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VIDEOSURVEILLANCE, DATA PROTECTION AND URBAN SECURITY

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I. INTRODUCTION

Capturing and processing images for surveillance purposes is a very widespread practice in our society. In general, video surveillance is used to ensure the security of assets and people, or in business environments to check that employees are fulfilling their work obligations and duties. Both purposes are valuable and worthy of legal protection, albeit subject to compliance with certain conditions. The use of technology for surveillance purposes has an impact on the rights of individuals, meaning that guarantees must be established.

And it is evident, as has been highlighted by various judgements of the Spanish Constitutional Court, that video surveillance is a resource that is particularly invasive of privacy. For this reason, a balance must be struck between individual freedom and security.

II. PROTECTION OF PRIVACY AGAINST VIDEO SURVEILLANCE IN THE SEPTEMBER 2009 SURVEY BY THE SPANISH CENTRE FOR SOCIOLOGICAL RESEARCH

- Most survey respondents take a middling position of 6 when asked to choose between freedom and security on a scale of 0 to 10.



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- With regard to video-surveillance cameras, 68.7% said they were in favour of video-surveillance cameras being in place. Of these, 66.4% were in favour because of the greater security this provides, 18% because it enables criminals to be identified, and 15.2% because it prevents crime.
- Some 10% of respondents were opposed to cameras being installed. The prime reason for this stance was the loss of privacy, cited by 79.4%.
- 43.8% of respondents believed that having cameras installed in banks is 'very good', while 51.7% said this was 'good'. In shops, 34% saw the installation of cameras as 'very good', and 54.3% as 'good'; in nurseries and schools, 50.6% of respondents thought it was 'good' and 26.6% as 'very good'.
- The places in which the public was least in favour of cameras being installed were workplaces (36.7% thought this was 'bad' or 'very bad') and in bars and restaurants, where this figure was 36%.
- 53.1% said they were aware that it is compulsory to request authorisation before installing these cameras. 3.4% believed it was not obligatory and 43% said they "didn't know" whether it was compulsory to request such authorisation.
- With regard to indicating the presence of cameras, 62.2% knew that this was a requirement, while 7% believed that there was no requirement to do so.
- 72.8% of respondents believed there should be controls over images recorded by video-surveillance cameras being shown on the television or Internet, while 15% were not in favour.
- Cases of images being spread via the Internet or on television where the right to privacy was violated seemed 'quite worrying' to 46.0% and 'very worrying' to 26.9%.

III. ORGANIC LAW 4/1997 OF 4 AUGUST REGULATING THE USE OF VIDEO CAMERAS BY SECURITY AND POLICE FORCES IN PUBLIC SPACES



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This Law governs the use of video cameras by security and police forces to record images and sound in public places, whether outdoor or indoor, and any subsequent processing of these images.

The law's scope covers the capture, reproduction and processing of images and sound, according to the terms envisaged in this Law, as well as preparatory activities.

Fixed video cameras may only be installed subject to authorisation, which will be granted as appropriate on the basis of a report by a collegial body headed by a judge. The majority of the members of this body shall not belong to the authorising administration.

The installation of fixed video cameras by state and local law-enforcement authorities must be authorised by the government representative in the autonomous region in question, on the basis of a report by a committee chaired by the Presiding Judge of the High Court of Justice of the same region.

Where authorisation has been given for the installation of fixed video cameras on roads or in public places, these can be used simultaneously with other mobile cameras in order to ensure better fulfilment of the aims set forth in this Law, with the gathering of images remaining dependent at all times on the existence of a specific threat.

Mobile video cameras may also be used in other public places. Authorisation for such use shall be given by the highest-ranking provincial official of the security and police forces.

The use of video cameras is governed by the principle of proportionality, both in terms of appropriateness and minimum intervention.

Video cameras may not be used to record images or sound inside homes or their hallways, except with the consent of the owner or with legal authorisation.

Should the recording capture any acts that could constitute criminal behaviour, the security and police forces shall place the tape or original medium of the images and sound, in their entirety, at the disposal of the court as soon as possible, and in any case within the maximum period of 72 hours after the recording was made.



