Deliberation SAN-2022-026 of December 29, 2022 National Commission for Computing and Liberties Nature of the deliberation: Sanction Legal status: In force Date of publication on Légifrance: Tuesday January 17, 2023 Deliberation of the restricted committee no SAN-2022-026 of December 29 2022 concerning the company VOODOOThe National Commission for Computing and Liberties, meeting in its restricted formation composed of Mr. Alexandre LINDEN, president, Mr. Philippe-Pierre CABOURDIN, vice-president, Mrs. Anne DEBET, Mrs. Christine MAUGÜÉ and Mr. Alain DRU, members; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 relating to the protection of personal data and the free movement of such data; Having regard to Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its articles 20 and following; Having regard to decree no. 2019-536 of May 29, 2019 taken for the application of law no. information technology, files and freedoms; Having regard to deliberation no. 2013-175 of July 4, 2013 adopting the internal regulations of the National Commission for Information Technology and Freedoms; Having regard to decision no. 2021-194C of the President of the CNIL of June 29, 2021 to instruct the Secretary General to carry out or have carried out a mission to verify the processing carried out by the company VOODOO or on its behalf; Having regard to the decision of the President of the National Commission for Computing and freedoms appointing a rapporteur before the restricted committee of June 20, 2022; Having regard to the report of Mr Claude CASTELLUCCIA, commissioner rapporteur, notified to the company VOODOO on July 22, 2022; Having regard to the written observations submitted by the company VOODOO on September 26, 2022 ;Having regard to the rapporteur's response to these observations notified on October 21, 2022 to the company's board;Having regard to the written observations of the company VOODOO received on November 21, 2022;Having regard to the other documents in the file;Were present, during the meeting of the restricted committee of December 8, 2022:- Mr Claude CASTELLUCCIA, commissioner, heard in his report;As representatives of the company VOODOO:- […] The company VOODOO having had the floor last;The restricted committee adopted the following decision :I. Facts and procedure1. Founded in 2013, VOODOO (hereinafter "the company"), specializing in the publishing of telephone games, is a simplified joint-stock company whose head office is located at 17 rue Henry Monnier in Paris (75009). In September 2021, the VOODOO group, which comprises around twenty companies, employed […] people in France, including […] within the VOODOO company. The company has several subsidiaries within several Member States of the European Union whose exclusive activity is the development of mobile games which are then published and operated by the company VOODOO.2. In 2020, the company VOODOO achieved a turnover of more than […] euros for a result of nearly

[…] euros. In 2021, its turnover amounted to approximately […] euros for a net profit of more than […] euros.3. Pursuant to decision no. 2021-194C of the President of the CNIL of June 29, 2021, a Commission delegation carried out an online check on August 19, 2021 both on "www.voodoo.io" from from a computer and on the "Helix Jump" application from an APPLE brand telephone. Its main purpose was to note the cookies and tracers deposited and/or read by the company VOODOO. On this occasion, the delegation followed the journey of a user who downloads an application published by the company VOODOO and then opens it for the first time on his phone. It noted that when the application is opened, a first window designed by the APPLE company and called "App Tracking Transparency" (hereinafter "the ATT solicitation") is presented to the user in order to obtain his consent to the monitoring of his activities on the applications downloaded on his phone. Then, it found that regardless of the choice expressed by the user in response to the "ATT solicitation", a second window relating to the advertising tracking carried out by VOODOO is presented to him. The delegation then followed two scenarios, one in which the "ATT solicitation" is granted and the other in which the "ATT solicitation" is denied. Minutes no. 2021-194/1, drawn up by the delegation at the end of the inspection, were notified to VOODOO the same day.4. On September 2, 2021, a document control mission was also carried out by sending a questionnaire to which the company responded on September 21, 2021.5. A request for additional information was sent to the company on January 17, 2022, which responded on January 31, 2022.6. For the purposes of investigating these elements, the President of the Commission appointed Mr. Claude CASTELLUCCIA as rapporteur, on June 20, 2022, on the basis of Article 39 of Decree No. 2019-536 of May 29, 2019 as amended. 