Santa-Clara University

47 USC 230, Roommates.com and Anti-SLAPP Laws

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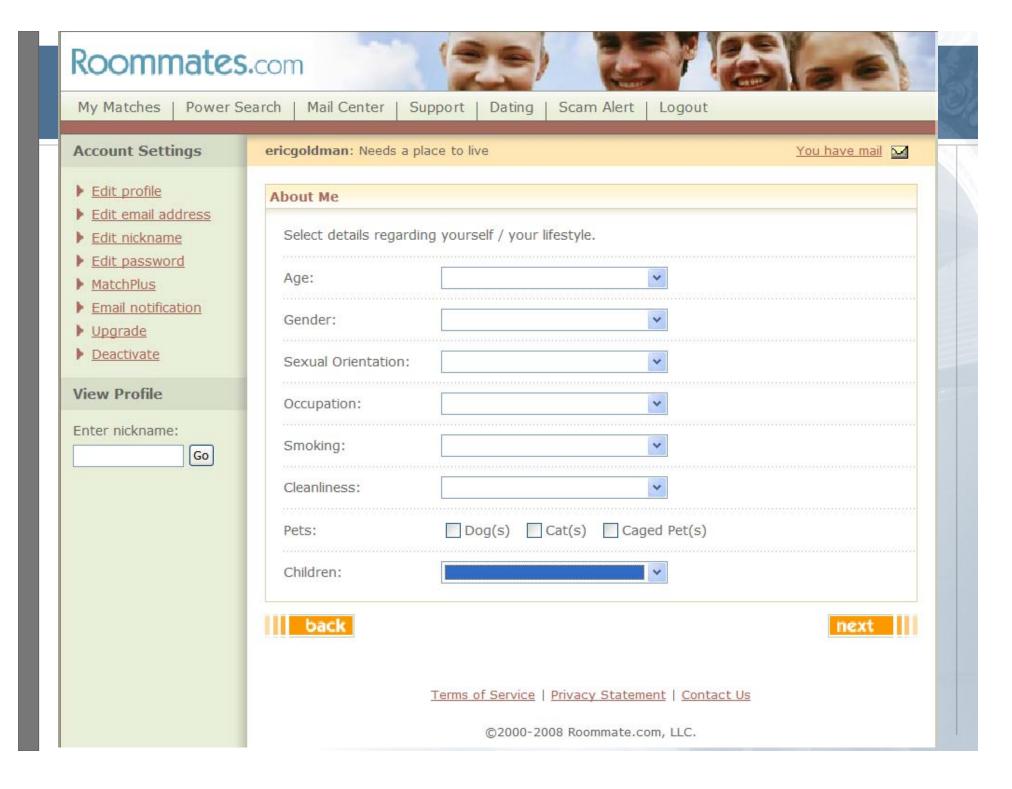
47 USC §230(c)(1)

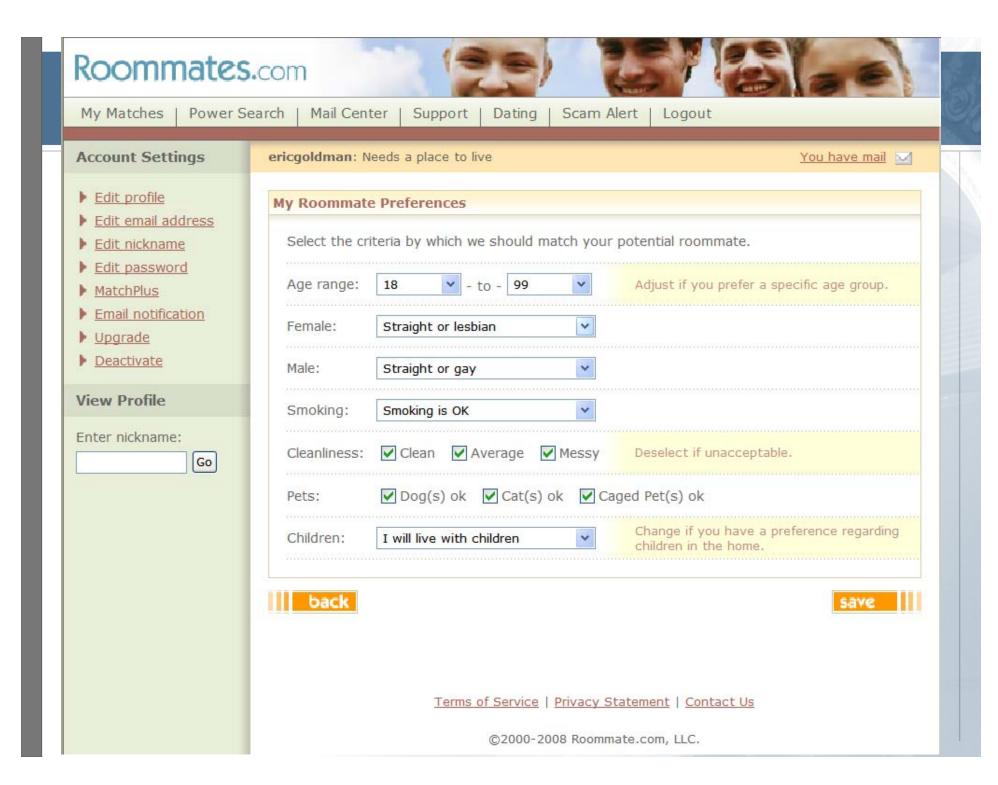
No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider

