

# Amicus Brief in Fair Housing Council of San Fernando Valley v. Roommates.com

November 1, 2007

Tags: Array

## Supporting Documents

In the case of *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, CDT sees the court's decision as a significant departure from the large body of case law that exists regarding §230 immunity. Defendant Roommates.com operates an online roommate matching website that helps individuals find roommates based on their description of themselves and their roommate preferences. To become a member on Defendant's site, users complete a questionnaire provided by Defendant by selecting answers from multiple-choice menus, providing information about themselves and their preferences based on characteristics such as age and sex. After the questionnaire has been completed, they can provide any additional information they wish in an open form. Plaintiff filed suit claiming that Defendant violated the Fair Housing Act. They argue that the free-form essays written by the users have at least the potential for discriminatory preferences, and also contend that the questions posed by Roommates.com's questionnaire require the disclosure of information regarding age, gender, sexual orientation, and family status, thereby violating the Act. Defendant asserted §230 immunity and the District Court subsequently granted its motion for summary judgment. On appeal the court surprisingly held that although §230 applies to the additional comments section of Defendant's website, it did not necessarily apply to the questionnaire portion, and remanded the case to the District Court. The case, however, is now being re-heard *en banc* by a full appellate court.

The Ninth Circuit's initial holding flies directly in the face of case law it itself established in *Carafano v. Metrosplash.com*, which held that online intermediaries are not rendered "publishers" by merely providing templates to assist their users create third-party content. In the 2003 *Carafano* decision, the court held that a questionnaire provided by the defendant online dating-service, and designed to help its users create their profiles, did not disrupt the immunity that it was afforded under §230. The court reasoned that even though the questionnaire was provided by the website operator, a profile on its site has no content other than what a user provides it. Despite this precedent, the Ninth Circuit's recent *Fair Housing* decision not only holds that service providers can be considered the content providers of their users' information by categorizing, distributing, and organizing it, but it also goes further in finding that service providers may enjoy no immunity at all depending on the type of information that they host. CDT and the other amici are urging the Ninth Circuit to overrule this holding *en banc* in light of the absence of any legal standing on which the court came to its decision.

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