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Should the recording capture any acts that could constitute administrative infringements relating to public security, the recording shall immediately be sent to the competent body so that the relevant sanctioning proceedings may be initiated.

Recordings shall be destroyed within a maximum period of one month after they are made, except where linked to any serious or very serious criminal or administrative infringements in matters of public security, in relation to ongoing police investigations, or where legal or administrative proceedings are open.

Any interested individuals may exercise their right to access and delete recordings in which they reasonably believe they are shown. However, the exercise of these rights may be denied by the person responsible for the images and sound if it is believed that this may endanger the defence of the state, public safety, the protection of the rights and freedoms of third parties, or the needs of investigations being carried out.

IV. ORGANIC LAW 15/1999 OF 13 DECEMBER ON THE PROTECTION OF PERSONAL DATA (LOPD).

It is important to note at the outset that Article 1 of Organic Law 15/1999 of 13 December on the Protection of Personal Data (hereinafter LOPD) states that: *“This Organic Law is intended to guarantee and protect the public liberties and fundamental rights of natural persons, and in particular their personal and family privacy, with regard to the processing of personal data”*.

Article 2.1 of the LOPD states that: *“This Organic Law shall apply to personal data recorded on a physical medium which makes them capable of processing, and to any type of subsequent use of such data by the public and private sectors”*; with the concept of personal data being defined under Article 3.a) of the LOPD, as *“Any information concerning identified or identifiable natural persons”*.



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Article 3.c) of the LOPD defines data processing as *“operations and technical processes, whether or not by automatic means, which allow the collection, recording, storage, adaptation, modification, blocking and cancellation, as well as assignments of data resulting from communications, consultations, interconnections and transfers”*.

The right to data protection is guaranteed where an action takes place that constitutes processing of the personal data in the sense given above. If this is not the case, the above-mentioned provisions do not apply.

In accordance with this definition of personal data processing, the capture of images of individuals constitutes personal data processing within the scope of application of this legislation.

Article 5.1. f) of Royal Decree 1720/2007 of 21 December which approves the regulation implementing Organic Law 15/1999 of 13 December on the Protection of Personal Data, defines personal data as: *“Any numerical, alphabetical, graphic, photographic or acoustic information, or information of any other kind concerning identified or identifiable natural persons”*.

Article 2.a) of Directive 95/46/EC of the Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, deals with the same issue, stating that personal data are to be understood as *“any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”*. Similarly, Recital 26 of this Directive refers to this issue, indicating that, to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person.



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Given the definition contained in these regulations, which considers personal data as *“any information concerning identified or identifiable individuals”*, the capture of the images mentioned shall be carried out in line with this concept wherever said capture enables the individuals appearing in these images to be identified. Directive 95/46/EC states this expressly in Recital 14, which states:

“(14) Whereas, given the importance of the developments under way, in the framework of the information society, of the techniques used to capture, transmit, manipulate, record, store or communicate sound and image data relating to natural persons, this Directive should be applicable to processing involving such data;”.

On the other hand, Instruction 1/2006, of 8 November, by the Spanish Data Protection Agency, on processing personal data for surveillance purposes through camera or video-camera systems (hereinafter Instruction 1/2006), states the following in its Articles 1.1 and 2:

“Article 1.1. This Instruction applies to the processing of personal data of images of identified or identifiable physical persons for surveillance purposes, using camera and video-camera systems.

The processing specified in this Instruction includes the recording, capture, transmission, preservation and storage of images, including their reproduction or broadcasting in real time, as well as the resultant processing of related personal data.

A person is considered identifiable when his identity may be determined through the processing to which this instruction refers, without requiring disproportionate time periods or activities.

The references contained in this Instruction to cameras and video cameras will also be understood to refer to any similar technical means and, in general, to any system that allows the processing foreseen herein to be performed.”



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“Article 2.

1. *The data specified in this instruction may only be processed if they are covered by the provisions of Article 6.1 and 2 and Article 11.1 and 2 of Organic Law 15/1999 of 13 December on the Protection of Personal Data.*

2. *Without prejudice to the provisions of the previous section on the installation of cameras and video cameras, the requirements of the legislation in force on this matter must in all cases be respected.”*

- According to the precepts transcribed above, cameras reproduce the image of the individuals affected by this kind of processing, and for the purposes of the LOPD, a person's image is personal data, as the information captured concerns individuals and supplies information about their personal image, the place where the image was captured and the activity being carried out by the individual to whom the image refers.

