

UNAUTHORIZED USE OF A COMPUTER
(A misdemeanor)
PENAL LAW 156.05
(Committed on or after Nov. 1,1986)

The _____ count is Unauthorized Use of A Computer.

Under our law a person is guilty of unauthorized use of a computer when he or she knowingly uses or causes to be used a computer or computer service without authorization and the computer utilized is equipped or programmed with any device or coding system, a function of which is to prevent the unauthorized use of said computer or computer system.

[Add if applicable:

It is a defense that the defendant had reasonable grounds to believe that he or she had authorization to use the computer¹.]

Some of the terms used in this definition have their own special meaning in our law. I will now give you the definition of the following terms: "computer," "computer service," "uses computer or computer service without authorization," and "knowingly."

COMPUTER means a device or group of devices which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to a computer program, can automatically perform arithmetic, logical, storage or retrieval operations with or on computer data, and includes any connected or directly related device, equipment or facility which enables such computer to store, retrieve or communicate to or from a person, another computer or another device the results of computer operations, computer programs or computer data.²

COMPUTER SERVICE means any and all services provided by or through the facilities of any computer communication system

¹ Penal Law § 156.50(1).

²Penal Law § 156.00(1).

allowing the input, output, examination, or transfer, of computer data or computer programs from one computer to another.³

USES A COMPUTER OR COMPUTER SERVICE WITHOUT AUTHORIZATION means the use of a computer or computer service without the permission of, or in excess of the permission of, the owner or lessor or someone licensed or privileged by the owner or lessor after notice to that effect to the user of the computer or computer service has been given by:

Select appropriate alternative(s):

- (a) giving actual notice in writing or orally to the user; or
- (b) prominently posting written notice adjacent to the computer being utilized by the user; or
- (c) a notice that is displayed on, printed out on or announced by the computer being utilized by the user. ⁴

[Add if applicable:

Under our law, proof that a computer is programmed to automatically display, print or announce such notice or a notice prohibiting copying, reproduction or duplication is presumptive evidence that such notice was displayed, printed or announced.⁵ What this means is that if the People have proven beyond a reasonable doubt that the computer was programmed to automatically display, print or announce such notice or a notice prohibiting copying, reproduction or duplication, then you may, but you are not required to, infer from those facts that the notice

³Penal Law 156.00(4).

⁴ Penal Law § 156.00(6).

⁵ Penal Law 156.00 (6)(c).

was displayed, printed or announced.]

A person KNOWINGLY uses or causes to be used a computer or computer service without authorization when that person is aware that he or she is using or causing to be used a computer or computer service without authorization.⁶

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following [three/four] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), used or caused to be used a computer or computer service without authorization; and
2. That the defendant did so knowingly; [and]
3. The computer utilized was equipped or programmed with any device or coding system, a function of which is to prevent the unauthorized use of said computer or computer system; [and]

Add if applicable:

- [4. That the defendant did not have reasonable grounds to believe that he/she had authorization to use the computer.]

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Unauthorized Use of A Computer as charged in the _____ count.

⁶ See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Unauthorized Use of A Computer as charged in the _____ count.