

Chapter 4. Legal framework of ICT professionals

Marta Fernández Diego

- ▶ Law basic concepts
- ▶ Legal framework of ICT professionals
 - ▶ Law of Information Society Services
 - ▶ eGovernment
- ▶ Civil liability
- ▶ Computer crimes





- ▶ Computer law does not exist as such.
- ▶ The rules affecting our profession are fragmented in different texts.



Law basic concepts

What is Law?



▶ According to differing concepts of the state:

1. The State as a body established by a dominating class to maintain its dominance:

Law is the regulatory artefact designed to organize and protect the state.

2. The State as harmonizing and integrating some socially compatible groups:

Law is the regulatory artefact designed to prevent infighting to attain this *harmonious society*.



Law basic concepts

Definition



- ▶ RAE (Royal Spanish Academy Dictionary):
 - ▶ "Set of principles and norms, expressing a sense of justice and order, which regulate human relations in every society, **and with which compliance can be coercively imposed.**"



Law basic concepts

Who is responsible for defining these norms?

- ▶ The Spanish constitution (1978) establishes the separation of powers:
 - ▶ **Executive**
 - ▶ The government (law enforcement)
 - ▶ **Legislative**
 - ▶ General court = Congress + Senate (law making)
 - ▶ **Judicial**
 - ▶ Judges and courts administer justice according to law.



Law basic concepts

The hierarchy of the set of laws

- ▶ **Fundamental law**
 - ▶ In Spain, the fundamental law is the **Constitution**.
 - ▶ It is above any other law.
- ▶ **Organic and ordinary laws**
 - ▶ Organic laws concern the **fundamental rights and public freedoms**, those approving the Statutes of Autonomy and the general electoral system, and all the other ones referred to in the Constitution.
 - ▶ The approval, amendment or repeal of organic laws shall require an **absolute majority in Congress**, in a final vote on the overall project.
- ▶ **Decree-law**
 - ▶ **In case of extraordinary and urgent need**, the Government may issue temporary legislative provisions which take the form of decree-laws.
 - ▶ Must be immediately submitted in full for debate and voting by the Congress.
- ▶ **Regulatory requirements**
 - ▶ The regulations emanate from the **executive branch power** and can not contradict any law.
 - ▶ The royal decree from the Council of Ministers and ministerial orders from the different ministries

Law basic concepts

Supranational legislation



- ▶ It should be noted that there is supranational legislation as a result of the **transfer of national sovereignty to perform common actions** (or a unified action) between a set of countries.
 - ▶ In the case of the European Union, there is a transfer of power to the European Council, Commission and Parliament which have legislative initiative.
 - ▶ Supranational legislation goes beyond the European Union.
- ▶ We distinguish between:
 - ▶ **Regulations:** legal standards issued by the European institutions that have **direct effect** in the member countries, which take precedence over national law.
 - ▶ **Directives:** contain targets that countries must comply within a time specified, and each country **transcribe the directive** into their own legislation in their own terms.
 - ▶ **Decisions:** also have a direct effect, but in this case they have a **more administrative nature** and are addressed to **particular recipients**.

Legal framework of ICT professionals

- ▶ Many regulations affect our profession, but the most important are:
 - ▶ Data Protection Law
 - ▶ Intellectual Property Law
 - ▶ Law of Information Society Services
 - ▶ Law on eGovernment



- ▶ The Spanish “Law of Information Society Services and Electronic Commerce”
 - ▶ arises to include in our legislation the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (**Directive on electronic commerce**).



Legal framework of ICT professionals

LSSI – Object



- ▶ To regulate the legal framework for information society services and electronic contracting insofar as concerns:
 - ▶ the **obligations of service providers**, including service providers who act as middlemen in the transmission of contents by telecommunications networks,
 - ▶ **electronic commercial communications**,
 - ▶ information before and after the conclusion of **electronic contracts**,
 - ▶ conditions regarding the validity and efficacy of electronic contracts and
 - ▶ the system of **sanctions** applicable to information society service providers.

Legal framework of ICT professionals

LSSI – Definition



- ▶ Information society service means
 - ▶ “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service” (Recital 17 of the Ecommerce Directive).
 - ▶ This requirement should be broadly construed. For example, although a simple “brochure” website might not be an information society service, **a website that earns money through advertising almost certainly will constitute an information society service**, even if it is completely free to users.



Legal framework of ICT professionals

LSSI – Examples



- ▶ The procurement of goods or services electronically
- ▶ The organization and management of electronic auctions or virtual markets and shopping centres
- ▶ The management of online shopping by groups of people
- ▶ The sending of commercial communications
- ▶ The provision of information by electronic means



- ▶ The service provider is obligated to provide certain information such as:
 - ▶ Name,
 - ▶ Address,
 - ▶ NIF,
 - ▶ E-mail,
 - ▶ ...



