

2006

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Recommended Citation

Jeffrey M. Sussman *Cyberspace: An Emerging Safe Haven for Housing Discrimination*, 19 Loy. Consumer L. Rev. 194 (2006).
Available at: <http://lawcommons.luc.edu/lclr/vol19/iss2/5>

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STUDENT ARTICLE

Cyberspace: An Emerging Safe Haven for Housing Discrimination

By Jeffrey M. Sussman*

I. Introduction

By its nature, the Internet facilitates relatively unregulated communication between strangers. In the abstract, many websites are like a newspaper's classified section. They take postings created by individuals and facilitate their availability to third parties. This article looks at whether websites, such as Craigslist¹, that function as a medium for these listings, are liable for any discriminatory content they host. Specifically, this article argues that current legislation provides immunity for websites that host advertisements in violation of the Fair Housing Act ("FHA").² This article will demonstrate that even though newspapers are liable for discriminatory housing postings within their classified sections, the identical postings on their websites would not pose any resultant liability.

Part II of this article will discuss the prevalence of discriminatory housing advertisements posted on the Internet and introduce the principal legislation governing these advertisements and the policies and procedures of those websites that commonly host them. Next, Part III will analyze the specifics of § 804(c) of the Fair Housing Act, codified at 42 U.S.C. § 3604(c), referred to as §3604(c) throughout.

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¹ Craigslist Home Page, <http://www.craigslist.org>. (last visited Nov. 20, 2006). Craigslist defines itself as "a place to find jobs, housing, goods & services, social activities, a girlfriend or boyfriend, advice, community information, and just anything else – all for free, and in a relatively non-commercial environment." Craigslist Factsheet, <http://craigslist.org/about/pr/factsheet.html> (last visited Nov. 20, 2006).

² Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (codified at 42 U.S.C. §§ 3601-3608, 3609-3614, 3614-1, 3614a, 3615, 3616, 3617-3619).

This section will also discuss the specifics of § 230 of the Communications Decency Act³ (“CDA”) which appears to provide complete statutory immunity for website defendants in housing discrimination suits. In Part IV, this article will look at two cases within which courts are first beginning to address the question of whether CDA immunity exists for websites that host third-party-created housing advertisements in violation of the FHA. Part V will discuss how these cases will establish the Internet as a safe haven for discriminatory housing and the effect this immunity will have on consumers.

II. Fair Housing, Advertising, and the Internet

Just one week after Dr. Martin Luther King, Jr. was assassinated, President Lyndon Johnson gave a speech from the White House declaring that despite the belief of the American populace that fair housing would never become the “unchallenged law of the land. . . its day has come.”⁴ Essentially, the FHA, as amended, makes it unlawful to discriminate in the sale or rental of housing.⁵ Specifically, it protects individuals of seven different protected classes: race, color, religion, sex, familial status, disability and national origin.⁶ The FHA makes advertisements that express intent to discriminate in the sale or rental of housing unlawful.⁷

Despite the government’s more than 30-year history of enforcing the FHA, housing discrimination remains prevalent. In 2004 alone, the United States Department of Housing and Urban Development (“HUD”) and its local partners received 9,187 complaints regarding housing discrimination.⁸ This government assessment did not account for individual civil suits that alleged fair housing viola-

³ Communication Decency Act of 1996, Pub. L. 104-104, Title V, Feb. 8, 1996, 110 Stat. 133

(codified at 47 U.S.C. §§ 230, 560, 561).

⁴ Lyndon Baines Johnson, Remarks Upon Signing the Civil Rights Act (Apr. 11, 1968).

⁵ See 42 U.S.C. § 3604 (2006).

⁶ *Id.* In January 2005, Congressman Town introduced an amendment to the FHA adding sexual orientation to the list of protected classes. H.R. 288, 109th Cong. (1st SESS. 2005).

⁷ See *infra* Part III. (presenting a textual analysis of the advertising provision of the FHA).

⁸ U.S. DEPT. OF HOUS. AND URBAN DEV., 2005 STATE OF FAIR HOUSING REPORT (2005), available at <http://www.hud.gov/offices/fheo/enforcement/fhmreport05.pdf>. (referring to the 2004 fiscal year).

tions. For various reasons, discrimination is regularly unreported and occasionally unnoticed.

Without deference to the FHA, President Clinton signed the CDA into law in order to promote the unfettered growth of the Internet in 1996.⁹ This law established immunity for "interactive computer service[s]," alleged to be involved in the publication or dissemination of information provided by another "information content provider."¹⁰ Based on the relative age of this statute, courts are still grappling with the applicability of this immunity to different web service providers. Presently, courts are beginning to determine whether websites that post housing advertisements with content in violation of the Fair Housing Act are immune from liability for hosting allegedly illegal advertisements.¹¹

Many of the websites that claim immunity under § 230(c) appear to recognize an inherent duty to make sure they do not host discriminatory material. For example, Craigslist places a hyperlink at the top of each web-listing informing its users that "[s]tating a discriminatory preference in a housing post is illegal" and informs users to "flag discriminatory posts as 'prohibited.'"¹² Moreover, a click on that statement links to a brief explanation of the Fair Housing Act and outlines the relevant provisions.¹³ It even provides examples of common unlawful advertisements.¹⁴

Craigslist additionally relies on a procedure whereby users are able to remove offensive and illegal content.¹⁵ If a reader of a posting determines it to be discriminatory, the user is able to follow a link

⁹ See Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 230(a) (1998)). (presenting the findings behind § 230 of the CDA).

¹⁰ 47 U.S.C. § 230(c)(1) (1998).

¹¹ See *infra* Part III (discussing two cases that involve this matter of first impression).

¹² Craigslist, Help > Flags and Community Moderation, *available* at <http://www.craigslist.org/about/help/flags.html> (last visited Nov. 20, 2006).

