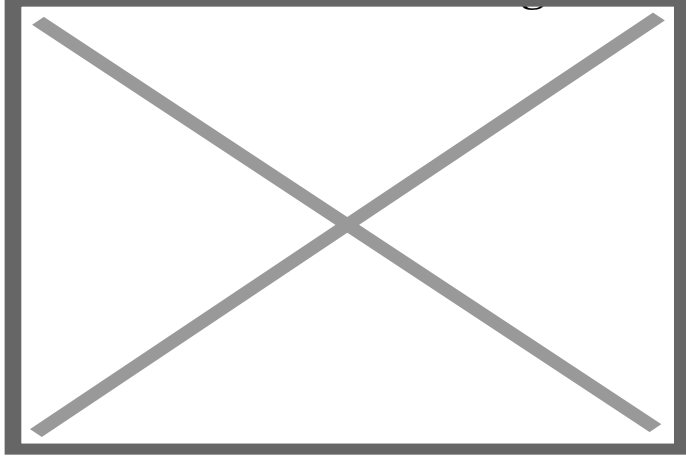


Ordinance Prohibiting Short-Term Rentals Did Not Conflict with Federal Policies Promoting Development of the Internet



The Ninth Circuit held that a local ordinance prohibiting

short-term vacation rentals (such as those available on Airbnb and other websites) did not conflict with Congressional policies fostering development of the Internet or violate the First Amendment. [Homeaway.com v. City of Santa Monica](#), No. 18-55367 (9th Cir., March 13, 2019). Finding that short-term rentals had negatively affected the quality and character of its neighborhoods, the City of Santa Monica passed an ordinance regulating the short-term vacation rental market by authorizing licensed "home-sharing" (rentals where residents remain on-site with guests) but prohibiting all other home rentals of 30 consecutive days or less. As to home-sharing rentals, the ordinance imposed certain obligations directly on hosting platforms such as Airbnb, including disclosing certain listing and booking information regularly to the City and refraining from booking transactions for properties not licensed by the City. Airbnb and HomeAway.com sued the City, arguing that the Ordinance violated the Communications Decency Act of 1996 ("Act"), which provides internet companies with immunity from certain claims in furtherance of congressional policy "to promote the continued development of the Internet and other interactive computer services." They also contended that the Ordinance effectively imposed a "content-based financial burden" on commercial speech in violation of the First Amendment. The Ninth Circuit rejected both claims. The court found no merit to plaintiffs' argument that the Ordinance violated the Act because it required them to monitor and remove third-party content, and therefore interfered with federal policy protecting internet companies from liability for posting third-party content. The court stated that the Ordinance prohibited processing transactions for unregistered properties; it did not require plaintiffs to review the content provided by the hosts listing on their websites. Rather, the only monitoring that appeared necessary to comply with the Ordinance was of the incoming requests to complete a booking transaction—content that, while resulting from the third-party listings, was "distinct, internal, and nonpublic." The court also rejected plaintiffs' claim that the Ordinance was preempted by the Act, concluding that the Ordinance would not pose an obstacle to Congress's aim of promoting "the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation." The court acknowledged plaintiffs' concerns about the difficulties of complying with numerous state and local regulations but pointed out that it had consistently avoided a broad reading of the Act "that would render unlawful conduct magically . . . lawful when [conducted] online," and therefore "give online businesses an unfair advantage over their real-world counterparts." Like brick-and-mortar businesses, the court said, internet companies had to comply with any number of local regulations concerning employment and taxes as well as zoning. As to the First Amendment claim, court noted that the Ordinance was

plainly a housing and rental regulation, which did not target speech or otherwise regulate expressive conduct. Because the prohibited conduct at issue -- completing booking transactions for unlawful rentals -- consisted only of nonexpressive conduct, the Ordinance did not implicate the First Amendment.

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