powers to do so, to impose any purpose on what has no powers.

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The processing activities take place on the territorial eBiblio web pages because it is the libraries themselves that are legally responsible for their services and the data of its users and the contribution of the Ministry consists of facilitating the continuity of the necessary infrastructure for its extension to the virtual world.

2. In relation to compliance with article 13 of the GDPR, in relation to the articles 4 and 12.1 of the GDPR

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The MCD maintains, in accordance with the rules that make up the block of constitutionality, that the autonomous communities participating in eBiblio are the responsible for both service management (ex lege) and data processing in their respective territories. In this sense, the CCAAs are in charge of issuing the user cards of their library networks and collect the data of the user necessary for this purpose and for the use of the content loan service digital eBiblio, being therefore responsible for the data and for providing the information that must be provided in compliance with article 13 of the GDPR. Said information appears collected on the websites of each regional eBiblio service, as can be verified through its access links (indicates these links

corresponding to each of the CCAAs).

The responsibility in the treatment of the data collected by the access and use of the eBiblio platform is assumed by the Autonomous Communities that manage the service in a unique and exclusive way in their respective territories, becoming responsible for the data by incorporating into the "Privacy Policy" of the eBiblio page of each territory a link to the website of the corresponding library.

It is, as indicated in the first section of this statement of allegations, a digital transcript of a physical library. The competence of that management does not vary.

However, two things to keep in mind:

Regarding the language and personal data protection information provided to the user, the website has been updated since 2021, taking the appropriate measures to remedy any of the deficiencies described in the AEPD file and that are currently public from the eBiblio website. Bliss

The web is the main information tool for the user and uses a language transparent, intelligible and easily accessible, with clear and simple language that can be read and understood by a minor, since they are part of the potential target audience of the service by having content aimed at adult, youth and children audiences.

You can check the language style change by comparing the web versions that were in force at the time of the claim (2021) and the current one. To this

In this regard, it attaches a copy of a "comparison of the web appearance as of the date of the claim (May 2021) and to the current date (July 2022", which includes the detail of the information offered in May 2021 in the tabs "What is it?" and "make yourself partner" ("Who can use eBiblio?", "Start using eBiblio" and "What does eBiblio offer? eBiblio?") and the one offered in July 2022 in the tabs "What is it?" and "How to use it?" ("What do I need?", "Through the web or the App", "Start using it"). None of the

The aforementioned sections include information on data protection

personal.

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You can also check the change made for compliance with

web accessibility with a more contrasting, informative and clean style.

Likewise, in order to have a legal document that establishes

clear and transparent responsibility on the part of the Autonomous Communities

as responsible for the data, the Ministry has initiated contact with them in order to

inform them about the need to incorporate clearer informative clauses of

accordance with the articles of the GDPR. Also, from the Ministry we have started

to work on a legal document model to serve as a basis for the CCAAs that

use eBiblio to, where appropriate, sign the appropriate contracts in terms of

data protection with the company awarded the service.

3.- In relation to the management of the eBiblio back office by the Ministry of

Culture.

The SDG for Library Coordination of the General Directorate for Books and the Promotion of

the Reading of the MCD, dated July 1, 2022 and for the sake of better compliance

of what is established in the RGPD and in the doctrine of the AEPD, has requested the

awardee of the eBiblio service, LIBRANDA, that the global user who uses the

Ministry in the management platform or back office of eBiblio does not have access to data

of any kind about the users, since they are data provided by the

autonomous communities and to which the Ministry does not access, has never accessed and

you don't need access.

SIXTH: On 10/21/2022, during the test phase, the instructor of the procedure agreed to incorporate the information and/or documentation into the actions following:

a) Copy of the following information, available on the website "madrid.ebiblio.es":

. In the main menu, section "Information".

"eBiblio is a free online e-book lending service offered through Spanish public libraries, is coordinated and promoted by the General Subdirectorate of Library Coordination of the Ministry of Culture and Sports in collaboration with the Library Services of the Autonomous Communities and Cities...

To use eBiblio Madrid you need a user card for libraries and library services.

public reading of the Community of Madrid..."

. In the menu at the bottom of the page, documents "Terms and conditions" and "Policy of Confidentiality".

Terms of use:

"By using the Service, you agree to enter into a contract that binds you with your library, and with DISTRIBUIDORA DIGITAL DE LIBROS, S.A.U., ("Libranda") (each individually a "Manager" or collectively the "Managers"), under the conditions established in these Terms..."

"Your privacy

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Managers care about protecting your personal information and respecting your privacy. Information about the type of information collected during your use of the Service,

the reasons for which said information is collected and the use made of it is available at the following link: "Privacy Policy", which you are responsible for reviewing and acknowledge having read and understood your acceptance of these Terms."

#### "Content of Libranda or third parties

You are informed and acknowledge that Libranda is the owner of: (a) the Service, including any text, image, sound, video, model, plan, map, picture, icon, software, design, applications, data, graphic presentations, trademarks, logos and slogans created or used by Libranda and over which it owns the intellectual property rights; (b) any tools, computer hardware and software used to provide the Service; and (c) graphic design, user interface and appearance of the Service".

#### Privacy Policy

The content of this information matches the version of the Privacy Policy of 06/23/2021, provided by LIBRANDA in its response to the transfer process of the claim, the content of which is outlined in Annex 4.

b) Through the link "Regional Catalog" inserted in the previous document "madrid.ebiblio.Información", accesses the website of the Library Network of the Community of Madrid and the document called "Legal Notice", available at the bottom of the page. Includes a "Privacy" section with General information of the Community of Madrid in relation to personal data that are collected through their websites. It is not a specific information in this matter in relation to the eBiblio service.

c) Copy of the following information, available on the website "canarias.ebiblio.es":

. In the main menu, section "Information".

"eBiblio is a free online e-book lending service offered through Spanish public libraries, is coordinated and promoted by the General Subdirectorate of Library Coordination of the Ministry of Culture and Sports in collaboration with

the Library Services of the Autonomous Communities and Cities...

If you are a member of any of the libraries of the Red de Bibliotecas de Canarias (BICA) you are already user of eBiblioCanarias. If it is not, you can go to the nearest public library that be part of said Network and register as a member or you can register online at the OpacWeb of the BICA Network (Libraries of the Canary Islands)..."

. In the menu at the bottom of the page, documents "Terms and conditions" and "Policy of Confidentiality". The content of these documents is similar to that outlined for the case of "madrid.ebiblio.es".

d) Access the website of the Canary Islands Government Libraries Network and obtain the document called "Legal Notice", available at the bottom of the page. Includes a section "Privacy Policy" with information addressed to "users of public libraries". It is not a specific information in relation to the service eBiblio.

SEVENTH: On 12/02/2022, a resolution proposal was formulated in the sense

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following:

1. That the Director of the Spanish Data Protection Agency sanction with a warning to the MCD entity, for the infringement of articles 28.3 and 13 of the GDPR, typified in articles 83.4.a) and 83.5.b) of the same Regulation, and classified as serious and minor in articles 73.k) and 74.a) of the LOPDGDD, respectively.

2. That the Director of the AEPD requires the claimed entity so that, in the

term to be determined, adopt the necessary measures to adapt its action to the personal data protection regulations, with the scope expressed in the Fundamentals of Rights of the proposed resolution.

EIGHTH: Once the aforementioned resolution proposal has been notified to the MCD, a letter is received from said entity in which it requests the filing of the sanctioning procedure. The aforementioned entity bases its request on the following considerations:

. The MCD begins by noting two preliminary issues related to the Organization of competences in library matters.

Firstly, it refers to what is established in the Spanish Constitution, articles 148.1.15<sup>a</sup> and 149.1.28<sup>a</sup>, to conclude that the management of the MCD in this area is extends the buildings and funds of the state-owned libraries and the cooperation librarian.

In addition, it indicates that it promoted the eBiblio system, providing the platform and a set of digital book licenses, to allow all Spanish libraries be able to offer digital content based on the functions that in terms of library cooperation is conferred on it by Law 10/2007, of June 22, on reading, books and libraries, contributing to the purposes set out in its article 14.3: promote the development of Spanish libraries and foster equality in the access to public service throughout the State.

. To promote those services and then offer them to Communities and Cities Autonomous, the MCD acquired the platform through a public sector contract, through through a call in an open procedure, whose specifications were prepared according to in accordance with the provisions of Law 9/2017, on Public Sector Contracts.

Thus, it is mentioned in the Specification of Particular Administrative Clauses the obligation of the contractor to respect the current regulations on data protection, of in accordance with article 122 of the aforementioned Law, according to the details that are reviewed



in the Third Proven Fact of the proposed resolution. Considering this content of the Specific Administrative Clauses, the MCD admits that defines the purposes of data processing.

As regards the Technical Specifications Sheet, the MCD refers to the statistics generation module listed among the functional requirements required of the "eBiblio" service management platform, noting that in this module only the final anonymized statistical data is found and that to the MCD You are not allowed to access personal data.

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The MCD, as promoter and coordinator of the contract, will be in charge through the General Sub-Directorate for Library Coordination to monitor the provision of the service, making sure that all the requirements demanded of the platform are provided correctly throughout the entire duration of the contract

. In the present case, and following the Guidelines 07/2020 of the European Committee of Data Protection (CEPD) on the concepts of data controller and in charge of the treatment in the RGPD", the MCD establishes the end of the treatment, but not the essential means thereof. In no case does the MCD establish what kind of data will be processed, what will be the duration of the treatment or who will have access to them data.

Both the document "eBiblio Platform. Conditions of use" as the document eBiblio platform. Privacy Policy" have not been prepared with the participation

of the MCD, since this Ministry determines the purposes of data processing in accordance to what is established in the LCSP, but not the essential means

In the version of "eBiblio Platform. Privacy Policy" in force at the time in which the claim was made, it was indicated what data was collected directly of the user (first name, last name, email address, browsing history, location data...). These essential means were not established by the MCD.

In the version of "eBiblio Platform. Privacy Policy" dated 06/23/2021 is designates the local administration of the library as the person in charge of the treatment of the data, being it, as public administration, the one that determines ends and means.

Therefore, the MCD only establishes the purposes and the software (non-essential means) with which the treatment will be carried out, but in no case does it establish the means essential. The MCD promotes and coordinates the platform, facilitating the Communities Self-employed who want an electronic document loan service, but the Autonomous Communities are the ones that fully manage the service.

In accordance with the aforementioned Guidelines 07/2020, co-responsibility exists when different parties jointly determine the purposes and means of processing.

In this case, although the purposes are common (facilitate the loan of documents included in the platform), the means are not determined jointly by the two parties, but only by the Autonomous Communities by virtue of their powers.

. In the next Technical Specification Sheets, the MCD undertakes to establish that those responsible for data processing must regulate an act prior to the use of the service in which the treatment of the data is regulated. data.

