Civil and Criminal liability of the suppliers of services in the information society

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THE CIVIL RESPONSIBILITY OF THE SUPPLIERS OF SERVICES.

1.- INTRODUCTION.

The supplier's civil responsibility understands all those suppositions of production of damages for the introduction of products in the market or for the benefit of services, it is also the denominated vicarius liability to differentiate it of the responsibility that it is born of the contract. The development of this parcel of the Right is usually connected with the Industrial Revolution and especially with the technological Revolution. Certainly it is with the widespread production of products of certain technological level and their massive acquisition, like it thinks about the necessity of juridical solutions that they motivate the production of surer products and that, I marry of taking place the damage, the responsibility compensatory is imputed to who generates the risk. That on the other hand it is who is under better conditions of avoiding it and of excusing it by means of the recruiting of an insurance.

Along the last years important legislative modifications have taken place on the matter. From the contained general rule in the articles 1902 and following of the Civil Code, going by the intermediate regulation contained in the articles 25 and following of the General Law for the Defence of the consumers and the Users of 1984 (LGDCU), to conclude, at the moment, in the Law 22/1994, of civil responsibility for the damages caused by faulty products (LRCP).

2.-GENERAL RIGHT OF DAMAGES FOR FAULTY PRODUCTS: THE LAW 22/1994.

With the Law 22/1994 the conversion takes place to the Spanish Right of the Directive one 85/374/CEE on the same matter. The European disposition marked as main objectives the reduction of the distortions of the competition for the legislative diversity of the internal Rights of the States members and it guides her of the consumer. In the long elaboration process the Directive one received the so much influences of the European Convention on responsibility for products in the event of corporal lesions or of death, of January of 1977, of the Council of Europe 27, as of the American Right always to the vanguard in this matter.

The Law 22/1994, the same as the Directive one, leaves of an approach of objective responsibility in their article 1: the makers and the importers will be responsible, according to that prepared in this law, of the damages caused by the defects of the products that, respectively, manufacture or care. This means that the responsibility is born with independence of the aspects culpability characteristic of the approaches of subjective responsibility or for blame, therefore, the causing manager of the damage won't be able to get rid of responsibility with the test of a diligent behaviour. It should be pointed out that the juridical approaches welcomed in the Law 22/1994 should be used as approaches guide regarding the interpretation of the precepts of the other dispositions, but provided, a different norm don't settle down in these in this respect.

In the articles 2 and 3 of the law that we comment the legal concepts of product they are developed and of defect, without a doubt you is before the nucleus of the juridical rule of damages for faulty products, since starting from here it is defined with certain clarity the existence of a claimable responsibility.

3.-CONCEPT OF PRODUCT.

Inside the product concept they are only understood in the application environment the goods furniture, even when they are united or incorporate to another good piece of furniture or property, except the matters agrarian cousins and cattlemen and the products of the hunt and of the fishing that they have not suffered initial transformation. To those that it is necessary to add the gas and the electricity. The base of the precept is in the reference of the goods furniture, in this given sense the generality of the expression is to understand understood all very not susceptible property of appropriation and of mobility without damage of its nature (art. 335 C.c). therefore it can be so much of a consumption good as of a production good.

4.-CONCEPT OF DEFECT.

On the other hand the defect is the decisive key element of the responsibility. Therefore it is not necessary to insist in the importance that has the study of the legal concept of product faulty content in the article 3 LRCP:

1. it will understand each other for faulty product that that it doesn't offer the security that would be necessary rightfully to wait, keeping in mind all the

circumstances and, especially their presentation, the reasonably foregone use of the same one and the moment of their setting in circulation.

2. in any event a product is faulty if it doesn't offer the security usually offered by the other copies of the same series.

3. a product won't be able to be considered faulty for the only made that such a product puts on later on in circulation in a more sophisticated way.

Before anything is to carry out two previous warnings: that it guides her it is not referred to the kindness or quality of the products and that you cannot identify insecure or dangerous product with faulty. Regarding the conventional qualities of the acquired goods they should be demanded through the contractual bed: non fulfillment or hidden bad habits. But the above-mentioned doesn't mean they not to be qualified of faulty if the insecurity or the danger goes more in general far from what would be necessary rightfully to wait, these products they are qualified of faulty by informative lacks on its use or manipulator(S. TS of December 19 1994).

A typology of defects elaborated by the doctrine and North American jurisprudence exists: defect of production, of design and of information. The first one when the product doesn't belong together with those of its same series, the second a failure in the conception of the product and the third lacks or inexact informations on the consumption, use or manipulation of the product.

5.- THE LOAD OF THE TEST.

We have, on the other hand that the article 5 settle down that the one harmed that it seeks to obtain the repair of the caused damages he or she will have to prove the defect, the damage and the relationship of causation between both. As you leave the law it imposes a grievous load of the test on the one harmed, what has given place to that it has more than enough this precept is formulated the biggest you criticize. The certain thing is that the critics are guessed right by the difficulty that it involves for the damaged one the test of the defect and the relationship of this with the damage. The LRCP is this way clearly inadequate with the sought purpose. In this sense the correct thing is to impose the probatory load of the different facts in question to the part that is under better conditions of proving it.

6.- SUBJECTIVE ENVIRONMENT OF APPLICATION: MAKERS AND HARMED.

In the subjective aspect the prominent thing in the LRCP is the width in the protection and the reduction of the responsible fellows. The first thing, because I hold protected they are all the damaged ones without distinction if they are consumers or professionals. As for him second, because the figure of the responsible one you focuses in the maker.

The article 4 of the LRCP develop maker's legal concept and importer in the following terms:

1. to the effects of this Law, it understands each other for maker:

a. That of a finished product.

b. That of any element integrated in a finished product.

c. The one that produces a matter prevails.

d. Any person that is presented to the public as maker, putting their name, social denomination, their mark or any other sign or distinguishing characteristic in the product or in the container, the wrapping or any other distribution form.

2. to the same effects it understands each other for importer who, in the exercise of their managerial activity, it introduces a product in the European Union for their sale, lease, financial lease or any other distribution form.

3. if the maker of the product cannot be identified, it will be considered as maker who given facilitated the product, unless, inside the term of three months, indicate to the damaged or harmed the maker's identity or of who had given him or facilitated him this product.

