

3-20-2018

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Recommended Citation

Barken, Marlene; Seaquist, Gwen; and Bramhandkar, Alka (2018) "AirBNB: A Digital Platform For Sharing Or Excluding?," *North East Journal of Legal Studies*: Vol. 37 , Article 1.

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AIRBNB: A DIGITAL PLATFORM FOR SHARING OR EXCLUDING?

by

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INTRODUCTION

Airbnb's meteoric rise to the #7 hotel brand¹ in the 9 years since its founding is both astounding and controversial. Having completely disrupted the travel industry, Airbnb's digital platform has enabled people to make money by renting out their property, but has it also provided the technology for private individuals, acting as Airbnb host surrogates, to practice not so subtle discrimination? This paper will examine the civil rights and fair housing claims brought by Gregory Selden in his class action suit against Airbnb.

The practices of Airbnb's competitors will be compared, and recommendations will be made for eliminating discrimination on such social media platforms.

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BACKGROUND

As of 2016, Airbnb rentals accounted for nine percent of total lodging units in the ten largest US markets.² The company claims to have a presence in 34,000 cities in more than 191 countries, with over 2 million listings.³ After its most recent funding efforts, Airbnb boasts a \$30 billion valuation, making it the second most valuable tech startup after Uber.⁴ CEO Brian Chesky anticipates that they will earn as much as \$3.5 billion a year by 2020. Yet the company has spent less than \$300 million of the \$3 billion it has raised from outside investors.⁵ The secret to its success: Airbnb utilizes the Internet as a vehicle for worldwide commercial exchanges without any middlemen. Its digital platform provides users with connections to willing hosts and efficiently contracts out all the operational and managerial expenses incurred by traditional hotels.⁶

This zero-marginal-cost business model brilliantly eliminates the overhead of owning brick and mortar hotels, including associated sales, occupancy, real estate, franchise and income taxes, as well as the need to hire and pay staff. By off-loading all the customary expenses of hotel services to its huge network of independent hosts, Airbnb effectively bypasses a regulatory licensing regime built up over decades to protect everything from health and safety to labor rights and guarantees of equal access to public accommodations. Perhaps most insidious, the very construction of the Airbnb platform provides the means to undermine anti-discrimination laws. Hosts offer accommodations to the public and then review guest profiles to select a match.⁷ The exchange of photos and user identities has played a tremendous role in building trust, accountability, and a sense of safety and “belonging” to the Airbnb “community.”⁸ Unfortunately, the same technology that promises to connect can also be used to exclude.

Enter Gregory Selden, a 25-year-old African American male. In March 2015, Selden inquired about the availability of a Philadelphia accommodation from an Airbnb host listed with the screen name Paul. Selden was rejected by Paul and told that the spot had been filled, but later the same day he found

Paul's listing on the site indicating that the accommodation was still available. Believing that he was discriminated against because of his race, Selden created two imitation Airbnb "white" profiles to seek accommodation once again from Paul. One had similar demographics as Selden, the second was an older white male. Selden used the two imitation profiles to request accommodations for the exact same dates he had originally sought. From Paul's view, the only information he had was the name, profile picture, location and how long the fake applicants had been members of the Airbnb community. On the same day that Paul rejected Selden, Paul immediately accepted both white imitation Airbnb accounts. Selden contacted Airbnb, but he received no response.⁹ His story was remarkably like that of Quirtina Crittenden, an African American business consultant who was featured in an April 2016 NPR segment. She had started the Twitter hashtag, "#airbnbwhileblack."¹⁰ The following month, Selden took his experiment to court, and not surprisingly, to social media platforms. His class action discrimination complaint spurred thousands of retweets from individuals who had suffered the exact same disparate treatment from Airbnb hosts, and #airbnbwhileblack went viral.¹¹

