

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3716

To amend title 18, United States Code, to provide a defense against certain criminal prosecutions for interactive computer service providers.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2002

Mr. GOODLATTE introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to provide a defense against certain criminal prosecutions for interactive computer service providers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Online Criminal Liabil-  
5 ity Standardization Act of 2002”.

1 **SEC. 2. LIABILITY LIMITATION APPLICABLE TO CERTAIN**  
2 **CRIMINAL PROSECUTIONS RELATING TO**  
3 **INTERACTIVE COMPUTER SERVICES.**

4 (a) IN GENERAL.—Chapter 1 of title 18, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing:

7 **“§ 25. Liability limitation applicable to certain pros-**  
8 **ecutions relating to interactive computer**  
9 **services**

10 “(a) Except as provided in this section, notwith-  
11 standing any other provision of law, no interactive com-  
12 puter service provider, or corporate officer of such pro-  
13 vider, shall be liable for an offense against the United  
14 States arising from such provider’s transmitting, storing,  
15 distributing, or otherwise making available, in the ordi-  
16 nary course of its business activities as an interactive com-  
17 puter service provider, material provided by another per-  
18 son.

19 “(b)(1) The liability limitation created by this section  
20 does not apply if the defendant intended that the service  
21 be used in the commission of the offense.

22 “(2) A corporation that is a provider of an interactive  
23 computer service does not have the intent described in  
24 paragraph (1) unless—

25 “(A) an employee or agent of the corporation  
26 has the intent described in paragraph (1); and

1           “(B) the conduct of the employee or agent con-  
2           stituting the offense was authorized, requested, com-  
3           manded, performed, or tolerated with actual knowl-  
4           edge of that conduct by one or more members of the  
5           board of directors or by a high managerial agent  
6           acting for the benefit of the corporation within the  
7           scope of the director’s or high managerial agent’s of-  
8           fice or employment.

9           “(c) As used in this section—

10           “(1) the term ‘interactive computer service’ has  
11           the meaning given that term in section 230(f) of the  
12           Communications Act of 1934; and

13           “(2) the term ‘high managerial agent’ means an  
14           individual who has a substantial role in the making  
15           of policy for a corporation, including an executive of-  
16           ficer of the corporation, an individual with a sub-  
17           stantial ownership interest in the corporation, and  
18           an individual in charge of major business or func-  
19           tional unit of the corporation, such as sales, admin-  
20           istration, or finance.

21           “(d) Nothing in this section may be construed to  
22           apply to an offense under section 2319 or 2319A of this  
23           title.”.

24           (b) CLERICAL AMENDMENT.—The table of sections  
25           at the beginning of chapter 1 of title 18, United States

- 1 Code, is amended by adding at the end the following new
- 2 item:

“25. Liability limitation applicable to certain prosecutions relating to interactive computer services.”.