The responsible fellow is par excellence the maker or real producer under his different modalities: finished product, that of integral element or the producing of the matter prevail. In how much to the reason legitimate of the almost exclusive preference for the maker's figure as responsible is in two data that coincide with the arguments in favor of the objective responsibility in good measure. On one hand, because it is the maker of the product the one that is under better conditions to control and to verify the productive process and therefore who can avoid the introduction potentially in the market of products in a preferable way harmful, and for other that of face to the insurance of the risk equally is this fellow the suitable one to hire the pertinent insurance to the best price and to take to effect the dispersion of the risk through the price of the final product

Beside the real maker a series of fellows compared to the producer appear but that in fact they are mere distributors, it happens this way with the apparent maker, with the importer and with the supplier or distributor in strict sense. The apparent maker, I hold that is presented in the market as such without being it, it is made responsible because with this performance way it is constituted in introductory of the product in the market and therefore in guarantor of the same one.

It is also equipped the maker the community importer. The responsibility is imposed here to a clear distributor to facilitate the repair of the damage and to avoid that the one harmed is subjected to less protective juridical rules. The LRCP defines the figure under two budgets, professional exercise and the introduction of a product extracommunity These importers of European products should be treated as simple suppliers and the corresponding actions should not be directed against the European maker national.

Lastly, but in a very exceptional way, the comparison can reach to the distributor in strict sense. And I eat we already point out it is not somebody to who can be imputed the faulty character of the products easily, their task distribute it doesn't simply propitiate the manipulation or alteration of the product. And on the other hand, to extend the responsibility to the same one would produce a counteractive effect in the interests of the one harmed, because it would increase the price of the final product and it would very probably reduce the competition in the sector of the distribution, without in that way it is added much more to the protection of the damaged ones.

7.-PROTECTED FELLOWS: THE ONE HARMED - PERSONAL DAMAGES - AND THE CONSUMER - MATERIAL DAMAGES.

It is said in the paragraph recruit of EM the following thing: the protected fellows are, in general, those harmed by the faulty product, with independence that they have or not the condition of consumers in strict sense. Certainly the disposition leaves of a universal principle of it guides her to all harmed fellow, but the article 10 it establishes a clear separation between the repair of the personal damages - universal protection - and the materials - the consumers' protection. In a same way it settles down in the article 9 of the Directive one, but this time in perfect agreement with that expressed in the Considering eighth of their Preamble. Because well, the question is that the one mentioned article 10.1 distinguishes between personal damages and materials. In the first case - death and corporal lesions - without any conditionary and in the second with two requirements, without mentioning the exclusion of the damages in the own faulty product and the deduction of the frank. It establishes an objective requirement: that the damaged thing is objectively dedicated to the use or subjective private, and other consumption: and in such a concept it has been used mainly by the one harmed. The consequence of this double requirement is that the protection regarding the material damages is reserved exclusively to the consumers, experts as final addressees of the goods; this is something that one deduces especially from the second of the requirements that imposes a non managerial destination of the very damaged one. It is even more restrictive the norm because it not even fits the non protection of the consumer, case that the very damaged one is not objectively dedicated to the private consumption in spite of an use in such a sense, this is, be a very managerial one.

8.-CAUSES DE INIMPUTABILITY

In the article 6 of the LRCP are enumerated what the law denominates causes of discharge of the responsibility that in fact are not such but you cause of non imputation. The discharge is referred to the rupture of the relationship of causation between the damage and the defect, exactly to what it refers the articles 8 and 9, on the contrary in the sixth of that that is of suppositions in those which, in spite of being completed the relationship of causation between the faulty product and the damage, the legislator decides not to impute the responsibility to the fellow that would be responsible in a principle for his relationship with the product. In definitive the question rotates on the distinction among the idea of Causation - made of the nature - right question. And it is in fact for the existence of these unimputability causes in an objective system of civil responsibility, for what is not spoken of an objective responsibility absolute - in the Exhibition of reasons - or of tinged objective responsibility. Each one of the causes picked up in the article 6 would be the non setting in circulation of the product, the presumption of nonexistence of the defect in the moment of the setting in circulation, the production neither for the sale neither in a managerial environment, the agreement production with imperative norms, the development risks and the production of a part.

9.- DAMAGE REPAIRABLE.

The delimitation of the repairable damage in the LRCP controls in the articles 10 and 11, the first one takes for title protection Environment:

1. the regime of civil responsibility foreseen in this Law understands the suppositions of death and the corporal lesions, as well as the damages caused in things different from the own faulty product, whenever the damaged thing is objectively dedicated to the use or deprived consumption and in such a concept it has been used mainly by the one harmed. In this same case a frank of 65000 pesetas will be deduced.

2. the other damages and damages, included the moral damages, will be able to be recouped according to the general civil legislation.

3. the present Law won't be of application for the repair of the damages caused by accidents nuclear, whenever such damages they are covered for international agreements ratified by the States members of the European Union.

The second, article 11, total Limit of the responsibility:

In the regime of responsibility foreseen in this Law, the maker's global civil responsibility or cared by death and personal lesions caused by identical products that present the same defect they will have as limit the quantity of 10.500.000.000 of pesetas.

The first thing that is appreciated is that the obligation to indemnify that it is not born of the present Law you subject to the call principle of integral indemnity, according to which the responsible fellow will reimburse all the damages that are objectively attributable to his behaviour or activity; as much the patrimonial damage as

the moral one, the emergent damage and the dismissed lucre. The immediate consequence of this is that the damages non cutlery pass to fall under the environment of application of the general norms of the civil responsibility, as in an expressed way two of the article settle down in the number 10. On the other hand, a distinction of juridical treatment settles down among the personal and not personal patrimonial damages, with a clear preference for the first ones.

10.-INTERRUPTION OF THE CAUSAL RELATIONSHIP.

The articles 8 and 9 of the LRCP contain typical discharge suppositions, of interruption of the causal relationship between the responsible fellow's action and the production of the damage, although like we will see the juridical treatment it is clearly differed in both cases. The first of these precepts develops the supposition of the intervention of a third in the production of the damage: The maker's responsibility or importer won't decrease when the damage is caused jointly by a defect of the product and for the intervention of a third. Nevertheless, the fellow responsible for agreement with this Law that had satisfied the compensation will be able to claim at the third the part that corresponds to his intervention in the production of the damage. As you leave, in protection of the one harmed, there are not liberation of the maker's direct responsibility or importer for the collaboration of a third in the production of the damage, but yes that the partial indirect liberation takes place when being recognized a repetition right in front of that third. The solution had not been very different of going to the general rule of the solidarity. Of course that there would be liberation of the maker's responsibility, for total rupture of the relationship of causation, if the only culprit was

the third, here the application of the general rules of the civil responsibility would proceed.