. The MCD declares that it agrees with what is indicated in the proposed resolution on the obligation of the data controller to provide the data subjects with the information on data protection, avoiding that the Privacy Policy

be drawn up by the successful bidder. The MCD undertakes, in the future Specifications

Technical Prescriptions, to establish that those responsible for the treatment of the

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data must give instructions to the winning company on the means of

treatment and, therefore, on the wording of the Privacy Policy.

. The MCD ends by detailing the actions that it intends to carry out in the next contracting, committing to include in the specifications:

. A clear definition of the figures of the person responsible for the data and the person in charge, of according to the Law.

. The obligation for data controllers to sign a legal agreement with the successful bidder, prior to the use of the service, in which the data treatment.

. The obligation of those responsible for the data to draw up the Privacy Policy Service privacy.

It also adds that, in the next contract, the MCD will agree with the

Autonomous Communities the essential means for data processing,

becoming stewards. Thus, in the next contracts that are formalized

of this platform, both the MCD and the Autonomous Communities that want to make use of the eBiblio electronic loan service must:

. Establish a legal mechanism that regulates the processing of data.

. Establish the Privacy Policy that will appear on the eBiblio service page,

which will include the modifications included in sections IV and V of the Fundamentals

Law of the Resolution Proposal.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: "eBiblio" is an online lending service for electronic books and other digital content (such as magazines or audiobooks) driven, coordinated and managed by the MCD. It includes a computerized management system or loan platform and a application for mobile devices that the MCD makes available to Cities and Autonomous Communities (all, except for the Basque Country).

SECOND: The MCD acquires the "eBiblio" service management platform and the app through a public sector contract, in an open procedure. In the year 2020, the MCD made a call for the contracting and implementation of the platform current book and app loan.

THIRD: The Specification of Particular Administrative Clauses that governs the summons outlined in the Second Proven Fact contemplates, among others, the following obligations of the parties:

. The successful bidder may not use for itself, nor provide to third parties, any data of the contracted works or publish, totally or partially, the content of the

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themselves without written authorization from the contracting authority.

. The successful bidder acquires the commitment of faithful and careful custody of all the information that is provided for the performance of the service and, with it, the

obligation that neither the documentation nor the information it contains reaches

in no case to the power of third parties

. In the event of the execution of the contract, it implies the transfer of data to the contractor:

. The contractor will be subject, in any case, to the national regulations and the European Union on data protection.

. The winning company must present before the formalization of the contract a statement that shows where they will be where the servers are located and from where the associated services will be provided to the same

. According to Clause 28, it is indicated that the successful bidder will be obliged to compliance with all the obligations that, in terms of security and protection of data, establishes the LOPDGDD.

On the other hand, in the "Summary-Table" that accompanies the Sheet it is stipulated:

“16. Place of delivery of the works or provision of the services included in the contract:

The benefits related to the management of the computer system for the loan of books and digital content will be developed at the headquarters of the successful bidder”.

“17.bis. Purpose of the treatment of the transferred data: To facilitate the loan of the documents included in the platform”.

The full content of the Specific Administrative Clauses Sheet set by the MCD, which is incorporated into the proceedings, is declared reproduced in this act to evidentiary effects.

FOURTH: In accordance with the Technical Specifications Sheet that governs the summons outlined in the Second Proven Fact, its purpose is:

"The purpose of this technical specifications document is the contracting and implementation of a computer management system or platform for lending electronic books and others

digital content in public libraries of the Cities and Autonomous Communities, which ensure the uninterrupted maintenance of the current "eBiblio" service, promoted by the Ministry of Culture and Sport...

The IT management system will include mobile applications, at least for iOS and Android. Its management will correspond to the General Subdirectorate of Library Coordination of the Ministry of Culture and Sport (from now on, the managing body)".

According to what is indicated in this Specification, the system that is intended to be contracted "will include a set of computer applications, as well as hardware resources and necessary communications, capable of managing accommodation and access to electronic content, as well as the temporary loan of the same to users of public libraries...", corresponding to the contractor to contribute all the resources necessary to meet the functional requirements detailed in the same Specification and the

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platform maintenance.

The functional requirements include enabling a module for generation of statistics, which must have a user for each Community and another global, and the configuration of a maximum of 18 independent sectors "to give service to the public libraries of the different Communities and Cities Autonomous, in whose management the technical services responsible for libraries of these administrations".

Likewise, you must use the "web service system" already developed by the MCD or any other provided by the contractor to authenticate the user through his

library card number or equivalent and a password. This "system of authentication of platform users must connect with the database or databases data containing the identification data of authorized users in each network in order to validate them".

The MCD itself, through the General Subdirectorate for Library Coordination, is the person responsible for monitoring the provision of the service.

The full content of the Technical Specifications Sheet set by the MCD itself is declares reproduced in this act for evidentiary purposes. Part of the content of this Specifications are incorporated into this act as Annex 1.

FIFTH: In the summons outlined in the Second Proven Fact, it resulted the entity LIBRANDA was awarded.

To formalize the award, the MCD and LIBRANDA signed the corresponding contract dated 12/16/2020. Regarding the protection of personal data, this contract includes only a mention of the obligation of confidentiality of LIBRANDA and in terms of security:

"Thirteenth. The successful bidder acquires the commitment of faithful and careful custody of all the information provided for the performance of the contracted service, as well as the obligation that neither the documentation nor the information it contains reaches the power of the from third parties.

Likewise, the successful bidder will have the obligation to keep confidentiality, during a period of five years from its knowledge, regarding the background or data that, not being public or well-known, are related to the object of the contract or of which you have information with occasion thereof."

The full content of this contract is declared reproduced in this act for the purposes evidence.

SIXTH: The "eBiblio" platform is displayed independently for each City

and Autonomous Community, with an access URL for each of them

("https://andalucia.ebiblio.es", "https://madrid.ebiblio.es" or "https://canarias.ebiblio.es", etc.).

includes the document "eBiblio Platform.

SEVENTH: The "eBiblio" platform

Conditions of Use" accessible to users from all Cities and

Autonomous communities. This document has been prepared by the entity

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LIBRANDA, who is mentioned as one of the managers of the platform:

"...By using the Service, you agree to enter into a contract that binds you with your library, and with DISTRIBUIDORA DIGITAL DE LIBROS, S.A.U., ("Librandia") (each individually a "Manager" or collectively the "Managers")...".

Regarding the information on personal data protection and privacy, it includes

a link that leads to the "Privacy Policy" available on the web.

"Information about the type of information collected during your use of the eBiblio Service, the reasons for which such information is collected and the use made of it is available at the following link: "Privacy Policy", which you are responsible for reviewing and acknowledge having read and understood your acceptance of these Terms...".

The full content of the document "eBiblio Platform. Conditions of Use" is

declares reproduced in this act for evidentiary purposes. Some of this content is incorporated into this act as Annex 2.

EIGHTH: The "eBiblio" platform includes the document "eBiblio Platform. Politics of



Privacy”, accessible to users from all Cities and Communities

Autonomous. This document, in its current version at the time it was formulated

the claim that has motivated the actions, is recorded by the entity

LIBRANDA, which identifies itself as one of the managers of the platform:

“Welcome to the platform for reading and lending electronic books (individually, the

"eBiblio Platform" or the "eBiblio Application", as the case may be, and collectively the "Service

eBiblio"), developed and operated jointly by Libranda/De Marque Inc. and the Ministry of

Culture and Sport together with the autonomous communities and cities of Spain, its library

(each individually a "Manager" or collectively the "Managers"), all

Managers are co-controllers of your personal data”.

For the exercise of rights and as contact information ("For more

information about our policies and practices...”) indicates a mailing address, a

email address and a telephone number, all belonging to

LIBRANDA.

This document describes how information collected, used, and disclosed is collected,

obtains about the users and the different measures so that they can contact.

It is structured with the following sections:

- . Introduction
- . Collection of personal information
- . Sharing and Transferring Personal Information
- . Right of veto and expulsion (exclusion)
- . Right of access
- . Storage and security
- . Duration of retention of personal information collected
- . External links and forms
- . Contact Us

. Changes to this Privacy Policy

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There are multiple references contained in the Privacy Policy to the collection of personal data of users involved in the use of the "eBiblio" platform.

Here are some examples:

. "In this Privacy Policy, we describe how we collect, use and disclose information information we obtain about the users of the eBiblio Platform".

. "We collect the following personal information, which you provide to us directly and in a form voluntary...".

. "We use the information we collect for the following purposes...".

. "...you consent to the collection, transfer, storage, use and control of your information collected by the eBiblio Platform...".

And the personal data that is collected is detailed, both directly from the user (first name, last name, email address, browsing history, data from location, etc.) and automatically (IP address, operating system, views of pages and requests, date and time of access, links you click, origin of the user, geolocation (Google Analytics), browser language).

The full content of this document "eBiblio Platform. Privacy Policy", which is incorporated into this act as Annex 3, is hereby declared reproduced for the purposes evidence.

NINTH: It is incorporated into the proceedings, provided by the entity LIBRANDA, a new version of the document "eBiblio Platform. Privacy Policy" dated

06/23/2021.

Like the document reviewed in the Ninth Proven Fact, this Privacy Policy

Privacy of 06/23/2021 is prepared by the entity LIBRANDA ("Libranda se

reserves the right to change this privacy policy at any time"), and does not

contains no mention of the MCD. Although, in this case, she identifies herself as the person in charge

of the treatment, indicating the Local Administration as responsible for the treatment

responsible for the "Library" in which the user is registered:

"Welcome to the platform for reading and lending electronic books (individually, the

"Platform" or the "Application", as the case may be, and collectively the "Service"), developed and

operated by DISTRIBUIDORA DIGITAL DE LIBROS, S.A.U., ("Libranda"), as successful bidder

of the public service for the implementation and management of the Platform. This means that the

public administration determines for what reasons (i.e. the purposes) your data is processed,

as well as the resources (ie, the media) allocated to said processing. In

Consequently, Libranda is in charge of processing your personal data".

For the exercise of rights and as contact information ("All questions and

comments about this privacy policy or requests related to the

must be sent to Libranda..."), even for the revocation of the

consent to the processing of personal data, a postal address, a

email address and a telephone number, all belonging to

LIBRANDA.

There are multiple references contained in this Privacy Policy to the collection and

use of personal data of users of "eBiblio" by LIBRANDA.

Here are some examples:

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“This privacy policy summarizes (1) the types of personal information collected by Librandia, (2) the reasons why Librandia collects personal information, (3) the way in which that Librandia uses and protects the personal information, and (4) the circumstances in which the personal information is shared with Librandia partners and third parties...”.

“As part of the operation of the Platform, Librandia will collect and/or process information about you...”.

“From time to time, you may provide further information to Librandia for purposes to manage your account either with the Platform or for the management of your account with your Library”.