¹³ Craigslist, Fair Housing is Everyone's Right!: Stating a Discriminatory Preference in a Housing Post is Illegal <http://www.craigslist.org/about/FHA.html> (last visited Nov. 20, 2006). [hereinafter Craigslist, Help for Flags and Community Moderation].

¹⁴ *Id.* (stating in part that, "these examples should give you some idea of what might constitute a discriminatory housing advertisement... postings describing the race of current occupants of the complex or neighborhood (e.g. "African-American neighborhood," "most residents are Asian," "lots of Hispanic families," etc.)").

¹⁵ Craigslist, Help for Flags and Community Moderation, *supra* note 13.

and flag the listing.¹⁶ After several flags, the postings are removed. Craigslist claims that nearly one-tenth of all posting are ultimately removed through the flagging system.¹⁷ The website contends that ninety-eight percent of those postings removed actually violate the Terms of Use.¹⁸ The Terms of Use specifically forbid users from posting or emailing materials that violate the FHA.¹⁹

While Craigslist's system arguably contains among the most thorough procedure for eliminating discriminatory posts, other classified-style websites condone discriminatory housing postings. Sublet.com is an apartment rental service. On its homepage, it places an Equal Opportunity Housing logo that links to its website's policy regarding the Fair Housing Act that expressly forbids discriminatory postings.²⁰ Other housing websites such as Roommates.com appear to rely solely on a blanket statement within their terms of service agreement that forbids users from posting illegal advertisements of any sort.²¹ Regardless of immunity, classified-style websites clearly seem to recognize that by the nature of their business they are prone to hosting discriminatory advertisements and take steps, in varying degrees, to discourage such illegal activity. Alone, this cognizance does not, cannot, and should not automatically establish or support website liability.

III. The State of FHA Advertising and CDA Immunity

A complete discussion of whether classified-style websites may be held liable for hosting discriminatory housing advertisements demands an inquiry into the precise language of critical sections of

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Craigslist Terms of Use, <http://craigslist.org/about/terms.of.use.html> (last visited Nov. 20, 2006). (stating "[y]ou agree not to post, email, or otherwise make available [c]ontent: ... that violates the Fair Housing Act by stating, in any notice or ad for sale or rental of any dwelling, a discriminatory preference based on race, color, national origin, religion, sex, familial status or handicap....").

²⁰ Sublet.com Equal Opportunity Housing, <http://www.sublet.com/eoh.html> (last visited Nov. 20, 2006) (stating, in part that "All real estate advertised herein is subject to the federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make such preference, limitation or discrimination").

²¹ Roommates.com, Acceptance of Terms, <http://www.roommates.com/terms.rs> (last visited on Nov. 20, 2006).

the FHA and the CDA.

A. The Fair Housing Act Advertising Provision

Under the FHA, housing advertisements may not state a preference based on "race, color religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination."²² For example, a housing listing that proclaims "no blacks" or "no whites" is illegal.²³ Similarly, demanding that a tenant be of a certain religion or describing a neighborhood as a "Jewish neighborhood" would be unlawful.²⁴ Even language that is only subtly discriminatory is illegal, regardless of intent, so long as it has the effect of discrimination.²⁵

Of all the sections of the Fair Housing Act, section 3604(c) is the most widely applicable.²⁶ Those property owners who may legally discriminate through various exceptions to the Act are nonetheless forbidden to advertise their discriminatory preference.²⁷ This section's broad language proclaims that it is unlawful. . .

*[t]o 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, color religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.*²⁸

²² 42 U.S.C. § 3604(c) (2006).

²³ See generally MEMORANDUM FROM ROBERT ACHTENBERG, ASSISTANT SEC'Y FOR FAIR HOUSING AND EQUAL OPPORTUNITY TO OFFICE DIRECTORS ET. AL. ON GUIDANCE REGARDING ADVERTISEMENTS UNDER §804(C) OF THE FAIR HOUSING ACT (Jan. 9, 1995) available at <http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf>. [hereinafter Memorandum from Roberta Achtenberg]

²⁴ See *id.*

²⁵ *Id.*

²⁶ Jennifer C. Chang, Note, *In Search of Fair Housing in Cyberspace: The Implications of the Communications Decency Act for Fair Housing on the Internet*, 55 STAN. L. REV. 969, 973 (2002).

²⁷ *Id.* "[P]rohibitions of the act regarding familial status do not apply with respect to housing for older persons, as defined in Section 807(b) of the act." Fair Housing Advertising, 54 Fed. Reg. 3308 § 109.5 (Jan. 23, 1989).

²⁸ 42 U.S.C. § 3604(c)(2006).

Courts have interpreted the “make, print or publish” language of 3604(c) to extend liability to newspapers,²⁹ magazines, television, radio stations³⁰, and real estate listings.³¹ Additionally, guidance on fair housing advertising from HUD states that the provision was intended to apply to all advertising media.³² Given this expansive framework, it would appear liability could rightfully extend to websites when deference is given solely to this statute.

Courts uniformly acknowledge that the “critical test for determining whether a notice, statement, or advertisement is violative of [3604(c)] is whether, in its natural interpretation, it would indicate to an ordinary reader or listener, who is neither the most suspicious nor the most insensitive of the citizenry, a discriminatory preference or limitation prohibited by the statute.”³³ Essentially, if a court finds that a listing expressly identifies a discriminatory preference as perceived by an ordinary observer, “the plaintiff need not establish that it was made with discriminatory intent in order to prove a violation of § 3604(c).”³⁴ However, evidence of discriminatory intent is always relevant in determining the actual meaning of a listing.³⁵ Such evidence also helps determine unlawfulness when a particular advertisement is not outright discriminatory, but nevertheless, discriminates in effect against the ordinary observer.³⁶

It is important to note that courts have dismissed all arguments insisting that 3604(c) violates the First Amendment freedom of press. As far back as 1971, the Fourth Circuit Court of Appeals proclaimed that “application of § 3604(c) to newspapers does not contravene freedom of the press protected by the First Amendment.”³⁷

²⁹ See *United States v. Hunter*, 459 F.2d 205 (4th Cir. 1972). See also *Hous. Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.*, 943 F.2d 644 (6th Cir. 1991).