The other precept, article 9, relative to the blame of the one harmed, yes it liberates, partial or totally, directly to the responsible one according to the Law: the maker's responsibility or importer will be able to decrease or to be suppressed in function of the case circumstances, if the damage caused outside due jointly to a defect of the product and blame of the one harmed or of a person of the one that this should respond secularly. The norm picks up the supposition of the victim's blame sole right so much like of the responsibility for blames. It is only in the first case when it fits the suppression of the maker's responsibility or importer. In the concurrence of blames a reduction of the quantity of the compensation takes place. This circumstance, although discussed, it is reviewable in cassation as much in the qualitative thing as in the quantitative thing. Neither exits an approach uniform jurisprudential on the approach to fix the proportion of the reduction, well the entity of the concurrent blames or the causal contribution of the diverse behaviours to the production of the damage; in this last sense our doctrine is pronounced more qualified purely with base in the function mender and not punitive of the civil responsibility. Finally, in the case of behaviours objectively imprudent of smaller or more unable it leaves imposing the idea of reduction of the compensation.

11.- THE LAW OF CONSUMERS AND USERS OF 1984.

The first final disposition of the LRCP establishes the partial repeal of the Law 26/1984, concretely of its articles 25 at 28, but only as soon as concurrent with the objective environment of application defined in the article 2 of the first one: product concept. The LGDCU has been object of critics generalized by the Spanish doctrine by the serious deficiencies of artificial technique that they suffer. Very probably this it has been one of the causes that more it has been able to influence, but not only this, in the Spanish Tribunals of justice during their first years of validity, even in recent dates they appear sentences that surprisingly ignore the existence of the LGDCU 1984. Because well, let us say that the most characteristic notes in this Law are the following ones. First part of a subjective environment restricted as it is the consumer's figure, expert as final addressee of the goods and services. Second, as for the responsible fellow the excess is such that one makes respond to the simple distributor in equality with the maker. Third, two rules of responsibility is developed, one lighter next to the general of the special civil, and other Code of objective responsibility regarding certain goods and services. And room, although the discharge causes are very limited, the system is compensated with a quite low global limit of responsibility.

12.-OBJECTIVE ENVIRONMENT OF APPLICATION.

The objective environment of current application of the articles 25 at 28 of the LGDCU are obtained by the confrontation with the objective environment of the LRCP article 2 and first final disposition. Initially, the Law of the 1984 understood to all type of products and services without distinction, therefore included properties and

agricultural products and cattle breeding. In consequence according to that settled down in the article 2 LRCP the precepts of the LGDCU reduce their application exclusively to the services, properties and the matters agrarian cousins and cattle breeding and the products of the hunt and of the fishing that they have not suffered initial transformation.

13.-SUBJECTIVE ENVIRONMENT OF APPLICATION.

In the case of the LGDCU the particularity in the subjective environment of application rests in being very narrow on one hand, the one of the one harmed, and very wide for the other one, that of the responsible fellow. Excessively reduced the first thing because it only understands as fellows protected the consumers as soon as final addressees of the goods or services, leaving not went to all damaged one included in that definition of consumer of the article 1 of the LGDCU. As for the responsible ones the extension is total, any manager or merchant that it has intervened in the distribution chain are forced to the payment of the opportune compensations, the norms are in this clearly disproportionate aspect when extending the responsibility to the mere distributor contrary to that seen regarding the environment of application of the LRCP.

14.-THE APPROACHES OF IMPUTATION OF THE RESPONSIBILITY.

The LGDCU develops in the articles 25 and following two subsystems of responsibility, one general in the articles 26 and 27 and other special in the article 28, in

this sense most of our doctrine is pronounced. The general has his approach in the imputation article in the article 26 where the following thing settles down:

The actions or omissions of those who take place, care, they give or they facilitate products or services to the consumers or users, decisive of damages or damages to the same ones, they will give place to the responsibility of those, unless it consists or it is credited that they have been completed the demands and requirements established rulery and the other cares and diligences that it demands the nature of the product, service or activity properly.

The norm basically supposes the continuity of our general rule of civil responsibility of the article 1902 C.C according to the average jurisprudential that incorporates the investment of the load of the test. Therefore, one shows off guilty that can be destroyed by the test of the responsible diligence of the presumed one acting. But before arriving to that moment the damaged one it should prove the existence of the damage, the relationship between the product and the fellow or demanded fellows and the relationship of causation between the damaged fellow and the use or consumption of the product. As it demands the article 25 you must be about damages and demonstrated damages. The legislator has welcomed an approach consolidated jurisprudential that it not only demands the execution of the legal demands, but also that it has been fulfilled the other cares and diligences that it demands the nature of the product. The reference to the nature of the product elevates the level of demanded diligence until the limit of the foregone damages, this way they are outside here the risks of the development as long as soon as it is damages taken place as a consequence of unforeseeable facts. In

definitive, with the exception of the suppositions of the victim's blame or of a third, the damage you lead back to the fortuitous case.

The special rule controls in the article 28 of the LGDCU. In this case the approach of imputation of the responsibility is an objective approach for the simple production of the damage, it is not possible the liberation for the manager's diligent behaviour, except for the general clause of discharge of responsibility of the article 25, the victim's exclusive blame, that it mentions itself implicitly in the article 28 when mentioning to the correct use or consumption of the goods and services. In such a way that the manager will only be liberated of responsibility if the damage took place for the incorrect use or consumption. Because well, when not mentioning the precept the necessity of the faulty character of the product, this makes him to understand each other as faulty all causing product of a damage in spite of a correct use.

15.-DAMAGE REPAIRABLE.

To the repair of the damages it refers the article 25 with the following tenor:

The consumer and the user are entitled to be reimbursed by the damages and demonstrated damages that the consumption of goods or the use of products or services cause them unless those damages and damages are caused by their exclusive blame or for that of people of those that they should respond secularly.

Of the precept it is deduced with clarity the necessity of the certainty of the damage, although anything has changed to miss that mention being a general assumption of the civil responsibility. As for the object of the compensation, the LGDCU, contrary to the LRCP, doesn't establish any expressed limitation in this

respect, with the exception of the limit of the article 28, therefore they fit all the damages here that the consumption or use causes the consumer or user, corporal damages, materials and moral, and as much emergent damage as dismissed lucre. This way it is understood in the direct material damages the destruction or very faulty deterioration of the own one, but without this means to extend the application of the articles 25 and following LGDCU to the whole contractual environment.

