

## **Airbnb fights legal battle for immunity from local regulation**

**By Joel Rosenblatt**

*Bloomberg*

Airbnb Inc. has a message for cities that try to enforce rules that crimp its couch-surfing style: See you in court.

The world's fourth-most valuable startup is testing a legal strategy against its hometown that may be a template for sharing-economy firms to fend off regulation. Because it operates on the internet, Airbnb argues, it can't be held responsible if users skirt local laws.

Airbnb sued San Francisco in June after it enacted a measure barring home-sharing platforms from collecting booking fees from hosts who haven't registered their units with the city. Airbnb also sued beach-front Santa Monica in Southern California and is threatening to sue New York over a state bill awaiting the governor's signature. Anaheim, home to Disneyland,

**AIRBNB » PAGE 6**

---

### **Airbnb**

#### **FROM PAGE 1**

dropped its effort to regulate Airbnb less than two weeks after it was sued by the company.

Companies arguing they're merely platforms, not service businesses, isn't novel. Uber deploys that defense against regulators in battles over everything from paying drivers to determining who's responsible when passengers get hurt.

Airbnb has added a twist by taking the offensive, asserting that a 20-year-old U.S. law shields it from liability tied to users in the same way EBay isn't responsible for sales of bootleg recordings or Stubhub for scalped tickets. Airbnb's online transactions and fees are protected by the Communications Decency Act of 1996 because they are "part and parcel" of its service, it says.

#### **Judge skeptical**

A federal judge voiced skepticism Thursday about Airbnb's argument, saying he was struggling to understand why the company thinks it should be given immunity from local regulation as a publisher of someone else's content.

Congress, in enacting the Communications Decency Act, wasn't permitting "a lawless no man's land just because it's on the internet," U.S. District Judge James Donato said during a hearing on the company's request to block San Francisco's law from taking effect. The hearing ended without a ruling.

While the court battle springs from the city's overheated housing market, the stakes are much broader.

Airbnb, with a valuation of \$30 billion, has garnered support from competitor Expedia's Home-Away, as well as a group representing Amazon. com, Facebook and Google. The Internet Association, whose members also include Uber and ride-hailing rival Lyft, says the dispute has wide-ranging implications for free speech on the internet.

#### **City fires back**

San Francisco says the company's attack on the law is absurd because it isn't intended to police what rental hosts upload to the website. The ordinance "regulates only conduct — an unlawful commercial transaction, not speech," the city contends.

"Airbnb and HomeAway attempt to stretch both the Communications Decency Act and the First Amendment beyond all reasonable bounds," the city said in a court filing. The companies wrongly claim that "because their business is online, they are immune from any regulation of their commercial transactions."

It's a tough call who has the stronger argument, said Michael Risch, a professor at Villanova University School of Law in Pennsylvania.

"If Airbnb wins, we will likely see more companies making arguments that generally applicable regulation is barred by the Communications Decency Act," he said.

With San Francisco's median rent for a one-bedroom apartment at \$3,550 a month, some landlords are evicting tenants to pursue even more profitable short-term rentals. The city loosened a longtime ban on converting residential units for shortterm use last year, while requiring hosts to register.

### **Housing crisis**

When the vast majority of hosts failed to comply, the city imposed a fine of up to \$1,000 a day on rental platforms for every unregistered host, plus possible misdemeanor charges. After Airbnb sued, the city softened the ordinance to fine the companies only when a stay is booked in an unregistered unit.

Eight in 10 rental units in the city aren't registered and Airbnb is profiting from them, said David Campos, one of 10 members of the city's Board of Supervisors who unanimously approved the revised penalties in June. "Airbnb didn't create the housing crisis, but it certainly has exacerbated it," he said.

Airbnb counters that, by its estimate, 1,200 San Francisco residents have avoided foreclosure by hosting rooms or homes on its platform. Helping residents make ends meet is also part of the company's pitch in New York, where it's trying to stop Governor Andrew Cuomo from signing a law that would fine hosts as much as \$7,500 for advertising short-term stays in unoccupied apartments.

Airbnb helped draft San Francisco's law requiring registration — but without the teeth to enforce it that the city later adopted, according to Campos. He wants home-sharing companies to "follow the rules that they themselves put in place."

"We're going to have to win this lawsuit to make that happen."

**Click here to see this page in the eEdition:**



**(Login Required)**