

**UNLAWFUL DUPLICATION OF
COMPUTER RELATED MATERIAL
SECOND DEGREE
(B Misdemeanor)
Penal Law 156.29
(Committed on or after Nov. 1, 2008)**

The _____ count is Unlawful Duplication of Computer Related Material in the Second Degree.

A person is guilty of Unlawful Duplication of Computer Related Material in the Second Degree when having no right to do so, he or she copies, reproduces or duplicates in any manner any computer material that contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals with an intent to commit or further the commission of a crime under the Penal Law .¹

[Add if applicable:

It is a defense that the defendant had reasonable grounds to believe that he or she had the right to copy, reproduce or duplicate in any manner the computer material.^{2]}

1

The words “a crime under the Penal Law” were substituted for “any crime under this chapter” for clarity. Accordingly, the applicable Penal Law offenses(s) should be defined for the jury.

2

Penal Law § 156.50(3). Here, the term “computer material” was substituted for the statutory language “computer data or the computer program” for clarity. The legislation enacting Penal Law § 156.29 expressly states that this defense applies to the new crime, which contains reference to “computer material” but not data or programs; computer material, however, is further defined as consisting of certain types of computer data or programs. When the defense was amended to include the new crime, the language was not amended to refer explicitly to computer material. However, as the defense expressly applies, the change correctly states the law with less risk of confusion.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “computer material,” “intentionally” and “crime under the Penal Law.”³

For purposes of this crime, COMPUTER MATERIAL is property and means any computer data⁴ or computer program⁵ which contains records of the medical history or medical treatment of an identified or readily identifiable individual or individuals.

[This term does not apply to the 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;]⁶

[COMPUTER DATA, as used in the definition of “computer material,” is property and means a representation of information, knowledge, facts, concepts or instructions which are being processed, or have been processed in a computer and may be in any form, including magnetic storage media,

³ Penal Law § 155.00 provides definitions for terms in Title J which includes this article. Accordingly, if in issue, incorporate the definitions of “deprive,” “appropriate,” and “owner” in that section. Also, if in issue, the definition for “benefit” is set forth in Penal Law § 10.00(17).

⁴ The term “computer data” is itself defined in Penal Law § 155.00(3). If necessary, the court may add the definition of that term, which is reproduced below, after defining “computer material.”

⁵ The term “computer program” is itself defined in Penal Law § 155.00(2). If necessary, the court may add the definition of that term, which is reproduced below, after defining “computer material.”

⁶ Penal Law § 155.00(5).

punched cards, or stored internally in the memory of the computer.^{7]}

[COMPUTER PROGRAM, as used in the definition of “computer material” is property and means an ordered set of data representing coded instructions or statements that, when executed by computer, cause the computer to process data or direct the computer to perform one or more computer operations or both and may be in any form, including magnetic storage media, punched cards, or stored internally in the memory of the computer.^{8]}

Intent means conscious objective or purpose. Thus, a person has the INTENT TO COMMIT or further the commission of a crime under the Penal Law when his or her conscious objective or purpose is to do so.⁹

(*Specify*) is a/are crime(s) under the Penal Law.

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) having no right to do so, copied, reproduced or duplicated in any manner any computer material that contained records of the medical history or medical treatment of an identified or readily identifiable individual or individuals; [and]

⁷ Penal Law § 156.00(3).

⁸ Penal Law § 156.00(2).

⁹ See Penal Law § 15.05(1).

2. That defendant did so with an intent to commit or further the commission of a crime under the Penal Law; [and]

[Add if applicable:]

3. That the defendant did not have reasonable grounds to believe that he/she had the right to copy, reproduce or duplicate in any manner the computer data or the computer program.]

Therefore, if you find that the People have proven beyond a reasonable doubt [both/each] of those elements, you must find the defendant guilty of the crime of Unlawful Duplication of Computer Related Material in the Second Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt [either/any one] or [both/more] of those elements, you must find the defendant not guilty of the crime of Unlawful Duplication of Computer Related Material in the Second Degree as charged in the ___ count.