In the section third of the article 28 a limit to indemnify of 500 million pesetas settles down for the cases understood in the same one. Artificial politics end is clear and it obeys an artificial technique that it goes being habitual of accompanying a severe rule of responsibility - objective - with the fixation of a stanchion maximum indemnify.

Finally, the article 29 LGDCU contains a rule that allows the consumer to obtain a compensation for the time lapsed from the judicial declaration of responsibility until its definitive payment and it is remitted to the Law of Civil Prosecution to determine the same one. the remission is to understand it made to the article 921, paragraph 4º of the LEC where the following thing settles down:

When the resolution condemns to the payment of a liquid quantity, this will yield, in favor of the creditor, since that was dictated in First Instance until it is completely executed, an annual interest similar to that of the legal interest of the money increased in two points, or the one that corresponds for pact of the parts, or special disposition, unless, interposed resource, the resolution was completely revoked. In the cases of partial repeal, the Tribunal will solve according to its wise will, reasoning him to the effect.

The truth is that in view of this precept the introduction of a norm like that of the article 29 LGDCU doesn't have much sense, although doesn't exist that it would not impede the application of the transcribed norm of the LCE equally.

16.-APPLICATION OF THE GENERAL RÉGIME OF THE CIVIL CODE.

In the Spanish Law, in a similar way to that happened in other Rights, it was confronted the problem of the damages initially by faulty products from the double via contractual and extracontractual. The first one with the resource well to the responsibility for hidden bad habits in the sale and purchase (arts. 1484 and ss. Cc), well in the general action of the contractual non fulfillment (art. 1101 Cc), or finally with the superation of the principle of relativity of the contracts (art. 1257 Cc). we won't enter here in more considerations on the big difficulties that present these different contractual roads, think you in a special way in the difficulty that it involves to establish a direct relationship among the producer and the one harmed without a contract of for half; the question is that after different rehearsals the solution has decanted clearly in favor of the road extracontractual. The normative bed of the article 1902 Cc allows to the one harmed to claim the opportune compensation to the maker without necessity of a previous artificial relationship: the one that for action or omission causes damage to other, intervening blame or negligence, it is forced to repair the caused damage. It is the principle of the Right Roman classic neminem laedere, duty of or to cause damage to the other ones that it constitutes the base of the system of civil responsibility. But it also presents their inconveniences this road extracontractual, on one hand the brief term of

one year for the exercise of the action and, for other, the test of the blame or negligence of the damage. Some inconveniences that have left overcoming with better or worse fortune, well with special dispositions (LRCP and LGDCU), well with developments jurisprudentials.

After the promulgation of the special laws about the maker's civil responsibility the rules of common Right, art. 1902 Cc, it is finally constrained to a function of the mentioned special Dispositions. Function that is developed in two levels, allowing for their bed the satisfaction of the principle of entire repair sometimes limited in the special rules and, on the other hand, giving covers to the excluded suppositions of the application environments of these. The first thing is manifested especially in the LRCP art. 10, it happens this way to the damages caused in the own faulty product, with the damages in goods not dedicated to the consumption and used preferably for this end, with the inferior material damages to 65000 pesetas, with the moral damages and, finally, the personal damages that overcome the limit of the 10.500.000.000 of pesetas of the article 11 LRCP. Regarding the LGDCU, the rules of the CC is good to repair the limit indemnizatory of 500 millions settled down in that, art. 28. As for him second, the exclusions that are made in the LRCP are remitted to the LGDCU first final disposition and art. 2 LRCP, and the non consumer's exclusion or user of the LGDCU art. 1 lead these suppositions from the damaged non consumer to the general legislation.

17.-INSURANCE OF THE RESPONSIBILITY.

In the field of the maker's civil responsibility, next to the whole problem seen on their installation, it charges special importance the covering insurance of this responsibility, especially with the development of the systems of objective responsibility. It is this way like a minimum guarantee settles down for the one harmed that its damage will be repaired, of not to be this way for very severe that is the regime of responsibility it doesn't pay the possible financial problems that affect the responsible manager. But not alone it constitutes a guarantee for the one harmed, but also for the manager that will be able to calculate with more security their company risk, internationality their cost easily through the cousin of the insurance and to excuse it in the market.

PENAL RESPONSIBILITY OF THE SUPPLIERS OF SERVICES IN THE SOCIETY OF THE INFORMATION

1.- **INTRODUCTION.-**

For few years, the new technologies like for example Internet has revolutionized in our society the traditional diffusion methods, providing us effective mechanisms of storage of data.

But like we have been able to observe along these years of technological revolution, Internet not only has us had carried big advances but also a certain concern to the governments and users in certain aspects like consequence of an illegitimate or abusive use of the net.

This illegitimate or abusive use can observe it in:

1) the regulation absence, with the result that the offenders could diffuse any type of illicit and noxious information without fearing to be inculpated or defendants.

2) absence of an authority what has favored the impunity of the offenders that they make a wrong use of the computer net.

The transmission of illicit and noxious contents on the part of an user (offender) like we have made allusion previously it is one of the big problems that worry and to those that it faces our society.

To be able to speak of the penal responsibility of the suppliers of services in the society of the information it is necessary to begin making allusion to the great difference that it exists among what they are contained illicit and noxious.

The illicit contents are those that need of the penal intervention (worthy of penal sanction), while the noxious contents are those that harm certain people as for ethical values, religious or political, that is to say; it is an offensive for the addressees but without necessity of the penal intervention (not worthy of penal answer).

We will make a brief listing of some of the aspects that are considered illicit contents:

a)Terrorism documental

b)Falsehoods

c)Diffusion of racist contents

d) Libels or violations of the intellectual property

e)Diffusion of injurious messages

f)Pornography, etc...

The suppliers of services are those that select and they load the information in Internet and they are responsible civil and penally for their own acts or activities.

It can be a physical person (matter that elaborates their personal page), or an artificial person (it puts to the users' of Internet disposition a certain information).

But it is necessary to keep in mind that these refuse to be responsible for the illicit and noxious acts of their clients for not harming their commercial activities.

What it usually allege is that they are mere transport companies and that their only function is to take of a destination to other a message without knowing its content.

What it usually make to be discharged of responsibility is:

a) to Control the contents that circulate.

b) to Include clauses that limit their responsibility for the illicit contents that can circulate for the net.