“We use the information collected to “Facilitate the loan of the documents included in the platform”, that means:

. Allow you to use our Platform and the services offered on it...”.

The full content of this document “eBiblio Platform. Privacy Policy”, version of 06/23/2021, which is incorporated into this act as Annex 4, declares reproduced for evidence purposes.

TENTH: On 10/21/2022, the procedure instructor accessed the websites “madrid.ebiblio.es” and “canarias.ebiblio.es”. Both include a section

"Information" in the main menu which indicates the following:

“madrid.ebiblio.es”:

“eBiblio is a free online e-book lending service offered through Spanish public libraries, is coordinated and promoted by the General Subdirectorate of Library Coordination of the Ministry of Culture and Sports in collaboration with the Library Services of the Autonomous Communities and Cities...”.

“canarias.ebiblio.es”:

“eBiblio is a free online e-book lending service offered through Spanish public libraries, is coordinated and promoted by the General Subdirectorate of Library Coordination of the Ministry of Culture and Sports in collaboration with the Library Services of the Autonomous Communities and Cities...”.

The content of the documents "Terms and conditions" and "Policy of Confidentiality" inserted in "madrid.ebiblio.es" and "canarias.ebiblio.es" is similar to outlined in the previous Proven Facts.

## FUNDAMENTALS OF LAW

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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, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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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".

Finally, the fourth additional provision "Procedure in relation to the Powers attributed to the Spanish Agency for Data Protection by other laws" establishes that: "The provisions of Title VIII and its implementing regulations will apply to the procedures that the Spanish Agency for the Protection of Data should be processed in the exercise of the powers attributed to it by other laws".

## II

This case is related to the "eBiblio" Service. It is a service free loan of electronic books (books, magazines and audiobooks) online (allows reading both online and via download) powered by the MCD. He The Ministry offers the Cities and Autonomous Communities (all, with the exception of Basque Country) the platform in charge of managing the service, which was set up in 2014, and a free application for mobile devices.

The purpose of these actions has to do with the data processing that entails the use of the "eBiblio" platform. Therefore, it does not reach the databases of public library networks.

It is necessary, first of all, to specify the character under which the entities involved, from the point of view of data protection personal data, which has been revealed in the claim that motivates the performances.

The MCD acquires the "eBiblio" service management platform and the app through public sector contract and makes it available to Cities and Communities Autonomous. In 2020, a call was made for the hiring and implementation of a computerized management system or loan platform of electronic books and other digital content in public libraries of the cities and Autonomous Communities, to ensure the uninterrupted maintenance of the

"eBiblio" service in force at that time, as well as the implementation of mobile apps. This call is promoted by the MCD, to which corresponds the monitoring of the provision of the service, as managing body.

The entity LIBRANDA is the company that was awarded the contract convened by the MCD, having formalized the corresponding contract for both entities on 12/16/2020. By virtue of this contract, LIBRANDA provides all the necessary resources for the internal management of the platform and is responsible for its maintenance. Likewise, it undertakes not to exploit the personal data of platform users.

In accordance with the foregoing, and as it appears from the documents that

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govern the aforementioned contracting, the entity MCD intervenes under the condition of responsible for the treatment of the data collected by the access and use of the platform "eBiblio" by the users and LIBRANDA does it as manager of the treatment

The figures of "responsible for the treatment" and "in charge of the treatment" are defined in article 4 of the GDPR as follows:

. "Responsible for the treatment or responsible: the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the ends and means of the treatment; if the law of the Union or of the Member States determines the ends and means of the treatment, the person in charge of the treatment or the specific criteria for their appointment they may be established by the law of the Union or of the Member States".

. "In charge of the treatment or in charge: the natural or legal person, public authority, service or other body that processes personal data on behalf of the data controller treatment".

Article 24 of the GDPR, referring to the "Liability of the person responsible for the treatment", states the following:

"1. Taking into account the nature, scope, context and purposes of the treatment as well as risks of varying probability and severity for the rights and freedoms of individuals physical, the person in charge of the treatment will apply appropriate technical and organizational measures to 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.

2. When they are provided in relation to the treatment activities, among the measures mentioned in section 1 will include the application, by the person responsible for the treatment, of the appropriate data protection policies..."

Report 0064/2020 of the Legal Office of the AEPD has emphatically expressed that "The GDPR has meant a paradigm shift when addressing the regulation of the right to the protection of personal data, which is based on the principle of "accountability" or "proactive responsibility" as indicated repeatedly by the AEPD (Report 17/2019, among many others) and is included in the Explanation of reasons for the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (LOPDGDD)".

The said report goes on to say the following:

"...the criteria on how to attribute the different roles remain the same (paragraph 11), reiterates that these are functional concepts, which are intended to assign responsibilities according to the real roles of the parties (paragraph 12), which implies that in most of the assumptions must be addressed to the circumstances of the specific case (case by case) based on their actual activities rather than the formal designation of an actor as



"responsible" or "in charge" (for example, in a contract), as well as autonomous concepts, whose interpretation must be carried out under the European regulations on the protection of personal data (section 13), and taking into account (section 24) that the need for a factual assessment also means that the role of a controller is not derives from the nature of an entity that is processing data but from its activities concrete in a specific context...".

Likewise, the legal report of the AEPD dated 11/20/2019, with internal reference [www.aepd.es](http://www.aepd.es)

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0007/2019, and STS 772/2020 (for all), analyze the legal figure of person in charge of treatment from the perspective of the GDPR, which regulates this figure in its article 28.

The concepts of data controller and data processor are not formal, but functional and must attend to the specific case.

The person responsible for the treatment is from the moment he decides the purposes and the means of treatment, not losing such condition by the fact of leaving a certain margin of action to the person in charge of the treatment or for not having access to the databases of the manager

This is undoubtedly expressed in the Guidelines 07/2020 of the European Committee of Data Protection (CEPD) on the concepts of data controller and in charge in the GDPR:

"A controller is the one who determines the purposes and means of the processing. treatment, that is, the why and how of the treatment. The data controller must decide on both purposes and means. However, some more practical aspects of the

implementation ("non-essential media") can be left to the person in charge of treatment. It is not necessary for the controller to actually have access to the data that is they are trying to qualify themselves as responsible" (the translation is ours).

In the present case, it is clear that the MCD entity is responsible for the processing of personal data that is caused by the use of the "eBiblio" platform, since, as defined in article 4.7 of the GDPR, is the entity that determines the purpose and means of the treatments carried out

The MCD not only decided, on its own initiative, the acquisition and start-up of the "eBiblio" service management platform and application for mobile devices, but also determines the purposes and means of treatment in a autonomous, that is to say, apart from the Cities and Autonomous Communities that later they use this online e-book lending service

"eBiblio" to offer it to users of public libraries in their respective networks.

Determining who decides the means and purposes of data processing is crucial to establish who is responsible for compliance with data protection regulations personal data, and in particular who should provide information to individuals concerned, what their rights will be, who will be responsible in case of breach of personal data security, etc.

The condition of person in charge of the treatment obliges, likewise, to comply with the provided in the transcribed article 24 of the RGPD and, especially, that related to the establishment of personal data protection policies and effective control and continued of the "appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the processing is in accordance with this Regulation", among which are those provided in article 28 of the GDPR in relation to the Data processors acting in the name and on behalf of the data controller.

However, the MCD is not only responsible for the treatment as a concept

functional, but also as a public entity that acts in the exercise of powers conferred on it by law. We must highlight the peculiar

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situation of Public Administrations, where the data controller is

that administrative body that has been attributed the powers by a norm

legal, for the exercise of which it is necessary to carry out data processing of a

staff. If the competence to carry out a certain activity is not held,

nor is it available to carry out the treatments that would derive from it. The

competence will therefore determine the legitimacy to carry out the treatment. And all

This is based on the premise that, compared to what happens in the private sphere, in the

that everything that is not prohibited can be done, the Public Administrations only

they can undertake what the legal system allows them, with full submission

to the Law and the Law (articles 9.1 and 103.1 of the Spanish Constitution).

If the determination of the ends and means by the MCD does not agree with the

competence attributed to him, he would be acting as responsible without being so and the

data processing carried out would be illegal.

In this case, the MCD is responsible for the management and promotion of the platform

"eBiblio", as deduced from the provisions of Royal Decree 509/2020, of 5

May, which approves the basic organic structure of the Ministry of Culture and

Sport, which includes among its functions the promotion and improvement of libraries, the

coordination and promotion of library cooperation and the supply of services

technicians and advice on library matters, in addition to obtaining,

exploitation and use of library data; all of them developed through the General Directorate of Books and Reading Promotion, Sub-directorate General of Library Coordination (article 3 of Royal Decree 509/2020).

On the other hand, the existence of a data processor depends on a decision adopted by the person responsible for the treatment, which he may decide to carry out himself certain processing operations or hire all or part of the treatment with a manager.

The essence of the function of the person in charge of the treatment is that the personal data are processed in the name and on behalf of the data controller. In practice, it is the person in charge who determines the purpose and the means, at least the essential ones, while the person in charge of the treatment has the function of providing services to the data controllers. In other words, “acting in the name and on behalf of the person in charge of the treatment” means that the person in charge of the treatment is aware of the serving the interest of the controller in carrying out a task specific and, therefore, follows the instructions established by it, at least in regarding the purpose and the essential means of the treatment entrusted.

The person responsible for the treatment is the one who has the obligation to guarantee the application of data protection regulations and the protection of the rights of interested parties, as well as being able to prove it (articles 5.2, 24, 28 and 32 of the GDPR).

The control of compliance with the law extends throughout the treatment, From the beginning to the end. The data controller must act, in any case, in a diligent, conscious, committed and active way.

This mandate of the legislator is independent of the fact that the treatment is carried out directly the person in charge of the treatment or to carry it out using a treatment manager.

In addition, the treatment physically carried out by a person in charge of treatment by account of the person responsible for the treatment belongs to the sphere of action of the latter last, in the same way as if he did it directly himself. The person in charge of Treatment, in the case examined, is an extension of the person responsible for the treatment.

In light of the principle of proactive responsibility (art 5.2 GDPR), the person responsible for the treatment must be able to demonstrate that it has taken into account all the elements provided for in the GDPR.

The data controller should take into account whether the data processor provides adequate documentation that demonstrates such compliance, privacy policies, privacy protection, file management policies, privacy policies information security, external audit reports, certifications, management of the exercise of rights, etc.

Likewise, before outsourcing a treatment and in order to avoid possible violations rights and freedoms of those affected, the data controller must enter into a contract, other legal act or binding agreement with the other entity that establish clear and precise obligations regarding data protection.

