IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Consolidated Case Nos. 04-56916 and 04-57173

FAIR HOUSING COUNCIL OF SAN FERNANDO VALLEY, et al.,
Plaintiffs, Appellants, and Appellees,

v.

ROOMMATE.COM, LLC,
Defendant, Appellee, and Appellant

Appeals from the United States District Court
for the Central District of California
The Honorable Percy Anderson
United States District Judge, Presiding
Case No. CV-03-09386-PA (RZx)

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA IN SUPPORT OF NEITHER PARTY

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(c), I certify that the American Civil Liberties Union of Northern California does not have a parent corporation and that no publicly held corporation owns 10% or more of any stake or stock in it.

November 1, 2007
San Francisco, CA

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STATEMENT OF INTEREST OF AMICUS AND SOURCE OF AUTHORITY TO FILE

This brief is filed with the consent of the parties. *See* Ninth Cir. R. 29-2(a).

The American Civil Liberties Union of Northern California ("ACLU-NC") is a regional affiliate of the ACLU, a nationwide, nonprofit, nonpartisan membership organization with over 550,000 members. The ACLU-NC, founded in 1934, is the largest ACLU affiliate in the country, with approximately 55,000 members. It is dedicated to the defense and promotion of the guarantees of equality, freedom of expression, liberty and other individual rights embodied in state and federal constitutions and statutes.

The issues presented in this case touch on two core concerns for the ACLU-NC: (1) maintaining and expanding protections against invidious discrimination under the Fourteenth Amendment and state and federal anti-discrimination laws, including the fair housing laws; and (2) guarding against encroachments on freedom of expression on the Internet, whether by governmental entities or through private lawsuits that threaten the viability of the Internet as a forum for the exchange of information and ideas among a multitude of users.

The ACLU-NC has been a leading participant in both state and federal court cases challenging discrimination of all sorts. Among the many cases in which the ACLU-NC has represented litigants or weighed in as an amicus curiae are *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130 (9th Cir. 2003) (student on student sexual orientation harassment), *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131 (N.D. Cal. 2000) (racial profiling), and *Aguilar v. Avis Rent A Car System, Inc.*, 21 Cal. 4th 121 (1999) (interplay of employment discrimination statutes and First Amendment).

Similarly, the ACLU-NC has participated both as amicus curiae and as counsel of record in numerous state and federal cases defending free expression on the Internet, including, in particular, cases involving 47 U.S.C. section 230, the statute at issue here. Undersigned counsel both briefed and argued as amicus curiae in *Barrett v. Rosenthal*, 40 Cal. 4th 33 (2006) and in *Kathleen R. v. City of Livermore*, 87 Cal. App. 4th 684 (12001). In addition, we represented a website operator sued for defamation based on third party postings to a college teacher review site. *Curzon-Brown v. San Francisco Community College District*, S.F. Superior Ct. No. 307-335 (filed Oct. 21, 1999). Among the other Internet free speech cases in which the ACLU-NC has participated either as direct counsel or as amicus

are *Clement v. California Department of Corrections*, 364 F.3d 1148 (9th Cir. 2004); *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006), and *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

Because this case touches on matters of such long-standing importance to the ACLU-NC, the organization is particularly concerned that the outcome in this case give as much scope as possible to each of the interests at issue. This brief takes the position that that goal may best be achieved by deciding this case on the narrowest possible grounds. Our suggested resolution of each of the issues presented is intended to lead to that result.

INTRODUCTION AND SUMMARY OF ARGUMENT

This is a case in which fundamental values are at stake: ensuring that all people have access to housing free of invidious discrimination while at the same time preserving the Internet as a forum for free expression. In this case, they pull the Court in opposite directions.

Section 230 of the Communications Decency Act, 47 U.S.C. § 230 has enabled the Internet to fulfill its promise as a vibrant forum for the exchange of ideas and information. The amazing diversity of its content, first remarked upon by the Supreme Court in *Reno v. ACLU*, 521 U.S. 844 (1997), has expanded at an exponential rate. Today the Internet provides both an opportunity to access, and to participate in the creation of, content that could hardly be imagined ten years ago.

Ironically, it is the very success of the Internet that presents the difficult issues now before the Court. For many, the Internet has become an essential means of finding housing opportunities. Indeed, for at least a significant segment of those seeking housing, it may soon displace more traditional sources, becoming the venue of choice for bringing seekers and providers of housing together.

