**15.18 Use or Control of Scanning Receiver**

**(18 U.S.C. § 1029(a)(8))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [using] [producing] [trafficking in] [possessing] a scanning receiver in violation of Section 1029(a)(8) 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 scanning receiver;

 Second, the defendant acted with 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.

 [A “scanning receiver” is a device or apparatus that can be used to intercept illegally a wire or electronic communication or to intercept illegally an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument.]

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

 [To “traffic” in a scanning receiver 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**

 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).

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

 18 U.S.C. § 1029(e)(8) defines the term “scanning receiver” to be a device or apparatus that can be used to intercept a wire or electronic communication in violation of 18 U.S.C. §§ 2510-2522. 18 U.S.C. § 2510(4) defines “intercept” to mean the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. When parties dispute whether the device involved is a “scanning receiver,” the court should add the following sentence to the instruction concerning the meaning of that term:

 The government has the burden of proving beyond a reasonable doubt that [*specify device*] is a scanning receiver.

 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, that carries the definition: “transmission between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(53).

 Sections 1029(b)(1) and (b)(2) specify penalties for an attempt or a conspiracy to violate any subsection of § 1029(a). When the indictment charges an attempt or conspiracy, modify this instruction accordingly, using relevant elements from Instruction 4.4 (Attempt) or 11.1 (Conspiracy—Elements).

*Revised Sept. 2018*