The person in charge of the treatment can only carry out treatments on the instructions documented data of the controller, unless required to do so by law of the Union or of a Member State, which is not the case. In this regard, Article 29 of the GDPR refers to the "Treatment under the authority of the person in charge or of the person in charge of the treatment" in the following terms:

"The person in charge of the treatment and any person acting under the authority of the person in charge or the person in charge and has access to personal data may only process said data following instructions of the person in charge, unless they are obliged to do so by virtue of the Law of the Union or of the Member States".

The person in charge of the treatment also has the obligation to collaborate with the responsible for guaranteeing the rights of the interested parties and fulfilling the obligations of the person responsible for the treatment in accordance with the provisions of the aforementioned article 28 of the GDPR (and related).

Therefore, the data controller must establish clear modalities for said assistance and give precise instructions to the person in charge of the treatment on how to comply with them adequately and document it previously through a contract or either in another (binding) agreement and verify at all times the development of the contract compliance in the manner established therein.

Only the person in charge of the treatment will be fully responsible when it is entirely responsible for the damages caused in terms of the rights and freedoms of the affected parties.

By establishing the responsibility of the person in charge of the treatment in the commission of infringements of the GDPR, its article 28.10 also meets the criterion of determining of the purposes and means of processing. Pursuant to this article, if the manager

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determines the purposes and means of treatment will be considered responsible for it:

"10. Without prejudice to the provisions of articles 82, 83 and 84, if a data processor

infringes this Regulation when determining the purposes and means of processing, it will be considered responsible for the treatment with respect to said treatment”.

In the present case, the correct legal classification according to the GDPR of the entity LIBRANDA, to which the MCD entrusted the implementation of the "eBiblio" platform, is as the person in charge of the treatment, since it acts fully in the name and on behalf of the MCD, for the benefit of this Ministry, which is the entity responsible for treatment for all purposes in terms of data protection.

The arguments presented are considered sufficient to answer the questions alleged by the MCD entity in its response to the claim transfer process.

The aforementioned entity understands that it is not responsible for the treatment of the data of the users of the service, since it does not have said data, and points out that from the Ministry does not require any personal data from said users and, therefore, does not stores information subject to the GDPR on its servers.

However, the truth is that the Ministry is the entity that promotes and coordinates the "eBiblio" service management platform, and the entity that acquires said platform through an open procedure, in order to award it to a bidder who, complying with the requirements of the Technical Specification Sheets and the Sheet of Particular Administrative Clauses set by the MCD itself, provide that e-book and content license management business platform digital and online loans.

It is the MCD who decides to implement the computerized loan management system of electronic books, which includes, as stated in the Specification Sheet Techniques, “a set of computer applications, as well as the resources of necessary hardware and communications, capable of managing hosting and access to electronic content, as well as the temporary loan thereof”; and “a statistics generation module that measures the activity of the platform:

acquisitions by buyer, types of reading access, loans by title, author, library, editorial, materials, reservations and downloads. You must have a user for each Autonomous Community and a global one, assigned to the managing body, which may consult all the statistics globally and/or by Autonomous Communities”.

The MCD entity is also its managing body, through the Sub-Directorate Library Coordination General; and the entity that decides to hire the implementation of the system with a third party, LIBRANDA, which undertakes to "provide all the necessary resources to fulfill the described functional requirements" detailed in the cited document.

On the other hand, the information offered to users in the Privacy Policy inserted accessible on the platform itself details the personal data that is collected as a result of the use of the platform, both directly from the user (first name, last name, email address, etc.) as automatically (IP address, operating system, page views and requests, date and time of access, links clicked, user origin, geolocation (Google

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Analytics), browser language); all of them collected for related purposes with the provision of the service and for statistical, research and analysis purposes arranged by the MCD.

Ultimately, it is the MCD who determines the data processing operations personal to be carried out. It is the same as saying that the MCD is the entity which determines why (purpose) and how (means) personal data is processed



to achieve the intended purpose.

Regarding the "means of treatment", the Directives 07/2020 of the European Committee of Data Protection (CEPD) on the concepts of data controller and in charge of the GDPR, already cited, state the following:

As regards the determination of the means, a distinction can be made between essential and non-essential media. "Essential media" are traditionally and inherently reserved for the data controller. While non-essential media also can be determined by the manager, the essential means must be determined by the data controller. "Essential media" means media that are closely related to the purpose and scope of the treatment, such as the type of personal data that are processed ("what data will be processed?"), the duration of the treatment ("for how long will they treat?"), categories of recipients ("who will have access to them?"), and categories of data subjects ("whose personal data is being processed"). Along with the purpose of treatment, the essential means are also closely related to the issue Whether the processing is lawful, necessary and proportionate. "Non-essential media" refers to more practical aspects of the application, such as choosing a particular type of software or detailed security measures that can be left to the developer.

treatment for you to decide" (the translation is ours).

There is no doubt about the status of controller of the MCD, that is not affected by the fact that it agrees with another entity (the successful bidder contracting) the implementation of the system according to your instructions.

The status of data controller must be attributed to the MCD, even if that you do not access the data. The regulation does not provide whether the data controller, to be, access or not to the data submitted to treatment. And this is so because the GDPR already establishes as sufficient to grant this condition the fact that the intervening entity determines the purposes and means of treatment, so that no

It is possible to add any other requirement or condition that said standard does not provide and, less  
Still, consider that other requirement, access or not to personal data, as  
preponderant to the point of annulling what the norm does establish.

The most accurate conclusion leads to the understanding that the entity that decides the purposes and  
means of treatment is responsible regardless of whether that entity accesses or  
no to the personal data processed. This is also the position defended by the  
European Committee for Data Protection in Directives 07/2020, on the  
concepts of controller and person in charge in the GDPR, in which  
indicates:

“42. It is not necessary for the controller to actually have access to the data  
that are being processed. Anyone who outsources a processing activity and, in doing so, has  
a determining influence on the purpose and (essential) means of processing (e.g.  
For example, by adjusting the parameters of a service in such a way as to influence whose data  
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personal data will be treated), you must be considered responsible even though you will never have  
real access to the data” (the translation is ours).

On the other hand, it so happens that in this case there is no doubt as to  
the status of data processor that must be attributed to the entity  
winning bidder, LIBRANDA, which is a separate and independent entity from  
responsible acting in the name and on behalf of the MCD, for the benefit of this  
Ministry and according to its instructions.

The actions have not revealed that LIBRANDA performs, in its own right,

benefit, processing of personal data of users of the "eBiblio" platform, that uses the data for its own uses, which, if it occurs, would grant it the status responsible for the treatment, according to the provisions of the aforementioned article 28.10 of the GDPR.

As indicated, all data processing indicated in the Privacy Policy Privacy have to do with the purpose of "facilitating the loan of documents included in the platform" and with the services offered by the platform (such as the newsletter subscription). Even treatments for statistical purposes were decided by the MCD.

These and no others are the circumstances that make up the concepts of responsible and person in charge of the treatment and the criteria for the distribution of their respective functions, which have not changed with the approval of the GDPR.

The previous arguments, which were already exposed in the opening agreement of the present procedure, were not taken into account by MCD when formulating its allegations to said agreement, in which he continues to deny his status as responsible of the treatment, although for reasons other than those indicated in your response to the procedure transfer of the claim, which are summarized in the Second Background.

If in that answer he basically argued that the "eBiblio" platform was not entails the processing of personal data, understanding that it is not requires the user any personal data to use the service, subsequently, in its allegations at the opening of the procedure, alleges that it is not the entity responsible for the treatment of the data collected by the access and use of the platform, indicating that said responsibility is assumed by the Cities and Autonomous Communities, which manage said service in a unique and exclusive way.

However, it is proven that the platform is not only driven by the Ministry, but is also managed by this entity, for which it uses a

external service provider company, such as LIBRANDA.

It has already been said, and it is highlighted in the Proven Facts, that the platform involves the collection and use of personal data. This is recognized in the Policy of Privacy inserted in "eBiblio", without having to confuse the fact that this Privacy Policy refers to the processing of personal data carried out LIBRANDA, since this entity acts on behalf of the MCD. In fact, the information contained in the Privacy Policy, indicating LIBRANDA as responsible for these treatments, is a determining anomaly of infringement, as [www.aepd.es](http://www.aepd.es)

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will be indicated in the Fundamentals of Law that follow.

The foregoing means that if LIBRANDA, on the one hand, acts on behalf of the aforementioned Ministry and, on the other hand, processes personal data for reasons of platform management, the conclusion is that the MCD entity is responsible for those data processing. For this reason, nothing changes the fact announced in the allegations in relation to the possibility that the MCD does not access the back office of "eBiblio", if LIBRANDA does it on your behalf.

On the other hand, the processing of personal data that requires the management of the platform with those treatments carried out by the Autonomous Communities for the management of their respective public networks of public libraries.

Subsequently, in the allegations to the resolution proposal, the entity MCD once again modifies its previous approaches, denying its status as

responsible for the treatment considering that it establishes the purposes of the treatment, but not the essential means thereof. Specify the aforementioned entity that does not establish what types of data will be processed, what will be the duration of the treatment or who will have access to those data; and defends this conclusion pointing out that the documents "Conditions of Use" and "Privacy Policy", which indicate the personal data that is collected from users (essential means), have not been prepared with their stake.

When raising this conclusion, the aforementioned Ministry does not take into account the arguments indicated above to substantiate their status as responsible for the treatment, regardless of whether the aforementioned documents have been prepared by the entity LIBRANDA, which always acts in the name and on behalf of the MCD, in such so that everything acted by LIBRANDA must be considered, for all purposes, as if it were done directly by the MCD. Furthermore, it cannot be accepted that the MCD serve as an irregularity that determines an infringement, such as the fact of having allowed a third party to develop the Privacy Policy as if the responsible for the treatment in question, to deny that this condition corresponds to the own MCD, responsible, owner and managing body of the eBiblio platform.

This approach included in the allegations to the proposal prepared by the Ministry is, on the other hand, contradictory with the recognition that it makes in the same statement of allegations, when he admits that it corresponds to the person responsible for the processing the obligation to provide data subjects with information regarding data protection, and must prevent the Privacy Policy from being drafted by the winning company.

Finally, it should be added that what the MCD indicated in its allegations is not true. at the opening of the procedure, when it alleges that on the web pages of the service "eBiblio" in the respective territories establish that they are the Communities

Autonomous those responsible for personal data. As has been proven, in all the respective websites the information offered in terms of protection of data are the documents "Terms of use" and "Privacy Policy" prepared by LIBRANDA, with details on the responsibility for the collection and use of the personal data of users that are outlined in the Proven Facts.

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On the other hand, the entity MCD warned in its allegations to the opening of the procedure that is preparing a document that serves as a basis for the Autonomous Communities sign the appropriate contract with the winning company, but without clarifying if what he intends is to transfer all the management of the platform "eBiblio" to the Autonomous Communities or establish co-responsibility in the data treatment.