7. On July 18, 2022, at the request of the rapporteur and on the decision of the President of the CNIL, new online checks were carried out both on the "www.voodoo.io" site from one computer and on eleven applications from an APPLE brand phone, namely "Paper.io 2"; “Aquapark.io”; "Crowd City"; “Hole.io”; "Snake vs. Block"; "Shortcut Run"; "Woodturning 3D"; "Spiral Roll"; "Scribble Rider"; "Cube Surfer" and "Helix Jump", presented on the aforementioned website as being the most downloaded.8. On July 22, 2022, the rapporteur had the company notified of a report detailing the breach of Article 82 of Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms (here- after the "Informatique et Libertés" law) which he considered constituted in this case. This report proposed that the Restricted Committee impose an administrative fine on the company, as well as an injunction, accompanied by a penalty payment, to stop using the "identifier for vendors" (hereinafter "IDFV ") terminals for advertising purposes in the absence of user consent. It also proposed that the sanction decision be made public, but that it would no longer be possible to identify the company by name after the expiry of a period of

two years from its publication.9. On September 26, 2022, the company filed its observations in response to the sanction report.10. The rapporteur responded to the company's observations on October 21, 2022.11. On 21 November 2022, the company produced new observations in response to those of the rapporteur.12. By letter dated November 22, 2022, the rapporteur informed the company's board that the investigation was closed, pursuant to Article 40, III, of amended decree no. 2019-536 of May 29, 2019.13. By letter of the same day, the company's board was informed that the file was on the agenda of the restricted meeting of December 8, 2022.14. The rapporteur and the company presented oral observations during the restricted committee session.II. Reasons for decisionA. On the processing of personal data in question and the responsibility of the company VOODOO15. With regard to the processing in question, the Restricted Committee notes that the procedure relates to the reading and writing operations carried out on the users' terminal equipment and which fall within the scope of the "ePrivacy" directive, in particular , the reading of the "Identifier For Advertisers" (hereinafter "IDFA") and the IDFV, of the terminal of users embedding the iOS.16 operating system. The IDFA is a unique identifier assigned to each device by the iOS operating system of the APPLE company. This is a series of hexadecimal characters created for the purpose of allowing advertisers to uniquely identify the device across all installed mobile applications that use this identifier.17. The IDFV is an identifier that is made available to publishers by APPLE, allowing them to track the use of their applications by users. Unlike the IDFA, the IDFV only has the same value for applications identified as coming from the same publisher. The IDFV is thus distinct for each application publisher, but identical for all the applications distributed by the same publisher.18. With regard to the responsibility for this processing, the Restricted Committee notes, first of all, that Article 4, paragraph 7, of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of personal data and the free movement of such data (hereinafter "GDPR") is applicable to this procedure due to the use of the concept of "controller" in Article 82 of the Data Protection Act and Freedoms, which is justified by the reference made by article 2 of the "ePrivacy" directive to directive 95/46/EC on the protection of personal data, which has been replaced by the GDPR.19. According to Article 4(7) of the GDPR, the controller is "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of treatment ".20. The Restricted Committee then notes that it appears from the elements in the file that the company VOODOO indicates that it determines the purposes and means of the processing of the personal data of the users of the applications. The material in the file corroborates this statement.21. The company VOODOO must therefore be regarded as responsible for the processing consisting of operations of access or

registration of information in the terminal of users residing in France when using the applications it publishes.B. On the procedure22. The company considers that the procedure followed by the CNIL does not respect the principle of the right to a fair trial insofar as the rapporteur would not have conducted his investigation to incriminate and exculpate. The company considers that the rapporteur did not take into account the figures it provided on 3 August 2022 relating to the number of users of the VOODOO applications targeted by the inspection, which are much more representative of the number of people concerned than the number of downloads on which the rapporteur relies in his initial report. Given these elements, the company asks the restricted committee to set aside the audit report of July 18, 2022.23 from the proceedings. Firstly, the Restricted Committee notes that, although the penalty procedure is indeed subject to certain requirements of the right to a fair trial, the company does not adduce any element tending to demonstrate that the procedure in question did not respect the rights of the defence.24. Secondly, with regard to the figures relating to the number of downloads or unique active users in France on iOS, the Restricted Committee notes that, as he explained during the meeting, the rapporteur mentioned the number of downloads of VOODOO applications in order to highlight the number of people