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A Legal, Ethical, and Public Policy Analysis of Airbnb: How Platform Design and Legal Loopholes Enable Discrimination in the Sharing Economy

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A LEGAL, ETHICAL, AND PUBLIC POLICY ANALYSIS OF AIRBNB: HOW PLATFORM DESIGN AND LEGAL LOOPHOLES ENABLE DISCRIMINATION IN THE SHARING ECONOMY

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Abstract: This paper analyzes how Airbnb’s platform design, legal classification, and economic incentives enable racial discrimination within the sharing economy. Despite public commitments to diversity and inclusion, Airbnb continues to facilitate bias due to loopholes in civil rights legislation and design features such as profile pictures and name visibility. Empirical studies and high-profile incidents underscore persistent racial disparities for both guests and hosts. This paper concludes with policy recommendations, including legislative reforms, design changes, and stronger state-level protections. It advocates for a modernized legal framework that holds digital platforms accountable and ensures equity across the sharing economy.

Introduction

Airbnb’s rise as a leader in the sharing economy has not come without a social cost. Racial discrimination persists across the platform due to economic incentives embedded in its design.

Airbnb has become a significant force, disrupting the hotel and travel industry and showing the bargaining power of being an asset-light platform in the sharing economy. The company stands out with its diverse listings, personalized experiences, and community-driven approach. However, Airbnb faces ongoing tensions between maximizing economic incentives and enforcing anti-discrimination policies. Despite the platform’s popularity, many users are unaware that its current design enables racial bias. Gaps in current legislation enable the

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company to evade existing anti-discrimination laws, allowing the platform to avoid accountability for its users' actions.

Airbnb's platform design and revenue model, centered on booking volume and guest satisfaction, inadvertently leads to discriminatory behavior by hosts and guests. Features such as displaying guest names and profile pictures have been known to facilitate racial bias. While hosts face tangible economic consequences when engaging in discrimination, including lost revenue, higher vacancy rates, and fewer reviews, implicit bias often outweighs these financial incentives. Airbnb has found loopholes in the "Mrs. Murphy" Exemption and Section 230 of the Communications Decency Act, while its classification outside the definition of a public accommodation allows the company to skirt the laws set by the Civil Rights Act of 1964 and the Fair Housing Act of 1968. These pieces of legislation have collectively shielded the company from liability for discriminatory actions by its users. Although Airbnb has implemented some self-regulating measures, these remain limited in scope, showing that greater action is needed to combat this issue.

This paper begins by outlining Airbnb's emergence as a leader in the travel app industry, followed by the regulatory and legal context that forms the foundation of the paper. It then explores empirical research that has analyzed discrimination on Airbnb's platform. The following section dives into Airbnb's initial responses, the platform's economic model and design, and key legal precedents that shape liability. Next is a comparison to traditional hotels, a look at Airbnb's impact on the New York City housing market, and an overview of patterns of broader discrimination across other platforms in the sharing economy. The paper concludes with policy and design reforms aimed at promoting equity and accountability on the platform.

This paper is directed toward policymakers, legal scholars, platform developers, and members of the sharing economy who seek to address issues related to economic incentives, civil rights, and discrimination on digital platforms.

History

Airbnb's Emergence in the Travel App Industry

Airbnb was founded in 2007 as a peer-to-peer marketplace that allows hosts to rent their properties to travelers for short-term stays. The company was created by Brian Chesky and Joe Gebbia, roommates looking for a quick way to make money. They began by renting out air mattresses and grew the company to include apartment and vacation rentals. Airbnb helps budget-conscious travelers, business professionals, and avid vacationers find communities and create unique travel experiences.

As of 2024, Airbnb has over 5 million hosts with 8 million property listings and 1.5 billion guest check-ins.² The company serves over 100,000 cities and 200 countries.³ In 2024, the company made \$11.1 billion in revenue and \$2.6 billion in net income.⁴ Airbnb is third in market share among travel app providers behind Expedia and Booking.com.⁵ Airbnb's strong global brand, network effects, and unique position in the accommodation market make it a dominant player in the travel industry.

Regulatory and Legal Context

Airbnb often perplexes law and policymakers as a housing category due to confusion surrounding whether its properties should be classified as public accommodations. These legal

² Statista Research Department, "Airbnb - Statistics & Facts," Statista, last modified February 26, 2025, accessed March 18, 2025, <https://www.statista.com/topics/2273/airbnb/#topicOverview>.

³ About Us," Airbnb, accessed March 24, 2025, <https://news.airbnb.com/about-us/>.

