

Analysis of the “Fair Housing Council v. Roommates.com, LLC” Case

1) Case Synopsis

Fair Housing Council of San Fernando Valley v. Roommates.com, LLC involves Section 230 of the CDA, the Fair Housing Act (FHA), and the California Fair Employment and Housing Act (FEHA). The plaintiff, the Fair Housing Council, is a non-profit organization that works to end arbitrary discrimination and ensure fair housing opportunities for everyone. The defendant, Roommates.com, is a roommate match site designed to pair up housemates depending on their preferences.

In 2007, the survey Roommates.com required new users to take was found to be a potential violation of the FHA and FEHA because of the ability to specify preferences based on sexuality, family status, and other factors. This scenario concerns the safety and rights of those who are looking for roommates, especially if they are part of a marginalized group like the LGBTQ+ community. It also tests the range of the immunity that Section 230 grants to interactive computer service providers.

The case was presented in 2007 and decided in 2008. The main issue was about how much liability Roommates.com would hold for its survey. According to the District Court, Section 230 of the CDA should protect Roommates.com and any computer service provider from liability for the content that its users create [1]. The survey only invites users to express their preferences, so Roommates.com shouldn't be held responsible for discriminatory responses. However, the Ninth Circuit reversed this decision. Prompting users to enter preferences via, for example, an open text box would protect Roommates.com from liability. Since the survey instead required users to answer prompted questions with pre-made answers, Roommates.com played a role in developing the offending content and therefore could not be granted immunity from violations of the FHA [2].

Roommates.com appealed the case in 2012, which resulted in a different ruling centered on the matter of the FHA and FEHA's reach. While these acts regulate discrimination in terms of the “sale or rental of a dwelling,” the selection of roommates involves private association and safety more than it involves fair access to housing [3]. Allowing government regulation in this field would breach individual rights. Therefore, the Ninth Circuit ruled that no action taken to choose a roommate could be subject to the FHA or FEHA. Since choosing a roommate can't be illegal, Roommates.com had nothing to be held liable for [4].

The 2012 ruling avoided reinforcing the prior conclusion about Section 230, which meant the protections for computer service providers would continue to be challenged in similar cases. For those seeking roommates, this ruling is a little bit ambiguous. It could be argued that the ability to choose roommates based on these disclosed characteristics respects individual choice, autonomy, and safety. It could also be argued that requiring all users to fill out this survey forces certain groups to risk targeted discrimination and harassment.

2) Personal Ethics

Group 1 is generally in agreement about this case. The biggest concern, for us, is the wellbeing of people looking for roommates. The rulings made in 2008 and 2012, focused on liability and governmental invasion, don't fully explore this issue. The survey that Roommates.com made has the opportunity to be useful — however, the company could have made better choices to respect individual rights and the safety of minority groups.

The core issues of the survey involve the intent behind it. According to one group member, claiming Roommates.com's survey to be inherently malicious or discriminatory falsely assumes the situation is a strict dichotomy. If users do express discriminatory preferences in their survey, that could be helpful information for marginalized individuals too, who may not wish to associate with someone with those beliefs. It should also be the right of marginalized people to, if they wish, seek out associations that might make them feel happier or more comfortable. A college may offer specific dorms as LGBTQ+ or gender-inclusive spaces, for example, which caters to the comfort and belonging of LGBTQ+ residents [5]. There are still risks that some individuals may lose out on specific housing opportunities. However, the Fair Housing Council seeks to impose an ideal scenario where these characteristics shouldn't pertain to roommate selection under *any* case, and that is a little bit naive.

That leads into the 2012 ruling which the whole group agrees with. The selection of roommates involves matters such as private association, comfort, and safety. It relates to but isn't the same thing as regulating access to general housing, such as a landlord renting out an apartment [6]. Therefore, the FHA and FEHA aren't totally applicable, nor is government enforcement wholly appropriate.