potentially affected by the violation that it considers constituted. She also notes that the adversarial phase between the rapporteur and the company VOODOO enabled figures relating to the number of people concerned to be included in the debates and that, during the meeting, the rapporteur took this volume into account in order to modulate the amount of the proposed fine.25. In view of these elements, the Restricted Committee considers that the procedure is not vitiated by irregularity.C. On the breach of article 82 of the Data Protection Act26. Under the terms of article 82 of the Data Protection Act, transposing article 5, paragraph 3, of the "ePrivacy" directive, "any subscriber or user of an electronic communications service must be informed in a clear and complete manner , unless it has been done beforehand, by the controller or his representative: 1° The purpose of any action aimed at accessing, by electronic transmission, information already stored in his terminal communications equipment electronic devices, or to register information in this equipment; 2° The means at his disposal to oppose it. These accesses or registrations can only take place on condition that the subscriber or the user has expressed, after having received this information, his consent which may result from appropriate parameters of his connection device or any other device placed under his control. These provisions are not applicable if access to the information stored in the user's terminal equipment or the registration of information in the user's terminal equipment: 1° Either, has the exclusive purpose of allowing or facilitating communication by electronic means; 2° Or, is strictly necessary for the provision of a communication service in line at the express request of the user ".27. Since the entry

into force of the GDPR, the "consent" provided for in the aforementioned Article 82 must be understood within the meaning of Article 4, paragraph 11 of the GDPR, i.e. it must be given in a free, specific, enlightened and unequivocal manner and manifest itself in a clear positive act.28. The CNIL specified in its deliberation n° 2020-091 of September 17, 2020 adopting guidelines relating to the application of article 82 of the law of January 6, 1978 as amended to read and write operations in the terminal of a user (in particular to "cookies and other tracers") and repealing deliberation no. 2019-093 of July 4, 2019: "these guidelines concern all terminal equipment covered by this definition, regardless of the operating systems or the application software (such as web browsers) used. They relate, in particular, to the use of HTTP cookies, by which these reading or writing actions are most often carried out, but also other technologies such as […] identifiers generated by operating systems (whether advertising or not: IDFA, IDFV, Android ID, etc.), hardware identifiers (MAC address, serial number or any other device identifier), etc " (§§ 12 and 13).29. The rapporteur observes that during the check carried out on August 19, 2021 on an APPLE brand device embedding the iOS operating system, when a user opens for the first time an application published by the company VOODOO, the "ATT solicitation" is presented to the user in order to obtain his consent to the monitoring of his activities on the applications downloaded on his phone. The user then has the possibility to click on "Ask the app not to track my activities" or "Allow". Regardless of the choice expressed by the user in response to the "ATT request", a second window, specific to the VOODOO company, is presented to him. When the user clicks on "Ask the app not to track my activities", the window which is then presented to him by the company VOODOO does not contain any button or checkbox intended to obtain his consent to other forms. personalized ads. The user only has to certify that they are over sixteen years old and accept the company's personal data protection policy.30. The reporter notes that in this scenario the IDFA, which is APPLE's advertising identifier, is not read but is replaced with a string of zeros ("00000000-0000-0000-0000-000000000000"). On the other hand, he finds that the IDFV is itself read and transmitted to domains with advertising purposes, along with other device-specific information (system language, device model, screen brightness , battery level, available memory space in particular) and its use (application used and time spent), without the user having given his consent to this operation. He observes that the VOODOO company does not dispute the advertising purpose of this reading operation and he concludes that by using the IDFV identifier for this purpose without the user's prior consent, the VOODOO company disregards the obligations of article 82 of the Data Protection Act. The rapporteur also notes that the breach committed by VOODOO is particularly serious insofar as the information it presents to the user is misleading. Indeed, when the user has refused the "ATT solicitation", the second

