

223.25 FELONIOUS COMPUTER TRESPASS. FELONY; MISDEMEANOR.¹

The defendant has been charged with computer trespass. For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt.

First, that the defendant used a computer or computer network.²

Second, that the defendant did so without authority.³

Third, that the defendant did so with the intent to do the following:

1. [Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network]
2. [cause a computer to malfunction, regardless of how long the malfunction persisted]
3. [alter or erase any computer data, computer programs, or computer software]
4. [cause physical injury to the property of another]
5. [make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network]
6. [falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers].

And Fourth, that the damage caused by the defendant's action was valued at \$2,500 or more.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant used a computer or computer network, without authority, with intent to [temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network] [cause a computer to malfunction, regardless of how long the malfunction persisted] [alter or erase any computer data, computer programs, or computer software] [cause physical injury to the property of another] [make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network] (or) [falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers], and that the defendant's action caused damage valued at \$2,500 or more, it would be your duty to return a verdict of guilty of felonious computer trespass. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of felonious computer trespass, but will consider whether the defendant is guilty of Class 1 misdemeanor computer trespass. Class 1 misdemeanor computer trespass differs from felonious computer trespass in that there must have been some monetary damage caused by the defendant's action, but that damage need not be valued at \$2,500 or more.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant used a computer or computer network, without authority, with intent to [temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network] [cause a computer to

malfunction, regardless of how long the malfunction persisted] [alter or erase any computer data, computer programs, or computer software] [cause physical injury to the property of another] [make or cause to be made an unauthorized copy, in any form, including , but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network] (or) [falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers], and that the defendant's action caused some monetary damage, it would be your duty to return a verdict of guilty of Class 1 misdemeanor computer trespass.

If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of Class 1 misdemeanor computer trespass but will consider whether the defendant is guilty of Class 3 misdemeanor computer trespass. Class 3 misdemeanor computer trespass differs from Class 1 misdemeanor computer trespass in that the defendant's action need not have caused any monetary damage.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant used a computer or computer network, without authority, with intent to [temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network] [cause a computer to malfunction, regardless of how long the malfunction persisted] [alter or erase any computer data, computer programs, or computer software] [cause physical injury to the property of another] [make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or

electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network] (or) [falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers], it would be your duty to return a verdict of guilty of Class 3 misdemeanor computer trespass. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1 Violation of this statute involving no damage is punishable as a Class 3 misdemeanor. Violation involving damage under \$2,500 is punishable as a Class 1 misdemeanor. Violation involving damage at or more than \$2,500 is punishable as a Class I felony.

2. "Computer" is defined in G.S. 14-453(2); "computer network" is defined in G.S. 14-453(3).

3. "Without authority" is when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission, or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.