REPUBLIC OF SAN MARINO

We the Captains Regent
of the Most Serene Republic of San Marino

Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;
Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 23 August 2016:

LAW NO. 114 OF 23 AUGUST 2016

COMPUTER CRIMES

Art. 1
(Purposes)

1. The purpose of the present Law is the introduction in San Marino legislative system of a criminal-law protection against computer crimes, in order to prosecute the new forms of crime that use electronic or telematics systems, which constitute an essential and indispensable instrument of communication, information and data processing and storage used at all levels and for many different purposes.

Art. 2
(Unlawful access to computer or telematics systems)

1. After Article 182 of the Criminal Code, the following Article shall be added:

"Art. 182-bis
(Unlawful access to computer or telematics systems)

Anyone who unlawfully enters a computer or telematics system protected by security measures or remains there against the expressed or tacit will of those who have the right to exclude him shall be punished by terms of second-degree imprisonment.
Third-degree imprisonment shall be applied:
1) if the fact is committed by a public official or by a person responsible for a public service, or by anyone otherwise exercising the profession of private investigator or by an operator of the system;
2) if, to commit the fact, the offender uses violence against persons or things;

3) if the fact entails the destruction, damage to or disturbance of the system or of the data contained therein.

      If the facts referred to in the first and second paragraphs relate to computer or telematics systems of public interest, third and fourth-degree imprisonment shall be applied respectively.

      First-degree imprisonment and a fine up to 5,500.00 euro shall apply to anyone who, in order to obtain an undue profit for himself or for others or to cause damage to others, holds or otherwise has access to suitable means to enter computer or telematics systems protected by security measures, or otherwise provides suitable indications or instructions for the above mentioned purpose.

      Second-degree imprisonment and a fine from 5,500.00 to 10,500.00 euro shall be imposed if the aggravating circumstance referred to in the second paragraph of point 1) applies.

      Second-degree imprisonment and a fine up to 10,500.00 euro shall be applied to anyone holding or otherwise having access without justified reason to computer equipment or programmes designed to alter the operation of a computer or telematics system, or the data contained therein.

      In the case specified in the first paragraph, the offence shall be punishable on complaint by the injured party.

In other cases the prosecution shall be ex officio.".

Art. 3
(Interception or illegal interference in computer or telematics communications)

1.   After Article 190 of the Criminal Code, the following Article shall be added:

"Art. 190-bis
(*Interception or illegal interference in computer or telematics communications*)

      Any person who unlawfully intercepts or interferes in computer or telematics communications or takes knowledge of data and information relating thereto, shall be punished with third-degree imprisonment.

      Unless the fact constitutes a more serious crime, the same punishment shall apply to anyone who reveals to third parties, in whole or in part, the content of the communications or information referred to in paragraph one.

      Anyone who, outside the cases provided for by law, installs equipment designed to intercept or interfere in computer or telematics communications shall be punished with second-degree imprisonment.

      The felonies referred to in the first and second paragraphs shall be punishable upon complaint of the injured party. In other cases the prosecution shall be ex officio.

      The punishment shall be third-degree imprisonment and prosecution shall be ex officio if the offence is committed:

1) to the detriment of a computer or telematics system used by the State or other public body or by undertakings providing public services or public utility services;
2) by a public official or a person responsible for a public service, with abuse of authority or in violation of official duties or by abusively acting as system operator;
3) by a person abusively exercising the profession of private investigator.".

Art. 4
(Damage to computer information, data and programmes - Frauds)

1.   After Article 203 of the Criminal Code, the following Article shall be added:

"Art. 203-bis
(Damage to computer information, data and programmes)

Unless the fact constitutes a more serious crime, anyone who deletes , alters or renders useless computer information, data or programmes belonging to others shall be punished, upon complaint of the injured party, by terms of second-degree imprisonment.

Unless the fact constitutes a more serious crime, anyone who commits an act designed to delete, alter or render useless computer information, data or programmes used by the State or other public body or related to them, or in any case of public utility, shall be punished by third-degree imprisonment. If the event occurs, the punishment shall be fourth-degree imprisonment.

Unless the fact constitutes a more serious crime, anyone who, by committing the fact referred to in paragraph one, alters or renders useless any computer or telematics systems belonging to others, or seriously impairs their operation, shall be punished by terms of third-degree imprisonment.

If the fact referred to in the third paragraph is designed to destroy or damage computer or telematics systems of public utility or to seriously impair their operation, third-degree imprisonment shall apply. If the event occurs, the punishment shall be fourth-degree imprisonment.

Fourth-degree imprisonment shall be applied if the fact is committed by using violence or threat against any person or by abusively acting as system operator.".

2.   Article 204 of the Criminal Code shall be amended as follows:

"Art. 204-ter
(Computer frauds)

Second-degree imprisonment and a fine from 600.00 to 3,000.00 euro shall be applied to anyone entering, altering or eliminating computer data, or otherwise interfering with the functioning of a computer programme or system, without being authorised thereto, in order to obtain an undue profit for himself or for others.

Third-degree imprisonment shall be applied if computer fraud has caused a considerably serious damage or the fact is committed by abusively acting as system operator.

Fourth-degree imprisonment shall be applied if the fraudulent conduct has led to an unauthorised transfer of money or values to the detriment of the owner.

Third-degree imprisonment and a fine from 600.00 to 3,000.00 euro shall be applied if the fact is committed by unduly using the digital identity to the detriment of one or more persons.".

3.   After Article 204-ter of the Criminal Code the following Article shall be added:

"Art. 204-quater
*(Computer fraud by the person who provides electronic
signature certification services)*

The person providing electronic signature certification services who, in order to obtain an undue profit for himself or for others or to damage others, violates the statutory requirements for the issue of a qualified certificate, shall be punished by terms of second-degree imprisonment and a fine from 250.00 to 1,000.00 euro.".

Art. 5
(Computer documents)

1.   After Article 301 of the Criminal Code the following Article shall be added:

"Art. 301-bis (*Computer documents*)

If any of the falsehoods referred to in this Chapter is related to a public or private computer document with evidentiary effect, the provisions concerning public acts and private deeds respectively shall apply.

Art. 6
(False declaration or certification to the electronic signature certifier on one's own personal identity or qualities or on those of other people)

1.	After Article 302 of the Criminal Code the following Article shall be added:

"Art. 302-bis
(False declaration or certification to the electronic signature certifier on one's own personal identity or qualities or on those of other people)

Anyone who declares or certifies to the electronic signature certifier false information on his own identity or status or other qualities, or on those of others, shall be punished by terms of first-degree imprisonment.".

Art. 7
(Entry into force)

1.	This Law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, on 23 August 2016/1715 since the Foundation of the Republic

THE CAPTAINS REGENT
Gian Nicola Berti - Massimo Andrea Ugolini

THE MINISTER OF
INTERNAL AFFAIRS
Gian Carlo Venturini