window presented to the user contains a text indicating that the settings of his phone "prevent tracking for the purpose of personalization of announcements and advertisements according to your device's advertising ID". The rapporteur therefore considers that the user legitimately expects that no follow-up, whatever its form, will be carried out for advertising purposes.31. In defence, the company disputes the rapporteur's assertion that the "ATT solicitation" is no longer presented to the user who has downloaded several VOODOO applications once he has refused advertising tracking on the occasion of the opening the first application. It specifies that the "ATT solicitation" is presented to the user each time a new VOODOO app is downloaded, unless the user has disabled the "Allow app tracking requests" option available in the "Privacy" settings. / "Monitoring" of his iPhone and not just once for all VOODOO applications. It considers that its system for collecting consent to the use of identifiers for advertising purposes and the information provided to users partially comply with the provisions of Article 82 of the Data Protection Act. The company indicates that, with regard to the information provided to users, it is certainly clumsy, but cannot for all that be qualified as misleading and does not present the character of seriousness underlined by the rapporteur. Indeed, if, in the window it displays, the company mentions that it collects data for a "non-targeted advertising purpose" "based on [the] browsing habits" of users, this information must be interpreted compared to the tracing of "browsing habits" made possible by the IDFA which allows monitoring through all the applications downloaded by a user on his terminal embedding the iOS operating system. The company argues that by contrast, when collected, the IDFV only allows tracking among apps offered by the same publisher. The company indicates that it is in this sense that the company VOODOO claimed not to "follow up" users in the event of refusal of the ATT.32. Firstly, the Restricted Committee recalls that Article 82 of the Data Protection Act requires consent to operations for reading and writing information in a user's terminal but provides for specific cases in which certain trackers benefit an exemption to consent: either when the sole purpose of this is to allow or facilitate communication by electronic means, or when it is strictly necessary for the provision of an online communication service at the express request of the 'user.33. In this case, the Restricted Committee notes that the company does not dispute that an operation to read the IDFV specific to the user's terminal is carried out when the latter refuses the "ATT request" - which request allows, when 'it is accepted, to collect the consent of the user to the monitoring of his activities on the downloaded applications. The company also confirms that reading users' IDFV serves an advertising purpose.34. The Restricted Committee notes that this operation is therefore not intended to allow or facilitate communication by electronic means and is not strictly necessary for the provision of an online communication service at the express request of the user. . Consequently,

such an operation of reading the IDFV does not fall under any of the exceptions defined in article 82 of the "Informatique et Libertés" law and cannot be carried out on the person's terminal without prior consent.35. The Restricted Committee considers that, even though the IDFV does not allow tracing as extensive as that made possible by the IDFA, the fact remains that, as emerges from the documents in the file and the company's writings and in particular from the window it presents to the user, that this identifier makes it possible to follow the activity of the user within the applications published by VOODOO for advertising purposes and without the prior consent of the interested parties. The Restricted Committee also notes that by refusing the "ATT solicitation", the user has already expressed his wish that his activity not be followed by any actor whatsoever. Thus, the fact that the company still carries out read and/or write operations for advertising purposes deprives the choice expressed by the user of its effectiveness.36. Secondly, the Restricted Committee notes that in the event of refusal of the "ATT request", the following information is presented to the user: "You have deactivated advertising tracking on your terminal" (in red) and "The Data protection is important to Voodoo and we respect your choice. Please note that your device settings prevent tracking for the purpose of personalizing ads and advertisements based on your device's Advertising ID. Other Data techniques that do not involve tracking (such as information related to the type of device, the type of connection or its IP address for example) may still be collected as described in our privacy policy, in particular to allow you to take advantage of of our games but also so that we can continue to improve and resolve potential problems with our games (analysis and correction purpose) and to offer you non-personalized advertising based on your browsing habits (advertising purpose not targeted)". The Restricted Committee considers that the user who becomes aware of this information can legitimately expect that no monitoring of his activity will be carried out for the purpose of personalizing the advertisements. In addition, the Restricted Committee observes that the terms used in this window do not correspond to the