³⁰ See *Blumenthal v. Drudge*, 992 F. Supp. 44, 49 (D.D.C. 1998).

³¹ See *Wheatley Heights Neighborhood Coal. v. Jenna Resales Co.*, 447 F. Supp. 838 (E.D.N.Y. 1978).

³² Memorandum from Roberta Achtenberg, *supra* note 23.

³³ William H. Danne, Jr., Annotation, *Validity, Construction, and Application of § 804(c) of Civil Rights Act of 1968 (Fair Housing Act) (42 U.S.C.A. § 3604(c)) Prohibiting Discriminatory Notice, Statement, or Advertisement With Respect to Sale or Rental of Dwelling*, 142 A.L.R. FED 1 (1997).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Hunter*, 459 F.2d at 213.

In 1991, the Second Circuit came to the same conclusion. "The government may . . . ban deceptive advertising or 'commercial speech related to illegal activity'" without violating the First Amendment.³⁸ Thus, the constitutionality of 3604(c) is so well established that this article will not explore any First Amendment freedom of the press arguments for website immunity, and will exclusively explore immunity as granted by the CDA.

B. A Textual Look at the Communication Decency Act

In 1996, Congress recognized that the "rapidly developing array of the Internet and other interactive computer services available to individual Americans represent[ed] an extraordinary advance in the availability of educational and informational resources to our citizens."³⁹ Therefore, government recognized and codified that "the policy of the United States. . . [is] to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."⁴⁰ In Congress's attempt to advance this and other similar objectives, they passed § 230(c) entitled "Protection for 'good samaritan' blocking and screening of offensive material," which states:

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

any action taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

any action taken to enable or make available to information content providers or others the technical means to restrict

³⁸ *Ragin v. N.Y. Times Co.* 923 F.2d 995, 1002-03 (2d Cir. 1991).

³⁹ *See* Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 230(a)(1998)).

⁴⁰ 47 U.S.C. § 230(b)(2)(2006).

access to material described in paragraph (1). [*sic*]⁴¹

At its simplest, immunity exists where (1) the defendant is a provider or user of an interactive computer service; (2) the cause of action treats the defendant as a publisher or speaker of information; and (3) the information at issue was provided by another information content provider.⁴²

Textually, the broadness of this immunity provision rests significantly on the definitions of “interactive computer service” and “information content provider.” Section 230 defines an “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server. . . such as. . . services offered by libraries and educational institutions.”⁴³ It defines an “information content provider” as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.”⁴⁴ By creating a broad definition for “interactive computer service,” Congress clearly intended for this provision to apply not just to the Internet itself, but also to websites and other content linked by the Internet.

One commentator pointed out that this statute neglects to define “publisher” or “speaker” and therefore common law meanings should be inferred in its interpretation.⁴⁵ In ordinary parlance, publisher “should refer to someone who approves the creation of or has control over the content of the published material, and includes those who print and sell books, newspapers, and other periodicals.”⁴⁶ A determination of whether an individual or corporation is a publisher would hinge on the level of participation that the publisher has with the content creator.⁴⁷ At common law, publishers are held to higher levels of liability than someone who merely disseminates information.⁴⁸ Therefore this commentator suggested that websites that do

⁴¹ 47 U.S.C. § 230(c)(2006) (referencing “paragraph (1)” in section 230(c)(2)(B) where statute is most likely meant to refer to 230(c)(2)(A)).

⁴² *Batzel v. Smith*, 333 F.3d 1018, 1037 (9th Cir. 2003).

⁴³ 47 U.S.C. § 230(f)(2)(2006).

⁴⁴ 47 U.S.C. § 230(f)(3)(2006).

⁴⁵ Chang, *supra* note 26, at 984-95.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

no more than facilitate the distribution of messages would be held to a lower level of liability.⁴⁹ Hence § 230(c)(1) could be given either of two meanings.⁵⁰ First, this section could be interpreted to ensure that websites that solely distribute messages are not treated like common law publishers.⁵¹ Under this theory, the statute would effectively lower their level of liability and not grant such websites absolute immunity.⁵² However, substituting the common law definition for “publisher” with the ordinary meaning would create blanket immunity for all websites.⁵³ Absent legislative or statutory guidelines suggesting that the common law meaning be adopted for use in construing this statute, courts have uniformly granted websites and other online providers blanket immunity.

Section 230(e) explicitly lists only four exceptions to interactive content provider immunity. That subsection entitled “effect on other laws” states:

No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other federal criminal statute.

No effect on intellectual property laws

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

No effect on Communications Privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any

⁴⁹ *Id.*

⁵⁰ Chang, *supra* note 26, at 984-95.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

similar State law.⁵⁴

Notably, civil rights legislation is not among the express exceptions of § 230. Therefore, there is a textual presumption that Congress recognized the areas of law where immunity was not appropriate and codified those exceptions it deemed appropriate to the exclusion of the FHA. Outside these limitations, courts have uniformly applied a broad construction of § 230.

