

15.17 Telecommunications Instrument—Illegal Modification (18 U.S.C. § 1029(a)(7))

The defendant is charged in [Count _____ of] the indictment with [use of] [production of] [trafficking in] a telecommunications instrument that had been modified to obtain unauthorized telecommunications services in violation of Section 1029(a)(7) 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] [produced] [trafficked in] [had custody or control of] [possessed] a telecommunications instrument that had been modified or altered to obtain unauthorized use of telecommunications services;

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

Third, 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.

[To “produce” a telecommunications instrument means to design, alter, authenticate, duplicate, or assemble it.]

[To “traffic” in a telecommunications instrument 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

Section 1029 does not define the term “telecommunications instrument.” Section 1029(e)(9) provides that “telecommunications service” has the meaning given in the Communications Act of 1934, 47 U.S.C. § 153, which defines “telecommunications service” as: “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(53).

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

18 U.S.C. § 1029(e)(4) and (5) define “produce” and “traffic.”

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