

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show another fact in issue. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

The indictment in this case is the formal method of accusing the defendant of an offense and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

The defendant is charged with the offense of conspiring to infringe copyrights. The defendant has pleaded not guilty to the charge.

The defendant is presumed to be innocent of the charge. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The defendant has an absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

You have heard evidence of a statement said to be made by the defendant to law enforcement officers. You must decide whether the defendant did in fact make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you feel the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself and the circumstances under which the statement was made.

You have heard testimony from witnesses who have pleaded guilty to an offense arising out of the same occurrence for which the defendant is now on trial. Their guilty pleas are not to be considered as evidence against the defendant.

You may give their testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

Count One of the indictment charges the defendant with violating Title 18, United States Code, Section 371, which provides, in part:

If two or more persons conspire to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall . . . have violated federal law.

To sustain the charge of conspiracy, the government must prove:

First, that the conspiracy as charged in Count One existed,

Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy, and

Third, that an overt act was committed by at least one conspirator in furtherance of the conspiracy.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. A conspiracy may be established even if its purpose was not accomplished.

It is not necessary that all the overt acts charged in the indictment be proved, and the overt act proved may itself be a lawful act.

To be a member of the conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

Proof of multiple or separate conspiracies is not proof of the existence of the conspiracy described in Count 1, unless one of the conspiracies proved is the conspiracy that is described in Count 1, or a conspiracy that was a subset of the charged conspiracy.

To prove that a single conspiracy existed, the government must prove beyond a reasonable doubt that there was an agreement among two or more persons on the common criminal objective described in Count 1. A single conspiracy may exist even if all the members did not know each other, or never met together, or did not know what roles all the other members played. And a single conspiracy may exist even if different members joined at different times, or the membership of the group changed. Similarly, even if there were different subgroups operating in different places, or many different criminal acts committed over a long period of time, that does not necessarily mean that there was more than one conspiracy. What is controlling is whether the government has proved beyond a reasonable doubt that there was an agreement on a common goal.

If the government has not proved beyond a reasonable doubt that there existed the conspiracy charged in Count 1 or a conspiracy that was a subset of the charged conspiracy, then you must find the defendant not guilty as to Count 1. And if the government has not proved beyond a reasonable doubt that the defendant was a member of the conspiracy charged in Count 1 or a conspiracy that was a subset of the charged conspiracy, then you must find the defendant not guilty as to Count 1, even if the defendant might have been a member of some other conspiracy.

In deciding whether the charged conspiracy existed, you may consider the actions and statements of every one of the alleged participants. An agreement may be proved from all the circumstances and the words and conduct of all the alleged participants which are shown by the evidence.

In deciding whether the defendant joined the charged conspiracy, you must base your decision only on what the defendant did or said. In determining what the defendant did or said, you may also consider the words or acts of other persons to decide what the defendant did or said, and you may use them to help you understand what the defendant did or said.

A defendant's association with conspirators is not by itself sufficient to prove his participation or membership in a conspiracy.

Count Two of the indictment charges the defendant with violating Title 17, United States Code, Section 506(a)(2), and Title 18, United States Code, Section 2319(c)(1), which provides, in part:

Any person who infringes a copyright willfully by the reproduction or distribution, including by electronic means, during any 180-day period, of at least ten copies of one or more copyrighted works, which have a total retail value of more than \$2,500, shall have violated federal law.

To sustain a charge of copyright infringement, the government must prove each of the following propositions beyond a reasonable doubt:

First: That a copyright existed during the time period charged in the indictment for one or more of the software titles/programs or movies maintained on the SDFM site;

Second: That the defendant willfully infringed the copyright for one or more of the software titles/programs or movies on the SDFM site by reproducing or distributing, including by electronic means, copies of the copyrighted work or works; and

Third: That the defendant reproduced or distributed during a 180 day period at least ten (10) copies of the copyrighted software titles/programs or movies which have an aggregate retail value of \$2,500 or more.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all of the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

A “copy” of a computer program is a material object in which a computer program is fixed by any method and from which the computer program can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

The Government need not demonstrate that the alleged copies are identical to the original work in all respect. Infringement may be shown by demonstrating a “substantial similarity” between the original work and a copy. A copy is substantially similar to the original work if you find that an ordinary reasonable person would conclude that the defendant unlawfully appropriated the copyright owner’s work by taking material of substance and value.

A person acts “willfully” if he acts voluntarily, with knowledge that his action was prohibited by law, and with the purpose of violating the law, and not by mistake, accident or in good faith.

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

If the defendant knowingly caused the acts of another person, the defendant is responsible for those acts as though he personally committed them.

A defendant charged with conspiracy in the indictment can be convicted, in the alternative, as an aider and abettor of that conspiracy.

A defendant is guilty of aiding and abetting a conspiracy if he or she commits an act in furtherance of the conspiracy and has knowledge of the conspiracy's purpose at the time he or she commits the act. One can aid and abet a conspiracy without necessarily participating in the original agreement. One who aids and abets a conspiracy is guilty of conspiracy.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

Each count of the indictment charges the defendant with having committed a separate offense.

You must give separate consideration to each count. You must consider each count and the evidence relating to it separate and apart from every other count.

You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to the defendant under any other count.

You should not speculate why any other person whose name you may have heard is not currently on trial before you.

If you find the defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that have been given during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.