C. Inferring Immunity: Consistency in Court Decisions

Congress passed § 230 in direct response to a New York court decision that held Prodigy, a popular computer network, liable for the content of messages posted on its bulletin boards.⁵⁵ The court determined that because Prodigy “held itself out as an online service that exercised editorial control over the content” on those boards, it should be treated as a publisher.⁵⁶ Therefore, the network was held liable for defamatory statements posted by a third party.⁵⁷ Just one year later, Congress granted immunity for “interactive computer services” in an attempt to prevent similar judicial results.⁵⁸

The era of broad website immunity began in 1997 with the Fourth Circuit’s holding in *Zeran v. America Online*.⁵⁹ In this suit, an America Online (“AOL”) user argued, “AOL unreasonably delayed removing defamatory messages posted by an unidentified third party, refused to post retractions of those messages, and failed to screen for similar postings thereafter.”⁶⁰ The district court granted AOL’s motion for judgment on the pleadings after accepting § 230 as an affirmative defense.⁶¹ The court reasoned that the plaintiff’s argument asserting that AOL had a duty to remove the defamatory statements once informed of them was contrary to the meaning of §

⁵⁴ 47 U.S.C. § 230(e)(1998).

⁵⁵ *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998).

⁵⁶ *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710, *2 (N.Y. Sup. Ct. May 24, 1995).

⁵⁷ *Id.* at *7.

⁵⁸ Communication Decency Act of 1996, 47 U.S.C. § 230.

⁵⁹ *See Zeran*, 129 F.3d. 327.

⁶⁰ *Id.* at 328.

⁶¹ *Id.*

230.⁶² On appeal, the Fourth Circuit affirmed.⁶³

The Fourth Circuit held that § 230 “precludes courts from entertaining claims that would place a computer service provider in a publisher’s role.”⁶⁴ Therefore, any lawsuit that demands liability for failure to conduct “traditional editorial functions – such as deciding whether to publish, withdraw, postpone, or alter content – are barred.”⁶⁵ The Fourth Circuit concluded that “Congress made a policy choice. . . not to deter harmful online speech through. . . imposing tort liability on companies that serve as intermediaries for other parties’ potentially injurious messages.”⁶⁶ Liability rests not with the online service provider, but with the individuals who post messages with the online service provider.⁶⁷

Alternatively, *Zeran* attempted to impose liability on AOL by defining AOL’s action not as that of a publisher, but rather that of a distributor. At common law, distributors are only liable for defamatory remarks within their distributed materials if they have actual knowledge of its presence.⁶⁸ Consequently, the plaintiff argued that when he provided notice to AOL, AOL assumed a duty to remove the inflammatory material. The plaintiff argued that the language of § 230 was intentionally limited to publishers; thus, Congress did not intend to extend immunity to distributors.⁶⁹ In response, the court exclaimed, “[e]ven distributors are considered to be publishers. . .”⁷⁰ With this one statement, broad content provider-based immunity was born.

A year later, the United States District Court for the District of Columbia dismissed AOL from liability pursuant to § 230 for hosting comments alleging that a White House employee had a history of spousal abuse.⁷¹ These comments were provided in gossip columnist

⁶² *Id.* at 330.

⁶³ *Id.* at 335.

⁶⁴ *Zeran*, 129 F.3d at 330

⁶⁵ *Id.*

⁶⁶ *Id.* at 330-31.

⁶⁷ *Id.* at 330.

⁶⁸ *Id.*

⁶⁹ *Zeran*, 129 F.3d at 331.

⁷⁰ *Id.* at 332. In 2002, the Ninth Circuit commented that “every court to reach the issue has decided Congress intended to immunize both distributors and publisher.” *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), fn 10. (granting immunity to a listserv operator that selects and compiles third party emails).

⁷¹ *Blumenthal v. Drudge*, 992 F. Supp. 44, 46 (D.D.C. 1998).

Matt Drudge's Drudge Report.⁷² Despite AOL's contractual option to "remove content that AOL reasonably determine[s] to violate AOL's then standard terms of service," AOL was not an "information content provider."⁷³ Rather, "AOL was nothing more than a provider of an interactive computer service on which the Drudge Report was carried, and Congress has said quite clearly that such a provider shall not be treated as a 'publisher or speaker' and therefore may not be held liable in tort."⁷⁴ Matt Drudge on the other hand was an "information content provider" and beyond the scope of § 230 immunity.⁷⁵

Several years later in *Ben Ezra v. America Online*, the court further expanded immunity when it held that "interactive computer service[s]" that take active steps to communicate with a third party to control the accuracy of information posted on their websites and induce corrections, do not become "information content providers" under the text of § 230.⁷⁶ Essentially, this holding expanded immunity by restricting the definition of "information content provider." The court reasoned that this interpretation comports with Congress' intent to "forbid the imposition of publisher liability on a service provider for the exercise of its editorial and self-regulatory functions."⁷⁷ Similarly, a term of service agreement that maintains the right "to remove messages deemed not in compliance with Community Guidelines" does not create a waiver of immunity.⁷⁸

In 2003, the Seventh Circuit affirmed, in *Doe v. GTE*, that § 230 provided immunity for two interactive computer service providers that provided access to illegally produced videos of athletes changing in their locker room.⁷⁹ More notable than this predictable conclusion was the court's dicta. In dicta, the court stated that had the defendants had a contractual right to protect the plaintiffs, the court might be able to bypass § 230 immunity.⁸⁰ While many attorneys point to the dicta in *Doe* to argue bypassing immunity, no known judicial opinion has adopted or further expounded on this

⁷² *Id.*

⁷³ *Id.* at 47.

⁷⁴ *Id.* at 50.

⁷⁵ *Id.*

⁷⁶ *Ben Ezra, Weinstein, and Co. v. Am. Online Inc.*, 206 F.3d 980, 985 (10th Cir. 2000).

⁷⁷ *Id.* at 986.

⁷⁸ *See Green v. America Online*, 318 F.3d 465, 471 (3d Cir. 2003).

⁷⁹ *Id.* at 471.

⁸⁰ *Doe v. GTE Corp.*, 347 F.3d 655, 657-58 (7th Cir. 2003).

plaintiff-friendly avenue.

