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Roommates.com Not Immune From Discrimination Lawsuit, Appeals Court Rules

By [Ryan Singel](#)  April 3, 2008 | 12:59 pm | [Wired.com](#)



Apartment hunting site Roommates.com cannot shield itself from an housing discrimination lawsuit by claiming it is just an internet forum, because the site requires users to answer questions about their gender, marital status and sexual orientation, the 9th U.S. Circuit Court of Appeals ruled Thursday.

The ruling is an important one because it sets a limit on a federal law protecting internet forums from lawsuits. [Section 230 of the 1996 Communications Decency Act](#) largely frees websites, online forums and ISPs from responsibility for what users say on their sites. Online freedom advocates describe that law as the best thing Congress has ever done for freedom of expression on the internet, since it allows social networking sites, hosted blogging services and news sites with commenting features — like this one — to let users be responsible for their words.

That legal immunity doesn't apply to Roommates.com, the court ruled, because the check boxes on the site actively solicit discriminatory content, making the service much more than a simple forum.

"By requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information provided by others; it becomes the developer, at least in part, of that information," the majority [wrote](#) (.pdf).

The Fair Housing Council sued the site alleging that the service allowed people to discriminate against potential roommates in violation of the [Fair Housing Act](#), which

prohibits denying someone a house or a rental on the basis of age, gender, race or religion, among other categories.

A lower court dismissed the suit on the grounds that [Roommates.com](#) was simply a information service provider and thus was protected by CDA 230.

But a three-judge appeals court panel ruled last May says that Roommates.com lost that protection by posing mandatory questions about sensitive categories and by creating options for people to filter results by those categories. The appeals court later withdrew that opinion, and re-heard arguments in front of a full panel of judges last December.

Thursday's 8-3 split decision upheld that [earlier ruling](#) (.pdf).

"Unlawful questions solicit ... unlawful answers," chief judge Alex Kozinsiki wrote.

"A real estate broker may not inquire as to the race of a prospective buyer, and an employer may not inquire as to the religion of a prospective employee. If such questions are unlawful when posed face-to-face or by telephone, they don't magically become lawful when asked electronically online."

But, the site does have immunity for the "additional comments" section where users can write whatever they like.

The Fair Housing Council contended the site should be liable for what users say there as well, but the 9th Circuit rejected that argument, saying that kind of mandatory content vetting was exactly what Congress tried to prevent.

"Without reviewing every essay, Roommate would have no way to distinguish unlawful discriminatory preferences from perfectly legitimate statements," Kozinski wrote. "This is precisely the kind of situation for which section 230 was designed to provide immunity."

That's why Craigslist [prevailed in a similar case](#) in March, where the free classified ads site was being sued in Chicago for letting users say they preferred to have a white, gay, straight or Latino roommate. Unlike Roommates.com, Craigslist's ads have no dropdown boxes, just a simple text box.

The case now returns to a lower court that will decide if Roommates.com actually violated the Fair Housing Act.

The court noted that dating sites that promote discrimination are perfectly legal, however — since people are legally free to turn down dates for flimsy or racist reasons.

As for other websites, the court said the ruling is actually very clear.

"The message to website operators is clear: If you don't encourage illegal content, or design your website to require users to input illegal content, you will be immune," the court wrote.

UPDATE: Roommates.com's lawyer Timothy Alger responds:

It is disturbing that the court's majority concludes that the mere allegation of an unlawful posting can trump the immunity for Internet-based services that has resulted in a vibrant form of mass communication that has transformed our society.

It is important to remember that Roommates.com is a site that enables people to find other people who want to share homes. Many users of the site share their bedrooms. No court has addressed whether roommate postings violate the Fair Housing Act, or whether the First Amendment protects such postings — although Roommates.com has repeatedly asked for such a decision. We believe the government has no business regulating the selection of roommates or advertising for roommates.