In the subsequent allegations, those presented on the occasion of the proposal for resolution, MCD informs of some modifications that it will include in its next contracts, contemplating the possibility that data processing is carried out carried out under the joint responsibility of the MCD itself and the Communities Autonomous (co-responsibility), although it does not provide sufficient details for improvements listed can be assessed.

In any case, that is not the situation analyzed in this proceeding, which It must be resolved, obviously, with the proven facts and factual circumstances.

II

Article 28 of the GDPR, "In charge of the treatment", in its section 3, establishes:

"3. The treatment by the person in charge will be governed by a contract or other legal act in accordance with the Law of the Union or of the Member States, which binds the person in charge with respect to the responsible and establishes the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the obligations and rights of the responsible. Said contract or legal act shall stipulate, in particular, that the person in charge:

a) will process personal data only following documented instructions from the responsible, including with respect to transfers of personal data to a third country or an international organization, unless it is obliged to do so under Union law or of the Member States that applies to the person in charge; in such a case, the person in charge will inform the responsible for that legal requirement prior to treatment, unless such Law prohibits it by important reasons of public interest;

b) will guarantee that the persons authorized to process personal data have committed to respect confidentiality or are subject to an obligation of confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another person in charge of the treatment;

e) will assist the controller, taking into account the nature of the treatment, through measures appropriate technical and organizational, whenever possible, so that it can comply with their obligation to respond to requests that have as their object the exercise of rights of the interested parties established in Chapter III;

f) will help the controller to ensure compliance with the obligations established in the articles 32 to 36, taking into account the nature of the treatment and the information to disposition of the manager;

g) at the choice of the controller, will delete or return all personal data once ends the provision of treatment services, and will delete existing copies unless

where the retention of personal data is required under Union law or

Member States;

h) will make available to the person in charge all the information necessary to demonstrate the

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compliance with the obligations established in this article, as well as to allow and

contribute to the performance of audits, including inspections, by the controller or

another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge shall inform

immediately to the controller if, in their opinion, an instruction violates this

Regulations or other provisions on data protection of the Union or of the

Member states".

These specific obligations may be supervised by the enforcement authorities.

data protection, without prejudice to the control that may be carried out in relation to

with compliance with the Regulation or the LOPDGDD by the person responsible for the

treatment.

In accordance with the provisions of article 28 GDPR, the person in charge and the person in charge

of data processing must regulate the processing of data in a contract or act

legal linking the person in charge with respect to the person in charge; that contract or legal act

must establish the object, duration, nature and purpose of the treatment, the

type of personal data and categories of interested parties, the obligations and rights of the

responsible etc

And it is the person responsible for the treatment, in this case the MCD, who is obliged to



establishment of the "appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the treatment is in accordance with the present Regulations", including those provided in article 28 of the GDPR in relation to the processors (article 24 of the GDPR).

In this case, there is no record that the MCD has ordered the formalization of a order of treatment or legal act that regulates access to the personal data of users of "eBiblio" by LIBRANDA, containing all the stipulations required in the aforementioned article 28.3 of the GDPR, which would have contributed to the correct definition of the roles under which the aforementioned entities intervene.

Both entities signed a contract to formalize the award of the contract called, but neither this contract nor the documents or Specifications that govern the contract contain the stipulations indicated, beyond a reference generic to the obligation of the winning bidder LIBRANDA to submit to the regulations and the European Union regarding the protection of personal data, and a mere mention of the obligations not to use for oneself or provide third parties with the personal data, confidentiality and security, as well as the purpose of the treatment.

This non-compliance supposes the commission of an offense typified in section 4.a) of article 83 of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides the following:

"4. Violations of the following provisions will be penalized, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, of an amount equivalent to a maximum of 2% of the total annual turnover of the previous financial year, opting for the highest amount:

a) the obligations of the controller and the person in charge under articles 8, 11, 25 to 39, 42 and

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43;”.

In this regard, the LOPDGDD establishes in its article 71 that "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law”.

For the purposes of the limitation period, article 73 of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, they are considered serious and will prescribe after two years the infractions that suppose a substantial infringement of the articles mentioned therein and, in particular, the following:

(...)

k) Entrust data processing to a third party without the prior formalization of a contract or another written legal act with the content required by article 28.3 of Regulation (EU) 2016/679.

(...)”.

In this case, the MCD has violated article 28.3 of the GDPR, motivated by the Absence of treatment contract with the entity LIBRANDA.

IV.

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

"2) "processing": any operation or set of operations performed on data personal data or sets of personal data, whether by automated procedures 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, comparison or interconnection, limitation, deletion or destruction".

In accordance with these definitions, the collection of personal data through of the "eBiblio" platform constitutes data processing, with respect to which the responsible for the treatment, in this case the MCD entity, must comply with the principle of transparency, established in article 5.1 of the GDPR, according to which the personal data will be "treated in a lawful, loyal and transparent manner in relation to the interested party (lawfulness, loyalty and transparency)"; and developed in Chapter III, Section 1 of the same Regulation (articles 12 and following).

Article 12.1 of the GDPR establishes the obligation of the data controller take the appropriate measures to "provide the interested party with all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 regarding the treatment, in a concise, transparent, intelligible and easy way. access, in clear and simple language, in particular any information addressed to child".

When personal data is collected directly from the interested party, the information

It must be provided at the same time that data collection takes place. He

Article 13 of the GDPR details this information in the following terms:

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

next:

- a) the identity and contact details of the person in charge and, where appropriate, their representative;
- b) the contact details of the data protection officer, if applicable;
- c) the purposes of the treatment for which the personal data are 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 responsible or of a third party;
- e) the recipients or categories of recipients of personal data, if any;
- f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate guarantees and means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

- a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;
- b) the existence of the right to request access to the data from the data controller personal information relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;
- c) 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 consent at any time, without this 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 contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data

personal and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, referred to in the

Article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic

applied, as well as the importance and expected consequences of said treatment for the

interested.

3. When the controller plans the subsequent processing of personal data

for a purpose other than that for which they were collected, will provide the interested party, with

prior to said further processing, information about that other purpose and any information

relevant additional pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent

that the interested party already has the information".

In accordance with these regulations, the duty to inform corresponds to the person responsible for the

processing of personal data.

In this case, the MCD entity has not complied with this obligation to inform the

users of the "eBiblio" platform, having allowed the only information in

matter of protection of personal data is provided by the entity in charge of the

treatment, LIBRANDA.

The information is provided through the documents "Terms of use" and "Policy of

Privacy", available on the platform, which have been prepared as their own by

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LIBRANDA, as if it were the owner of the website, and not by the responsible Ministry.

There is multiple information contained in those documents that account for

of this circumstance.

This can be seen in the document "Terms of use" when the user is indicated that "By using this service, you agree to enter into a contract that binds you to its library and with Distribuidora... (Libranda)" or that "it acknowledges that Libranda/De Marque Inc. is the owner of: (a) the eBiblio Service... (b) any tools, computer hardware and software used to offer the Service"; or when it's done reference to "the eBiblio Services offered by Libranda/De Marque". Also LIBRANDA provides its contact information in the Privacy Policy for the exercise of rights, despite the fact that there is no stipulation in this regard in the contract formalized by said entity and the MCD.

This single fact, which is not controversial and has been recognized by the entity itself LIBRANDA, supposes a breach of what is established in the precepts before cited by the MCD entity, which justifies the declaration of the infringement correspondent.

In addition, those documents contain several deficiencies, in relation to the minimum content of the information that must be provided to the interested parties according to the article 13 of the GDPR.

a) The information on the identity of the person in charge, which has already been dealt with in the previous Fundamentals of Law, is deficient and confusing; and their contact details (those of the entity in charge of the treatment are indicated and not those of the MCD).

In the version of the Privacy Policy provided by the complaining party, the as "co-controllers" the Ministry, the Cities and Autonomous Communities, Libranda/De Marque Inc. and libraries, but without defining the scope of that supposed co-responsibility and without sufficiently specifying the roles under which All these entities are involved.

In the new version of this Policy of June 2021, contributed to the proceedings by LIBRANDA, this deficiency is not corrected. In this new version, information about the responsible entity is resolved with a generic reference to the "Administration Public" to later add that "The local administration of your library... is the person responsible for the processing of your personal data". On the other hand, even if specifies the condition of LIBRANDA as data processor, it is also informs that "This privacy policy summarizes (1) the types of personal information collected by Librandia, (2) the reasons why Librandia collects information information, (3) how Librandia uses and protects personal information, and (4) the circumstances in which personal information is shared with partners of Librandia and third parties, when the applicable laws require or allow it".

b) The contact details of the data protection officer are not provided.

c) The legal basis of the treatment is not clear.

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The "Terms of Use" document refers to the conclusion of a contract that commits the user to his library and LIBRANDA; while in politics of Privacy provided by the complaining party, the user is informed that "By using the eBiblio platform, as well as all other services available on said eBiblio Platform, you accept and consent that your information, including the personal information, is handled in the manner described in this Privacy Policy". On the other hand, the new version of the Privacy Policy informs about the consent as the legal basis for data processing ("The legal basis that

allows the processing of your data by Librandia is the consent").

d) In the "Storage and Security" section of the Privacy Policy provided by the complaining party is informed that personal data is stored on servers "generally" located in Europe, although it is noted that "the data collected or shared with third parties, including, but not limited to, Google Analytics and, in some cases, your library, may be stored on servers located outside of Europe, especially in the United States or Canada."

The data that could be stored on servers outside Europe are those automatically collected through the use of Google Analytics cookies:

"collects various types of information regarding your browsing on the Platform (for example, the pages you browse, the date and time you access those pages, the links you click). Google Analytics also collects, among other information, the type of operating system on your device, the language set for your browser, the name of your Internet service provider or your location geographic. The data collected, together with your anonymous IP address, is stored by Google on servers located in Canada, but in certain cases can be transferred to the United States. Google uses this information with the sole purpose of generating statistics and reports on browsing on the eBiblio platform. These elements allow us to improve the eBiblio Platform by better understand the behavior of Users".

According to the Section "Sharing and transferring personal information", the transfer international reporting is based on consent: "Consent for the international transfer of information. By checking the "I Accept" button, you agree the collection, transfer, storage, use and control of your information collected by the eBiblio Platform, in accordance with the conditions and for the purposes described in this section of the privacy policy".



However, the existence or absence of a adequacy decision of the Commission, or on adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been lent, nor about the possible risks for the interested party.

