

COMPUTER TRESPASS
(Access to Computer Material)
Penal Law § 156.10(2)
(Committed on or after Nov. 1, 2006)

The (*specify*) count is Computer Trespass.

Under our law, a person is guilty of computer trespass when that person knowingly uses, causes to be used, or accesses a computer, computer service, or computer network without authorization and he or she thereby knowingly gains access to computer material.

[Add if applicable:

It is a defense that the defendant had reasonable grounds to believe that he or she had authorization to use the computer.]¹

The following terms used in that definition have a special meaning:

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 allowing the input, output, examination, or transfer, of computer data or computer programs from one

¹Penal Law §156.50(1).

²Penal Law §156.00(1).

computer to another.³

COMPUTER NETWORK means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.⁴

ACCESS means to instruct, communicate with, store data in, retrieve from, or otherwise make use of any resources of a computer, physically, directly or by electronic means.⁵

WITHOUT AUTHORIZATION means to use or to access a computer, computer service or computer network without the permission of the owner or lessor or someone licensed or privileged by the owner or lessor where the actor⁶ knew that his or her use or access was without permission or after actual notice to such person that such use or access was without permission. It shall also mean the access of a computer service by a person without permission where such person knew that such access was without permission or after actual notice to such person, that such access was without permission.⁷

[Add if applicable:

Under our law, proof that a person used or accessed a computer, computer service or computer network through the knowing use of a set of instructions, code or computer program that

³Penal Law §156.00(4).

⁴ Penal Law §156.00(6).

⁵ Penal Law §156.00(7).

⁶ The words “the actor” have been substituted for the statutory language “such person” for clarity.

⁷ Penal Law § 156.00(8).

bypasses, defrauds or otherwise circumvents a security measure installed or used with the user's authorization on the computer, computer service or computer network shall be presumptive evidence that such person used or accessed such computer, computer service or computer network without authorization.⁸

What this means is that if the People have proven beyond a reasonable doubt that the person used or accessed a computer, computer service or computer network through the knowing use of a set of instructions, code or computer program that bypasses, defrauds or otherwise circumvents a security measure installed or used with the user's authorization on the computer, computer service or computer network, then you may, but you are not required to, infer from those facts that such person used or accessed such computer, computer service or computer network without authorization.]

COMPUTER MATERIAL is property and means any computer data or computer program which:

Select appropriate alternative(s):

(a) contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals.

[*Add if applicable:* Computer material does not include gaining access to or duplication solely of the medical history or medical treatment records of a person by that person or by another specifically authorized by the person whose records are gained access to or duplicated]; or

⁸ Penal Law §156.00(8).

(b) contains records maintained by the state or any political subdivision thereof or any governmental instrumentality within the state which contains any information concerning a person⁹ which because of name, number, symbol, mark or other identifier, can be used to identify the person and which is otherwise prohibited by law from being disclosed.

[Add if applicable: Computer material does not include gaining access to or duplication solely of records of a person by that person or by another specifically authorized by that person whose records are gained access to or duplicated]; or

(c) is not and is not intended to be available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his, her or their consent and which accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.¹⁰

A person KNOWINGLY uses, causes to be used, or accesses a computer, computer service, or computer network without authorization when that person is aware that he or she is using, causing to be used, or accessing such computer, computer

⁹ Here the statute references “person” as defined in Penal Law § 10.00(7). If in issue, that definition is: “Person” means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

¹⁰ Penal Law § 156.00(5).

service, or computer network without authorization.¹¹ A person KNOWINGLY gains access to computer material when that person is aware that he or she is doing so.

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, [both/each] of the following [two/three] elements:

1. That on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)*, knowingly used, caused to be used, or accessed a computer, computer service, or computer network without authorization; and
2. That the defendant thereby knowingly gained access to computer material; [and]

Add if applicable:

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

If you find the People have proven beyond a reasonable doubt [both / each] of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt [either one / any one or more] of those elements, you must find the defendant not guilty of this crime.

¹¹ See, Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.