

15.11 Unauthorized Access Devices—Using or Trafficking (18 U.S.C. § 1029(a)(2))

The defendant is charged in [Count _____ of] the indictment with [using] [trafficking in] unauthorized access devices during a period of one year in violation of Section 1029(a)(2) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [used] [trafficked in] the unauthorized access devices at any time during a one-year period [beginning [date], and ending [date]];

Second, by [using] [trafficking in] the unauthorized access devices during that period, the defendant obtained [anything of value worth \$1,000 or more] [things of value, their value together totaling \$1,000 or more] during that period;

Third, the defendant acted with the intent to defraud; and

Fourth, the defendant's conduct in some way affected commerce between one state and [an]other state[s], or between a state of the United States and a foreign country.

An “unauthorized access device” is any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud.

[To “traffic” in an access device means to transfer or otherwise dispose of it to another, or to obtain control of it with intent to transfer or dispose of it.]

Comment

Use this instruction in conjunction with Instruction 15.16 (Access Device—Defined). *See United States v. Brannan*, 898 F.2d 107, 108-10 (9th Cir. 1990) (distinguishing “unauthorized access device” from “counterfeit access device”).

For a definition of “intent to defraud,” see Instruction 4.13 (Intent to Defraud).

For a definition of “knowingly,” see Instructions 4.8 (Knowingly) and 4.9 (Deliberate Ignorance).

When parties dispute the “affecting commerce” requirement, see Comment to Instruction 15.10 (Counterfeit Access Devices—Producing, Using, or Trafficking). *See also* Comment to Instruction 15.10 for changes to this instruction when attempt or conspiracy is alleged in violation of 18 U.S.C. § 1029(a).

18 U.S.C. § 10 defines interstate and foreign commerce.

18 U.S.C. § 1029(e) defines “access device,” “traffic,” and “unauthorized access device.”