

**THEFT OF SERVICES
(A Misdemeanor)
(Avoiding Charges for Computer
or Computer Service)
PENAL LAW 165.15(11)
(Committed on or after Nov. 1, 1992)**

The _____ 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 [*or* computer service] which is provided for a charge or compensation, that person uses, causes to be used or attempts to use a computer [*or* computer service] and avoids or attempts to avoid payment therefor.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms:¹ "intent" and "attempt".

INTENT means conscious objective or purpose.² Thus, a person acts with intent to avoid payment for the use of a computer [*or* computer service] when that person's conscious objective or purpose is to avoid payment for the use of such computer [*or* computer service].

¹If the definition of "computer" or "computer service" is in issue, it should also be given.

"Computer" is defined in Penal Law § 156.00(1) as "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."

"Computer service" is defined in Penal Law § 156.00(4) as "any and all services provided by or through the facilities of any computer communications system allowing the input, output, examination, or transfer of computer data or computer programs from one computer to another."

²See Penal Law § 15.05(1).

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].³ 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 fact that the defendant did so with the intent to avoid payment for such computer [or computer service].

A person ATTEMPTS to use a computer [or computer service] when he or she intends to do so and engages in conduct which tends to effect that objective. Similarly, a person attempts to avoid payment for use of a computer [or computer service] when he or she intends to do so and engages in conduct which tends to effect that objective.⁴

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 or attempted to use a computer [or computer service] which was provided for a charge or compensation, and avoided or attempted to avoid payment for such computer [or computer service]; 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 [or computer

³See Penal Law § 165.15(11).

⁴See Penal Law § 110.00.

service].

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 Theft of Services 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 Theft of Services as charged in the _____ count.