However, the unfettered and uninhibited world of the Internet, which is part and parcel of both its accessibility and the wealth of housing

information it provides, also presents opportunities for housing providers to express discriminatory preferences. In the past, the traditional media, governed as they are by state and federal fair housing statutes, served as a brake on those who discriminate. Newspapers are not permitted to run advertisements that violate fair housing laws; brokers and agents are not permitted to engage in screening or steering. The question presented by this case is how to reconcile the operation of section 230, which provides Internet intermediaries with immunity from liability for unlawful content provided by third parties, with the operation of the nation's fair housing laws.

In submitting this brief, amici are guided by two principles. First, that section 230 was intended to encourage the free exchange of ideas and information, not acts of discrimination. Accordingly, section 230 most emphatically does not provide immunity to a website operator either for its own content or its own conduct that violates state or federal anti-discrimination statutes. By the same token, however, it is essential to recognize and preserve the pivotal role played by section 230 in allowing free speech on the Internet to flourish. Section 230 removes the threat of costly litigation and potentially crippling damage awards that would

otherwise deter small, independent forum sites and large, powerful Internet Service Providers, alike, from providing a forum for the speech of others.

Thus, in deciding this case, we urge the court to write narrowly, resolving only the issues squarely presented, using as precise a standard as possible. Unintended consequences that can flow from broad pronouncements and sweeping rules are particularly likely when dealing with a technology in which rapid change is the norm and new and unanticipated developments lie just around the corner.

Ultimately, this case may not allow for an entirely satisfactory result. The aims of the fair housing laws cannot be fully effectuated without doing violence to section 230's core principle that preserving the Internet as a forum for free expression depends upon providing immunity to content intermediaries for the speech of others. Too loose a standard in determining whether a defendant has participated in the creation or development of content is an invitation to strip section 230 of any real force. On the other hand, defendants are not entitled to use the unlawful content of others as a shield for the content they, themselves, create or for their own conduct that allegedly violates fair housing laws.

In construing section 230, the critical task in this case is to carefully separate content and conduct that is legitimately attributable to Roommate,

and hence not entitled to section 230 immunity, from the content supplied by its members, to which section 230 immunity applies. Put another way, the Court must ask whether plaintiffs seek to impose liability on Roommate for what Roommate has said or done, or whether the basis of the alleged liability is content that originates with third parties. Amicus believes that applying section 230 in this manner yields the following results:[1]

First: Roommate is not entitled to immunity for the design of the questionnaire that it, itself, created and posted on its website. To the extent that the fair housing laws prohibit Roommate from asking the questions it asks—regardless of the answers given—section 230 immunity does not apply.

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[1] Because amicus believes this case should be remanded to the district court for further proceedings, the Court need not, and should not, address the liability and First Amendment issues raised by Roommate. Those arguments should be addressed in the first instance by the district court, particularly since the contours of those claims may change based on this Court's rulings on the section 230 issues.

Amicus recognizes that, in the context of shared living arrangements, there are significant questions whether state and federal fair housing statutes apply, and if so, whether they violate the First Amendment's protection of intimate association. However, whatever rule the court applies on section 230 immunity in this case will apply equally to other, similar sites offering housing for sale or rent. Thus, while statutory and constitutional analysis may later determine the liability questions presented by this particular case, they should not influence the outcome of the section 230 analysis.

Second: Section 230 does not apply to Roommate's conduct in using its members' protected characteristics as the basis for determining whether to notify them of a particular housing opportunity. Section 230 immunity applies when a plaintiff attempts to hold a content intermediary liable for the content supplied by a third party. The charge here is that Roommate takes third party content and uses that information to engage in its *own* conduct that violates the fair housing laws—it decides which profiles to bring to the attention of a particular member based on that member's gender, sexual orientation, or status as a person living with children.

Roommate is not entitled to section 230 immunity for a second reason, as well. Roommate's ability to engage in allegedly discriminatory email notifications is inextricably intertwined with the questions Roommate requires members to answer on its questionnaire. The former is not possible without the latter. Because there is no section 230 immunity for the questionnaire itself, there is no immunity for the screening that is a function of the questionnaire's design.

