

**CRIMINAL POSSESSION OF COMPUTER RELATED
MATERIAL**

Penal Law § 156.35

Committed on or after Nov. 1, 1986)

(Revised June 5, 2012¹)

The (*specify*) count is Criminal Possession of Computer Related Material.

A person is guilty of criminal possession of computer related material when having no right to do so, that person knowingly possesses, in any form, any copy, reproduction or duplicate of any computer data or computer program which was copied, reproduced or duplicated in violation of law², with intent to benefit himself or herself or a person other than an owner thereof.

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

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.³

A person KNOWINGLY possesses computer data or a computer program when that person is aware that he or she is in

¹ The 2012 revision was for the purpose of inserting definitions of the terms “possess” and “knowingly,” and adding “knowingly” in the listed elements of the crime.

² The statute at this point reads: “in violation of section Penal Law § 156.30 of this article.” The substituted phrase “in violation of law” is defined below by incorporation of the elements of Penal Law § 156.30.

³ Penal Law §10.00(8). If necessary, an expanded charge on the meaning of physical possession and constructive possession may be found in the Charges of General Applicability under the heading “Possession: Physical and Constructive.”

possession of such computer data or program.⁴

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.⁵

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.⁶

INTENT means conscious objective or purpose. Thus, a person acts with intent to benefit himself or a person other than an owner thereof when his or her conscious objection or purpose is to do so.⁷

Copied, reproduced or duplicated IN VIOLATION OF LAW means that a person, having no right to do so, copied, reproduced or duplicated in any manner any computer data or computer program.

Select appropriate alternative:

and thereby intentionally and wrongfully deprived or

⁴ See Penal Law § 15.05(2). An “expanded” definition of “knowingly” is available in the General Charges section under Culpable Mental States.

⁵Penal Law § 156.00(3).

⁶ Penal Law § 156.00(2).

⁷ See Penal Law § 15.05(1).

appropriated from an owner thereof an economic value or benefit in excess of two thousand five hundred dollars.⁸

with an intent to commit or attempt to commit or further the commission of any felony.⁹

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 of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name) having no right to do so, knowingly possessed in any form, any copy, reproduction or duplicate of any computer data or computer program which was copied, reproduced or duplicated in violation of law; and
2. That the defendant did so with intent to benefit himself/herself or a person other than an owner thereof.

If you find the People have proven beyond a reasonable doubt both 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 or both of those elements, you must find the defendant not guilty of this crime.

⁸ Penal Law § 156.30(1).

⁹ Penal Law § 156.30(2).