But the general "principle admitted by all the classifications" is that the suppliers of contents are responsible for all the actions, for what will respond of all the contents that diffuse through the net.

It is necessary to keep in mind that the lender of services of Internet will be able to be responsible if:

a) it Has the contained offender's knowledge.

b) it Has knowledge of the information.

c) But it moves away the material when it is aware of the infraction.

d) If it receives an economic compensation.

Therefore, to be able to demand responsibility to a suppliers of services, it will be proven that the supplier of services had knowledge of the illicit activities.

For that that, they will only be responsible the suppliers of services if they have been imposed the duty of surveillance on the contents that can be transmitted by their systems of the net.

In the European Union, in accordance with the Directive one 2000 / 31, the States Members won't impose the suppliers of services the obligation of supervising the data that transmit or store, unless they establish it the Judicial Authorities (I articulate 15.1 and 2)

In our Right, the computer science has constituted a form through which can be ended up injuring different juridical goods, as the intellectual property, the intimacy..

What has carried out many States is to elaborate norms you specify, and gold on the other hand have modified their laws to adapt them to the new technologies, while others have applied their existent norms. But it is necessary to also clarify that not all the information is considered illicit for the same States, neither everything is noxious for all the people, as well as the penal responsibility of a crime varies from a country to another.

Everything this great problem has demanded the International cooperation to put an end or to fight against the illicit contents.

The commission in 1996 defines the illicit contents as those that are susceptible of entering under the environment of application of the penal norms of the States Members.

There are certain illicit contents that generate penal responsibility as;

a) Documental Falsehoods

b) Diffusion of racist documents

c) Pornography infantile etc.

But it is always necessary to make reference to that the suppliers of having contained don't always pursue the same objectives, since many of them the only thing that it make is to diffuse information about a certain area.

In the case of Spain: While in the European Union we met with a Directive one, in Spain at the same time didn't have legislation as regards the suppliers of services civil and penal responsibility. But today in day, the Directive of Electronic Trade picks up discharges of responsibility so much civil as penal.

The same as the directive of Electronic Trade, is discharged the suppliers of service of the obligation of controlling the contents that transmit, unless the judicial authorities request it, only in this case would be forced.

Today in day, the suppliers of contents are responsible for the illicit and noxious acts that make in Internet.

It is necessary to make it also indexes to that the Penal Code of 1999 was reformed to punish the comercialization of infantile pornography.

The Spanish legislation, doesn't punish neither the acquisition neither the possession of infantile pornography through the net that on the other hand in countries like France, United Kingdom, Germany, etc... they are difficultly punished.

In Spain, we don't still have a specific regulation mainly this topic. In the last years, they have left incorporating to our juridical classification the new forms of criminal commission in which computer elements intervene.

As for the procedure to notify the illicit material will consist first on registering in the Office of Intellectual property (OPI). When the OPI receives the notification it has the obligation of moving away the illicit content, but if the suppliers of services demonstrates that the material is not illicit, the OPI will return to load the content in the net, unless it already exists demand.

But with the course of these years it has been tried to determine the responsibility of the suppliers of services of Internet.

The proposal of Directive of Electronic Trade of 1998, establishes a rule of the suppliers' of services penal and civil responsibility. But, with this Directive the suppliers of they have services they are not considered responsible but they have originated themselves the transmission, but they have selected the addressee of the transmission and but they have modified the data transmitted through the net. But it is necessary to keep in mind that to be subject to the precautionary measures that could be imposed by the Judicial Authorities.

The law 34/2002 of June of Services of the Society of the Information 11 and Electronic Trade, approved by the Congress June 27 2002 and published in the BOE the 12 of July 2002, ithas like object the incorporation to the Spanish classification of the European Parliament's Directive 2000/31 CE and the Council of relative June of 2000 8 to aspects of the services of the society of the information, in particular the Electronic Trade in the Interior Market.

The article 1 of the Law 34/2000, it says that this law will be from application to the suppliers of services of the society of the information settled down in Spain and to the services lent by them.

It will understand each other that a lender is established in Spain when his residence or social home is in Spanish territory.

The established suppliers of service in Spain will be subject to the other dispositions of the Spanish juridical classification that will be they of application in function of the activities that develop with independence of the use of electronic means for their realization.

But, we should make reference to that the Law 34 / 2002 that it went into effect October 12, will be modified shortly as consequence of the European parliament's Directive 2002/58 CE and of the Council July 12 2002, relative to the treatment and the personal data and to the protection of the intimacy in the sector of the electronic communications.

Next and seen in an introductory way the responsibility of the suppliers of services in the society of the information, we will analyse a series of crimes that they are typify in our Crime Code: Criminal digital behaviours, crimes against the intimacy, crimes against the honor, documental falsehood, falsification of social bills, crimes against the patrimony

2.- PROBLEM JURIDICAL PRISON OF THE DIGITAL BEHAVIORS

2.1.-GENERAL CONSIDERATIONS. -

At the present time we are before a cybernetic revolution, where everything is automatic, before a second industrial revolution whose origins date of the years fifty, we meet with a new society model, a society that is governed by the informatic,where the big information superhighway are the instrument of the denominated society of the information. Already nobody doubt that the computer revolution is changing and it has changed the internal organization our traditional society when modifying and to perturb the systems to get and to use the information.

Characteristic one of the main ones and rights with those that the user of this new technological society has been and in short of Internet, it is the one of becoming an ANONYMOUS USER.

And it is soon after this anonymity possibility in the net, of where the most destructive behaviours introduced in this society internet user also arise, consistent in starting from this anonymity idea to be able to harm and to violate passwords, and-mails, softwares, to introduce pornography etc.

It thinks about starting from this conflict a rupture among that right to the privacy postulated by this new society that is configured in the Nets of the Information, and a more and more imperious necessity of being able to have measures and solutions that allow the repression of crimes in Internet, measures and solutions that limited in an unavoidable way the so yearned right from the user to the anonymity.

2.2.- DIGITAL CRIMINAL BEHAVIORS. -

Next we will examine some of these illicit behaviours:

· Cracking. -

The Cracker, is the computer science's self taught person, contrary to the hacker, it doesn't have its knowledge and therefore he tries to imitate them, the experts that the cracker is the before room of the future hacker say. The typical behaviours of the cracker, it is the non spoilt copy of programs computer specialist violating this way the royalties.

Based on this described behaviour, there are not problems when applying the Crime Code since this behaviour of the cracker it will find submission in the article 264.2, which postulates the regulation of the computer damages, is of application the article 270 too, regulator of the relative crimes to the intellectual property.

