

**UNLAWFUL DUPLICATION OF
COMPUTER RELATED MATERIAL
First Degree
(E felony)
(Amount in Excess of \$2500)
Penal Law 156.30(1)
(Committed on or after Nov. 1, 2008)**

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

A person is guilty of Unlawful Duplication of Computer Related Material when having no right to do so, he or she copies, reproduces or duplicates in any manner any computer data or computer program and thereby intentionally and wrongfully deprives or appropriates from an owner thereof an economic value or benefit in excess of two thousand five hundred dollars.

[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 data or the computer program¹.]

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of

¹

Penal Law § 156.50(3) provides that it is a defense to this charge “that the defendant had a reasonable ground to believe that he had a right to copy, reproduce or duplicate in any manner the computer data or program

the following terms: "computer program," "computer data" and "intentionally."²

COMPUTER PROGRAM 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.³

COMPUTER DATA 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, punched cards, or stored internally in the memory of the computer.⁴

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY deprives or appropriates from an owner thereof an economic value or benefit in excess of two thousand five hundred dollars when his or her conscious objective or purpose is to do so.⁵

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 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,

2

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).

3

Penal Law § 156.00(2).

4

Penal Law § 156.00(3).

5

See Penal Law § 15.05(1).

copied, reproduced or duplicated in any manner any computer data or computer program; [and]

2. That the defendant thereby intentionally and wrongfully deprived or appropriated from an owner of that data or program an economic value or benefit in excess of two thousand five hundred dollars; [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 each of those elements, you must find the defendant guilty of the crime of Unlawful Duplication of Computer Related Material as charged in the ___ count.

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 Unlawful Duplication of Computer Related Material as charged in the ___ count.