That doesn't mean that Roommates.com should be fully absolved of responsibility. Another group member makes the point that specifically requiring all users to volunteer information about these characteristics — sexuality, family status, etc — and using them in the filtering system is an invasion of privacy. It also forces all users to face possible risks associated with these characteristics: losing access to housing opportunities due to some users' discriminatory preferences, especially if the matching is automated, or possibly even being targeted by people who lie on the survey for malicious reasons. The whole group agrees that only optionally inviting users to share their own characteristics and relevant preferences would have done a far better job at respecting the rights and autonomy of Roommates.com users. Users could then decide for themselves whether or not the most comfortable space for them should pertain to their identity or family status, which would also better resemble the college dorm example mentioned prior.

3) Professional Ethics

The case of Fair Housing Council of San Fernando Valley v. Roommates.com LLC concerned violation of the FHA guidelines, and discrimination in the housing industry through Roommates.com's website. The case questioned the ethical responsibility of Roommates due to their use of gender, sexual orientation, and other personal information to match roommates based on what they were comfortable living with [7]. Allowing decision making based on these factors goes directly against sections *1.6 Respect Privacy*, *1.4 Be Fair and Take Action Not to Discriminate*, and *3.1 Ensure that the Public Good is the Central Concern During All Professional Computing Work* [8]. Privacy is not respected when these aspects of a user's identity are required in order to apply for housing. Action to discriminate is easier to enact when these identifiers are used as reasons to decline or screen off housing applications. If only a portion of the public is being protected / accepted, then the collective public good is not truly being protected.

Roommates.com's design played an active role in not just allowing, but actively promoting these practices that allowed for applications to be categorized and filtered in a way that blocked entire groups of people. "A website operator can be both a service provider and a content provider," [7] and in the case of creating these forms, Roommates.com was the content provider, meaning they are "‘responsible, in whole or in part’ for creating [the content]". Section 230, which specifically provides legal immunity for content posted by users, does not cover the content that is specifically provided by the platform [1]. Their access to housing is blocked. This contradicts section

1.2 *Avoid harm* [8]. This all goes against the FHA's specific rules against discrimination in housing, hurting social welfare as opposed to supporting it. Their company violated sections 2.3 *Know and Respect Existing Rules Pertaining to Professional Work*, and 2.6 *Perform Work Only in Areas of Competence* [8], as well as the already-in-place rules set by the FHA, which prohibited discrimination based upon race, sex, national origin, or familial status [9]. Had Roommates.com LLC worked together with the Fair Housing Council of San Fernando Valley, both of these sections could have been upheld.

Roommates.com LLC did not respect the rules of the housing industry they entered. They did not seek guidance in order to enter the industry with any level of competence pertaining to the systems in place. And choosing not to seek aid, not to follow the guidelines in place, went against *Section 2.2: Maintain High Standards of Professional Competence, Conduct, and Ethical Practice* [8]. They disregarded the ethical implication of their system, either not understanding it, or simply deciding it was a miniscule matter next to their success / the comfortability of the few over the many.

4) Comparison

Our personal ethics and the professional ethics of this case lined up surprisingly well. In a world where the largest tech companies often act with profit in mind as opposed to ethics, one member of our group was concerned that there were no such strong policies in place to govern the creation of tech companies, and the paths they took. Researching the ACM was a pleasant surprise to disprove this thought. Similarly to how our personal ethics discussed the impact of Roommates.com's practice on the community at large, the ACM outlines rules that prioritize community wellness. The guidelines that Roommates.com ignored in the FHA were paralleled by the sections they ignored in the ACM Code of Ethics. Adhering to one would have let them adhere to the other, if they had taken the time to conduct their practice ethically. Their conduct did not contribute to society's well-being, it did not take action to avoid discrimination, and it did not respect the existing infrastructure of the field they entered. As mentioned earlier, our agreement with the 2012 verdict does not mean we believe that the website is wholly blameless. The risk placed on applicants by requiring details that open them to discrimination was Roommates.com's responsibility to consider. There is not enough evidence to suggest that this was done with malicious intent. However, our personal ethics were so close in content to the professional ethics we researched, that we were left wondering how these harmful subjects of discrimination and harm weren't considered during company creation. That lingering wonder makes us more aware of the guidelines in place before us, and prioritizing them in a way that keeps public wellness at the forefront of our company's direction.

5) References

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