The use of camera and video-camera facilities must comply with certain rules that govern the entire process from the capture, storage and reproduction of an image right through to its deletion. The controller must bear the following principles in mind:

- The means by which the data are processed must be proportional to the final objective.
- Notice must be given of the capture and/or recording of the images.
- The use of cameras or video-camera facilities is only acceptable when no other less invasive option is available.
- Cameras and video cameras installed for the protection of private spaces may not gather images of public spaces.
- Partial and limited images of public highways may be taken if this is essential for the surveillance purpose or if it cannot be prevented due to the location of these roads.
- Images from the rest of the pavement or street may not be captured.



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- In any case, the use of video-surveillance systems must respect individuals' rights and all other laws (the capture of images in spaces protected by the right to privacy, such as the interiors of nearby homes, bathrooms or changing rooms, or physical spaces beyond those specifically protected by the installation, is not admissible).

- Images will be kept for as long as is necessary to satisfy the purpose for which they were captured.

Similarly, the LOPD imposes a number of obligations:

1. The registration of files: The use of surveillance systems using video cameras may give rise to the creation of files. If the video-surveillance system generates a file, the data controller must provide prior notification to the Spanish Data Protection Agency in order to be entered in its General Register. This shall be the case provided that there is some kind of recording and not when the camera is reproducing or broadcasting images in real time.

Should these files be publicly owned, they must first be created by means of general provision published in the corresponding official gazette, in accordance with the provisions of Article 20 of the LOPD, before being registered.

2. The duty of disclosure: The particular characteristics of video surveillance mean that specific procedures are required in order to notify individuals whose images are captured. Instruction 1/2006 includes an information sign, which it is compulsory to use and display.

In addition, the file manager must have a printed document containing all the information referred to in Article 5 of the LOPD. This must be available, and it must at the very least be possible for this to be printed at the request of the affected party.



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IV. INSTRUCTION 1/2006, OF 8 NOVEMBER, BY THE SPANISH DATA PROTECTION AGENCY, ON PROCESSING PERSONAL DATA FOR SURVEILLANCE PURPOSES THROUGH CAMERA OR VIDEO-CAMERA SYSTEMS.

This Instruction is applied to the processing of personal data in the form of images of identified or identifiable individuals, for surveillance purposes using camera and video-camera systems. The processing specified in this Instruction covers the recording, capture, transmission, preservation and storage of images, including the reproduction or broadcasting of these images in real time, as well as the resultant processing of related personal data.

The processing of personal data from images obtained through the use of cameras and video cameras by security and police forces is governed by the specific provisions on this matter.

The processing of images in a personal and domestic setting, understood as processing carried out by an individual within the context of an exclusively private or family activity, is not subject to regulation by this Instruction.

According to Article 4 of the LOPD, images may only be processed if they are appropriate, relevant and not excessive in relation to the legitimate and explicit aims and scope which may have justified the installation of the cameras or video cameras.

The installation of cameras or video cameras shall only be considered admissible where the purpose of the surveillance cannot be achieved by using other means that, without requiring undue effort, pose less of a risk of intrusion to people's privacy and their right to personal data protection.

In terms of obligations, the duty of disclosure stipulated in Article 5 of the LOPD must be fulfilled, with at least one information sign being placed in a location that is sufficiently visible, both in indoor and outdoor spaces (based on the template provided in the Annex to the Instruction), and printed documents must be made available to interested parties, detailing the information set forth in Article 5.1 of the LOPD.



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Likewise, any person or entity planning to create video-surveillance files must previously notify the Spanish Data Protection Agency with a view to inclusion in its General Register. Publicly-owned files must conform to the provisions of Article 20 of the LOPD. Any processing consisting exclusively of the reproduction or broadcasting of images in real time shall not be considered as a file for these purposes. Video-surveillance files shall have a basic level of protection.