Third: Section 230 immunity does apply to the statements in the "comments" section of the member profiles that Roommate publishes. Roommate is not an information content provider with respect to these statements. The test of whether Roommate is an information content

provider cannot be, as the panel suggests, whether it "encourages, prompts, or solicits" discriminatory statements by others. This is a standard that would work a sea-change in the way section 230 has been interpreted to date. It is so elastic that it will inevitably weaken the protection Congress intended to extend to content intermediaries and will lead to inconsistent determinations in which there are no standards to provide guidance to the courts that must interpret the statute. Settled law, including the law of this Circuit, is more than sufficient to support the conclusion that section 230 properly applies to members' responses in the "comments" box.

ARGUMENT

I. SECTION 230 IMMUNITY DOES NOT APPLY TO THE QUESTIONNAIRE THAT ROOMMATE CREATED AND DESIGNED

There is no dispute that Roommate is the author of the questionnaire that it requires its members to complete. Indeed, this questionnaire is the lynchpin upon which Roommate operates many aspects of the site. For example, if the questionnaire did not insist that members provide information about themselves and their roommate preferences, Roommate could not use factors such as gender or the presence of children to determine which housing listings to tell home seekers about in its email notifications. Nor could it determine which listings to withhold.

It is particularly significant that it is Roommate, not its members, that determines the personal characteristics that are the subject of inquiry. Thus, while Roommate invites members to express preferences based on gender, sexual orientation, and familial status—and compels them to disclose their own status with respect to these same characteristics—it does not ask about race, religion, ethnicity, or disabilities. These are the choices that *Roommate* has made in designing its questionnaire.

Plaintiffs argue that Roommate violates the fair housing laws simply by asking the questions it does. AOB at 11 n.3. Thus under this theory, Roommate is liable regardless of whether discriminatory responses are provided by its subscribers. Roommate is being charged with liability based on its own content, not the content of a third party. *See Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003) (applicability of section 230 turns on whether defendant "created or developed the particular information at issue."). It is this factor that distinguishes Roommate from *Carafano*.

In *Carafano,* defendants' asserted liability turned not on the questions asked but on a third party's use of the questionnaire to create the challenged profile. Thus, Matchmaker could be held liable only if it were considered to have jointly created the profile through the combination of the questions

asked and the answers given. In this case, however, to the extent liability is predicated solely on the claim that the law does not permit Roommate to ask the questions it asks, it is Roommate's content, not that of a third party, that is the source of Roommate's asserted liability. Section 230 immunity does not apply.

Nor does *Batzel v. Smith*, 333 F. 3d 1018 (9th Cir. 2003) support a claim of section 230 immunity here. Relying on *Batzel*, Roommate argues that its questionnaire is simply a tool it uses in exercising editorial judgment as to whether or not to publish particular content. What Roommate is doing is actually quite different. In *Batzel,* plaintiff sought to impose liability on Cremers because he posted Smith's allegedly defamatory email to a website and listserv. This Court correctly held that making the editorial decision to include or exclude the email did not transform Cremers from a publisher into an information content provider. Cremers was exercising the traditional role of a publisher. He did not create the email. He merely chose to make it available. Here plaintiff seeks to hold Roommate liable for something *it* created: its questionnaire. Selecting someone else's content is quite different from publishing one's own.

No one disputes that in many respects Roommate is acting as a publisher. But section 230 immunity does not attach with respect to the

publication of all content on a website. It applies only to the extent that a plaintiff seeks to hold a website liable for "information provided by *another* information content provider." 47 U.S.C. § 230(c)(1) (emphasis added). There is no immunity for deciding what content of its own to publish. *See Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007) (interactive computer service provider remains liable for its own speech); *Anthony v. Yahoo!, Inc.*, 421 F. Supp. 2d 1257, 1262-63 (N.D. Cal. 2006) ("No case of which this court is aware has immunized a defendant from allegations that *it* created tortious content.") (emphasis in original); *Donato v. Moldow*, 374 N.J. Super. 475, 490, 865 A.2d 711, 720 (N.J. Super. Ct. App. Div. 2005) ("There is nothing inconsistent or unusual about a website operator being both an interactive computer service provider or user and an information content provider."). To the extent that plaintiffs seek to hold Roommate liable for the blank questionnaire, there is no section 230 immunity.[2]

