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Federal Court Deals Airbnb a Blow in its Fight Against Local Regulations.

“This case is hugely significant,” says one legal scholar.

Santa Monica, California scored a significant win in federal appeals court on Wednesday, with a ruling that promises to set a favorable precedent for local governments seeking to regulate home-sharing and short-term rental websites like Airbnb.

Affirming a lower court’s decision, the U.S. 9th Circuit Court of Appeals rejected claims by Airbnb and HomeAway.com that the city’s home-sharing regulations were illegal under a federal law that shields internet companies from legal risks they could face from third-party content. Similar cases are pending elsewhere.

“Now we have a precedent that really, really opens the door to regulation,” said Abbey Stemler, a professor of business law at Indiana University and a leading scholar on the sharing economy.

“Why this case is hugely significant in my mind is it now creates a way for local governments to rein in these platforms,” she added.

Santa Monica’s ordinance, first passed in 2015 and amended in 2017, permits city residents who obtain a special license to host visitors in exchange for money for a period of less than 31 days, as long as the resident and visitor are both staying in the home.

It also imposes obligations on platforms like Airbnb: They have to collect and submit occupancy taxes, they have to disclose certain listing and booking information to the city, and they can’t complete bookings for property not licensed and listed in a city registry.

Businesses are prohibited under the ordinance from collecting booking services fees for unlicensed, and therefore unlawful, short-term rentals.

The companies grounded their legal arguments against the local regulations in a 1996 federal statute known as the Communications Decency Act. Section 230 of that law provides legal protections for online entities that host or republish speech.

A basic example would be that a company providing an online forum would not be held liable for defamatory content posted by a user. But Stemler explained that in recent years the Communications Decency Act has been used in efforts to block regulation.

In the Santa Monica case Airbnb and HomeAway.com argued that the city’s ordinance required them to monitor and remove third-party content and in doing so violated the Communications Decency Act, interfering with protections afforded to them under the federal law.

The content monitoring and removal referenced here would have to do with actions the companies may have taken to check that properties appearing on their websites were included in the city’s

short-term rental registry and removing property listings if they were not.

“While we acknowledge the Platforms’ concerns about the difficulties of complying with numerous state and local regulations, the CDA does not provide internet companies with a one-size-fits-all body of law,” the 22-page opinion by Judge Jacqueline Nguyen says.

“Like their brick-and-mortar counterparts, internet companies must also comply with any number of local regulations concerning, for example, employment, tax, or zoning,” it adds.

The decision points out that the ordinance does not force the companies to review the content of property listings, or to remove them. Instead it prohibits the processing of transactions for properties that don’t meet registry and licensing requirements.

An analogy Stemler offers is that if a company hosted a website listing cocaine dealers and took a fee for each sale, the activity would not be protected under Communications Decency Act.

“That final step of processing the transaction is what Santa Monica is saying is not protected by the CDA,” she added.

The companies also leveled some claims against the ordinance under the First Amendment. But the district court concluded that the local law regulated conduct, not speech. The appeals court agreed, saying it concerned “nonexpressive conduct—namely, booking transactions.”

Airbnb did not respond to an emailed request for comment on Wednesday. The Santa Monica case is not the only time the tech firm has tangled with local governments over regulations.

Around the same time the company began its court battle over the Santa Monica rules it also challenged a similar ordinance in San Francisco. That case concluded with a settlement in 2017 and the company agreeing to follow an amended set of regulations.

In January, a federal judge ruled in favor of Airbnb and HomeAway in a New York City case, issuing a preliminary injunction that blocked city regulations from taking effect while the litigation continues.

A day later, Airbnb filed a lawsuit in a Florida federal court over Miami Beach’s short-term rental restrictions. And last November the company sued Boston over its rules.

Some of the arguments the company has made in the Miami Beach and Boston cases hinge on the Communications Decency Act.

Route Fifty

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