On the academic side, three Harvard Business School professors had likewise concluded that discrimination persists and may be exacerbated in online platforms.¹² Their first study in 2014 found that nonblack hosts could charge more than black hosts, and black hosts saw a larger price penalty for having a poor location relative to nonblack hosts.¹³ Their second study published in September 2016 corroborated Selden's experience. The professors invented a name that they thought was distinctively "white" sounding and another name that they believed would be interpreted as distinctively "African-American." Their theory was that some Airbnb hosts are inherently racist and when asked to rent their property to an African American, would falsely report the property as unavailable, but report the same property on the same date available to the "white sounding name." Their premise was uncannily accurate. The experiment found that those with African-American names were 16% less likely to be accommodated as a White applicant.¹⁴ The authors concluded that, "inquiries from guests with White-sounding names are

accepted roughly 50% of the time. In contrast, guests with African-American sounding names are accepted roughly 42% of the time.”¹⁵ A similar study that surveyed 1200 plus hosts in Boston, Chicago and Seattle found that guests with African-American names were 19% less likely to have their requests to book accepted than guests with Caucasian names.¹⁶

Selden’s case and the Harvard study graphically highlight the racial discrimination that continues to flourish in the United States. In itinerant housing, it exists on a profound level, significantly impacting business and interstate commerce, to say nothing of the demoralizing impact it has on an entire population. Given the range of anti-discrimination laws in the United States, one would assume such discriminatory practices would be banned. Yet because of the blurred lines between what is private and public in the brave new world of social media, little if any law exists to prevent these discriminatory practices from occurring.

The following section will review the three major judicial pronouncements that underpin laws prohibiting racial discrimination at places of public accommodation. Each of these will be discussed from an historical vantage point and then be applied to Selden’s claims of violation of Title II of the Civil Rights Act of 1964, section 1981 of the Federal Civil Rights Statute, and the Fair Housing Act.

THE LEGAL ARGUMENTS

The lawsuit by Selden against Airbnb exemplifies the arduous uphill climb plaintiffs face when bringing a lawsuit against Airbnb. As is typical of social media websites, Airbnb makes it a condition of use that all users waive their rights to a trial and instead must use arbitration to settle any disputes. Therefore, to date, Selden’s lawsuit has been spent trying to wiggle out of the arbitration clause so that he can get to the substantive legal issues dealing with discrimination. The United States District Court for the District of Columbia, however, ruled that the arbitration clause prevailed, thus barring his action. Selden has appealed.

Assuming for a moment that Selden can prevail on the issue of the arbitration clause, the next formidable hurdle concerns how to classify Airbnb. Is it a hotel? A rental agency or a website provider? As one writer stated, “These questions remain unanswered. Yet policy makers cannot regulate the sharing economy without answering them.”¹⁷ To avoid any of the responsibility and liability associated with running hotels, Airbnb describes itself as a community of hosts and users. “Airbnb is not a hotel; it does not operate, own, manage, sell or resell any properties. Nor is Airbnb a hotel aggregator.”¹⁸

Nonetheless, Airbnb does, in some ways, resemble a hotel. The company, not the host, manages payments for rooms, and ensures that guests pay appropriate local hotel taxes. The company, not the host, contracts for insurance against damages to accommodations. Airbnb advertises and brands its alternative experience akin to a hotel. The U.S. hotel industry certainly [considers](#) it a peer. In a forthcoming paper, “The New Public Accommodation,”¹⁹ industry analysts argue that Airbnb could be legally considered a hotel because it is replacing hotels, and meets the same consumer needs as a hotel.²⁰

In his brief, Selden likened the company to a hotel and its hosts to rental agents or hotel employees.²¹ There is an important reason Selden wants Airbnb classified as a hotel: it would then be covered by Title II of the Civil Rights Act. This law provides that places of public accommodation may not discriminate on the ground of race, color, religion or national origin. A place of public accommodation includes such businesses as restaurants, gas stations, exhibition or entertainment venues, and any inn, hotel, motel, or other establishment which provides lodging to transient guests.²²

Even if Airbnb were to be classified as a place of public accommodation, one notable exception exists that may have a direct impact on Title II’s application. The Act explicitly excludes “an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.”²³ This exception is commonly referred to as the “Mrs. Murphy exemption” because of a comment by Republican Sen. George D. Aiken of Vermont during Title II’s

inception. He suggested that Congress “integrate the Waldorf and other large hotels, but permit the ‘Mrs. Murphy’s,’ who run small rooming houses all over the country, to rent their rooms to those they choose.”²⁴ Thus, those rentals located within a building with four or fewer rooms to let would not come under the auspices of Title II. What Congress had in mind was the typical mid-twentieth century boarding house, not today’s city dwellers looking to make money on short-term rentals of apartments in large buildings with multiple units.