· Ciberpunk. -

Behaviour also denominated as electronic vandalism, this behaviour has as end and objective the destruction of programs, any fact type, or computer support.

There are experts that consider to the cyberpunk, as a cracker whose goal is the destruction; that is to say the one of to not get the entrance consented in a computer system by means of the corruption of a password, (typical behaviour of a cracker) for the destruction of data, or to introduce a virus or logical bombs that destroy the same ones.

The juridical-penal fitting of this behaviour, has its hypifity in the current crime of computer sabotage, foreseen in the article 264 of the Crime Code.

· ***Sniffers. -***

It consists on an invasion of the private life through the net, using a series of programs scanners, or sniffers whose mission is to enter in the hard disk of the particular user's computer, to look for certain type of information. For example this type of programs, allows a control unspoiled of the electronic mail, that makes this program it is to "hunt" the mails that circulate for the net to read them and to control them. This behaviour type is perfectly classified and fit penally as a serious attack against the privacy and intimacy, finding its hypifity in the article 197.1.

· ***Spamming. -***

Consistent behaviour in the shipment of advertising messages by mail electronic, without consent, as for this behaviour type we don't find a penal juridical mark.

2.3.-**SPECIAL REFERENCE TO THE HACKING OR COMPUTER INTRUSISM. -**

It is difficult to make a first one a first approach and definition from the subjected behaviours to study. The delinquency together to the new technologies directs us toward a multiplicity of concepts and ideas, in compensation to the accuracy and existent concretion in other areas, this owes you among other aspects to the lack of definition of the own computer crime.

When hacking speeches, are come to mind the criminal's figure or computer vandal, this diffuse idea also owes himself to the lack and absence of an artificial regulation in our classification of this type of behaviours that they could help us to sum up them and to define them.

The behaviours hacking or of computer intruder they are bounded to the group of access behaviours or NOT authorized interference, in a surreptitious way, to a computer system or net of electronic communication of data and to the use of the same ones without authorization or beyond that authorized.

The computer intruder in our Crime Code.

The behaviours of mere computer intruder, this is not access behaviours and/or permanency authorized to computer systems it is not that they enjoy a perfect and defined projection inside our Crime Code

Inside these behaviours we find those behaviours of computer intruder that attempt against the intimacy, finding a penal fitting in the article 197 of the Crime Code. But it is necessary to proceed to an analysis of two types of behaviours, one the subsume in the article 197.1 consistent in accesses verified with interception of telecommunications and a second behaviour subsume in the article 197.2 consistent in the access unallowed with ulterior attack to the habeas dates.

The article 197.1 of the Crime Code, in their second paragraph establish one that, to discover the secrets or it harmed the intimacy of other, without their consent… it intercepts their telecommunications or use technical artifices of it listens transmission, recording or reproduction of the sound or of the image or of any other communication sign, it will be punished with the hardships from one to four years of and it fines from twelve to twenty-four months

This type approaches, the incrimination of behaviours of interception of any means of communication, among those that are the communications through of the nets of information, as the computer science. Also the wide legislator the type when it also establishes the use of technical artifices to avoid the recording behaviours and reception so of what has been intercepted in a principle it is unpunished.

We will meet with an imperfect crime, since for their consummation it won't demand an effective discovery of the intimacy, it will be enough with an interception of the telecommunications, budgotten by a managing deceit of discovering the intimacy of another.

It is interesting, to define the very juridical one protected of this type. The privacy that is picked up in the secret of the telecommunications, consists in that the fellow won't exercise any control type on what wants to maintain secretly since the mere action of using the net of telecommunications takes harnessed the secret notion. The secret of the phone and telematic telecommunications is this way the true one very juridical protected by the article 197.1, more than the own intimacy expert in wide sense.

The open clause picked up by the precept ("or of any other communication" sign), it enlarges the environment of it guides, when giving typical space to the technological innovations as regards electronic or telematic communications.

As soon as the article 197.2 of the Crime Code, to say that it determines that the same hardships will be imposed the one that, without being authorized, seize, use or modify, in damage of third, reserved data of personal or family character of another that they are registered in files or computer, electronic or telematic supports, or in any other file type or public or private registration. Equal hardships they will be imposed to who without being authorized, consent for any means to the same ones and the one who it alters or use in damage of the holder of the data or of or third

We see that the article 197.2 regulates and hypifies a series of behaviours that they imply computer abuses against the privacy or computer freedom.

This way the modalities hypified are collections in two points; a first point that hypifies the actions of seizure, use or modification of reserved data of personal

character that are automated in an electronic way, requiring stops the submit of the behaviour in this type that these actions are carried out without permission, without authorization and therefore harm at a third; in a second section or point, the behaviours of that are incriminated that without being authorized, it consents for any means to the personal data and it alters them or it uses in damage of the holder or of a third.

Entering in the first of the precepts, it is ignored because the legislator has used the subjective element of "in damage of a third", the doctrine understands that this "third" are the holder, the interested of the personal data. But deepening more in this precept that we have between hands, should point that in the moment that one mediates seizure of personal data, we are no longer in a simple interference of the system, to wonder that would pass in the suppositions in that the intruder consents would fit even this way and he takes possession of data without intention of harming at a third, happening that spirit later, with subsequently. That it is necessary to say in this respect, because the answer is the following one, it is necessary to sustain the impunity of this behaviours, all time that the tendency characteristic of the subjective element of the unjust one should foreordain and to inform the typical behaviour and, therefore, to coexist and to preexist in its event, so if it appears with subsequently it impedes the hypified of the behaviour. In relation to the authorization absence, this should be interpreted as an illegal behaviour contrary to the forecasts of it guides that for the automated personal data.

Continuing with the second point or pointed precept, to center us in analyzing the parentheses "access without being authorized" and use "in damage of the holder of the data or of a third", as for the first aspect, this type would be consummated with the

mere access to the data without authorization. Of being this way, and not being only fit the behaviours of mere computer, consistent intruder in the access to computer systems, this commisive modality would become, nevertheless, the nearest frontier to it. The scenary type of this, let us call him submodality it will come integrated, therefore, for the accesses to not authorized data, attacked with the purpose of discovering other people's intimacies. Again, you must formulate the unhypified from the deceitful accesses to robbed computer systems of ulterior objectives, with access happened to the contained data in those systems, when not coming foreordained the behaviour for a specific subjective tendency.

