

Deliberation MEDP-2021-002 of December 6, 2021 National Commission for Computing and Liberties Legal status: In force

Date of publication on Légifrance: Thursday, December 16, 2021 Deliberation of the office of the National Commission for Computing and Liberties No. MEDP-2021 -002 of December 6, 2021 deciding to make public formal notice no. MED-2021-134 of November 26, 2021 taken against the company CLEARVIEW AI The office of the National Commission for Computing and Liberties, meeting on December 6, 2021 under the chairmanship of Mrs Marie-Laure DENIS; In addition to the President of the Commission, Mrs Sophie LAMBREMON, Deputy Vice-Chairman, and Mr François PELLEGRINI, Vice-Chairman; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Having regard to Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms, in particular its article 20; Having regard to Decree No. 2019-536 of May 29, 2019 taken for the application of Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms; Having regard to deliberation No. 2013-175 of July 4, 2013 setting the internal regulations of the National Commission for Computing and Liberties; Having regard to decision no. MED-2021-134 of November 26, 2021 of the President of the Commission giving formal notice to the company CLEARVIEW AI; Adopted the following deliberation:

The National Commission for Computing and Liberties (hereinafter "CNIL") received several complaints between May and December 2020 relating to the difficulties encountered by the complainants in exercising their rights of access and erasure with the company CLEARVIEW AI (hereinafter "the company"). Within the framework of the mutual assistance provided for in Article 61 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ( hereinafter "GDPR"), the CNIL was communicated by several of its member States useful information relating to the processing implemented by the company. implemented by the company, the user organizations of the company's services (current or former) having their main establishment in France or within the European Union as well as on several complaints. On May 27, 2021, the CNIL was also seized of a complaint from Privacy International relating to the company's facial recognition software and its use by law enforcement. database is based on the aspiration of photographs or videos, containing faces, publicly accessible on millions of websites, including on social networks. It has been stated that the company implements this processing unlawfully since it has no legal basis to do so, in breach of Article 6 of the GDPR. In addition, it is noted that the company has disregarded its obligation to respect and facilitate the exercise of the rights of access and erasure of the persons concerned, in disregard of Articles 12, 15 and 17 of the GDPR. Consequently, by decision of November 26, 2021, the

Chairperson of the Commission, on the basis of article 20 of the amended law of January 6, 1978, gave formal notice to the company CLEARVIEW AI, located at 214 W 29th St. in NEW YORK CITY (10001 – United States of America), to **put an end within two (2) months to the breaches observed** in the obligations provided for in Articles 6, 12, 15 and 17 of the GDPR. It ordered the company to no longer proceed without a legal basis to the collection and processing of personal data relating to data subjects who are on French territory in the context of the operation of the facial recognition software that it markets. .In application of the last paragraph of II of article 20 of the amended law of January 6, 1978, the President of the CNIL regularly convened the office of the Commission for the purpose of ruling on her request to make its decision public. meeting for this purpose on December 6, 2021. After deliberation, the office considers that the publication of the formal notice decision is justified, first of all, because of the characteristics of the processing in question. Indeed, this processing concerns more than ten billion images as well as a considerable number of data subjects. There are therefore several million people in France whose face appears in a photograph or video publicly accessible on the Internet, and in particular on a social network account, who are likely to be affected by this processing. As the database is also updated very regularly to integrate newly available information, the number of these people is constantly changing. This massive processing is also particularly intrusive in that it collects a potentially very large amount of photographic data, to which are associated other personal data that may reveal various aspects of their private life such as their tastes and preferences (for example, in terms of hobbies) or their political or religious beliefs, expressed on social networks, in blog articles or even press articles. From this data, a biometric template is also created, that is to say biometric data considered as sensitive, which aims to identify the person of unique way from a photograph of the individual. It is therefore a facial recognition device and the company aims for it to be used, in particular, by the police to identify perpetrators and victims of offenses from a photograph. In this context, the office then recalls the very high seriousness of the breach of article 6 of the GDPR noted by the CNIL. Indeed, the company implements this processing in all unlawfulness since it has no legal basis for this purpose: neither legitimate interest of the data controller, nor consent of the interested parties. Finally, the office emphasizes that the publicity of the decision of formal notice is also necessary to inform the persons concerned of the existence of this device, which the vast majority of them are unaware that it may concern them. Consequently, the office of the National Commission for Computing and of Liberties decides to make public the decision n° MED-2021-134 of the President of the CNIL giving formal notice to the company CLEARVIEW AI. The office recalls that this formal notice is not in the nature of a sanction. If the company complies in all respects with the requirements of the formal

notice within the time allowed, it will be subject to a closure which will also be made public. Finally, both the aforementioned formal notice decision and this deliberation will no longer allow the company to be identified by name at the end of a period of two years from their publication. President Marie-Laure DENIS