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[2] For the same reason, the First Circuit's recent decision in *Universal Communication Systems, Inc. v. Lycos, Inc.*, 478 F.3d 413, does not support Roommate's argument. UCS did not claim that Lycos' construction and operation of its website was an independent source of liability, regardless of the content posted by others. Rather, it claimed that Lycos should be considered a content provider of the challenged postings because the design of Lycos' website made it easier for *others* to post defamatory material. The First Circuit rejected that claim holding, much as did this Court in *Carafano*, that making it "marginally easier for others to develop and disseminate

II. SECTION 230 IMMUNITY DOES NOT APPLY TO ROOMMATE'S ACTIONS IN ALLEGEDLY ENGAGING IN DISCRIMINATION IN ITS EMAIL NOTIFICATIONS

A. Roommate's Alleged Liability Is Based On Its Own Conduct And Content, Not On Third Party Content.

One of the services Roommate provides its members is email notification of profiles that may be of interest. AOB at 11. In doing so, however, Roommate limits a home seeker's notifications to only those housing providers willing to rent to individuals who match the providers' preferences with respect to characteristics such as gender and the presence of children. Appellants' Resp. to Pet. for Reh. ("Resp. Pet. Reh.") at 5. Roommate claims that section 230 provides immunity for the manner in which it determines which members will receive which notifications. *See* Pet. for Reh., Rule 35(b) Statement at 1. It does not.

Section 230 immunity applies only when liability is based on what a third party has said. With respect to the email notifications, Roommate is charged with liability not for the content of the profiles that it calls to its members' attention. It is charged with liability in using unlawful criteria in deciding whether or not to notify a member that a profile might be of

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misinformation . . . [i]s not enough to overcome Section 230 immunity." *Id.* at 420.

interest. *See Anthony v. Yahoo!, Inc.*, 421 F. Supp. 2d at 1263 (No section 230 immunity where Yahoo! accused of sending expired profiles to current members of dating site, representing that the profiles were of active members: "Because Anthony posits that Yahoo!'s manner of presenting the profiles—not the underlying profiles themselves—constitute fraud, the CDA does not apply.").[3]

Section 230 immunity does not apply to plaintiffs' screening claim for a second reason, as well. Roommate's ability to engaging in screening in notifying home seekers about particular housing opportunities is inseparable

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[3] The panel majority concluded that Roommate should be treated as an information content provider because "[b]y categorizing, channeling and limiting the distribution of users' profiles, Roommate provides an additional layer of information that it is "responsible" at least "in part" for creating or developing." *Fair Housing Council v. Roommates.com*, 489 F.2d 921, 929 (9th Cir. 2007). However, websites frequently engage in categorizing and channeling of user-provided content in their day-to-day operations without violating section 230, as cases such as *Carafano* make clear. Moreover, section 230 also protects content intermediaries that delete or edit a posting and, hence, arguably "limit" it. The difference is that the decision to "limit" the information is based on content, not on the protected characteristic of the member. Here, the basis for Roommate's liability is its alleged discriminatory *conduct* in using prohibited characteristics to determine whether to notify a member about a particular profile. Section 230 immunity does not apply to that conduct and this Court should so hold. It should do so, however, without relying on whether, by "categorizing, channeling, or limiting" information, Roommate has become an information content provider.

from Roommate's design of its questionnaire.[4] That, too, renders section 230 inapplicable to the charge of unlawful screening. It is Roommate's choice of the characteristics included in the "About Me" and "My Roommate Preferences" sections of the questionnaire that enables it to subsequently determine which "matches" it will include in its email notifications. Because Roommate has chosen not to ask about race, it performs no matches based on race. Because it does ask about whether a member lives with children, Roommate is able to limit the email notifications that it sends to single mothers to only those housing providers willing to accept children.

B. The Source of Roommate's Alleged Liability Here Is Different From Liability Based On A User-Initiated Search.

In ruling on the issues presented here, it is important to distinguish the basis of Roommate's alleged liability in this case from liability sought to be imposed as the result of a user-initiated search in which the role of the

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[4] The role played by Roommate's questionnaire in this case distinguishes it from the questionnaire in *Carafano*. *Compare Carafano*, 339 F.3d at 1124-25. First, as noted above, here it is alleged that the questionnaire itself is unlawful, irrespective of the responses provided by users. Second, while, like the structured questionnaire in *Carafano,* the Roommate questionnaire enables it to offer additional features, unlike *Carafano*, the additional feature enabled by the questionnaire—Roommate's allegedly discriminatory notifications—is, itself, claimed to be unlawful.

website is simply to process the search request. In a user-initiated search, a third party—the user—supplies the search terms that determine the universe of information to be retrieved. Thus the search and the information provided in response to the search is the product of content (*i.e.*, the search terms) provided by the user. For the same reasons that section 230 immunity applies to websites when they transmit or process other third party content, it applies to user-initiated searches.