This matter has been rectified in the current Privacy Policy, in which points out the following:

The information obtained through cookies

When using the Platform, certain information may be collected (such as interactions with the Platform or any other information described below) through session cookies own and Google Analytics cookies. We also inform you that the transfer [www.aepd.es](http://www.aepd.es)

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international data transfer to Google is protected by the formalization of contractual clauses type approved by the European Commission. For more information, see our Privacy Policy "Cookies".

e) Regarding the conservation of the data, a period of six years was established without justify the reasons for this deadline, although this has now been modified establishing that personal information may be retained when necessary to comply with applicable laws or to prevent any infringement; to resolve disputes; and to enforce this privacy policy. Added to be removed information when it is not needed.

f) The information on the rights of the interested party is deficient. I only know mentions the possibility of requesting access to or deletion of personal data,

adding the right of rectification in the Privacy Policy updated in

June 2021; and before the person in charge of the treatment.

g) The possibility of filing a claim with the AEPD was not indicated in the

Privacy Policy provided by the claimant.

It is interesting to note that MCD, in its pleadings at the opening of the

procedure, has not formulated any consideration on the above points,

except for the question related to the entity responsible for the treatment, already analyzed in the

Fundamentals of law precedents.

Therefore, a breach of the provisions of article 13 of the GDPR is verified,

which supposes the commission of an infraction typified in article 83.5.b) of the same

Regulation, which under the heading "General conditions for the imposition of fines

administrative" provides the following:

Violations of the following provisions will be penalized, in accordance with section

2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company,

of 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;(...)".

For the purposes of the limitation period, article 74 of the LOPDGDD indicates:

"Article 74. Offenses considered minor.

The remaining infractions of a merely

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 to

information of the affected party for not providing all the information required by articles 13 and 14 of the

Regulation (EU) 2016/679".

Article 83 "General conditions for the imposition of administrative fines" of the

GDPR in its section 7 establishes:

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“Without prejudice to the corrective powers of the control authorities under article 58, paragraph 2, each Member State may lay down rules on whether and to what extent measure, impose administrative fines on authorities and public bodies established in that Member State”.

Likewise, article 77 “Regime applicable to certain categories of

responsible or in charge of the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

c) The General State Administration, the Administrations of the autonomous communities and the entities that make up the Local Administration.

2. When the managers or managers listed in section 1 commit any of the infractions referred to in articles 72 to 74 of this organic law, the authority of data protection that is competent will issue a resolution sanctioning them with warning. The resolution will also establish the measures that should be adopted so that cease the conduct or correct the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and to those affected who had the status of interested, if any.

3. Without prejudice to the provisions of the previous section, the data protection authority

It will also propose the initiation of disciplinary actions when there are indications enough for it. In this case, the procedure and the sanctions to be applied will be the established in the legislation on the disciplinary or sanctioning regime that results from application.

Likewise, when the infractions are attributable to authorities and executives, and the existence of technical reports or recommendations for treatment that had not been properly attended, the resolution in which the sanction is imposed will include a reprimand with the name of the responsible position and the publication will be ordered in the Official State or regional Gazette that corresponds.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions referred to in the preceding sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued under the protection of this article.

(...)"

In the case at hand, it is found that the responsible entity, that is, the MCD, has not formalized a commission contract with the service provider of treatment or other legal act that regulates access to personal data by part of the latter entity, as well as for the breach of the principle of transparency on the part of the aforementioned Ministry, violating the provisions of articles 28.3 and 13 of the GDPR.

In accordance with the provisions of article 77 of the LOPDGDD, it is proposed penalize such conduct with a warning sanction.

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Likewise, when the managers or managers listed in section 1 of the cited article 77 of the LOPDGDD committed any of the offenses to which referred to in articles 72 to 74 of this Organic Law, it is contemplated that the resolution issued may require the entity in question to establish the measures that should be adopted to stop the infringing conduct, correct the effects of the infraction that had been committed and adapts its action to the requirements contemplated in articles 28 and 13 of the GDPR, with the scope expressed in the previous Fundamentals of Law; as well as the contribution to this Agency of the means accrediting compliance with what is required.

Specifically, MCD must formalize, in accordance with the provisions of the Article 28.3 of the GDPR, the relationship that links said Ministry with LIBRANDA in the implementation and maintenance of the "eBiblio" service; and establish a new Policy of Privacy, available to all users of the aforementioned platform, which gives response to the objections raised in this proceeding.

When preparing this new Privacy Policy, special attention should be paid to the following questions:

a) The correct identification of the entity responsible for data processing personal information that the use of the service entails.

In the event that, in the future, it is resolved that there are data treatments personal joint ventures with other entities (Cities and Autonomous Communities or managers of public library networks), the provisions of the Article 26 "Joint controllers" of the GDPR.

b) The detail of the different data processing that is carried out, the legal bases rights that legitimize them and their purposes.

In the event that the processing of personal data in question is covered by the user's consent, it should be noted that this consent is understood as a clear affirmative act that reflects a manifestation of free will, specific, informed and unequivocal of the interested party to accept the data processing of a personal nature that concern him, provided with sufficient guarantees to certify that the interested party is aware of the fact that he gives his consent and of the extent to which it does. And must be given for all processing activities carried out for the same purpose or purposes, so that, when the treatment has various purposes, consent must be given for all of them in a specific and unequivocally, without the provision of the service being subject to the fact that the affected party consent to the processing of your personal data for purposes that do not keep connection with the development or control of said service. In this regard, it is interesting emphasize that the legality of the treatment requires that the interested party be informed about the purposes for which the data is intended (informed consent).

c) The information on the protection of personal data inserted in the web "eBiblio", in all its territorial areas, informs the interested parties about the possibility of carrying out international data transfers ("The information that we collect is stored on servers...usually located in Europe..."; "...in

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some cases... may be stored on servers located outside of Europe, especially in the United States or Canada"), on the basis of consent of the interested party ("Consent for the international transfer of information..."),

although in relation to Google Analytics it is also indicated in another section that "When voluntarily provide us with your personal information, you agree to your collection, use and disclosure...".

According to the information that has been analyzed in these proceedings, the data that could be stored on servers outside of Europe are those automatically collected through the use of Google Analytics cookies.

On the other hand, in the version of the Privacy Policy dated June 2021, it is indicates that "...certain information may be collected... through... cookies from Google Analytics" and that "the international transfer of data to Google is covered by in the formalization of the standard contractual clauses approved by the Commission European".

In relation to this issue, it must be clearly reported whether or not international transfers of personal data and, if so, must provide users of "eBiblio" with all the details established in section f) of article 13.1 of the GDPR ("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 from the Commission, or, in the case of transfers indicated in article 46 or 47 or article 49, paragraph 1, paragraph second, reference to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been lent").

This mandatory information is related to the established protection system for international transfers in articles 44 and following of the GDPR.

Said article 44 establishes a general principle, according to which the data only

They may be exported if, on the one hand, the treatment object of the transfer is lawful and complies with the provisions of the GDPR and, on the other, if it complies with the conditions that they are established in Chapter V of the same legal text (articles 44 to 50).

Article 45 of the GDPR establishes, as a main rule, that a transfer of personal data if the country, territory or international organization addressee guarantees an adequate level of protection recognized by a decision of adequacy dictated by the European Commission.

In the absence of said adequacy decision, article 46 of the GDPR authorizes enter into transfers if the person in charge or in charge has offered guarantees appropriate, materialized through the instruments referred to in the same article.

Among the guarantees that data controllers can offer according to with the provisions of this article 46 of the GDPR include the subscription of the clauses contractual model approved by the European Commission. However, it must be taken into Note that the CJEU has declared that there are situations in which these clauses do not constitute a sufficient means to guarantee effective data protection

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personal transferred to a third country and may require the adoption of measures complementary.

The following scenario contemplated by the GDPR, in the absence of a decision of adequacy and adequate guarantees, is to allow the transfers to be carried out if any of the conditions stated in article 49.1 is met. of the GDPR.

If none of the circumstances provided for in the articles that above, the carrying out of international transfers of personal data does not would be covered, and in that case the MCD should consider discontinuing the use of



Google Analytics cookies.

Lastly, it is noted that failure to meet the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infringement in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent disciplinary administrative proceeding.

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 MINISTRY OF CULTURE AND SPORT, with NIF S2800239B, for the infringement of articles 28.3 and 13 of the GDPR, typified in the Articles 83.4.a) and 83.5.b) of the same Regulation, and classified as serious and minor in articles 73.k) and 74.a) of the LOPDGDD, respectively, a sanction of warning.

SECOND: REQUEST the entity MINISTRY OF CULTURE AND SPORT to that, within a period of six months, counted from the notification of this resolution, adapt its action to the personal data protection regulations, with the scope expressed in the Foundation of Law V, and justify before this Agency Spanish Data Protection Agency the attention of this requirement. In the text of the resolution establishes what have been the infractions committed and the facts that have given rise to the violation of the data protection regulations, of which clearly infers what are the measures to be adopted, 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 approach, how to comply with the GDPR and the LOPDGDD.

THIRD: NOTIFY this resolution to the MINISTRY OF CULTURE AND

SPORT.

ROOM:

in accordance with the provisions of article 77.5 of the LOPDGDD.

COMMUNICATE this resolution to the Ombudsman, in

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

Resolution will be made public once the interested parties have been notified.

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Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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

The interested party expresses 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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APPENDIX 1

SPECIFICATION SHEET

(...).

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APPENDIX 2

“EBIBLIO PLATFORM. TERMS OF USE”

“...By using the Service, you agree to enter into a contract that binds you with your library, and with DISTRIBUIDORA DIGITAL DE LIBROS, S.A.U., ("Libranda") (each individually a "Manager" or collectively the "Managers"), under the conditions established in these Terms, which you acknowledge that you have read and understood and which bind you legally and contractually as a user...

If you do not agree to these Terms, please do not register for or use the Service...

To access the Service, you must have an account in good standing with one of the libraries participants or create an account directly on the Service, in cases where this option is available...

Managers care about protecting your personal information and respecting your privacy. Information about the type of information collected during your use of the Service eBiblio, the reasons for which said information is collected and the use made of it is available at the following link: "Privacy Policy", which you are responsible for reviewing and acknowledge having read and understood your acceptance of these Terms... your content

The Administrators may permit, at their sole discretion, the downloading and posting of comments and observations, through a book club or otherwise, as well as images, text or other content submitted by you through the eBiblio Service, including your history of reading (collectively, "Your Content"). By submitting your content, you grant Managers a irrevocable, perpetual, non-exclusive, transferable, free license to copy, modify, display or use your content.

You represent and warrant to Libranda/De Marque that: (a) you are the owner of Your content or have the written permission of the copyright owner to make available provision of Your Content on or through the eBiblio Service; (b) Its content is accurate and correct; (c) you have the right to grant the license mentioned above to the managers; and (d) the reproduction, display, distribution, use and other exploitation of Your Content.

by the Managers and their eBiblios service providers, members, users and licensees, as permitted by the aforementioned license, will not infringe the rights of third parties and will not infringe any laws, in particular copyright laws and protection of intellectual property...