That same year, the Federal District Court for the Eastern District of Virginia held in *Noah v. AOL Time Warner* that AOL was immune from liability stemming from third party content hosted on its network in violation of Title II of the Civil Rights Act of 1964 dealing with public accommodations.⁸¹ In this case, the *pro se* plaintiff sued AOL for not preventing “harassing comments that blasphemed and defamed plaintiff’s Islamic religion and his co-religionists.”⁸² The court reasoned that § 230 overrides Title II liability for websites because the statutory text of § 230 has express exceptions written into it; “namely, causes of action based on (i) federal criminal statutes, (ii) intellectual property law, (iii) state law ‘that is inconsistent with this section,’ and (iv) the Electronics Communications Privacy Act of 1986.”⁸³ Notably, the Civil Rights Acts are not among them.⁸⁴ “Moreover, the exclusion of federal *criminal* claims, but not federal civil rights claims, clearly indicates, under the canon of *expressio unius est exclusion alterius*, that Congress did not intend to place federal civil rights claims outside the scope of § 230 immunity.”⁸⁵ This case suggests a bleak outcome in a case where the Fair Housing Act, under Title VIII of the Civil Rights Act of 1968, confronts § 230 immunity.

A recent case involving Internet dating sites provided significant insight into the amount of editorial control a website may exercise and still qualify for § 230 immunity.⁸⁶ In *Cerafano v. Metrosplash.com*, the Ninth Circuit held that immunity extended to the Internet dating website, Matchmaker.com when it rejected the plaintiff’s contention that automated additions to user dating profiles based on responses to online questionnaires established the website as an information content provider.⁸⁷ In reaching this conclusion, the court reasoned that where website-developed content results solely from user activity, the website is not an “information content provider.”⁸⁸ The holding in this case provides an important precedent

⁸¹ See *Noah v. AOL Time Warner, Inc.*, 261 F. Supp.2d 532 (E.D. Va. 2003), *aff’d*, 2004 WL 602711 (4th Cir. 2004) (*per curiam*).

⁸² *Noah*, 261 F. Supp.2d at 534.

⁸³ *Id.* at 539.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See *Cerafano v. Metrosplash.com Inc.*, 339 F.3d 1119 (9th Cir. 2003).

⁸⁷ *Id.* at 1125.

⁸⁸ *Id.*

to current litigation.

While academia continues to debate whether the broad definition of “interactive computer service” and the narrow definition of “information content provider” reflect Congress’ intention when it passed § 230, there appears to be uniformity across court reasoning. Therefore, regardless of the plaintiff or the allegation, holding a website liable for its content is an extremely difficult task. However, it is in this immunity-friendly atmosphere that civil rights activists attempt to hold websites liable for hosting discriminatory housing postings.

IV. The FHA and § 230 Immunity Collide in Court

Courts are now beginning to address the issue of immunity for Internet outlets that host discriminatory housing advertisements in violation of § 3604. In California, a federal district court held that Roommate.com was immune under § 230 for content hosted on its website.⁸⁹ That decision is currently on appeal in the Ninth Circuit.⁹⁰ Concurrently, Illinois federal courts are grappling with whether Craigslist is immune from liability for advertisements posted on its popular bulletin board website.⁹¹ This section will address the arguments advanced by counsel for both sides in these cases.

A. *Fair Housing Council of San Fernando Valley v. Roommate.com*

In 2003, the Fair Housing Council of San Fernando Valley (“FHC”) brought suit in the United States District Court for the Central District of California alleging violations of the Fair Housing Act and similar state law claims against Roommate.com as well as claims for unfair business practices and negligence.⁹² The Defendant argued that § 230 granted it broad immunity from liability for hosting third party content and therefore it could not be liable for the FHA

⁸⁹ See Order, Fair Hous. Council of San Fernando Valley v. Roommate.Com, LLC, 2004 WL 3799488, at *2 (C.D.Cal., Sept. 30, 2004).

⁹⁰ Docket, Fair Hous. Council, et al. v. Rommate.com, LLC, No. 04-57173, (9th Cir.).

⁹¹ See Complaint for Monetary, Declaratory & Injunctive Relief; Demand for Jury Trial, Chicago Lawyers’ Comm. for Civil Rights Under Law, Inc. Craigslist, Inc., No. 06C 0657, 2006 WL 344836 (N.D.Ill. Feb. 3, 2006). [hereinafter CLC Complaint]

⁹² *Roommate.com*, 2004 WL 3799488 at *2.

claims.⁹³

Rommmate.com is the owner and operator of www.roommates.com— a website that helps individuals seek compatible roommates.⁹⁴ To accomplish this, users create profiles that include information about themselves so others can search it and may express interest.⁹⁵ For users to complete their profile, they must select from several options regarding age, gender, sexual orientation, occupation and number of children.⁹⁶ Notably, the profile survey inquires into neither race nor religion.⁹⁷ They must also create a nickname to identify their profile.⁹⁸ Users can also attach a personal statement and photographs to their profile.⁹⁹

Users must create a separate profile for each property listing. These property profiles must include the detail of the area's location, rent, availability date, and the property's features.¹⁰⁰ While some questions are clearly not discriminatory, Roommate.com does ask about sexual orientation, age, gender, and familial status all of which are protected classes under the FHA.

The terms of service policy of Roommate.com holds users "entirely responsible" for the content they post. Furthermore, the site states that they are not the author of the posted information.¹⁰¹ As soon as a profile is complete, it is visible to all users.¹⁰² They do not screen listings except to the extent that any photographs added to a profile are screened prior to making them available to users.¹⁰³ At the time of this suit, Roommate.com received over one million page views a day and 24,000 users subscribed to premium services.¹⁰⁴ Some services were available with a free, basic subscription.¹⁰⁵

⁹³ *Id.*

⁹⁴ *Id.* at *1.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Roommate.com*, 2004 WL 3799488 at *1.

⁹⁸ *Id.*

⁹⁹ *Roommate.com*, 2004 WL 3799488 at *2.