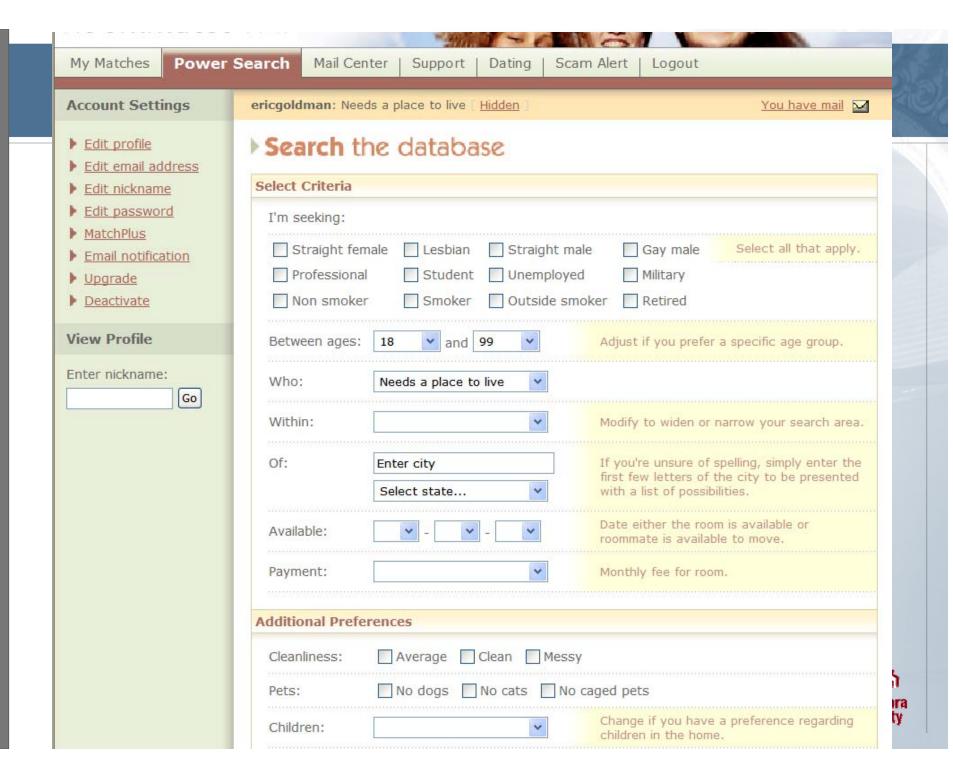


47 USC §230(c)(1)

- "Provider or user of an interactive computer service"
 - ICS = "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions"
- "Treated as a publisher or speaker"
 - Excludes federal crimes, [federal] IP laws and ECPA
- "Provided by another information content provider"
 - ICP = "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer services."







Roommates.com Holding (?)

If you don't encourage illegal content, or design your website to require users to input illegal content, you will be immune



Implications

- Immunity isn't reduced by editorial control, scienter or takedown notices
- Section 230 workarounds? (out of 5 6)
 - Not ICS [is]
 - 230 eliminated publisher liability, not distributor liability [
 - Promissory estoppel [i i]

 - Claim over site text/marketing [š š š]
 - [federal] IP claim [§ § § §]



CA Anti-SLAPP Law/CCP 425.16

- SLAPP = "Strategic Lawsuit Against Public Participation"
- Defendant typically files motion to strike within 60 days after complaint
 - Motion to strike stays all discovery
- Defendant must show the lawsuit targets speech on "issue of public interest"
- If so, plaintiff has burden to show "probability" of prevailing
- If motion to strike succeeds, case ends + mandatory fee-shift
 - If motion fails, defendant can immediately appeal



Additional Provisions

- Public interest litigation exception (CCP 425.17(b))
 - Plaintiff not seeking more/different relief than general public/class
 - Enforcement of "important right affecting the public interest" and confers "significant" benefit on public or large class
 - Private enforcement necessary
- Advertising Exception (CCP 425.17(c))
- Exceptions to exceptions (CCP 425.17(d)) = newsgatherers, "any dramatic, literary, musical, political, or artistic work," nonprofits receiving 50%+ government funding
- SLAPPBack (CCP 425.18) = reduced burdens to malicious protection claim based on SLAPP