reality of the processing carried out by the company. Indeed, the company indicates that it collects "technical data not involving tracking" in order to offer "non-personalized advertising based on your browsing habits". However, the Restricted Committee considers that the fact of collecting information on the "browsing habits" of users in order to offer them advertisements necessarily prevents these advertisements from being qualified as "non-personalised", even if the data associated with the identifier only allow low personalization, limited to the context of the application used. It thus considers that the information is likely to mislead users as to the consequences of refusing the "ATT solicitation".37. In view of the foregoing, the Restricted Committee considers that by using the IDFV identifier for advertising purposes without the user's consent, the company VOODOO disregards the

obligations of article 82 of the Data Protection Act.III . On corrective measures and their publicity38. Under the terms of article 20, III, of the amended law of January 6, 1978, "When the data controller or its subcontractor does not comply with the obligations resulting from regulation (EU) 2016/679 of April 27, 2016 or this law, the president of the National Commission for Computing and Liberties may also, if necessary after having sent him the warning provided for in I of this article or, if necessary in addition to a formal notice provided for in II, seize the restricted formation of the commission with a view to the pronouncement, after adversarial procedure, of one or more of the following measures: […] 2° An injunction to bring the processing into conformity with the obligations resulting from the regulation (EU) 2016/679 of April 27, 2016 or of this law or to satisfy the requests presented by the person concerned in order to exercise their rights, which may be accompanied, except in cases where the treatment is implemented by the State, a penalty payment the amount of which may not exceed €100,000 per day of delay from the date set by the restricted committee; […] 7° With the exception of cases where the processing is implemented by the State, an administrative fine not exceeding 10 million euros or, in the case of a company, 2% of the turnover total worldwide annual business for the previous fiscal year, whichever is greater. […] The restricted committee takes into account, in determining the amount of the fine, the criteria specified in the same article 83 ".39. Article 83 of the GDPR provides that "each supervisory authority ensures that administrative fines imposed under this Article for breaches of this Regulation referred to in paragraphs 4, 5 and 6 are, in each case, effective, proportionate and dissuasive", before specifying the elements to be taken into account to decide s it is necessary to impose an administrative fine and to decide on the amount of this fine.A. On the pronouncement of an administrative fine and its amount40. insufficiently reasoned. It then recalls that the legal framework applicable to tracers has evolved constantly, partly unpredictably and heterogeneously at French and European levels from 2019 to 2021. 41. It also highlights the constraints to which its economic activity is subject and in particular its dependency and vulnerability to monopoly platforms that control app stores. It recalls that the obligation to use the "ATT solicitation" has forced application publishers to develop their own consent collection mechanism which must apply in addition to the ATT window. According to the company, APPLE has thus forced publishers "to adopt methods of obtaining consent that are unsatisfactory because they are complex for the user". It emphasizes that its income depends almost exclusively on the display of advertisements.42. It considers that any breach it may have committed would only be of limited scope insofar as the data collected is not directly identifying, is not intrusive, or even does not constitute personal data. It emphasizes that the duration of the collection is very short, on average 17.4 minutes per month per user, that the processing in

question was implemented recently since the ATT dates from April 2021 and that the breach would only concern users with the iOS operating system who would not have consented to the "ATT solicitation", ie a number of persons concerned much lower than the number of downloads put forward by the rapporteur.43. Finally, the company considers that the pronouncement of a sanction against it would not be consistent with the action plan unveiled on November 24 by the CNIL, the objective of which is to support players in the ecosystem of mobile applications. 