¹⁰⁰ *Id.* at *1

¹⁰¹ *Id.* at *2

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Roommate.com*, , 2004 WL 3799488 at *1

¹⁰⁵ *Id.*

FHC contends that Roommate.com violated fair housing laws in three distinct ways. First, they contend the specific user nicknames violate the FHA.¹⁰⁶ Some allegedly discriminatory nicknames include: "ChristianGrl, CatholicGirl, Asianpride, Asianmale, Whiteboy, Chinesegirl, Latinpride, and Blackguy."¹⁰⁷ Second, the information in the user personal statements often contains discriminatory content.¹⁰⁸ Examples of discriminatory comments include the following:

'[L]ooking for an ASIAN FEMALE OR EURO GIRL'; 'looking for a straight Christian male'; 'I am not looking for freaks, geeks, prostitutes (male or female), druggies, pet cobras, black muslims or mortgage brokers'; and '[h]ere is free rent for the right women . . . I would prefer to have a hispanic female roommate so she can make me fluent in Spanish or an Asian female roommate just because I love Asian females.'"¹⁰⁹

Lastly, FHC contends that the defendant violated the fair housing act through the questions in the questionnaire.¹¹⁰ The organization contends that asking people to specify gender, sexual orientation, age, and familial status violates the FHA.¹¹¹

In 2004, the United States District Court granted a partial summary judgment motion for the defendants that dismissed the FHA claim.¹¹² In doing so, the court also dismissed the supplemental state law fair housing claims for lack of jurisdiction after the only federal claim was dismissed.¹¹³ Judge Anderson noted that this case "is apparently the first case to address the relationship between the CDA's grant of immunity and the FHA's imposition of liability for the making or publishing of discriminatory real estate listings."¹¹⁴ In support of this decision, the court rested largely on the statutory language of the CDA. While not directly citing to *Noah*, the court referenced the maxim *expressio unius est exclusion alterius*, which means, "the ex-

¹⁰⁶ *Id.* at *2.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Roommate.com*, , 2004 WL 3799488 at *2

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at *6.

¹¹³ *Id.*

¹¹⁴ *Roommate.com*, 2004 WL 3799488 at *3.

pression of one thing implies the exclusion of the other.”¹¹⁵ The court reasoned that because § 230 has some textual exceptions, it is not the court’s role to infer an additional exception for civil rights laws.¹¹⁶

Further, the court likened this case to the *Carafano* holding in which the Ninth Circuit provided immunity to Matchmaker.com for claims of inaccurate postings on its website that were the result of questionnaires. Following similar logic, the court in *Roommate.com*, held that Roommate.com should not be liable for its similarly generated content.¹¹⁷ After all, “immunity is quite robust.”¹¹⁸

Moreover, the court addressed the plaintiff’s concerns that this holding could potentially “eviscerate the FHA.”¹¹⁹ The court suggested that it was helpless in preventing this potential outcome.¹²⁰ In dicta, the court explained, “operators of Internet sites such as Roommate.com have an advantage over traditional print media because websites, unlike newspapers, are exempt from 42 U.S.C. § 3604 and the related state fair housing laws for publishers.”¹²¹ The court reached its holding based on the law, and urged Congress to address whether further changes were necessary.¹²²

This case is currently on appeal in the Ninth Circuit. Among the standard briefs filed, Amazon.com, America Online, Ebay, Google, Tribune Company, Yahoo!, Netchoice and the United States Internet Service Provider Association have filed an amici curiae brief in support of Roommate.com.¹²³ Their brief argues that the court should uphold its decision because the plain language of § 230 immunizes interactive computer services from liability for third party content.¹²⁴ They further argue that each of the statutory elements required for immunization are present in this case. They believe that a

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at *3-4.

¹¹⁸ *Id.* at *3.

¹¹⁹ *Roommate.com*, 2004 WL 3799488 at *4.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Brief for Amazon.com, Inc. et al. as Amici Curiae Supporting Defendant at 1, Fair Hous. Council of San Fernando Valley et al. v. Roommate.com, LLC, No. 04-57173 (9th Cir. 2005).

¹²⁴ *Id.* at 7-8.

reversal of the district court decision would undermine the policy objectives of § 230 and adversely affect their individual businesses.¹²⁵ These arguments will likely prevail. As the amici curiae brief states, FHC's view of § 230 "ignores its plain language and deviates sharply from the established case law examining the statute's scope."¹²⁶

B. *Chicago Lawyers' Committee for Civil Rights Under Law v. Craigslist*

Recently, the Chicago Lawyers' Committee for Civil Rights Under Law ("CLC") brought suit against Craigslist alleging violations of § 3604 of the FHA.¹²⁷ In its complaint, the CLC identified approximately 120 allegedly discriminatory housing advertisements observed on the Chicago section of Craigslist.¹²⁸ Among the allegedly discriminatory statements were: "African Americans and Arabians tend to clash with me so that won't work out;" "Non- women of Color NEED NOT APPLY;" "Muslim preferred;" and "Requirements: Clean Godly Christian Male."¹²⁹ Little more than a rudimentary analysis of these statements is needed to reach the conclusion that many of them are discriminatory. In their answer, Craigslist neither confirmed nor denied the existence of these statements.¹³⁰ Instead, they contended that confirming their presence would be overly burdensome.¹³¹

After all, Craigslist believes they are not liable regardless of whether they hosted the alleged postings. Therefore, they filed a motion for judgment on the pleadings, which asked the court to rule on the issue of immunity to prevent unnecessary discovery if the court rules in their favor.¹³²

In a memorandum in support of this motion, Craigslist

¹²⁵ *Id.* at 10-13.

¹²⁶ *Id.* at 6.

¹²⁷ See CLC Complaint, *supra* note 91.

¹²⁸ *Id.* ¶¶ 17-141 (referencing chicago.craigslist.org).

¹²⁹ *Id.* ¶¶ 17, 21, 30, 44.

