

**COMPUTER TRESPASS**  
**(E felony)**  
**(With Intent to Commit a Felony)**  
**Penal Law 156.10 (1)**  
**(Committed on or after Nov. 1,1986)**

The \_\_\_\_\_ count is Computer Trespass

A person is guilty of Computer Trespass when that person knowingly uses or causes to be used a computer or computer service without authorization and he or she does so with an intent to commit or attempt to commit or further the commission of any felony.

*[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<sup>1</sup>.]

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 a computer or computer service without authorization,” “knowingly,” “intent,” and “felony”.

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.<sup>2</sup>

COMPUTER SERVICE means any and all services provided

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<sup>1</sup> Penal Law § 156.50(1).

<sup>2</sup>Penal Law 156.00(1).

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 computer to another.<sup>3</sup>

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.<sup>4</sup>

*[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.<sup>5</sup> 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

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<sup>3</sup> Penal Law 156.00(4).

<sup>4</sup> Penal Law § 156.00(6).

<sup>5</sup> Penal Law 156.00 (6)(c).

not required to, infer from those facts that the notice 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.<sup>6</sup>

INTENT means conscious objective or purpose. Thus a person acts with intent to commit or attempt to commit or further the commission of any felony when his or her conscious objective or purpose is to do so.

A FELONY includes *(specify)*.<sup>7</sup> *(Add the appropriate definition(s).)*

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)*, used or caused to be used a computer or computer service without authorization; [and]
2. That the defendant did so knowingly and with an intent to commit or attempt to commit or further the commission of a felony; [and]

*[Add if applicable:*

3. That the defendant did not have reasonable grounds

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

<sup>7</sup> See Penal Law § 156.00(7).

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 Computer Trespass 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 Computer Trespass as charged in the \_\_\_\_\_ count.