44. The Restricted Committee recalls that Article 20, paragraph III, of the Data Protection Act gives it jurisdiction to pronounce various sanctions, in particular administrative fines, the maximum amount of which may be equivalent to 2% of the total worldwide annual turnover of the previous financial year carried out by the data controller or 10 million euros. It adds that the determination of the amount of these fines is assessed in the light of the criteria specified by Article 83 of the GDPR.45. The Restricted Committee then notes that all of the submissions brought to its attention, both by the rapporteur and by the company, contain all the elements enabling the amount of the proposed fine to be assessed.46. Firstly, with regard to the constraints generated by the implementation of the "ATT solicitation", the Restricted Committee considers that this circumstance cannot exonerate the company from its own liability: in the absence of the express consent of the user, the Restricted Committee considers that the company cannot carry out reading operations in the latter's terminal for advertising purposes.47. Secondly, the Restricted Committee emphasizes that it is appropriate, in this case, to apply the criterion provided for in subparagraph a) of Article 83, paragraph 2, of the GDPR relating to the seriousness of the breach, taking into account the scope of the processing and the number of data subjects.48. The Restricted Committee notes, first of all, that by not obtaining the consent of users to read the IDFV, the company deprives them of the possibility of exercising their choice in accordance with the provisions of the aforementioned Article 82. Furthermore, it observes that the failure is aggravated by the fact that the information presented to the user who refused the "ATT solicitation" legitimately leads him to believe that he will not be subject to any form of tracing.49 . With regard to the number of people concerned, the Restricted Committee notes that it appears from the figures transmitted by the company in its last written submissions that the eleven applications which were the subject of the control have a total of 5.8 million users in France. on iOS between April 2021 and July 2022. The Restricted Panel notes that while this may not necessarily be 5.8 million unique users and that, according to the company, 43% of them accept the tracking of their activities, the fact remains that this large volume of people reflects the company's central place in the mobile gaming sector, which claims on its website 150 million monthly active users worldwide, making it one of the leading companies of the sector.50. Finally, with regard to the scope of the breach, the

Restricted Committee considers that the fact that each user only plays on average 17 minutes per month does not mean that the amount of data collected is insignificant. It observes that during the checks carried out by the CNIL delegation, the latter only opened the VOODOO applications for a few minutes but nevertheless noted, on the one hand, that many requests containing the IDFV of the terminal used were sent to several advertising domains and that, on the other hand, these requests contained information related to the technical characteristics of the terminal (system language, device model, screen brightness, battery level, available memory space in particular) and its use (application used and time spent). Thus, the use of a VOODOO game even for a limited period of time results in the collection of data, feeding processing for advertising purposes, a collection that is significant for the user.51. The restricted formation further recalls that the IDFV, in that it is combined with other information characteristic of the user's terminal, allows, as the company indicates in the window it presents, to follow " the browsing habits "of people and in particular the categories of games they prefer, in order to personalize the ads seen by each of them. The IDFV does constitute, in these circumstances, personal data.52. Thirdly, the Restricted Committee considers that it is also appropriate to apply the criterion provided for in subparagraph k) of Article 83, paragraph 2, of the GDPR relating to any other circumstance applicable to the circumstances of the case and to the financial benefits obtained as a result of the breach.53. The Restricted Committee notes that the company's business model is based almost exclusively on advertising, since more than [...] of its revenues come from this source of revenue. However, even if the follow-up of the activity of the user carried out thanks to the IDFV is not of the same extent as the follow-up made possible by the IDFA, the fact remains that the use of the IDFV for advertising purposes without the user's consent undeniably enabled VOODOO to derive financial benefit from the breach committed.54. Fourthly, the Restricted Committee recalls that, from 2013, the CNIL has supported the actors with regard to cookies and tracers, by publishing a recommendation recalling the principles that should be respected to allow the use of cookies and tracers, while respecting the Data Protection Act. From its deliberation no. 2013-378 of December 5, 2013, the CNIL referred to "the identifier generated by software or an operating system" as being within the scope of its recommendation. In addition, as indicated above, in its guidelines of September 17, 2020, the Commission specified that "these guidelines […] relate, in particular, to […] identifiers generated by operating systems (whether advertising or not: IDFA, IDFV, Android ID, etc.) […]". Thus, the regime applicable to the IDFV and the constant position of the CNIL with regard to the practices covered by this procedure have been known for a long time. In addition, with regard to the unstable nature of the legal framework in terms of tracers, the CNIL recalls that the wording of