¹³⁰ Answer with Affirmative Defenses, Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., No. 06C 0657, 2006 WL 1232495 ¶¶ 17-141 (N.D. Ill. Apr. 14, 2006).

¹³¹ Answer with Affirmative Defenses, *supra* note 130, ¶¶ 17-141.

¹³² Mem. in Support of Craigslist's Mot. for J. on the Pleadings, Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., No. 06C 0657, 2006 WL 1041035 (N.D. Ill. Apr. 14, 2006) [hereinafter Memo in Support].

pointed to the plethora of court cases that grant immunity to Internet service providers that host third party material.¹³³ They contended that all decisions discussing immunity point toward a broad construction of § 230 that would consequently apply to them.¹³⁴

Craigslist was quick to suggest that if their website was not immune and if accordingly they were “[f]aced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and types of messages posted.”¹³⁵ Craigslist has fewer than two dozen employees, yet hosts hundreds of thousands of messages a month on its website.¹³⁶ It would not be feasible or even possible for the limited staff to monitor these listings.¹³⁷

The website argued that it meets each of the elements to establish immunity. They attempted to demonstrate that they are a “provider” of an “interactive computer service” by comparing their activities to those of other sites that previously benefited from immunity.¹³⁸ Next, they argued that the allegedly discriminatory content “constitutes ‘information provided by another information content provider.’”¹³⁹ Craigslist likened its service to those in *Zeran* and *Carafano*. Subsequently, they contended that CLC inaccurately portrays Craigslist as a “publisher.”¹⁴⁰ However, case law uniformly holds that websites that automatically generate text to accompany a third party posting are not “publisher[s]” for purposes of § 230.¹⁴¹

In the CLC’s memorandum in opposition, they urged the court not to adopt the construction of § 230 adopted by the “Third, Fourth, Ninth, and Tenth Circuits” in favor of an alternate interpretation of § 230 that no court has ever adopted.¹⁴² They further criticized the recent decision in *Roommate.com* as a “cursory analysis of

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Memo in Support, *supra* note 132.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Mem. in Opp’n to Def.[’s] Mot. for J. on the Pleadings, Chicago Lawyers’ Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., No. 06C 0657, (N.D. Ill. May 19, 2006), *available at* 2006 WL 1447139 at *7-8 (N.D. Ill. May 19, 2006). [hereinafter Memo in Opposition]

§ 230.”¹⁴³ CLC contended that the readily adopted interpretation fails to give meaning to the title of § 230(c) stating “Protection for ‘Good Samaritan’ blocking and screening of offensive material.” They argued that this section’s title was poorly named, because if courts continue to infer that § 230 grants immunity to websites that take no affirmative steps to block or screen offensive material, the section’s name was essentially misleading. Furthermore, they believed that the consistent decisions applying § 230(c) contravened the Congressional intent evidenced by the section’s title.¹⁴⁴

In an amicus curiae brief filed in support of the CLC, the National Fair Housing Alliance (“NFHA”) discussed the importance of the FHA.¹⁴⁵ They demonstrated how case law broadly interprets the Act. NFHA contended that 3604(c) explicitly holds publishers liable for § 3604(c) violations, stating that the “[t]he language of the Act is broad and inclusive.”¹⁴⁶ Essentially, it was the NFHA’s position that Internet sites cannot be held to a different standard than newspapers.¹⁴⁷ “Given the immense volume of housing advertisements found on the Internet, the broad ends of the FHA cannot be achieved if websites such as Craigslist are considered immune from its coverage.”¹⁴⁸

In contrast, an amici brief jointly filed by AOL, Ebay, Google, Yahoo!, Electronic Frontier Foundation, Internet Commerce Coalition, Net choice, Netcoalition, and the United States Internet Service Provider Association supporting the motion for judgment on the pleadings distinguished newspapers from websites. It stated that, “Congress recognized that such services were revolutionizing the way people communicate and gather information because – unlike predecessor media such as newspapers – these services carry a vast amount of information that originates with subscribers and other third parties and is disseminated nearly instantaneously.”¹⁴⁹ In furtherance

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See Br. for National Fair Housing Alliance as Amicus Curiae Supporting Plaintiff, Chicago Lawyers’ Comm. for Civil Rights Under Law, Inc. Craigslist, Inc., No. 06C 0657, 2006 WL 1708503 (N.D. Ill. May 22, 2006). [hereinafter NFHA Amicus]

¹⁴⁶ *Id.* at 17. (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1973)).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Br. for Amazon.com, Inc., et al. as Amici Curiae Supporting Defendant Craigslist’s Mot. for J. on the Pleadings, Chicago Lawyers’ Comm. for Civil Rights

of this argument, the brief cited Representative Goodlatte's comments on the floor of the House of Representatives.¹⁵⁰ The Congressman stated that it would not be possible for interactive service providers to filter the vast quantities of material website bulletin boards commonly face.¹⁵¹

In November 2006, a Federal District Judge granted Craigslist's motion for judgment on the pleadings.¹⁵² The court upheld Craigslist's argument that its activity of posting user advertisements fit squarely within the immunity criteria of § 230(c).¹⁵³ Essentially the court determined that Craigslist is an "interactive computer service" that by its nature hosts information from third party "information content providers"—its users.¹⁵⁴ Resultantly, there is no publisher liability for Craigslist.¹⁵⁵

However, the court was careful to suggest that this grant of immunity only exists to the extent that a cause of action requires finding that Craigslist was a publisher of third party advertisements.¹⁵⁶ While this eliminates the possibility of liability under § 3604(c), the court alludes to the notion that other causes of action may exist or could be created by legislatures.¹⁵⁷ However, it is unclear what cause of action the judge had in mind. Perhaps creative lawyering could find a successful cause of action, but no particular option appears particularly fruitful. Post-trial motions are currently underway¹⁵⁸ and a CLC appeal appears imminent.