Passing to analyze the second of the announced parentheses, of the second point picked up by this article 197.2 CP, use in damage of the holder of the data or of a third, again we find several considerations. The modification action contemplated in the type, it will be an alteration behaviour, again we meet with a subject with a clear purpose, the one of harming the holder of the data or a third, so again is to aim that the acts of mere computer trudder don't find fitting, since an alteration deceit or use of the purpose data don't behave. To more abundance, the deceitful accesses not spoilt that become in imprudent behaviours of alteration or use of data, neither they will be submit in this passage, by virtue of the selective function of the subjective element of the unjust one.

3. - CRIMES AGAINST THE FREEDOM AND SEXUAL INDEMNITY

Although inside the Title VIII of the Crime Code 1995 that it takes for it signs Of the crimes against the freedom and sexual indemnity " they are regulated a plurality of unlawful behaviours, we will center our study in the illegal behaviour of the art.

189.1.b) consistent in the diffusion of pornographic material elaborated with smaller or with unable.

The reason of it resides it in that this behaviour can be made clearly through internet. The rest of the behaviours, like the professors indicate Orts Berenguer and Roig Torres[1], or they are of unthinkable executive connection with the computer science, or they only admit it in a tangential way so they lack the enough relevance to be studied in an individualized way.

In accordance with this, the art. 189.1.b establishes that any individual or legal entry producing, selling, distributing or screening pornographic material will be punished with prison penalty from one to three years, or will facilitate the production, selling, diffusion or exhibition for any means of pornographic material in whose elaboration has been used smaller than age or unable, even if such pornographic material comes from a foreign country or it was unknown.

To who possessed this material for the realization of anyone of these behaviour it will be imposed the penalty in their inferior half".

Regarding the legally protected interest, the legislator has intention of protecting 2 properties: one the one hand, the appropriate formation process and the minor socialization and unable and on the other hand, the intimacy of the same ones.

[1] Orts Berenguer and Roig Torres "Delitos informáticos y delitos cometidos a través de la informática". Ed. Tirant lo blanch. Valencia 2001. Pág 124

The professor Alonso Rimo[2] has highlighted the difficulty however of accepting the one that the behaviours of the art. 189.1.b.it was noxious for the formation processes and socialization of smaller and more unable, since those take place in a later chronological moment to the consummation from the lesion to such values.

As for the participant in a crime, it can be committed by anyone person in anyone in the ways of responsibility, cooperation, complicity....

It will be necessary that the participant in a crime acts fraudulently, it is, having knowledge of the nature pornographic material and with the intention of carrying out anyone of the behaviours of the art. 189.1.b).

For the appropriate understanding of the typical behaviour, it is necessary to specify some issues. Firstly, what pornographic material is understood about pornographic material. For the North American Supreme Tribunal a work is pornographic when the following requirements are given: a) in their group it appears dominated by a libidinous interest, b) it is potentially offensive when straying of contemporary standards of the community, relative to the representation of sexual matters, c.) it is lacking all literary, artistic, scientific or political value.

Our Supreme Tribunal [3]understands that a work is pornographic when: a) it is obscene and b) it lacks artistic, literary, scientific, or political value totally.

[2] Orts Bernguer, E and Alonso Rimo, A."La reforma de los delitos contra la libertad sexual" en "Derecho penal, sociedad y nuevas tecnologías".Coord: Zúñiga Rodríguez, L,; Méndez Rodríguez, Calzado; Diego Díaz-Santos, R.Ed.Colex.Madrid2001.pág51

[3] STS 22-3-1983, 9-12-1985, 26-10-1986, 5-2-1991, 24-3-1997, 10-10-2000

In second place, the form or the means through which the pornographic material is materialized can be changed. So, in graphic magazines, pictures, video tapes, CD-ROM, DVD...

In third place, it is necessary to point out that the minor and unable they must participate in a truly significant way in the elaboration of the pornographic material without it is enough a sporadic intervention in the means through which that is materialized.

In fourth place, it is necessary to detach the difficulties that arise when proving to highlight if people that intervene in a significant way in the elaboration of the pornographic material are really smaller or more unable or if on the contrary it is adults disguised of smaller.

On the other hand, the crime will have been consummated when the pornographic material is introduced in internet and it is object of knowledge on the part of some user. Otherwise we will be before the tentative in its double slope of completed and not completed.

The reason resides in that this behaviour will only be criminal when it implies the setting in circulation to disposition of a significant number of fond of the pornographic material.

The mere holding or possession of pornographic material elaborated with smaller or more unable, as well as the view of images of this nature for a fellow for its

own enjoyment won't be punishment according to the art. 189.1.b) when not implying a setting in circulation to disposition of a significant number of fond of the pornographic material.

As for the responsibility of the suppliers and providers, they will be responsible when they have knowledge of the use of a page web for the diffusion of pornographic material and don't act to the respect. The identical terms the administrator of the service it will respond.

To finish we will make mention of some Resolutions, Decisions and Communications through which the States members of the European Union seeks to punish the sexual and pornographic exploitation penally of smaller through internet. So, Resolution on contained illicit and noxious in Internet of the European Parliament of 24-04-1997; Decision of the Council of the European Union of 29-05-2000 directed to prevent and to combat the sexual abuse of smaller; Resolution of the General Assembly of the Nations Together of 26-06-2000 on prostitution and infantile pornography; Communication of the Commission to the Council and the European Parliament of 26-01-2001etc...[4]

4. - CRIMES AGAINST THE HONOUR

The crimes against the honour are regulated in the articles 205 and the following ones of the Crime Code of 1995.

[4] Orts Berenguer, E and Roig Torres, M. Op.Cit. pág 127

We will refer to them with general character it stops then to pass to the study of the same ones in connection with the electronic transmissions.

Regarding the slander crime, the article 205 provides that." It is slander the imputation of a crime made with knowledge of their falsehood or rash scorn by the truth."

Of the study of the present article they come off the requirements or elements of the crime of slander. These are: 1) attribution to a certain or easily determinable person of the commission of a crime 2) attribution made with knowledge that it is inexact or with conscious scorn toward the truth 3) attribution that must relapse on unequivocal, specific and fixed facts. It is not enough vague, generic and imprecise statements therefore 4) the crime whose commission is imputed will be prosecuted by the state 5) "animus injuriandi" this is spirit or desire of harming the other people's honour as well as knowledge or acceptance that the poured informations are offensive for the very juridical of the honour

Regarding the crime of insults, of the article 208 are derived the following considerations: 1) the insults can be serious or weigh being decisive for the location of an insult in one or another group, the public concept in that it has it to him 2) The insults can consist on an action or expression. Insides of these last ones they are distinguished in turn those that suppose a false imputation of facts and those that consist on trials of value 3) The insults can be made or not with publicity like it is pointed out in the art.211

Regarding the legally protected interest, it is clear that it is to protect the honour understood as the person's dignity that implies in both crimes that it must be treated as subject but not as an object.