article 82 of the Data Protection Act has not been modified since 2011, except for the replacement of the word "accord "by "consent" and the change in the numbering of the article following the rewriting of the law by order no. 2018-1125 of December 12, 2018. If the entry into application of the GDPR, by extending the meaning given to the concept of consent, has effectively changed the scope of some of the provisions of Article 82 of the Data Protection Act, the scope of the sanction procedure in question is strictly limited to practices whose regime was not not affected by this development, i.e. the use of a tracker without prior consent. The legal framework was therefore fully established at the time of the checks.55. Moreover, the Restricted Committee notes that the President of the CNIL did not intend, through the CNIL's action plan related to mobile applications, to interrupt any prosecution in connection with the use of tracers without the users' consent. 56. Finally, the Restricted Committee recalls that pursuant to the provisions of Article 20, paragraph III, of the Data Protection Act, the company VOODOO incurs a financial penalty of a maximum amount of 2% of its turnover. business, which amounted to more than […]euros in 2020 and approximately […] euros in 2021, or 10 million euros, whichever is greater. The maximum amount of the fine incurred in the present case is therefore 10 million euros.57. Therefore, in the light of the relevant criteria of Article 83, paragraph 2, of the Rules mentioned above, the Restricted Committee considers that a fine of 3 million euros against the company VOODOO appears justified.B . On the issuance of an injunction58. The rapporteur proposes that the Restricted Committee issue a compliance injunction, which could consist of the cessation of the use of the IDFV for advertising purposes in the absence of the user's consent.59. In defence, the company presented the rapporteur with two options that it plans to deploy in order to comply: the collection of consent through a window presented before the "ATT request" or the introduction of a " pay wall" before the "ATT solicitation". It considers that the injunction requested by the rapporteur has become devoid of purpose in view of the measures envisaged and regrets that he did not rule on the conformity of these proposals.60. Firstly, the Restricted Committee notes that, while the company describes the measures it plans to deploy, none of the measures mentioned have been implemented at this stage. Thus, the Restricted Committee considers that the company has not demonstrated, on the day of the closing of the investigation, its compliance with the provisions of the aforementioned Article 82 and that it is therefore appropriate to issue an injunction on this point. 61. Secondly, the Restricted Committee recalls that the amount must be both proportionate to the seriousness of the breaches committed and adapted to the financial capacities of the controller.62. In the light of these elements, the Restricted Committee considers as justified the issuance of an injunction accompanied by a penalty payment of 20,000 euros per day of delay from the notification of this decision.63. Regarding the period granted to the

company to comply with the injunction, the Restricted Committee considers, in view of the company's explanations, that a period of three months from the notification of this decision is sufficient to regularize the situation. C. Publicity of the decision64. The company asks the restricted committee not to make its sanction public. It maintains that the seriousness of the facts has not been established, that the duration and scope of the processing are without risk for the rights and freedoms of individuals and notes that no complaint related to this processing has been filed with the CNIL. . It also mentions the fact that it operates in a particularly tense international competitive context, with competitors who are mainly of American or Israeli nationality, not subject to the GDPR or the Data Protection Act, who will exploit a possible sanction to their advantage. 65. The Restricted Committee considers that the publication of this decision is justified in view of the seriousness of the breach in question, the scope of the processing and the number of people concerned.FOR THESE REASONSThe Restricted Committee of the CNIL, after having deliberated , decides to: impose an administrative fine on VOODOO in the amount of €3,000,000 (three million euros) for breach of article 82 of the Data Protection Act; pronounce against the company VOODOO an injunction to obtain the consent of the user to the use of the IDFV for advertising purposes; to accompany the injunction with a penalty payment of €20,000 (twenty thousand euros) per day of delay at the end of a period of three months following the notification of this deliberation, the supporting documents of compliance must be sent restricted training within this period; make public, on the CNIL website and on the Légifrance website, its deliberation, which will no longer identify the company by name at the end of a period of two years from its publication.PresidentAlexandre LINDENThis decision may be appealed to the Council of State within two months of its notification.