

Decision of the Executive Committee of the *Commission Nationale de l'Informatique et des Libertés* n° MEDP-2021-002 of 6th December 2021 to make public the order n°MED-2021-134 of 26th November 2021, issued to CLEARVIEW AI.

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In the event of any inconsistencies between the French version and this English courtesy translation, please note that the French version shall prevail.

The Executive Committee of the *Commission Nationale de l'Informatique et des Libertés*, chaired by Mrs. Marie-Laure DENIS, met on 6th December 2021;

Mrs. Sophie LAMBREMON, delegated Vice-Chair and, M. François PELLEGRINI, Vice-Chair were also in attendance;

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

Pursuant to Act 78-17 of January 6, 1978 (French Data Protection Act), as amended, and in particular Article 20;

Pursuant to Decree no. 2019-536 of 29 May 2019, in accordance with Act no. 78-17 of January 6, 1978 (French Data Protection Act);

Pursuant to Decision no. 2013-175 of 4th July 2013 pertaining to the adoption of the by-laws of the *Commission National de l'Informatique et des Libertés* (CNIL);

Pursuant to Decision no. MED- 2021-134 of 26th November 2021 of the Chair of the Commission (CNIL) issuing an order to CLEARVIEW AI.

Adopted the following decision:

The *Commission National de l'Informatique et des Libertés* (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").

As part 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 has been provided with useful information by several of its European counterparts regarding the processing carried out by the company.

A CNIL delegation carried out an investigation, by sending a questionnaire on 27th October 2020 that concerned the different processing implemented by the company, the organisations which use the company's services (current or former) having their main establishment in France or within the European Union, as well as several complaints.

The CNIL also received, on 27th May 2021, a complaint from the organisation, Privacy International, concerning the company's facial recognition software and its use by law enforcement authorities.

It results from this information that the company developed and sold a facial recognition software whose database is based on the extraction of photographs or videos, in which faces appear, publicly accessible on millions of websites, including social networks.

It has been observed that the company unlawfully carries out this processing, since it has no legal basis for this purpose, contrary to Article 6 of the GDPR. In addition, it is noted that the company has failed to comply with its obligation to respect and facilitate the exercise of the data subject's rights of access and erasure, contrary to Articles 12, 15 and 17 of the GDPR.

Therefore, by decision of 26th November 2021, the Chair of the Commission has, on the basis of Article 20 of the Act of January 6, 1978 as amended, issued an order to the company CLEARVIEW AI, located 214 W 29th St. à NEW YORK CITY (10001 – United States of America), to cease, within a period of two (2) months, the violations of the obligations provided for by the Articles 6, 12, 15 and 17 of the GDPR. It ordered the company to stop carrying out the collection and processing of personal data relating to data subjects who are on French territory, without legal basis, as part of the operation of the facial recognition software which it markets.

Pursuant to last paragraph of section II of Article 20 of the French Act of January 6, 1978, as amended, the Chair of CNIL duly convened its Executive Committee in order to deliberate on the request to make the decision public.

The Executive Committee met for said purpose on 6th December 2021.

After deliberation, the Executive Committee considers that the publication of the decision to issue an order is first justified by the characteristics of the processing in question. Indeed, it affects more than ten billion images and a significant number of people concerned. This means that there are several million people in France whose faces appear on a photograph or video publicly accessible on the Internet, and including on a social network account, that are likely to be affected by this processing. Moreover, as the database is regularly updated to integrate newly available information, the number of these people is constantly changing.

In addition, this massive processing is particularly intrusive in that it collects a potentially very large amount of photographic data on a given person, to which other personal data are associated, which may reveal various aspects of their private life, such as their tastes and preferences (e.g., in terms of leisure activities) or their political or religious convictions, expressed on social networks, in blog posts or even in press articles.

Moreover, a biometric template is created from these data, i.e., biometric data that can be considered as sensitive, which aims to identify the individual in a unique way from a photograph. Therefore, it is a facial recognition software and the company aims to enable it to be used, for instance, by law enforcement authorities to identify perpetrators and victims of offences from a photograph.

In this context, the Executive Committee then recalls the high seriousness of the violation of Article 6 of the GDPR noted by the CNIL. Indeed, the company unlawfully carries out this processing since it does not have any legal basis for this purpose: neither legitimate interest of the controller, nor consent of the interested parties.

Finally, the Executive Committee points out that making this decision public is also necessary to inform people concerned of this software, the vast majority of them being unaware that it could concern them.

Therefore, the Executive Committee of the CNIL decides to make public the decision no. MED-2021-134 of the Chair of CNIL issuing an order to the company CLEARVIEW AI.

The Executive Committee states that the order shall not be deemed a sanction. If the company complies with the requirements of the order within the time period set, proceedings will be formally closed, and the closure will also be made public.

Finally, the aforementioned decision to issue an order, as well as this decision, will no longer allow the company to be identified by name after a period of two years from their publication.

The Chair

Marie-Laure DENIS