If Airbnb were to be classified as a place of public accommodation, Selden would also have to show that its activities affect interstate commerce.²⁵ Of all the arguments, this would be the easiest to prove. This requirement invokes the power of Congress to “regulate commerce among the states” as set out in the Commerce Clause contained within Article II, §8 of the United States Constitution. While numerous cases exist interpreting the power of Congress to regulate interstate commerce, one seminal case dealing with that power in the context of Title II stands out: *The Heart of Atlanta Motel*.²⁶

Originally brought before the United States Supreme Court to challenge the racially discriminatory practices of a motel located in Atlanta, Georgia, the case centered on the application of Title II to a place of accommodation. There was no doubt the motel fell within the public accommodation definition of the statute. The fundamental question remained whether the discrimination affected interstate commerce. Holding that it did, the court found that the motel’s location near an interstate in Atlanta with 216 rooms available for rental by transient guests, as well as the owner’s solicitation of guests both on the interstate highway and by use of billboards, placed it squarely within the ambit of the statute.²⁷

Finding “overwhelming evidence that discrimination by hotels and motels impedes interstate travel” the court stated that the reach of Congress in enacting such legislation “extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment

of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce.”²⁸ In short, if the business engages in activity that impacts interstate commerce, then it is within the sphere of Title II. “From the plain language of the statute, it is clear Congress' intent in enacting Title II was to provide a remedy only for discrimination occurring in facilities or establishments serving the public: to conclude otherwise would obfuscate the term “place” and render nugatory the examples Congress provides to illuminate the meaning of that term.”²⁹

If the paucity of racial discrimination cases since the decision is any indication, the outcome in *Heart of Atlanta* put an end to any question about Title II's application to racial profiling at places of public accommodation that impact interstate commerce. Here Selden's argument is extremely powerful. All of Airbnb's hosts are soliciting business on the Internet, certainly impacting interstate commerce, and serving the public—exactly Title II's target. Selden's hurdle is whether he can get beyond the boarding house exception by either aggregating hosts operating under the Airbnb umbrella and/or arguing that the exception does not apply to individuals utilizing a social media platform to advertise and offer places of public accommodation.

Another legal theory advanced in Selden's complaint is a violation of Title VIII of the Civil Rights Act of 1968, or the Fair Housing Act (FHA). This act prohibits discrimination in housing specifically, usually for longer-term rentals and sales. “It casts a broader net than Title II, including in its protections not only race, color, religion and national origin, but also sex and family condition.”³⁰ Moreover, the Supreme Court has held that there is no requirement under the FHA to show discriminatory intent.³¹

For example, one way in which the Fair Housing Act is a broader provision is that it applies not only to landlords but also to brokers.³² Currently, a lawsuit pending in the U.S. District Court for the Southern District of New York, alleges that Airbnb acts as a “short-term rental site that is ...operating without a real estate broker's license in New York.”³³³⁴ The

class action suit is being brought by “all Airbnb users who have listed or rented properties in New York State over the last six years.”³⁵ They claim that because Airbnb “facilitates, controls and processes payments for rentals through its website after listing and advertising the properties,”³⁶ that it should be characterized as a broker. A finding that the company is a broker would have significant ramifications for Airbnb, in addition to fines for operating as a broker without a license. The Fair Housing Act allows both actual and punitive damages as well as damages for emotional distress, all conceivable awards to plaintiffs suffering from discrimination.³⁷

Finally, Selden also invokes 42 USC 1981, a federal civil rights statute that prohibits racial discrimination in contracting. This statute appears to be the easiest to apply to Airbnb, since every agreement (or denial of accommodation) between a host and a user is contractual. The difficulty of pursuing a remedy under this statute, however, is that a plaintiff alleging a violation must prove that the discrimination by the host was intentional. Selden’s fake profile experiment might be sufficient proof.