Roommate's email notifications here have nothing to do with user-generated searches and everything to do with an allegedly discriminatory notification process. Roommate's conduct here is akin to denying access to its search capabilities to some users because of their gender or because they live with children. Just as Roommate could not discriminate in providing access to its search mechanism based on protected characteristics, it may not engage in discrimination in deciding which home seekers are notified of which profiles based on those characteristics.

Similarly, this court need not reach the question of whether section 230 applies to Roommate's structured search function, which allows searches based on protected characteristics. That structured search function is made possible only because of the questions Roommate asks on its questionnaire. If, as plaintiffs contend, Roommate's questionnaire itself is

unlawful, then a structured search using protected characteristics will no longer be possible because Roommate will not be able to collect the information in structured fields. A narrowly written decision that focuses on the fact that it is Roommate, not the user, that (a) decides to undertake the screening at issue here; and (b) is able to engage in that screening only because *it* has chosen to include categories such as gender, sexual orientation, and whether the home seeker has children (but not race or other protected characteristics) on its questionnaire is all that is required to resolve this case.[5]

This court should not speculate as to whether section 230 immunity might or might not apply in some other case involving a structured search function until that case is presented to it. Roommate's alleged liability here stems not from content posted by others but from its own conduct and content, irrespective of its search mechanism.

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[5] Similarly, if the questionnaire design violates the relevant fair housing statutes, and if section 230 provides no immunity for the questionnaire, presumably Roommate will be required to eliminate the challenged categories of information from its drop-down menus. If that happens, then not only will Roommate not be able to make matches based on the challenged preference and user characteristic categories, those standardized preference and member characteristic categories will no longer appear in its profiles. Thus any discriminatory content will be limited to the open-end response in the "comments" section.

III. SECTION 230 IMMUNITY APPLIES TO THE STATEMENTS IN THE "COMMENTS" SECTION OF THE MEMBER PROFILES THAT ROOMMATE PUBLISHES

Existing case law, including this Court's decisions in *Carafano v. Metrospalsh.com, Inc.*, 339. F.3 1119, and *Batzel v. Smith*, 333 F. 3d 1018, amply supports the conclusion that Roommate is entitled to immunity under section 230 for publishing its members' statements in the "comments" section of their profiles. In determining whether a defendant is an information content provider, *Carafano* instructs that the inquiry should focus on "the portion of the statement or publication at issue." *Carafano,* 339 F.3d at 1123; *see also id.* at 1125 ("The critical issue is whether [defendant] acted as an information content provider with respect to the information that appellants claim is false or misleading." (quoting *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 717 n.11 (2002)); *accord, Batzel*, 333 F.3d at 1031. The "comments" box at issue here is indistinguishable from the open-ended questions in *Carafano*. Section 230 immunity applies.

Plaintiffs seek to avoid this result by arguing that Roommate is an information content provider because it actively solicited or encouraged the posting of the challenged content. Resp. Pet. Reh. at 15. The panel majority opinion also seems to suggest whether a defendant is an information content provider turns on whether the defendant "prompt[s], encourage[s], or

solicit[s]" the content in question. *Fair Housing Council v. Roommates.com*, 489 F.2d at 929.[6]

Even under that overly broad standard, the panel majority concluded that Roommate was entitled to immunity for users' postings to the comments section. *Roommate.com*, 489 F.3d at 929. But that is not the standard to be employed. It is a formulation so broad and indefinite that it risks rendering section 230 meaningless. It will lead to inconsistent and irreconcilable results, and will undermine Congress' intent in enacting this provision.

This Court's decision in *Carafano* provides the appropriate terms for determining whether a defendant is an information content provider with respect to the comments section in this case. *Carafano* instructs that the court should look to whether the defendant "play[ed] a significant role in creating, developing or 'transforming' the relevant information." *Carafano*, 339 F.3d at 1125. So long as the "essential published content" was provided by a third party, "[t]he interactive service provider receives full immunity regardless of the specific editing or selection process." *Id.* at 1124. "The fact that some of the content was formulated in response to Matchmaker's questionnaire does not alter this conclusion." *Id.; see also Donato v.*

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[6] That formulation emerges from extended dictum in part 2 of the panel decision. *See id.* at 928. The opinion, itself, recognizes that its speculation about the result in the hypothetical it posits is unnecessary to its decision.