#### Libranda/De Marque or Third Party Content

You are informed and acknowledge that Libranda/De Marque Inc. is the owner of: (a) the Service eBiblio, including any text, image, sound, video, model, plan, map, image, icon, software, design, applications, data, graphic presentations, trademarks, logos and slogans created or used by Libranda/De Marque and to which it owns copyright intellectual property; (b) any tools, computer hardware and software used to offer the Service; and (c) graphic design, user interface, and appearance of the eBiblio Service.

Some texts, photos, sounds, videos, models, plans, maps, images, icons, software, designs, applications, data, graphic presentations, trademarks, logos and slogans may be owned by third parties. In all cases, you must not use, reproduce or save them without the prior written consent of Libranda/De Marque or such third parties...

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#### Service Links

The eBiblio Service may allow you to connect or log in to use the features offered by applications, services or websites operated by third parties and which are not owned nor are they controlled by an Administrator (collectively, the "Third Party Applications").

We provide these links only as a convenience to you, and you access them at your

own risk. You may also need to abide by some provisions and terms of use

applicable when you use or purchase, as the case may be, certain products or services

eBiblio related to the eBiblio Service or third-party applications...

## Contact

All questions about the eBiblio Service or the eBiblios Services offered by

Libranda/De Marque or managers can contact: (email address and

Libranda mailing address).

Last update: January 15, 2019".

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## ANNEX 3

### "EBIBLIO PLATFORM. PRIVACY POLICY"

#### Introduction

Welcome to the platform for reading and lending electronic books (individually, the

"eBiblio Platform" or the "eBiblio Application", as the case may be, and collectively the "Service

eBiblio"), developed and operated jointly by Libranda/De Marque Inc. and the Ministry of

Culture and Sport together with the autonomous communities and cities of Spain, its library

(each individually a "Manager" or collectively the "Managers"), all

Managers are co-controllers of your personal data.

Distribuidora Digital de Libros ("Libranda") is a duly constituted company of

In accordance with Spanish laws based in...

Your library is a legal person whose status and headquarters depend on the website or location

where you created and registered your account, if applicable...

In this Privacy Policy, we describe how we collect, use, and disclose information information we obtain about users of the eBiblio Platform. You will also find, in this privacy policy, the different means by which you can contact us to, for example, to obtain more information about the protection of your personal information, to request that we delete, modify and/or correct your personal information.

By using the eBiblio Platform, as well as all other services available on said eBiblio Platform, you accept and consent that your information, including information personal, is handled in the manner described in this Privacy Policy. His use of the eBiblio Platform and any dispute over privacy are subject to this Privacy Policy. privacy.

#### Collection of Personal Information

Information you provide directly to us

What information is collected?

We collect the following personal information, which you provide to us directly and from voluntarily, for example, by logging into the eBiblio Platform using your library account or by creating an account directly on the eBiblio Platform:

Name

Last name

Email address

ID number specific to your library

We also collect certain information, such as your browsing history. Finally,

We may collect your location data when you post content to the Platform.

eBiblio, if the option to access your location data is activated on your device mobile.

How is this information collected?

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eBiblio Platform subscription form

Login form

When you complete your user profile

When you post a comment through your user profile

When you review a book through your user profile

Subscription to our newsletter

Why is this information collected and how is it used?

We use the information we collect for the following purposes:

To allow you to use the eBiblio Platform, as well as the eBiblio Services available on

her, by creating an account and a User profile;

To communicate with you if you have subscribed to the newsletter;

To communicate with you when you use the eBiblio Services of the eBiblio Platform

(for example, to provide you with a download link for an ebook you have

lent or in which you have withheld, to send you a withholding confirmation, etc.);

Statistics, research and analysis.

To provide you with technical support, as necessary;

To notify you of any changes to our terms of use and this privacy policy

privacy, and/or for other administrative purposes;

To ensure the protection of rights and interests and enforce this privacy policy

privacy and our terms of use;

To ensure that minors do not borrow books intended for adults only;

To comply with legal or regulatory obligations



We collect and use only the information that is required and necessary to enable us to fulfill the aforementioned purposes.

In addition to the above, we also use, as described in the next section, cookies to automatically collect information about you.

#### Information We Collect Automatically

What information is collected?

IP address

OS

Page views and requests

Date and time of access

Links you click

user origin

Geolocation (Google Analytics)

The language of your browser

How and why is this information collected?

We collect such information through the use of cookies. cookies are alphanumeric identifiers that are recorded on the hard drive of the employee's computer User or on any other mobile device used by the User to access the eBiblio platform. These files allow the exchange of state information between the eBiblio Platform and the User's browser.

We use the following cookies:

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Session cookies: These cookies are essential for the proper functioning of the eBiblio platform. These cookies do not collect information for commercial purposes or for advertising targeting purposes. Session cookies are encrypted identifiers and not recognizable that are essential for the correct functioning of some functions (for example, they allow a faster login process and avoid having to go back to log in on each page you browse). These cookies do not collect information to be used for commercial prospecting or advertising orientation. Cookies from session are encrypted identifiers that are not recognizable but are essential for that, among other things, you do not have to log in again on each page that navigate.

Google Analytics Cookies: Google Analytics collects various types of information with regarding your navigation on the Platform (for example, the pages you browse, the date and the time you access those pages, the links you click). Google

Analytics also collects, among other information, the type of operating system on your device, the language configured for your browser, the name of your service provider Internet services or your geographic location. The data collected, along with your anonymous IP address, are stored by Google on servers located in Canada, but in certain cases they can be transferred to the United States. Google uses such information for the sole purpose of generating statistics and reports on browsing on the eBiblio Platform. These elements allow us to improve the eBiblio Platform by better understand the behavior of Users.

We collect and use only the information that is required and necessary to enable us to fulfill the aforementioned purposes. You can delete all Cookies that are installed on your computer or mobile device at any moment. You can also disable cookies by selecting the appropriate option in your browser settings. The deactivation of cookies can cause evil

operation of the eBiblio Platform and some of the functions or pages may be

difficult, if not impossible, to access.

## Sharing and Transferring Personal Information

### Consent for the international transfer of information

By checking the "I Agree" button, you agree to the collection, transfer, storage, use and control of your information collected by the eBiblio Platform, in accordance with the conditions and for the purposes described in this section of the privacy policy.

With whom do we share your personal information?

We promise not to commercialize the personal information we collect. If we have intend to do so, we will ask for your express consent prior to any such disclosure.

However, we share such information with third parties in the following cases:

With your library to offer you e-book lending services;

With Google, as described above;

In the event of a change in control of the company;

To comply with applicable legal or regulatory obligations, including as part of a Judicial procedement; to respond to a subpoena, warrant, court order, or other legal process; or as part of an investigation or request by the police or an authority government, Canadian or other.

If you do not want your personal information shared with third parties, you can opt out at the

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time of collection or at any time thereafter, as mentioned in the

next section. Please note that such a refusal may result in our being unable to provide you with

certain eBiblios Services.

#### Right of veto and expulsion (exclusion)

We are committed to offering you a veto and deletion right regarding your personal information.

The right of veto is the possibility offered to Users to reject, at the time of the collection, that your personal information is used for certain purposes mentioned in this document. The right of deletion refers to the option offered to Users to choose that your personal information is no longer stored or used for certain purposes (for example, a list of mail).

To exercise these rights, contact us:

Address: (...)

Email address: (...)

Phone: (...)

#### Right of access

We are committed to recognizing a right of access and modification for those who wish to consult or modify information about them.

To exercise these rights, contact us:

Address: (...)

Email address: (...)

Phone: (...)

#### Storage and Security

The personal information we collect is stored on secure servers with access restricted, generally located in Europe, from a third-party eBiblios Service provider.

However, please note that data collected from or shared with third parties, including, among others, Google Analytics and, in some cases, its library, may be stored in servers located outside of Europe, especially in the United States or Canada.

We take all reasonable means to ensure that any Service provider

External eBiblios offers a safe and appropriate environment to protect your personal information,

as well as security measures similar to those required by Spanish law. However,

Please note that applicable laws outside of Spain may authorize a government, a

court of law or a public entity to require the disclosure of your personal information. The

Managers shall not be liable in any way with respect to such disclosure and shall not

will challenge such a request to disclose your personal information if required by local law. To the

voluntarily provide us with your personal information, you agree to its collection, use and

disclosure in accordance with the above.

Notwithstanding the foregoing, the security of your personal information is one of our

priorities and we are committed to taking all reasonable steps to prevent the

disclosure, use, alteration or destruction of your personal information. Libranda/De Marque

limits the number of employees who have access to such information to managers of

products, product experts and developers. Employees with access to such

information have a duty of absolute confidentiality.

To ensure the security of your personal information, we use the following measures:

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Secure Sockets Layer (SSL)

computer backup

firewall

encrypted emails

We are committed to maintaining a high degree of confidentiality through the use of the

latest technological innovations that allow us to guarantee the confidentiality of your transactions. However, despite our best efforts, no measures of data security can fully guarantee the security, and always associated true degree of risk with the provision of personal information on the Internet.

#### Duration of retention of personal information collected

We retain your first name, last name and email address for the entire period during which the account you created with your library or, if applicable, the account you created directly on the eBiblio Platform remains active, and for a period of six years after the termination of such account or for any other period of time required by any applicable law, for the sole purpose of complying with such applicable law.

Your loan history is saved on the eBiblio Platform for a certain period of time. time determined by your library, after that period, your loan history will be will delete automatically. You have the option to request loan history retention of the tour by checking the "Keep activity history" box.

You can also delete your loan history at any time through the section "Your account". If you do so, your data will be anonymized for statistical purposes only.

#### External links and forms

##### external links

From time to time, we may add some hyperlinks on our eBiblio Platform that redirect you to external websites operated by third parties that we think might be of use interest to Users. In no way does this imply that we approve the content of these websites, nor the activities of the companies, organizations or associations in charge of said websites. When you leave our eBiblio Platform, you and your personal information will no longer be governed by this privacy policy. We recommend that you consult the policy of privacy of any website you visit before you start using the site.

#### Babelio Platform

You will find, in the eBiblio Platform, a "Babelio" form that is a tool for the book rating. When you use such a form to rate, review, or post a comment about a book, your personal information will be collected directly by Babelio and, therefore, it will be governed by Babelio's own privacy policy, which we recommend that you read before using said form. The Managers will in no way be responsible for the use, by Babelio, of your personal information, nor its protection.

#### Contact Us

For more information about our policies and practices regarding the confidentiality, including our practices with respect to the protection and retention of your personal information can be communicated with us at any time:

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28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

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Address: (...)

Email address: (...)

Phone: (...)

#### Changes to this Privacy Policy

The Administrators may modify this Privacy Policy at any time. Yeah make any changes, we will take reasonable steps to notify Users of said changes. In the event that a User fails or refuses to accept the last and updated version of this privacy policy, your access to the eBiblio Platform may be suspended as of the effective date of such update.”