AIRBNB’S RESPONSE TO SELDEN’S COMPLAINT

Airbnb has mounted a strategic, two front response to the Selden suit. Based on its Terms of Service, the company has a predictably strong defense to Selden’s claims, arguing that all disputes must be settled by binding arbitration.³⁸ On November 1, 2016, the U.S. District Court for the District of Columbia granted Airbnb’s Motion to Compel Arbitration and stay the case. The court acknowledged that Airbnb’s Terms of Service agreement constitutes an online adhesion contract, but it ruled that by choosing to sign up for Airbnb through the commonplace notification screen, click, and subsequent use of the site, Selden manifested his assent. Furthermore, the court found that Selden’s agreement to arbitrate all claims includes statutory civil rights claims, and that the arbitration clause is not unconscionable.³⁹

Selden appealed the ruling to the U.S. Court of Appeals for the District of Columbia Circuit, strenuously arguing that

Airbnb's arbitration clause limits class action proceedings and thus the ability of African Americans to obtain the necessary injunctive relief to redress Airbnb hosts' ongoing and widespread discrimination. Airbnb moved to dismiss the appeal as premature since there is no final judgment, only an interlocutory order for arbitration to proceed. Given the plaintiff class' inability to otherwise vindicate statutory rights, Selden responded that the appellate court should exercise pendant jurisdiction and deem the arbitration clause unconscionable and unenforceable.⁴⁰ Oral argument has not been scheduled yet.⁴¹

At the same time, Airbnb has apologetically admitted that the founders weren't fully conscious of possible discrimination when they designed the site, and the company has very publicly taken steps to proactively address these concerns.⁴² Airbnb hired former U.S. Attorney General Eric Holder and Laura Murphy, a former American Civil Liberties Union director to advise the company. CEO Brian Chesky released their report in September, 2016, and the company introduced several new rules and procedures. Users must sign an anti-bias community commitment statement and pledge not to discriminate while using the service, and hosts who violate the new policy risk being suspended or removed from the site. Customers who believe they were denied lodging due to discrimination will be guaranteed lodging, though it is not clear how that promise will be implemented. To further guard against racial discrimination, Airbnb plans to reduce the prominence of guests' photos when they book rooms, while enhancing other parts of their profiles.⁴³ Airbnb also provides potential hosts a new toolkit to create awareness and sensitivity training. The toolkit, designed together with social psychologists, is aimed at helping hosts understand and act against bias.⁴⁴

More significant are changes to the actual design of the website. There are a few tools users can utilize to tackle bias on the website, such as the flag button to report any instances of discrimination and the Instant Book feature which enables travelers to book a listing without waiting for approval from the host. Unfortunately, not all hosts utilize this feature.⁴⁵ The

company was set to increase the availability of Instant Book to at least half of its two million listings by January 2017, in addition to adding a feature that automatically blocks any dates offered by a host if they've already rejected a request for those dates. This would likely be the most meaningful change.⁴⁶

COMPARING COMPETITORS

Airbnb's explosive growth and the general acceptance of the sharing economy have spawned competition. Some of these new players are old established companies in the travel industry. For example, Expedia recently purchased Home Away for \$3.9 billion. Home Away lists professionally managed properties that are long-term rentals. Home Away attracts vacationers seeking resort locations, while Airbnb serves a wider variety of business and pleasure travelers visiting tourist spots, cities and residential areas.⁴⁷ Expedia now also owns Vacation Rentals by Owners (VRBO), which was a pioneer in the industry and was acquired by Home Away in 2006. VRBO operates much like Airbnb.⁴⁸

Trip Advisor, the oldest, largest, and most trusted online travel service, runs Vacation Rentals, which offers a seamless booking experience by eliminating the hassle of multiple bookings. Vacation Rentals has at least 830,000 listings and a presence in 190 countries.⁴⁹ Home Away, Vacation Rentals, and VRBO all require some personal, identifying information for an initial booking, including first and last name, but additional "introductory" information is optional, and no picture is requested.

The third significant competitor is Priceline, which owns Bookings.com and Villas.com. Both are vacation rental oriented. Villas.com has over 240,000 rentals worldwide and patrons can utilize filters such as pet friendliness and close-by golf courses.⁵⁰ Notably, Booking.com is the only website that offers instant booking. Listings on the website appear to be limited to traditional lodges, hotels, inns, and resorts, not single-family homes or condos.

Another promising competitor is Tansler, a home sharing

platform that functions in a reverse auction style, allowing renters to choose their price, rather than their host. Renters browse the properties in their preferred destination along with their list prices. They then add the properties they like to their auction cart, which is then sent to the hosts. There is a 24-hour period in which hosts can either accept or deny the renter's offered price.⁵¹ This approach eliminates a host's opportunity to discriminate based on a guest's profile.

