

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC.,
Plaintiff,
v.
CRAIGSLIST, INC.,
Defendant.
CASE NO. 06 C 0657
Judge Amy J. St. Eve
Magistrate Judge Jeffrey Cole

MOTION TO FILE NEW SUPPLEMENTAL AUTHORITY FROM THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc., by its attorneys, hereby moves this Court for leave to file the September 20, 2006 position statement of the United States Department of Housing and Urban Development ("HUD") on the central issue in this case: whether the Fair Housing Act applies to Internet publishers of discriminatory housing advertisements. In support of this Motion, Plaintiff states as follows:

- 1. Plaintiff is a public interest consortium of forty-five law firms which litigates significant civil rights cases. Plaintiff has a Fair Housing Project which investigates housing discrimination, educates the public as to housing discrimination protections, and takes steps to enforce these protections. In February 2006, Plaintiff filed this case against craigslist under the Fair Housing Act, 42 U.S.C. § 3604, alleging that craigslist violated the Fair Housing Act by publishing numerous discriminatory housing advertisements on its website, advertisements that include statements like "no minorities," "African Americans and Arabians tend to clash with me

so that won't work out," "Ladies please rent from me," "Requirements: Clean Godly Christian Male," and "No children."

2. In April 2006, craigslist moved for Judgment on the Pleadings, arguing that the Communications Decency Act, 47 U.S.C. § 230, immunizes craigslist and other Internet publishers from liability under the Fair Housing Act. craigslist did not dispute that the Fair Housing Act imposes liability on publishers who publish discriminatory advertisements written by third parties, but argued that the Communications Decency Act immunizes Internet entities such as websites from Fair Housing Act liability.

3. In May 2006, Plaintiff filed its Memorandum in Opposition and argued, on page 3, footnote 1, that the United States Department of Housing and Urban Development, the federal agency charged with enforcing the Fair Housing Act, had suggested in numerous informal statements that the Fair Housing Act applied to publishers of discriminatory housing advertisements on the Internet.

4. Recently, on September 20, 2006, HUD made its position official, by publishing a guidance for all regional offices, attached as Ex. A. In this statement, HUD writes that "[j]ust as the Department has found newspapers in violation of the Fair Housing Act for publishing discriminatory classifieds, the Department also has concluded that it is illegal for Web sites to publish discriminatory advertisements." As for the Communications Decency Act, HUD states, "HUD has concluded that the CDA does not make Web sites immune from liability under the Fair Housing Act or from liability under state and local laws that HUD has certified as substantially equivalent to the Fair Housing Act."

5. As the agency charged with enforcing the Fair Housing Act, HUD's position is entitled to deference. "An agency's construction of a statute it is charged with enforcing is entitled to deference if it is reasonable and not in conflict with the expressed intent of Congress."

*Rapanos v. United States*, 126 S.Ct. 2208, 2240 (2006) (quoting *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 131 (1985)); see generally *Chevron U.S.A. Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

WHEREFORE, for the reasons stated above, Plaintiff Chicago Lawyers' Committee for Civil Rights Under Law, Inc., respectfully requests leave to file New Supplemental Authority from the United States Department of Housing and Urban Development.

Respectfully submitted,

/s/ Stephen D. Libowsky

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Dated: September 29, 2006


**EXHIBIT A**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

September 20, 2006

MEMORANDUM FOR: FHEO REGIONAL DIRECTORS  
FROM:   
Bryan Greene, Deputy Assistant Secretary for Enforcement and  
Programs, ED  
SUBJECT: Fair Housing Act Application to Internet Advertising

Section 804(c) of the Fair Housing Act makes it illegal "to make, print, or publish, or cause to be made, printed, or published, any notice or statement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, sex, disability, or familial status." This prohibition applies to all advertising media, including newspapers, magazines, television, radio, and the Internet. Just as the Department has found newspapers in violation of the Fair Housing Act for publishing discriminatory classifieds, the Department also has concluded that it is illegal for Web sites to publish discriminatory advertisements.

Some Web sites assert that they are exempt from liability under Section 804(c) of the Fair Housing Act because of a provision in the Communications Decency Act ("CDA"), 47 U.S.C. § 230, which limits the liability of interactive computer services for content originating with a third party user of the service. Although the CDA does not state an intent to limit liability under the Fair Housing Act or other civil rights statutes, some believe that Section 230 of the CDA gives Internet publishers immunity from lawsuits brought under federal and state civil rights statutes. However, HUD has concluded that the CDA does not make Web sites immune from liability under the Fair Housing Act or from liability under state and local laws that HUD has certified as substantially equivalent to the Fair Housing Act.

In order to ensure that Web sites do not provide an open market for unlawful discriminatory conduct, HUD will continue to investigate allegations that Web sites have published discriminatory advertisements on the Internet and, where there is cause to believe discrimination has occurred, will issue a Determination of Reasonable Cause. As required by the Fair Housing Act, HUD will attempt conciliation in each case. I recommend that proposed conciliation agreements include provisions designed to prevent discriminatory advertisements from being posted to the Web site; this may include the Web site agreeing to practices such as screening, filtering, pop-up warnings, or user self-certification.

This guidance does not change the established procedures for processing these cases. Regional Directors should continue to process these cases in accordance with current guidelines.