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## ANNEX 4

### Privacy Policy

#### "YO. Introduction

Welcome to the platform for reading and lending electronic books (individually, the "Platform" or the "Application", as the case may be, and collectively the "Service"), developed and operated by DISTRIBUIDORA DIGITAL DE LIBROS, S.A.U., ("Libranda"), as successful bidder of the public service for the implementation and management of the Platform. This means that the public administration determines for what reasons (i.e. the purposes) your data is processed, as well as the resources (ie, the media) allocated to said processing. In

Consequently, Libranda is in charge of processing your personal data.

Distribuidora Digital de Libros, S.A.U., ("Libranda"), is a duly incorporated company in accordance with Spanish law with registered office at..., and Identification Number Fiscal...

The local administration of your library (the Library) is responsible for the treatment of your personal information. You can find the identity and data of your Library, as well as the data of the corresponding data protection delegate, accessing its website.

Libranda is aware of the need to protect your privacy and is committed to respect the confidentiality of the personal information it collects about you.

This privacy policy summarizes (1) the types of personal information collected by Libranda, (2) the reasons why Libranda collects personal information, (3) the way in which Libranda uses and protects personal information, and (4) the circumstances in which it Personal information is shared with Libranda partners and third parties, when the laws applicable laws require or permit it. This privacy policy also describes the decisions



that may be taken with respect to the collection, use and storage of information

personnel, and access to it.

## II. Collection and Use of Personal Information

As part of the operation of the Platform, Libranda will collect and/or process information

about you, as described below. Personal information is collected and used

only for the purpose indicated in this privacy policy and for no other purpose.

The provided information

When you log in to the Platform, you must select your participating library in the

eBiblio project of the Ministry of Culture and Sports, a collective project with the communities

and autonomous cities of Spain and will be directed to the Library's website, which will

will authenticate. You can only benefit from the services offered through the Platform if it is

an authenticated member of a Library. You and your Library will send Libranda your

user number to allow you to access the Platform, log in to your account

user and use the functions of the Platform. From time to time, you may provide

more information to Libranda for the purposes of managing your account either with the

Platform or for the administration of your account with your Library. Libranda keeps the

strict confidentiality of this information, in accordance with this policy, the provisions

contractual conditions to which it is subject and the applicable laws.

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Depending on the case, you can also download or upload information, comments or

files to the Platform. Libranda reserves all the right to verify and reject them if

violate their policies.

The legal basis that allows the processing of your data by Libranda is the consent.

Libranda is not responsible for the use or protection of personal information that you provide to Libraries or third parties, which is managed by Libraries or third parties according to their own policies. Please contact them directly. to learn more about its privacy and confidentiality policy.

The information obtained through cookies

When using the Platform, certain information may be collected (such as interactions with the Platform or any other information described below) through session cookies own and Google Analytics cookies. We also inform you that the transfer international data transfer to Google is protected by the formalization of contractual clauses type approved by the European Commission. For more information, see our Privacy Policy Cookies.

More information

Libranda may collect information about the way in which the user interacts with the Platform through statistical tools such as Google Analytics. To collect this information, codes will be placed on the Platform that will allow knowing, among other things, what searches were performed and what content was accessed, as well as the browser and the device that was used. This information will be processed and updated each time interact with the Platform. Finally, your geolocation data may be collected when you post content through the Platform, if the option to share data from geolocation is enabled on your device.

Your personal information may be collected through the following forms:

- . Form to register on the Platform;
- . Identification form;
- . When you complete your user profile;

. When you post a comment on your user profile;

. When you rate a book from your user profile;

You can find additional information on how to manage cookies, including how to revoke consent and delete cookies, in an accessible and permanent way at all times through the Cookies Policy of the website.

### III. Use and Sharing of Collected Information

Librandia does not sell, rent or commercially exploit the information collected. Information collected is not shared with third parties or used by third parties except for the purpose for which was collected as described in this policy, unless required or authorized by law or has obtained the appropriate consent, as the case may be.

We use the information collected to "Facilitate the loan of the documents included in the platform", that means:

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- Allow you to use our Platform and the services offered on it, by creating an account and a user profile;

- Contact you as part of the service features you use, for example

For example, to give you access to the e-book download link when you're ready, to confirm a reservation of a digital book, to notify you and send you the download link of a loan when a book you have reserved is available for you to borrow;

- Enhance the reading experience by posting suggestions based on your personalized profile;

- Service Management;

- Offer technical support, if necessary;

- Inform you of changes to our terms of use and policies and/or other reasons

administrative;

- Protect the rights and interests and enforce this privacy policy or the conditions

of use;

- Check that the minor does not borrow books designated exclusively for

Adults;

- Compliance with the law.

Personal information

Personal information may be shared with Libranda's partners and subcontractors

that allow the Platform to function properly, for example, by helping Libranda to

develop, maintain and update the Platform. The information will only be communicated to those

"need to know" after verifying that contractual and other measures have been taken

appropriate measures. Consequently, the recipients of your personal data may be

Libranda and Google partners for the management of Google Analytics cookies.

Personal information may be used and communicated if Libranda, acting in a manner

reasonably believes that the use and disclosure is necessary to comply with the law

law, legal proceeding or governmental request, or otherwise to

any purpose set forth in applicable law that permits or requires the disclosure of

personal information.

Anonymous information used in aggregate form

Libranda may use anonymous information in aggregate form to improve the Platform. The

Anonymous information may also be used in aggregate form for research purposes and

statistics, including projects with Libranda associates.

For clarity, anonymous information used in aggregate form is not information

personal information and cannot and will not be used to re-identify you or another person.

IV. Access, Correction and Update of Personal Information

Subject to applicable law, you may request access, correction, or

removal of personal information by contacting Libranda:

Mailing address: (...)

Email address: (...)

Phone number: (...)

Depending on the case, you can also correct the information online or on your own

Platform. Data collected by third parties cannot be corrected by Libranda. You

you should contact these third parties to correct this information.

Likewise, we inform you that you have the right to file a claim with the Agency

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Spanish Data Protection Agency if you consider that there has been an infringement of the

data protection legislation regarding the processing of your personal data.

## V. Security Measures

Libranda applies security measures based on what may be reasonably necessary

to protect the security and confidentiality of personal information. In this sense,

Libranda has implemented the following measures:

**SSL Technology:** With each access to the Platform through the Internet, the technology of Layer

Secure Connection (SSL) protects personal information by authenticating the

server and data encryption. No personal information will be disclosed until

this technology is activated;

**Limited Access:** Access to personal information is granted only to employees,

representatives and relevant subcontractors of Libranda "who have a need to know" for the purposes of

develop or operate the Platform;

Security Center: Libranda's servers are located in a data center located

in Spain and the Platform is hosted on the Google Cloud platform. to get more

information about these hosting services, please visit the conditions of use and the

policy, available at <https://cloud.google.com/product-terms/>.

EVEN IF LIBRANDA USES MARKETABLE QUALITY TECHNOLOGIES TO

RUN THE PLATFORM AND ITS SERVERS - AS WELL AS ANY

FILE TYPES - THEY ARE NOT FAILURE AND NOR FULLY PROTECTED

AGAINST UNPREDICTABLE EVENTS OR FORCE MAJEURE, CYBER ATTACKS OR USES AND

UNAUTHORIZED ACCESS, AND YOU SHOULD KNOW THERE IS A RISK

ASSOCIATED WITH THE ELECTRONIC TRANSMISSION OF DATA. THIS RISK IS

INHERENT TO ALL ELECTRONIC OPERATIONS, AS WELL AS TO ALL

OTHER FORMS OF COMMUNICATION. THEREFORE, LIBRANDA CANNOT

ENSURE THAT INFORMATION WILL NEVER BE INTERCEPTED OR ACCESSED OR

YOU WILL SEE ENGAGED IN OTHER INCIDENTS. SUCH INCIDENTS MAY

OCCUR AND MAKE DEVICES OR SYSTEMS ACCESSIBLE TO

PERSONS NOT AUTHORIZED OR CONTROLLED BY OTHER PERSONS, AND GIVE

PLACE TO THE RECEPTION OF UNWANTED COMMUNICATIONS AND INVITATIONS. YEAH

YOU RECEIVE A MESSAGE THAT APPEARS TO COME FROM THE PLATFORM ON WHICH YOU

ASKS YOU TO SHARE PERSONAL INFORMATION, YOU SHOULD AVOID ANSWERING IT.

LIBRANDA WILL NEVER REQUEST FINANCIAL AND OTHER INFORMATION

SENSITIVE IN THIS WAY. IF YOU OR SOMEONE ELSE HAS PROVIDED

PERSONAL INFORMATION IN RESPONSE TO AN EMAIL

SUSPICIOUS, POP-UP, OR FAKE WEBSITE CLAIMING

WHICH IS ASSOCIATED WITH THE REQUEST, OR IF ANY OF THESE OCCURS

EVENTS MENTIONED ABOVE, PLEASE CONTACT LIBRANDA

IMMEDIATELY.

#### SAW. Personal Information Storage and Duration

Subject to applicable laws, Libranda retains and stores personal information for its use and disclosure in accordance with this privacy policy, whenever it is necessary for the purpose described here. To this end, Libranda may retain the information personal once a specific purpose has been fulfilled if reasonably necessary do so: (i) to comply with applicable laws or to prevent any infringement; (ii) for resolve disputes; and (iii) to enforce this privacy policy.

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The period of conservation of your personal data is limited to the contract for the provision of implementation services of the eBiblio platform, consequently, will be kept until its termination. Once the service is finished, Libranda will return or destroy the data personal, according to the request of each library.

#### VII. Third Party Websites

If the Platform provides a link to third party websites, including the website of the Library, you should be aware that those websites operate independently and they are subject to separate terms of use and privacy policies. It is recommended strongly that the user knows the conditions of use and independent policies related to these third-party websites, since Libranda is not responsible for the content or practices of these websites.

#### VIII. Modifications

Libranda reserves the right to change this privacy policy at any time.

Any significant change will be communicated before it takes effect through a popup window or any other means. Later, a version will be published up-to-date with this privacy policy and will be readily available. In addition, it will be published an updated version of this privacy policy whenever a change is made minor. It is possible to determine if this privacy policy has been modified by checking the its effective date. Libranda recommends that this privacy policy be

Please review periodically to assess your current practices, as continuing to use the Platform implies acceptance of any changes made. If you don't agree with changes to this privacy policy or any other applicable modifications, You must stop using the Platform immediately.

#### IX. How to Contact Libranda

All questions and comments about this privacy policy or requests related to it must be sent to Libranda at: ... (email address e-mail from Libranda).

You can withdraw your consent to the collection and use of your personal information at any time by sending us an email at the address above. However, if you withdraw your consent, we may no longer be able to provide you with access to the Platform.

Last update: June 23, 2021”.

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