Other competitors have emerged to cater to specific groups of travelers. KidandCoe.com offers rentals that are child friendly and have children's rooms and amenities. It is geared toward families, but so far it has relatively few properties in each of the cities where it has a presence.⁵² Users must send a message to the host explaining their family needs, but no picture is required. Noirbnb and Inclusive (formerly Noirebnb) were both formed in 2016 after their founders experienced discrimination when trying to rent through Airbnb. They are aimed at serving African American travelers and members of other minority groups, such as the LGBT community and travelers of Latino origin.⁵³ Inclusive requires users to create a profile, including name, gender, language and personal travel and life preferences, though no picture is requested. Noirbnb is still in the early stages of financing and web development. Both companies state that they welcome all who look for an inclusive travel experience, but one can't help wondering if such alternatives may lead to self-segregating sites. (See Appendix 1, "Comparison of Airbnb's Competitors.")

Interestingly, despite the backlash against Airbnb for discrimination claims, none of its competitors require hosts to read about discrimination or sign an agreement stating that they understand that they cannot discriminate based on race, color, ethnicity or national origin. As noted above, many do not have an instant book feature, instead relying on a matching process based on the host's posted materials and the guest's submission of personal information. Providing users with a system to shop for all sorts of attributes that may range from multilingual hosts to food compatibility and child friendly accommodations is certainly advantageous, expanding both choice and

competition. The flip side, however, can be highly undesirable. The seemingly benign requirement for users to submit profiles to enhance the “match,” may instead allow hosts to select their guests based on immutable characteristics such as race. Though Airbnb has initiated internal efforts to combat discrimination, it appears that external pressure is necessary to force the entire industry to reexamine and rework its current business model.

CONCLUSIONS AND RECOMMENDATIONS

While Airbnb appears to be taking swift and sincere action to combat the challenge of persistent discrimination, one cannot help questioning their central premise. Celebrating diversity fits nicely with Airbnb’s branding and public relation campaign, and was beautifully portrayed in the company’s January 2017 Super Bowl ad viewed by millions.⁵⁴ But Airbnb’s platform created an international community of private individuals who understandably want to maintain the ability to choose their visitors, yet in many cases they are essentially running a hotel. The website allows, in fact invites, hosts to select and rate their guests. As Leigh Gallagher has aptly pointed out in cataloguing the Airbnb story, the resulting discrimination is the very opposite of “belonging” and may be the unintended consequence of ‘three white guys’ building a platform.⁵⁵

If Airbnb really wants to eliminate bias, the company should completely do away with guest “profiling,” including the use of photographs and real biological names before customers can access hosts’ accommodations. This is exactly the remedy that Selden is seeking to address the clear disparate treatment and impact African Americans experience on the site. Selden’s class action suit will likely be thwarted by Airbnb’s arbitration defense, and the legal line between platform and provider will remain untested in the courts. To unequivocally address the new discrimination in the shared economy, Congress would need to amend Title II to cover transactions occurring on social media websites. Absent a change in the legal landscape, it is up to Airbnb and similar online booking sites to design out the discrimination. Airbnb’s

failure to voluntarily make these changes leads one to conclude that the company fears many hosts would defect and the brand would lose significant revenue. Ominously, the promise of social media to connect us, may instead foster greater separation. **Appendix 1**

Comparison of Airbnb's Competitors*				
Name	Properties	Annual fees	Other fees	Types of property
HomeAway	1.2 million	\$349 or 8% pay-per-booking fee (10% if overseas)	Booking fee 4-9% of rental cost	Vacation rentals
Vacation Rentals	830,000		Service fee 5-12%	Vacation rentals
VRBO	794,000 as of 2014	\$349 rental fee or 10% pay per booking	No guest fees	Vacation rentals
Tansler	Over 50,000	None	Renter's pay a 6% service fee, owners pay 3%	Vacation rentals
Booking.com/ Villas.com	1,157,152 (Booking.com) 240,000 (Villas.com)		No booking fees	Unique vacation rentals for villas.com
Kid and Coe				