V. Unfair Housing: The Unfortunate but Likely Result

Over the last ten years the courts have developed sufficient

Under Law, Inc. v. Craigslist, Inc., No. 06C 0657 2006 WL 1794487, (N.D. Ill. June 22, 2006). [hereinafter Amazon Amici].

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 2006 WL 3307439, at *14 (N.D. Ill. Nov. 14 2006).

¹⁵³ *Id.* at*13.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at *14.

¹⁵⁶ *Id.* at *13.

¹⁵⁷ Chicago Lawyers' Comm. for Civil Rights Under Law, Inc., 2006 WL 3307439, at *13.

¹⁵⁸ Docket, Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., No. 06C 0657, (N.D. Ill.).

precedent to establish the extent of immunity granted by § 230 of the CDA. Therefore, predicting the ultimate and final outcomes in these two cases is a practical endeavor. This section explains the likely end results in these cases and discusses how these results will affect consumers.

A. The Internet as a Fair Housing Safe Haven

The law of this nation is, in this commentator's opinion, extremely clear in regards to this issue: websites that host advertisements in violation of § 230 are immune from liability from the third-party produced content they host. Underlying the plaintiff's position in both the Roommate.com and the Craigslist cases, is the notion that public policy demands a civil rights legislation friendly interpretation of § 230. However, the policy opinion on which the plaintiffs universally rely is contrary to the manifest weight of case law uniformly applied throughout the nation. The dicta in *Doe* is no more than mere dicta. While plaintiffs consistently point to it for support, it has little, if any, judicial persuasion.

As CLC points out in framing its case against Craigslist, the Third, Fourth, Ninth, and Tenth Circuits have appropriately adopted a broad interpretation of § 230. Boldly, they will likely attempt to convince the Seventh Circuit that every other circuit court got it wrong when the case goes on appeal, a near-certain occurrence. Not only is this an uphill battle, it will be nearly impossible.

As unfortunate as this result is to the advancement of civil rights in America, public policy is not in itself sufficient to sidestep adopted legislation. Civil rights laws and regulations are significant and undoubtedly within the Congressional radar. Therefore, when the courts in *Roommate.com* and *Noah* pointed the to maxim *expression unius est exclusion*, the courts got it right. Those exceptions expressly excluded from § 230 are a strong indicator of those items not intended to be excluded under the section. In passing section § 230, Congress wanted to create an environment that "preserve[s] the vibrant and free market. . . for the Internet."¹⁵⁹ This holding merely interprets the law to advance that objective.

Consequently, the Internet is now a safe haven for discriminatory housing advertisements. Websites that host discriminatory postings cannot be held liable for third party content. Liability for these postings now rests exclusively on the third party content producer. Unlike other areas of Internet law, in almost all cases, the individual or business behind the posting can be easily identified. Those who

¹⁵⁹ 47 U.S.C. § 230(b)(2)(1998).

seek to rent a house must have direct contact with the individuals who seek to rent that house. Thus, tracking down the liable individual is not a daunting task.

B. Fair Housing Effects Consumers

The essential effect of this resultant safe haven is that consumers seeking housing will confront occasional discrimination. So long as websites are not required to monitor content posted by third parties, "interactive computer services" will likely not monitor the information they host. The significant cost of monitoring instantaneous Internet postings would effectively prohibit any site from providing free classified-style listings to its users. Even the most ethical of websites would be financially unable to provide the monitoring needed to prevent discriminatory housing postings. Any website that chooses to take an active role and monitor the content they host will likely pass the cost on to customers.

Arguably, Craigslist's appeal is derived substantially from its non-corporate appearance. Consumers both in need of housing and with housing available to users freely post messages. The ability to post information quickly and to receive responses from consumers immediately is the essential benefit that these "interactive computer service[s]" provide. The lack of regulation on this process enables the Internet to provide immediate gratification to consumers.

Housing consumers troubled by discrimination are not without judicial avenues, however. It is important to note that while the websites themselves are not liable as a result of § 230, a cause of action under § 3604(c) remains against the third party content provider. Therefore, a consumer who feels discriminated against based on one of the FHA's protective classes may seek a civil remedy from the author of the discriminatory posting. Without question, § 230's limitation of liability will in most cases remove the cause of action against the deepest pockets because most individuals who post listings often lack capital to payout damages while websites generally have available funds.

Recognizing the importance of advancing Fair Housing, the United States Government established the Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity. This arm of the federal government investigates complaints of FHA violations.¹⁶⁰ Therefore, individual lawsuits are not the only

¹⁶⁰ HUD'S TITLE VIII FAIR HOUSING COMPLAINT PROCESS, *available at* <http://www.hud.gov/offices/fheo/complaint-process.pdf> (last visited Nov. 20, 2006).

option available to offended housing consumers. Any individual who feels they are being discriminated against in their ability to acquire desirable housing may file a complaint, without cost.¹⁶¹ Thereafter, the Department investigates the alleged discrimination.¹⁶² Upon a determination of cause that discrimination in violation of the FHA occurred, the case is referred to the Department of Justice, which is thereafter required to file suit.¹⁶³ This alternative procedure enables consumers to seek remedies with little expense or legal expertise.

VI. Conclusion

The state of fair housing on the internet is clear, but bleak. The progeny of cases dealing with immunity under the CDA continue to grow to the detriment of plaintiffs facing discrimination. However, as the Internet evolves into a safe haven for housing discrimination, fair housing still remains the law of the land and is still enforceable through civil actions. Nevertheless, counter to expansive language of the FHA that holds newspapers liable for its third party advertising content, the cause of action for housing discrimination on the internet under the FHA only rests with the third party content provider. Because of the diminished benefit of suing the liable discriminating parties, consumers will likely face an increasing prevalence of discriminatory housing advertisements in the future.

¹⁶¹ *Id.* at 1.

¹⁶² *Id.*

¹⁶³ *Id.* at 3.