Legal framework of ICT professionals

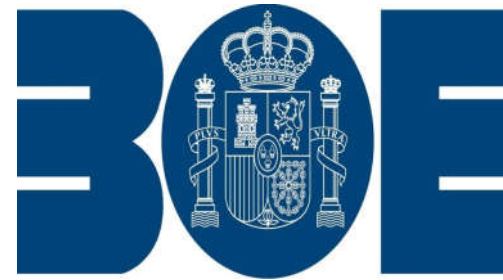
LSSI – Infractions and sanctions

- ▶ Very serious (penalties from 150,001 to 600,000 Euros)
 - ▶ Failure to suspend the transmission, hosting, network access or any other provision of equivalent service when ordered.
- ▶ Serious (from 30,001 to 150,000 Euros)
 - ▶ Significant breach of the obligation of the service provider established in article 22.1, in relationship with the procedures for revoking consent given by recipients.
- ▶ Minor (up to 30,000 Euros)
 - ▶ Failure to comply with article 20 for commercial communications, promotional offers and contests.



Citizens' Electronic Access to Public Services

- ▶ The Law on Citizens' Electronic Access to Public Services (also known as “**Law on eGovernment**”) entered into force on 24 June 2007.
- ▶ It officially recognised the right of citizens to communicate electronically with Public Administrations,
 - ▶ i.e. to conduct their administrative business by electronic means on a 24-hour basis any day of the year.





- ▶ The aim of the law was:
 - ▶ to enhance efficiency by doing away with the need to present paper documents to authorities,
 - ▶ to promote “closeness to the citizen and administrative transparency” and
 - ▶ to contribute to the development of eGovernment.
- ▶ It also established the basic principles for the use of IT between citizens and the Administration, but also among (central, regional and local) Public Administrations.



- ▶ The laws [39 / 2015](#) Common Administrative procedure of public administrations and [40 / 2015](#) Legal Regime of the public Sector, which replaces Law 30 / 1992 and the Law 11 / 2007, entered the fact that **the use of the electronic environment has to constitute the usual means in relations of administrations with citizens and those among themselves.**

Law 39/2015, Common Administrative procedure of public administrations

- ▶ Allows the electronic processing must constitute the usual performance of public administrations, in order to better serve the principles of effectiveness, efficiency, the cost savings, transparency obligations and guarantees of citizens.

Law 39/2015, Common Administrative procedure of public administrations

- ▶ The rights of people in their relations with the AA.PP.;
- ▶ assistance in the use of electronic media;
- ▶ electronic records of hijacking;
- ▶ searches, so that each Administration will have an electronic record
General and public agencies linked or dependent on each administration may have its own electronic register fully interoperable and interconnected Electronic Registration with the General administration of which depends;
- ▶ identification systems of stakeholders in the procedure; signature systems admitted by the AA.PP.;
- ▶ the practice of notifications via electronic means;
- ▶ the issuing of documents by the AA.PP.;
- ▶ the validity and effectiveness of copies made by the AA.PP.;
- ▶ the documents provided by stakeholders; and the file of documents, so that each Administration should maintain an electronic file Only of electronic documents that correspond to procedures completed.

Law 40/2015 of Legal Regime of the public Sector

- ▶ The electronic identification systems
- ▶ electronic signature of staff at the service of the AA.PP.
- ▶ electronic headquarters
- ▶ electronic filing documents
- ▶ the exchange of data in closed environments of communication
- ▶ automated administrative action
- ▶ the obligation of public administrations interact electronically
- ▶ functioning electronic collegiate bodies
- ▶ electronic systems mutual information
- ▶ shared management of common services that includes the information and communications systems
- ▶ the application of National schema interoperability and National security scheme
- ▶ reuse of systems and applications of ownership of the administration and technology transfer between Administrations.

Electronic signature



- ▶ Public-key cryptography
- ▶ Understanding digital certificates

Civil liability

- ▶ Definition
- ▶ Civil / Penal liability
- ▶ Civil liability in the field of engineering
- ▶ Civil liability insurance
- ▶ Professional liability

Civil liability



"Look, we don't want any trouble! All we ask is that you sign this release form in case you get hurt while you burglarize our house!"



- ▶ Civil liability is the **potential responsibility for payment of damages as a result of an action or omission**:
 - ▶ For example, third party damage in car accidents, in hunting accidents, for leak contaminants into the environment from businesses, resulting from a professional error, etc.
- ▶ In order to succeed with a claim for damages arising out of the action or omission of another, it is necessary to prove **fault** on the part of that person.
- ▶ Fault can take the form of either: **Intent or Negligence**.

Civil liability

Fraudulent/Negligent behavior

- ▶ From the point of view of intentionality we may distinguish two types of behaviors:
 - ▶ **Fraudulent behavior**
 - ▶ Events where the subject is aware that he will cause harm (something done with the intention to harm).
 - ▶ **Negligent behavior**
 - ▶ Lawful acts that cause damage because the appropriate precautions are not taken into account, that is, for acting negligently.