Comparison of Airbnb's Competitors*			
Name	Types of travelers	IPO/Financing details	Host/Guest Profile
HomeAway	Tourists/ vacationers	Not publicly traded (Subsidiary of Expedia)	Homeowner can choose who to rent to "make sure they are a good fit for the property"). Traveler and host reviews. Can send message without your picture. No instant bookings.
Vacational Rentals	Vacationers		Can report complaints about requesting payment outside of website, and calendar not accurate. Cannot report issues of discrimination. Little information about hosts. Reviews on hosts. No instant bookings.
VRBO	Vacationers	Subsidiary of Expedia	Same as Vacation Rentals (owned by HomeAway)
Tansler			No information on website, cannot see listings or book anything.
Bookings.com/Villas.com	All travelers but Villas.com is geared towards vacationers	Part of the Priceline group	Instant bookings. Services mostly hotels and inns. Guests can review listings and properties.
Kid and Coe			Guests can review hosts and properties. No instant bookings. Hosts decide who stays at their properties.

ENDNOTES

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³ *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Nov. 10, 2017).

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⁵ Alan Murray, *The Rise and Rise of Airbnb*, FORTUNE (Feb. 15, 2017), <http://fortune.com/2017/02/15/airbnb-gallagher-book-inequality-jobs/>.

⁶ Barken, M., Bramhandkar, A. and Seaquist, G., *Hosting in the New Peer to Peer Marketplace: Better Barter Disrupts Regulatory Regimes*, North East Journal of Legal Studies, Vol. 35, Spring/Fall 2016, pp. 49–65. [I can't find this source online and have a few questions about it]

⁷ *Id.*

⁸ LEIGH GALLAGHER, *THE AIRBNB STORY* 100 (2017).

⁹ Complaint at 4–6, *Selden v. Airbnb, Inc.*, 681 F. App'x 1 (D.D.C. 2017) (No. 16-7139), https://www.pacermonitor.com/public/case/11472767/SELDEN_v_AIRBNB,_INC.

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¹¹ GALLAGHER, *supra* note 8, at 7.

¹² Benjamin Edelman, et al., *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment*, AM. ECON. J.: APPLIED ECON., Apr. 2017, at 1–22.

¹³ GALLAGHER, *supra* note 8, at 99–100.

¹⁴ Edelman, *supra* note 12.

¹⁵ Edelman, *supra* note 12, at 8.

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²⁰ Aaron Belzer & Nancy Leong, *Can civil-rights law stop racial discrimination on AirBnb?*, THE WASHINGTON POST (May 1, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/01/can-civil-rights-law-stop-racial-discrimination-on-airbnb/?utm_term=.95aed1831601.

²¹ Brief for the Petitioner, *Selden v. Airbnb, Inc.*, 681 F. App'x

1 (D.D.C. 2017) (No. 16-7139),
https://www.pacermonitor.com/public/case/11472767/SELDE_N_v_AIRBNB,_INC.

²² “All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin. (b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action: **(2)** any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station; **(3)** any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and **(4)** any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.” 42 U.S.C. § 2000a (2011).

²³ 42 U.S.C. § 2000a(a) (2011).

²⁴ Henry Grabar, *The Civil Rights Act Exempts Racist Bed-and-Breakfasts. Does That Cover Airbnb?*, SLATE (June 8, 2016, 2:10 PM), http://www.slate.com/blogs/moneybox/2016/06/08/the_airbnb_racial_discrimination_lawsuit_will_hinge_on_whether_airbnb_is.html.

²⁵ *Id.*

²⁶ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).

²⁷ *Id.*

²⁸ *Id.* at 258 (citing *M’Culloch v. Maryland*, 17 U.S. 316, XXX (1819)).

²⁹ *Clegg v. Cult Awareness Network*, 18 F.3d 752 (9th Cir. 1994).

³⁰ Jeremy Quittner, *Airbnb and Discrimination: Why It’s All So Confusing*, FORBES (June 23, 2016), <http://fortune.com/2016/06/23/airbnb-discrimination-laws/>.

³¹ Even if the Fair Housing Act applies to Airbnb, however, many other sharing economy businesses like Uber, Lyft, TaskRabbit and Postmates do not involve housing, so discrimination by such businesses would remain unaddressed. *See generally* Aaron Belzer & Nancy Leong, *Can civil-rights law stop discrimination on AirBnb?*, THE WASHINGTON POST (May 1, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/01/can-civil-rights-law-stop-racial-discrimination-on-airbnb/?utm_term=.95aed1831601.

