

COMPUTER TRESPASS
(E felony)
(Access to Computer Material)
Penal Law 156.10 (2)
(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 thereby knowingly gains access to computer material.

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,” “computer material” and “knowingly.”

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.¹

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 computer to another.²

USES A COMPUTER OR COMPUTER SERVICE

¹Penal Law 156.00(1).

²Penal Law 156.00(4).

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.³

[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.⁴ 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 not required to, infer from those facts that the notice was displayed, printed or announced.]

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

Select appropriate alternative(s):

³Penal Law § 156.00(6).

⁴Penal Law 156.00 (6)(c).

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

[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

(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 person⁵ 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.

[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 the 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 or their consent and which accords or may accord such rightful possessors an advantage over competitors or other persons

⁵ 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.

who do not have knowledge or the benefit thereof.⁶

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.⁷ 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 of the following two 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 thereby gained access to computer material; and
2. That defendant did so knowingly.

Therefore, if you find that the People have proven beyond a reasonable doubt both 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 either one or both of those elements, you must find the defendant not guilty of the crime of Computer Trespass as charged in the _____ count.

⁶ Penal Law 156.00 (5).

⁷ See Penal Law § 15.05(2). An expanded definition of “knowingly” is available in the General Charges section under Culpable Mental States.