It will only be able to be subject passive of these crimes first physical people, because these they are the only ones that can make crimes and in consequence the only ones to those that can impute you the commission of the same ones and second, because the person's dignity that is injured with the insults is physical people's exclusive patrimony and not of the juridical ones.

These crimes will be accomplished when there is an effective damage to the injured person’s honour that is gotten when the imputation transcends in that consists the slander or the action or expression that attempts of the dignity on that it consists the insult.

These crimes against the honour can also be made through internet. So, through e-mail, through news or comment introduced in a magazine or newspaper published in the net etc...

In the case of injurious or calumnious messages through e-mail of the one that alone it has knowledge the offended one, it will respond the author and the inductor (if it is that there has been). Subsidiarily the servants and suppliers will respond although it is not usual, since usually they don't have knowledge and control of the content of the emitted messages.

If of these calumnious or injurious messages have knowledge other people besides the offended one, it will respond the originator of the same ones and the inductor in the event of having him.

If the slander or the insult is contained in a newspaper or magazine published through internet it will be responsible subsidiary the editors of the text, the directors of the publication, the company publisher, etc...

If the slander or insult appears in a page web, it will be responsible the supplier and the provider in the measure in that they have knowledge that it has taken place the slander or insult.

5. - CRIMES OF DOCUMENTAL FALSEHOODS

These crimes of documental falsehoods are regulated in the articles 390 and the following ones of the Criminal Code and they can be made through the computer science as later we will see.

Of the art. 390 come off that the manipulation of documents is punished whenever this it consists on anyone of the following behaviours: 1) alteration of the same one in some of their elements or requirements of essential character 2) simulation of a document in everything or partly so that it induces to error about their authenticity 3) to suppose in an act the intervention of people that they have not had it or to attribute to those that yes they have intervened different manifestations from those that it has made 4) to miss the truth in the narration of the facts

It is also demanded the active fellow to act with the purpose of making the document manipulated in the juridical traffic to enter so that it has appearance of authenticity and be able to induce to error to a person of knowledge and experience means.

It is also contemplated as typical behaviour to present in trial or to make use of the knowingly false document of their falsehood to harm to other (art. 393 and 396) as well as the expedition of false certificate on the part of medical and of public official (art. 397 and 398).

For the appropriate understanding of this crime, it is necessary to make some considerations. In the first place, what it understands each other for document. We will refer to documents regarding only its criminal consequences when it is a durable support that incorporates data, facts, narrations with evidential effectiveness or any other type of juridical relevance. It has of coming from certain or determinable person that acts in own name or on behalf of a third, of an artificial person.... The support will incorporate a sense, this is, it will be a comprehensible, reasonable document, credible. Finally, that sense it will have artificial relevance that it comes him given by the incorporation from the document to the juridical traffic.

In second place, in which of the four categories of documents to those that it refers the Crime Code (public, official, mercantile and private) we can locate the computer documents. These will be inside anyone of these categories whenever they gather the general characteristics to be considered document and the specific ones of each one of them.

In third place, the active fellow of the crime of documental falsehoods can be changed. So it can be the authority or the public official with enough competition to create or to authorize documents (art. 390); the matter that makes falsehood in public, official or mercantile documents (392) and the matter that falsifies a private document (395).

To finish we should point out that the crime of documental falsehood cannot be made alone through manual means but also through computer means what raises a series of problems for those that there are not consolidated answers and accepted without critical by the doctrine.

In all ways, that that yes it is clear in the doctrine it is that the results and effects of the documental falsehoods through the computer science are the same ones that when the crime is made by the traditional means.

6. - FALSIFICATION OF THE BILLS OF A SOCIETY

It is regulated in the article 290 and it punishes the administrator that falsifies the annual bills or other documents that reflect the artificial and economic situation of the society so that they cause an economic damage to the society, to some of their partners or a third.

This crime can be made since through the computer science in the practical entirety of the cases the accounting of the company it is taken through computer means

7. - CRIMES AGAINST THE PATRIMONY

Inside the crimes against the patrimony we are going to study the following modalities:

1) Article 248.2. It punishes the swindles made through the computer science, this is those that with spirit of lucre and in damage of third they get non spoilt transferences of money or of any patrimonial asset.

Inside the typical behaviour we include the following cases:1) introduction of false data in the computer, 2) alteration of the order of the process, 3) falsification of the initially correct result

The participant in a crime will be people legitimated to consent to the system and the third non authorized. They will have intention of getting rich to coast of becoming poor the victim

The victim of the crime will be so much the holder of the patrimony affected as the bank entity that assumes the damage of their clients when the swindle takes place through the computer system of the entity.

The crime will be consummated when the active fellow gets the carried out transference. If the manipulation the result it is not gotten, it will be in tentative grade.

2) Article .255. It punishes the defrauding traditional of electric power, gas, dilutes and those taken place in the telecommunications by anyone of the following

means: through mechanisms installed to make the defraudation, altering the indications of power meter , another means maliciously...

3) Article 256. It punishes the use of terminal teams of telecommunications (fax, electronic mail,) without consent of the holder or making an excessive use of the same ones that surpasses the limits fixed by the holder or the person authorized to whose position is.

4) Article .264.2.It refers to the calls “computer damages” , this is, it contemplates the destruction, alteration, unusual or to damage in any other way the data, programs or documents electronic other people's contents in nets, supports or systems informatics Therefore the damages to the logical elements, that is to say, to the software.

For the qualification of the action like crime they will be kept in mind: the utility of the data, the value of the same ones and how the damage is materialized taken place in the holder's activity.

5) art. 270 last paragraph. This article punishes the production, setting in circulation and holding of any means directly dedicated to annul the protection of the programs of computer. It tries to protect the intellectual property in their patrimonial dimension.

6) art.278. This article punishes the seizure by any means of secrets of the company on the part of the employees of the same one, as well as the diffusion,

revelation, and surrender of the discovered secrets at third for the same person that carried out the discovery.

7) art. 282.This article punishes the deceiving publicity of products or services on the part of makers or traders. It will be been able to make through internet.

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