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³⁴ Matthew Perlman, *New Suit Claims Airbnb Breaks NY Real Estate Broker Laws*, LAW 360 (Feb. 12, 2016, 1:23 PM), <https://www.law360.com/articles/758666/new-suit-claims-airbnb-breaks-ny-real-estate-broker-laws>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Daniel W. Barkley, *Affordable Housing and Community Development Law*, ABA, http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/barkley.html (last visited Nov. 10, 2017).

³⁸ Motion of Defendant to Compel Arbitration, *Selden v. Airbnb, Inc.*, 681 F. App'x 1 (D.D.C. 2017) (No. 16-7139), https://www.pacermonitor.com/public/case/11472767/SELDEN_v_AIRBNB,_INC.

³⁹ *Selden v. Airbnb, Inc.*, 681 F. App'x 1 (D.D.C. 2017).

⁴⁰ Response of Petitioner to Motion to Dismiss for Lack of Jurisdiction, *Selden v. Airbnb, Inc.*, 681 F. App'x 1 (D.D.C. 2017) (No. 16-7139), https://www.pacermonitor.com/public/case/11472767/SELDEN_v_AIRBNB,_INC.

⁴¹ *Selden* also faces an uphill battle with the argument concerning the interlocutory appeals as the District of Columbia is in a circuit that has yet to decide whether or not appeals can be taken in such instances.

⁴² Greg Bensinger, *Airbnb Promotes Diversity to Prevent Booking Discrimination by Hosts*, THE WALL STREET JOURNAL (Sept. 8, 2016, 3:34 PM), <https://www.wsj.com/articles/airbnb-promotes-diversity-to-prevent-booking-discrimination-by-hosts-1473343215>.

⁴³ *Id.*

⁴⁴ https://www.airbnb-toolkits.com/my_toolkits?utm_campaign=antibias&utm_source=newsletter

⁴⁵ *How Hosts Can Cultivate Unbiased Hospitality*, AIRBNB BLOG (Oct. 23, 2016), <http://blog.airbnb.com/unbiased-hospitality>.

⁴⁶ Danny King, *Airbnb issues a new policy: Zero tolerance of host bias*, TRAVEL WEEKLY (Sept. 12, 2016), <http://www.travelweekly.com/Travel-News/Hotel-News/Airbnb-issues-new-policy-Zero-tolerance-host-bias>.

⁴⁷ Todd Conway, *Airbnb Competitors – Who Are They and What’s the Difference?*, <http://blog.pillowhomes.com/airbnb-competitors-who-are-they-and-whats-the-difference/> (last visited Nov. 10, 2017).

⁴⁸ Stephanie Rosenbloom, *Giving Airbnb a Run for Its Money*, N.Y. TIMES (Feb. 10, 2015), https://www.nytimes.com/2015/02/15/travel/giving-airbnb-a-run-for-its-money.html?_r=1.

⁴⁹ Peter Lane Taylor, *Watch Out, HomeAway and Airbnb: Here’s Why TripAdvisor May Be Your Biggest Competition*, FORBES (Dec. 7, 2016, 12:53 PM), <https://www.forbes.com/sites/petertaylor/2016/12/07/watch-out-homeaway-airbnb-heres-why-tripadvisor-may-be-your-biggest-competition/#1ea137b3736d>.

⁵⁰ *Supra* note 49.

⁵¹ Dany Papineau, *29 Airbnb Alternatives & Competitors for Hosts*, AIRBNBSECRETS, <http://www.airbnbsecrets.com/airbnb-alternatives/>.

⁵² *Supra* note 49. [I’m not sure which note this refers to?]

⁵³ Denver Nicks, *Airbnb Competitors Launch to Serve Black Travelers*, TIME (June 7, 2016), <http://time.com/money/4359703/airbnb-competitors-noirebnb-noirbnb/>.

⁵⁴ Katie Benner, *In Airbnb's Super Bowl Ad, Implied Criticism of Trump's Travel Ban*, N.Y. TIMES (Feb. 5, 2017), <https://www.nytimes.com/2017/02/05/technology/airbnb-super-bowl-ad-trump-travel-ban.html>.

⁵⁵ GALLAGHER, *supra* note 8, at 104.