Civil liability Compensation



- ▶ Involves **quantifying first the damages** suffered by the person or entity due to the activity of one individual who has personal liability for it, and second **repairing the damage caused**.
- ▶ The right to compensation could include not only the value of the loss suffered (**consequential loss**), but the gain the creditor has ceased to get (**ceasing gain**).
- ▶ The amount so obtained is called **full reparation** so that the person suffering the damage is restored to the previous situation, before the occurrence of the act giving rise to compensation.



Civil/Penal liability

- ▶ Civil liability differs from criminal liability in that the latter is intended to **designate the person who must answer for the damages caused to the society as a whole**, not to a particular individual.
 - ▶ The damages in criminal liability are social, since they are considered as **violations of public order**.
- ▶ The civil liability is an attempt to repair the damage caused to victims: therefore, **the sanction of civil liability is in principle compensatory, rather than punitive**.
- ▶ **Both responsibilities can coexist in the same event.**

Civil liability? In the field of engineering





Civil liability in the field of engineering

- ▶ In contractual relationships we distinguish between:
 - ▶ **The obligations of means**, whereby a party undertakes **to use its best efforts, or to use the appropriate means**, to do something for the other party.
 - ▶ These only require a debtor to act prudently and diligently and to use all reasonable means so as to endeavor to achieve a certain result.
 - ▶ **No result is guaranteed**, however.
 - ▶ **The obligations of result**, whereby a party undertakes **to achieve a defined result**.
 - ▶ These require a debtor to actually achieve the bargained for result except only where the debtor can rightfully invoke a force majeure or the creditor's fault to be excused.

Professional liability

- ▶ Professional liability can be defined as those legal obligations arising out of **professional's errors, negligent acts, or omissions** during the course of the practice of his or her craft.
- ▶ Traditionally, the scope of professional liability was limited entirely to liberal professions.
- ▶ In the case of computer engineers, one of the typical cases where liability may be incurred is data protection.

Civil liability insurance

- ▶ Civil liability insurance is only responsible **for the other party's losses**.
- ▶ Your person and your property are unprotected, but liability insurance protects you from being held responsible for the other party's damages.

Civil liability insurance

Types



- ▶ There are different types of liability insurance, including:
 - ▶ General liability, which works in much the same way as auto liability insurance, but covers businesses. General liability protects a company from third party claims.
 - ▶ D & O liability
 - ▶ Employer liability
 - ▶ **Professional liability**

Professional liability insurance

- ▶ The purpose of professional liability insurance is to protect those seen as professionals or "experts" in a given field, **who may not be protected by general liability due to their expertise.**
- ▶ When someone is seen as a professional, they are held to a higher standard and are therefore often considered to hold greater liability towards their clients.
- ▶ Consequently, **they need more coverage than general liability insurance offers.**

Computer crimes

- ▶ An individual may incur criminal liability **even where he or she was not aware that the activity constituted a crime.**
- ▶ The Spanish Penal Code does not cover computer crimes as such.
- ▶ In summary, **the computer may have been used in the commission of a crime, or it may be the target.** Computer crime refers to any crime that involves a computer and a network.



Computer crime characteristics

- ▶ **Imprudent acts**, which are not necessarily committed with intent
- ▶ Can be performed **easily and quickly**
- ▶ Can cause **serious economic losses**
- ▶ Require some **technical skills** to be performed and can become quite sophisticated
- ▶ **Do not require physical presence** to be performed
- ▶ **Too hard to audit** because, in many cases, it is difficult to find the evidence
- ▶ The **proliferation and evolution** of these crimes make their identification and subsequent persecution even more complicated.



The Convention on Cybercrime

- ▶ Also known as the Budapest Convention on Cybercrime or just the Budapest Convention, this is the **first international treaty seeking to address computer crime and internet crimes** by harmonizing national laws, improving investigative techniques and increasing cooperation among nations.
- ▶ Drawn up by the **Council of Europe in Strasbourg** with the active participation of the Council of Europe's observer states **Canada, Japan and China**.

Computer crime classification

The Convention on Cybercrime



- ▶ Offences against the **confidentiality, integrity and availability** of computer data and systems
- ▶ Computer-related offences, such as **computer-related forgery and fraud**
- ▶ Content-related offences, which include exclusively **offences related to child pornography**
- ▶ Offences related to **infringements of copyright** and related rights, for example illegal copies of software or computer hacking
- ▶ Dissemination of **racist and xenophobic** material through computer systems, as well as of racist and xenophobic-motivated threats and insults

Computer crime classification

- ▶ Brigada de Investigación Tecnológica de la Policía Nacional Española (Technological Investigation Brigade of the Spanish National Police Force)



Computer crime classification

- ▶ United Nations (UN)