Data controllers must take all technical and organisational measures necessary to ensure the security of the data and prevent them from being altered, lost, processed or accessed without authorisation (adopting security measures). Similarly, any person who may have access to the data during the exercise of their functions, must observe all due confidentiality and secrecy in relation to these data (duty of secrecy).

The data shall be deleted within a maximum of 10 days after they are captured.

Lastly, regarding the rights of individuals referred to in Articles 15 et seq. of the LOPD, the right to access data shall be granted using certification. However, it is impossible to exercise the rights to delete and correct data.

V. TABLES SHOWING VIDEO-SURVEILLANCE FILES REGISTERED WITH THE AEPD AS OF 31 DECEMBER 2010



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Year of registration	Private ownership	Public ownership	Total
1994	9	2	11
1995	4	0	4
1996	1	0	1
1997	0	0	0
1998	0	0	0
1999	3	0	3
2000	15	0	15
2001	16	0	16
2002	37	0	37
2003	95	0	95
2004	126	3	129
2005	249	0	249
2006	445	12	457
2007	4,760	89	4,849
2008	9,136	180	9,316
2009	21,834	283	22,116
2010	32,134	791	32,925
Total	68,864	1,359	70,223



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MAIN ACTIVITY	No. of files
COMMERCE	15,181
TOURISM, HOTEL AND CATERING	8,536
PROPERTY OWNERS' ASSOCIATIONS	5,277
HEALTHCARE	3,766
CONSTRUCTION	1,809
CHEMICAL AND PHARMACEUTICAL INDUSTRY	1,773
ACTIVITIES RELATING TO FOOD, DRINK AND TOBACCO PRODUCTS	1,675
TRANSPORT	1,384
REAL-ESTATE ACTIVITIES	1,073
SECURITY	987
IT SERVICES	971
EDUCATION	969
MACHINERY AND MEANS OF TRANSPORT	925
ENERGY SECTOR	846
ASSOCIATIONS AND CLUBS	656
GAMBLING AND BETTING ACTIVITIES	650
ACCOUNTING, AUDITING AND TAX ADVICE	631
PRODUCTION OF CONSUMER GOODS	624
TELECOMMUNICATIONS SERVICES	548
AGRICULTURE, LIVESTOCK FARMING, FORESTRY, HUNTING, FISHING	501



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VARIOUS PERSONAL SERVICES ACTIVITIES	491
SOCIAL SERVICES ACTIVITIES	436
ELECTRONIC COMMERCE AND SERVICES	301
LEGAL, NOTARIAL AND REGISTRY ACTIVITIES	301
BANKING AND FINANCIAL INSTITUTIONS	269
ACTIVITIES OF BUSINESS, PROFESSIONAL AND EMPLOYERS' ORGANISATIONS	186
PRIVATE INSURANCE	181
ROADWORTHINESS TESTING AND OTHER TECHNICAL ANALYSIS	98
POLITICAL, UNION OR RELIGIOUS ACTIVITIES	87
RESEARCH AND DEVELOPMENT (R&D)	81
ORGANISATION OF TRADE FAIRS, EXHIBITIONS, CONFERENCES AND OTHER RELATED ACTIVITIES	78
DIRECT ADVERTISING	73
POSTAL AND MAIL ACTIVITIES (POSTAL OPERATIONS, POSTAL SERVICES, TRANSPORT)	50
UNDECLARED	22
PERSONNEL RECRUITMENT	20
FRIENDLY SOCIETIES COLLABORATING WITH SOCIAL SECURITY BODIES	16
CAPITAL SOLVENCY AND CREDIT	8
OTHER ACTIVITIES	17,384
Total	68,864



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VI. TRENDS IN COMPLAINTS AND SANCTIONS IMPOSED BY THE AEPD IN THE SPHERE OF VIDEOSURVEILLANCE.

In terms of complaint trends, the most notable are those relating to:

- _ the services sector (hotels, catering and retail)
- _ property owners' associations
- _ webcams (Internet)
- _ the workplace
- _ schools

The main reasons for lodging complaints relate to the lack of information signs, the failure to register files, the failure to contract a security company when the video-surveillance system is connected to an alarm centre and, lastly, the capture of images on public highways. The chart below illustrates the spectacular growth in the number of complaints received by the Agency over recent years.

