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SHORT TERM RENTALS - NEW YORK

Airbnb, Inc. v. City of New York

United States District Court, S.D. New York - January 3, 2019 - F.Supp.3d - 2019 WL 91990

Companies operating online marketplaces for short- and long-term home sharing brought action against city, seeking to enjoin enforcement of city ordinance seeking to regulate home-sharing platforms and the market for peer-to-peer apartment rentals on grounds that such ordinance violated the First and Fourth Amendments of the United States Constitution and conflicted with the Stored Communications Act.

The District Court held that:

- Ordinance requiring monthly disclosure of companies' user data implicated the Fourth Amendment;
- Broad disclosure requirements of ordinance were likely unreasonable under the Fourth Amendment, supporting temporary injunction;
- Companies failed to establish that they were likely to prevail on claim that ordinance facially violated the Stored Communications Act; and
- Companies were likely to suffer irreparable harm, supporting issuance of temporary injunction.

City ordinance seeking to regulate home-sharing platforms and the market for peer-to-peer apartment rentals implicated the Fourth Amendment rights of companies operating online marketplaces for short- and long-term home sharing; ordinance placed a search and seizure regime that implicated protected privacy interests of the companies whose user records were required to be produced monthly, and the peer-to-peer housing industry was not inherently dangerous or one with a history of pervasive regulation.

Companies operating online marketplaces for short- and long-term home sharing had reasonable expectations of privacy in their user-related records, as would support Fourth Amendment protection from unreasonable governmental search and seizure of such records; companies had a competitive interest in keeping such information from rivals who might exploit it, and an interest in promoting positive customer relations by keeping customer data private.

Monthly production of business records required by city ordinance seeking to regulate home-sharing platforms and the market for peer-to-peer apartment rentals was likely unreasonable in violation of the Fourth Amendment rights of companies operating online marketplaces for short- and long-term home sharing, thus supporting temporary injunction in companies' action challenging validity of city ordinance; although ordinance would facilitate law enforcement efforts, scope of disclosure required was immense, amounting to virtually all monthly local user data, disclosure requirements were perpetual with no temporal limitation, and ordinance lacked a mechanism for pre-compliance review.

Companies operating online marketplaces for short- and long-term home sharing failed to establish that they were likely to prevail on merits of their claim that city ordinance seeking to regulate home-sharing platforms and the market for peer-to-peer apartment rentals facially violated the Stored

Communications Act by requiring companies to produce private consumer information to the city without valid consent, and thus were not entitled to temporary injunction on such grounds in their action against city; companies conditioned use of their services on hosts accepting privacy policies that notified hosts that the information they provided may be disclosed to governmental authorities.

Companies operating online marketplaces for short- and long-term home sharing, found likely to prevail on their claim that monthly production of business records required by city ordinance seeking to regulate home-sharing platforms and the market for peer-to-peer apartment rentals violated their Fourth Amendment rights, were likely to suffer irreparable harm in the absence of preliminary relief, thus supporting issuance of preliminary injunction; ordinance would subject companies to continuing violations of the Fourth Amendment rights, risk of disclosure of private information was imminent, and ordinance did not place meaningful limits on city's ability to disseminate the information it collected.