Moldow, 374 N.J. Super. 475, 500, 865 A.2d 711, 726 ("Development requires material substantive contribution to the information that is ultimately published.").

Terms such as "prompt," "encourage," "suggest," and "solicit" are simply too expansive to provide meaningful guidance or to ensure that content intermediaries are not labeled content providers in situations where section 230 immunity applies. For example, in *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.C. Cir. 1998), the plaintiff argued that Drudge was "not just an anonymous person who sent a message over the Internet." *Id.* at 51. AOL had entered into a contract for him to provide his column and had promoted that column to its subscribers as a source of rumors. AOL was also entitled under its contract to edit the content of the column. Nevertheless the court held that AOL was immune under section 230.

Plaintiffs' proposed standard offers no principled way for courts to draw the line intended by Congress. *Cf. Barrett v. Rosenthal*, 40 Cal. 4th at 50 (noting that adopting a distributor-based rule of liability would lead to confusion and "foster disputes over which category [publisher or distributor] the defendant should occupy."). A website that invites users to submit ratings or reviews could be said to be soliciting those ratings or reviews and is therefore liable if they prove to be defamatory. The same is true of

auction sites that both solicit others to submit items and solicit feedback about other sellers on the site. *See Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816 (2002). Does a hotel rating site suggest, encourage, prompt, or solicit defamatory comment when it invites its users to rate the cleanliness of a hotel and provides a range of responses from "spotless" to "filthy?" Section 230 was designed to prevent this kind of mushy inquiry.[7]

We recognize that there are instances in which two parties do, indeed, collaborate on the creation or development of content such that both may be held liable. We also recognize that there will be instances in which those two parties may engage in a subterfuge designed to enable the deep pocket to invoke immunity under section 230, casting only the impecunious party as the information content provider. But this is not such a case and it is far better to wait until that case presents itself before determining whether the *Carafano* rule will be adequate to the task of unmasking the subterfuge or whether some other standard must be developed. In this case, focusing on the lawfulness of Roommate's own words and conduct will, if plaintiffs are correct on their underlying theories of liability, be more than sufficient to

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[7] To the extent that the "solicitation" is, itself, unlawful, the defendant's liability turns on whether its own words constitute the prohibited solicitation. The focus in that inquiry is, at it should be, on what the defendant said, not on what a third party said in response.

remedy the harm flowing from the structured portion of the questionnaire that Roommate created and the use to which it—not third parties—put that information in limiting access to housing listings.

CONCLUSION

Section 230 does not apply in this case to the extent that Roommate's liability is predicated upon the questions asked in the questionnaire it designed, without respect to the responses provided by its members. Roommate is also not immune for its affirmative decision not to provide home seekers with email notifications of housing opportunities when the home seeker does not meet the allegedly discriminatory preferences of the provider. However, section 230 immunity does apply to members' statements in the comments section of their profiles. That is content attributable solely to Roommate's members.

Dated: November 1, 2007

Respectfully submitted,

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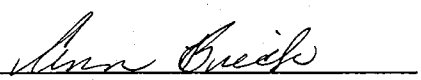
By: 
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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7) and Ninth Circuit Rule 29-2(c)(3), the attached brief is proportionately spaced, has a typeface of 14 points and, according to the word-count feature of Microsoft Office Word 2003, contains 4,139 words, including footnotes, but excluding the parts of the brief exempted by Rule 32(a)(7)(B)(ii).

November 1, 2007

Ann Brick

Counsel for Amicus Curiae

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Fair Housing Council of San Fernando Valley, et al., v. Roommate.com, LLC
Consolidated Case Nos. 04-56916 and 04-57173

I, Meghan Loisel, declare that I am a citizen of the United States, employed in the City and County of San Francisco; I am over the age of 18 years and not a party to the within action or cause; my business address is 39 Drumm Street, San Francisco, CA 94111.

On November 2, 2007, I served 2 copies of the attached

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA IN SUPPORT OF NEITHER PARTY

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 2, 2007 at San Francisco, California.

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Meghan Loisel