

Deliberation SAN-2023-005 of April 17, 2023 National Commission for Computing and Liberties Legal status: In force Date of publication on Légifrance: Wednesday May 10, 2023 Deliberation of the restricted committee no. SAN-2023-005 of April 17, 2023 concerning the company CLEARVIEW AI

The National Commission for Computing and Liberties, meeting in its restricted formation composed of Mr. Alexandre LINDEN, president, Mr. Philippe-Pierre CABOURDIN, vice-president, Ms. Anne DEBET and Christine MAUGÜÉ, MM. Alain DRU and Bertrand du MARAIS, members; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 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 modified relating to data processing, files and freedoms, in particular its articles 20 and following; Considering the decree n ° 2019-536 of May 29, 2019 taken for the application of the law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation no. 2013-175 of July 4, 2013 adopting the internal regulations of the National Commission for Data Processing and Freedoms; deliberation no. SAN-2022-019 of October 17, 2022 adopted by the restricted committee against the company CLEARVIEW AI; Having regard to deliberation no. SAN-2023-001 of February 9, 2023 adopted by the restricted committee against of CLEARVIEW AI; After deliberation, adopted the following decision: I. FACTS AND PROCEDURE

1. The company CLEARVIEW AI (hereinafter "the company") is a company established in the United States whose activity is the development of facial recognition software, the database of which is based on the aspiration of publicly accessible images on the Internet, which makes it possible to identify a person from a photograph representing them.
2. Between May and December 2020, the National Commission for Computing and Freedoms (hereinafter "the CNIL") received several complaints relating to the difficulties encountered by the complainants in exercising their rights of access and data protection. deletion from the company.
3. The organization Privacy International lodged a complaint with the CNIL on May 27, 2021.
4. By decision of October 17, 2022, notified on October 18, 2022, the Restricted Committee adopted corrective measures in the following terms: " - impose an administrative fine on CLEARVIEW AI in the amount of 20,000,000 (twenty million) euros;- pronounce against the company CLEARVIEW AI an injunction not to proceed without a legal basis to the collection and processing of personal data relating to data subjects who are on French territory in the framework of the operation of the facial recognition software that it markets, and delete all of the personal data of these persons, in particular the data of the complainant in question who requested deletion (complaint no. 20012263), after having replied to requests for access already made by persons, where applicable; - attach the injunction to a penalty payment of one hundred thousand euros (100,000 euros) per day of delay at the end of a period of two months following the notification

of this deliberation, the proof of compliance must be sent to the restricted committee within this period ".5. Pursuant to Article 44 of 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 (hereafter after "the amended law of January 6, 1978"), the restricted committee, by a deliberation of February 9, 2023, notified on the following March 13, brought to the company's attention that, given the absence of production of supporting documents compliance within the time limit set by the injunction, it planned to liquidate the penalty payment for an amount of five million two hundred thousand euros (5,200,000 euros) for the period from December 19, 2022 to February 9, 2023, , and to make public the deliberation pronouncing the liquidation of the penalty. It informed the company that it had a period of fifteen days from the notification of the reasons for the liquidation and its amount to submit its written observations.6. The company made no written observations.II. REASONS FOR THE LIQUIDATION AND AMOUNT7. Under the terms of Article 44 of Decree No. 2019-536 of May 29, 2019 taken for the application of the amended law of January 6, 1978 "When the restricted committee decides to attach a penalty payment to its decision to injunction to compliance [...], it can do so by the same decision.The controller [...] sends to the restricted body, no later than the date set in the latter's decision, the elements certifying that it is complied with the injunction issued against him ".8. Article 44, paragraph 3, of the aforementioned decree provides that "In the event of total or partial non-performance or late performance, the restricted committee proceeds to the liquidation of the penalty payment which it had pronounced" and that "The amount of the penalty payment is liquidated taking into account the elements transmitted, if necessary, by the data controller or the subcontractor, its behavior and the difficulties of execution that it has encountered, in particular if it is established that the non-execution or the delay in the execution comes, in whole or in part, from a cause unrelated to the capacity for compliance ".9. Finally, according to paragraph 4 of the aforementioned article, "the decision pronouncing the liquidation of the penalty is preceded by a written procedure during which the restricted formation brings to the attention of the data controller or the subcontractor the reasons for the planned liquidation and its amount The controller or processor has a period of fifteen days from the date of notification of the reasons for the liquidation and its amount to send the restricted committee its observations. written ".A. On the grounds for liquidation10. The Restricted Committee finds that the company has not provided it with any evidence to certify that it has complied with the injunction issued against it.11. Consequently, the Restricted Committee considers that the company has not complied with the injunction issued by deliberation no. 2022-019 of October 17, 2022.B. On the amount of the penalty to be liquidated12. Given that the company has refrained from addressing the slightest element

of response, the Restricted Committee considers that the behavior of the company justifies that the penalty payment be liquidated in the amount of five million two hundred thousand euros under the period from December 19, 2022 to February 9, 2023.C. On advertising¹³. This deliberation should be made public, as was sanction decision no. 2022-019 of October 17, 2022. It seems appropriate that the many people concerned by the processing referred to in the decision can be notified of the follow-up given to the delivery of the injunction.FOR THESE REASONS

The Restricted Committee of the CNIL, after having deliberated, decides to:- proceed with the liquidation of the penalty imposed against the company CLEARVIEW AI for an amount of five million two one hundred thousand euros (5,200,000 euros) for the period from December 19, 2022 to February 9, 2023; - make public, on the CNIL website and on the Légifrance website, this deliberation, which will no longer identify the company at the end of a period of two years, the starting point being the publication of deliberation no. SAN-2022-019 of October 17, 2022. Chairman Alexandre LINDEN In accordance with article R.421-7 of the code of administrative justice, this decision may be the subject of an appeal before the Council of State within four months of its notification.