

THEFT OF SERVICES
(Avoiding Charges for Computer or Computer Service)
Penal Law § 165.15(11)
(Committed on or after Nov. 1, 2006)¹

The (specify) count is Theft of Services.

Under our law, a person is guilty of Theft of Services when, with intent to avoid payment by himself or herself [or another person] of the lawful charge for use of any computer, computer service, or computer network which is provided for a charge or compensation, he or she uses, causes to be used, accesses, or attempts to use or access a computer, computer service, or computer network and avoids or attempts to avoid payment therefor.

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

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.²

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.³

1 The terms "computer network" and "access" were added to the statute, effective Nov. 1, 2006.

2 Penal Law § 156.00(1).

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COMPUTER NETWORK means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.⁴

ACCESS means to instruct, communicate with, store data in, retrieve from, or otherwise make use of any resources of a computer, physically, directly or by electronic means.⁵

INTENT means conscious objective or purpose.⁶ Thus, a person acts with intent to avoid payment for the use of a computer, computer service, or computer network when that person's conscious objective or purpose is to avoid such payment.

Under our law, proof that a person overcame or attempted to overcome any device or coding system, a function of which is to prevent the unauthorized use of a computer or computer service, is presumptive evidence of an intent to avoid payment for such computer or computer service.⁷

This means that, if the People have proven beyond a reasonable doubt that the defendant overcame or attempted to overcome any device or coding system, a function of which was to prevent the unauthorized use of said computer or computer service, you may, but you are not required to, infer from that

4 Penal Law § 156.00(4).
Penal Law § 156.00(6).

5 Penal Law § 156.00(7).

6 See, Penal Law § 15.05(1).

7 See, Penal Law § 165.15(11).

fact that the defendant did so with the intent to avoid payment for such computer or computer service.

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, caused to be used, accessed, or attempted to use or access a computer, computer service, or computer network which was provided for a charge or compensation, and avoided or attempted to avoid payment therefor; and
2. That the defendant did so with the intent to avoid payment by himself/herself [or a third person] of the lawful charge for use of such computer, computer service, or computer network.

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