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## SHARING ECONOMY



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A LOOK AT AIRBNB'S LEGAL BATTLES ACROSS THE US

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By Thomas A. Dickerson  
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**As Airbnb seeks to expand in China much like Uber's aborted invasion, it is rapidly trying to improve its compliance image at home. In its efforts to placate local officials by giving up some of its hosts who may be violating local laws, Airbnb has surrendered yet again. This time in its hometown, San Francisco.**

**"In the settlement, Airbnb essentially agreed to San Francisco's demand to be more transparent about its hosts and to help enforce existing regulation laws". This battle and others with New York City, Santa Monica, Nashville, Chicago and New Orleans started last year when these municipalities decided to get tough and ramp up the penalties for Airbnb's reluctance to more thoroughly police and report its hosts for violating local laws.**

### San Francisco

**In *Airbnb Inc. v. City and County of San Francisco*, an action in which Airbnb challenged San Francisco Ordinance 178-16 enacted Aug. 2, 2016 which "makes it a misdemeanor to collect a fee for providing booking services for the rental of an unregistered (apartment)" on the grounds of "(1) 'preemption' under the Communications Decency Act...(2) content-based speech restriction under the First Amendment to the United States Constitution and (3) imposition of criminal strict liability", the Court denied Airbnb's motion seeking a preliminary injunction "on the primary grounds urged by plaintiffs, but further proceedings are warranted on an issue relating to fair enforcement".**

### The Settlement

**On May 1, 2017, Airbnb and San Francisco settled this case with Airbnb agreeing to "collect data from people who rent their homes for less than a month on their sites. San Francisco will use that information to vet and register hosts.**

Companies like Airbnb will have to regularly provide the city with the data it needs to enforce local laws. The companies will also cancel reservations and deactivate listings if the city notifies them of an invalid registration. The city also preserved its ability to hold companies like Airbnb accountable by fining them \$1,000 per violation if they do not take down illegal listings”.

### **Santa Monica**

In *Airbnb Inc. v. City of Santa Monica*, an action in which Airbnb challenged a City of Santa Monica ordinance set forth in Chapter 6.20 of Santa Monica Municipal Code which ‘seeks to hold Airbnb liable for content created by third-party users, but punishing Airbnb for listings posted to its platform where those listings do not comply with the law’ The Court denied Airbnb’s motion for a preliminary injunction on Sept. 22, 2016.

### **Nashville**

And in Nashville, Tennessee, the Court on Oct. 28, 2016, ruled in *Anderson v. The Metropolitan Government of Nashville and Davidson County*, that a city ordinance regulating short-term rentals such as those advertised by Airbnb is vague and unconstitutional.

### **New York State**

In New York State Governor Andrew Cuomo signed into law New York Multiple Dwelling Law Section 121 and New York City Administration Code Section 27-287.1 [the “Act”] which applies to a “class A” multiple dwelling which is defined “as a multiple dwelling that is occupied for permanent residence purposes”. The Act seeks to prohibit “advertising that promotes the use of dwelling units in a class A multiple dwelling for other than permanent residence purposes” and imposes stiff civil penalties for doing so, i.e., “not more than one thousand dollars for the first violation, five thousand for the second violation and seven thousand five hundred dollars for the third and subsequent violations’. The Act defines ‘advertise” to include “any form of communication for marketing that is used to encourage, persuade and manipulate viewers” and appears to apply to the hosts who advertise their units and the medium through which the advertisement are made known to the public, e.g., Airbnb and Homeaway.com.

### **Airbnb Sues New York State**

Consequently, Airbnb, as it has in San Francisco and Santa Monica, California, filed a lawsuit in federal court, this time against New York State [*Airbnb Inc. V, Eric Schneiderman*, 16 CV 8239, JB, (S.D.N.Y.)] challenging the Act. Airbnb applied for a preliminary injunction to block enforcement of the Act.

## **Vicarious Liability For Airbnb?**

**To the extent that the Act seeks to penalize Airbnb directly for illegal acts of its hosts, the Airbnb complaint states, in part, that “the Act directly conflicts with, and is preempted by, section 230 of the Communications Decency Act of 1996, 47 U.S.C. 230 (the “CDA”). Application of the Act to Airbnb would hold Airbnb liable for the content of rental listings created and posted by third-parties on Airbnb’s platform. As such, the Act unquestionably treats online platforms such as Airbnb as the publisher or speaker of third-party content and is completely preempted by the CDA...The Act also suffers from several other defects: It is an unjustifiable content and restriction on speech in violation of the First Amendment, its lack of a mens rea or scienter requirement violates both the First Amendment and the Due Process Clause; it is impermissibly vague regarding whether its provisions apply to hosting platforms like Airbnb, and it violates the home rule clause of the New York State Constitution”.**

## **Settlement**

**New York State was subsequently dropped as a defendant and the case resolved on Dec. 3, 2016. In essence, Airbnb sought to protect itself by agreeing to give up more of its hosts who may be violating local laws. “But Airbnb on Friday agreed that it would drop the suit as long as New York City enforces the new law only against hosts and does not fine Airbnb...The agreement is a victory for opponents of Airbnb. The company and New York authorities have battled for years over the legality of offering short-term lodging through the service...Since 2010, it has been illegal in New York to rent out a whole apartment on Airbnb for fewer than 30 days. In October, Airbnb said it was willing to crack down on people in New York City who rent out multiple homes, bowing to pressure from politicians and tenants’ rights groups who said the company, had made it harder to find affordable housing in the city”.**

## **Conclusion**

**Airbnb is popular in New York State, the number of hosts having grown from 15,000 in 2014 to 45,000 in New York City and 13,000 more upstate in 2016. However, the Attorney General investigated Airbnb from 2010 to 2014 and found that 72 percent of the hosts in New York City were illegal, with commercial operators constituting 6 percent of the hosts and supplying 36 percent of the rentals. Airbnb needs to enforce local laws with increasing vigor in order to accommodate local officials.**