



**Chicago Lawyers' Committee
for Civil Rights Under Law, Inc.**

Chicago's Partnership for Equal Justice

Chicago Hearing for Periodic Review for UN Human Rights Council - 4/13/10

Discrimination in the Private Market in the Chicago Metropolitan Area

Advertising and the Impact of the Internet

"No children, no pets." "Ideal renters would be a married couple without children." "African-Americans clash with me." "No minorities." "Require only single person, preferably a woman. . . No kids. This is a quiet place and tenants next door need someone quiet/normal." "Christian, non-smoker, no kids."

These are examples of internet ads for housing uncovered by my organization, the Chicago Lawyers' Committee for Civil Rights, in 2006 and 2007. Did the poster of the ad violate the Fair Housing Act? Is the website on which they were posted legally responsible?

There has been an obvious movement of rental housing ads from newspapers to the internet over the last 6 years or so. It's now the primary place where renters search for housing. The operators of craigslist said in 2007 that 30 million notices are posted to its website every month. One of the many effects of the recent foreclosure crisis is that there is an increase in renters, with former homeowners becoming tenants again.

When my office searched craigslist apartment ads a few years ago, we found many discriminatory ads, like the ones I mentioned. The National Fair Housing Alliance (NFHA), with the cooperation of fair housing centers around the country, surveyed internet housing ads in 2008-09 and found 7500 similar ones that violated fair housing law.

The Fair Housing Act (FHA) makes it illegal "to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on" race, religion, sex, disability, familial status, or national origin.

If these ads appeared in newspapers, both the publisher and those who posted the ads would be found to have violated the Fair Housing Act. In fact, newspapers have screened for discriminatory ads for 40 years. But because of another law, the Communications Decency Act of 1996 (CDA), the Seventh Circuit Court of Appeals here in Chicago held in a case we filed, Chicago Lawyers' Committee v. craigslist, that the internet service provider, craigslist, wasn't responsible for these discriminatory ads. The CDA provision used in its holding is headed "Protection for 'Good Samaritan' blocking and screening of offensive material," and it was intended to protect from liability internet service providers when they take voluntary, good faith action to block offensive content. The court stated that it would be "hard" for craigslist to screen the ads. (We disagree.) It held that craigslist wasn't liable for ads posted on its website.

The next month, April 2008, the Ninth Circuit Court of Appeals in California held that the website roommate.com was not immune under the CDA in a case brought by the Fair Housing Councils of San Fernando Valley and San Diego. The roommate website asks subscribers their sex, sexual orientation, and family composition and what their preferences for roommates on that basis are. The *en banc* court held that they were not immune for that part of the site, because they provide content, or as we argue, facilitate discrimination. We just filed an amicus brief in that case (for ourselves, the Chicago Area Fair Housing Alliance, and John Marshall Law School) in March; on remand, the court found the website to have violated the FHA, roommate appealed, and it's before the Ninth Circuit again.

It's paradoxical that the CDA, which was enacted to encourage internet service providers to screen for offensive conduct, was interpreted to hold that they're immune if they don't screen. Although most of the discriminatory ads found don't deal with race, craigslist wouldn't be liable if landlords posted ads saying "whites only" or "no blacks." Similarly, under roommate's argument of immunity, they could ask roommate seekers what their race was and what they wanted the race of their roommate to be.

The Fair Housing Act's advertising provision is important; unlike other provisions, doesn't have a "Mrs. Murphy," or owner-occupied small building, exemption; it applies to all. I share the view that this is because so many people read advertising and believe that the ads reflect what is and isn't legal. Also, discriminatory housing advertisements insult and injure members of the targeted group and deter them from seeking housing.

The Seventh Circuit reminded us in the craigslist case that we could still sue or file administrative complaints against the individual landlords who post discriminatory ads. We have done that; we filed 20 or more such cases. Other fair housing groups here and around the country have done the same. Each case is challenging, starting with identifying the poster of the ad; sometimes that's not possible. The internet makes it very easy to for someone who wants to discriminate to mask his/her identity. Investigation and attempted conciliation can take months, if not years. We have had anomalous results. In cases with nearly identical ads, one resulted in over \$10,000 in damages and comprehensive affirmative relief, while the other was dismissed by an agency for lack of substantial evidence, although we identified the landlord/owner of the building.

The fairest, most efficient and effective way to eliminate discriminatory ads from the internet would be to amend the Communications Decency Act to make clear that it doesn't provide immunity to internet service providers for housing ads that violate the Fair Housing Act. We share NFHA's position on that. Operators of websites like craigslist and roommate are the modern-day equivalent of publishers of newspaper housing ads and they should be legally responsible for the discriminatory ads posted on their sites.

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