⁴ David Curry, "Airbnb Revenue and Usage Statistics (2025)," Business of Apps, last modified February 24, 2025, accessed March 18, 2025, <https://www.businessofapps.com/data/airbnb-statistics/>.

⁵ Curry, "Airbnb Revenue," Business of Apps.

gray areas frequently allow Airbnb to bypass regulations surrounding racism and discrimination. Key legal and regulatory frameworks relevant to this issue include the Civil Rights Act of 1964, the Fair Housing Act of 1968, California’s Unruh Civil Rights Act, and Section 230 of the Communications Decency Act.

The Civil Rights Act of 1964 “[prohibits] discrimination in public places, [provides] for the integration of schools and other public facilities, and [makes] employment discrimination illegal.”⁶ This Act forbids segregation in public places and businesses, such as hotels, theaters, libraries, and public schools. However, since the Act applies to places of public accommodation, Airbnb can bypass these rules since most listings are privately owned, meaning they are not necessarily subject to the same anti-discrimination regulations. Although some jurisdictions have extended anti-discrimination laws to cover short-term rentals like Airbnb, there is still ambiguity over whether the Civil Rights Act applies to the company, leaving room for hosts to engage in discriminatory practices.

The Fair Housing Act of 1968 “prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners’ insurance companies, whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, familial status, or disability.”⁷ While the Act applies to landlords, brokers, and other housing providers, there is an ongoing debate on whether the FHA applies to Airbnb hosts. The “Mrs. Murphy” Exemption states, “dwellings with four or fewer units (one of which must be

⁶ National Archives, "Civil Rights Act (1964)," National Archives, accessed April 2, 2025, <https://www.archives.gov/milestone-documents/civil-rights-act#:~:text=President%20Lyndon%20Johnson%20signed%20it,theaters%2C%20restaurants%2C%20and%20hotels.>

⁷ "The Fair Housing Act," U.S. Department of Justice, last modified 2023, accessed April 2, 2025, [https://www.justice.gov/crt/fair-housing-act-1.](https://www.justice.gov/crt/fair-housing-act-1)

occupied by the owner) are exempt from fair housing law.”⁸ Because most Airbnb listings are single-family homes or private rooms in properties with four or fewer units for rent, many hosts are exempt from liability under the “Mrs. Murphy” Exemption, legally permitting them to discriminate against potential guests.

The historic purposes of the Civil Rights Act and the FHA were to end systemic discrimination in public spaces while promoting equal rights for people of marginalized groups. However, the legal uncertainties surrounding how Airbnb fits into these regulations raise significant questions about how law and policymakers should apply civil rights protections in a digital age. The tension between Airbnb hosts and the public sphere of the platform has created legal uncertainty that needs to be addressed by reforming these acts. This ambiguity emphasizes the need for updated policies to govern digital platforms.

California’s Unruh Civil Rights Act “provides protection from discrimination by all business establishments in California, including housing and public accommodations, because of age, ancestry, color, disability, national origin, race, religion, sex, and sexual orientation.”⁹ However, because the line between Airbnb as a business establishment or a network of individual hosts is blurred, there are still uncertainties about whether all hosts in California are subject to this legislation.

Section 230 of the CDA protects platforms like Airbnb from being liable for a host’s discriminatory behavior. The Act “provides immunity to online platforms from civil liability

⁸ "Fair Housing Laws in Massachusetts," Caretaker, last modified April 28, 2020, accessed April 9, 2025, <https://caretaker.com/learn/fair-housing/fair-housing-laws-in-massachusetts#:~:text=Murphy%E2%80%9D%20exemption%2C%20which%20states%20that,a%20hypothetical%20elderly%20widow%2C%20Mrs.>

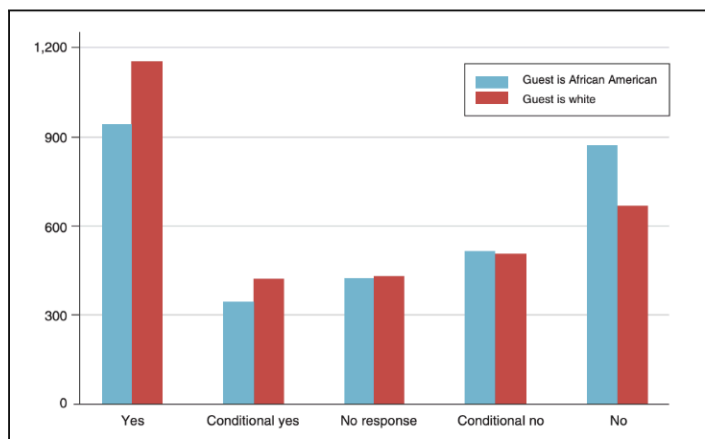
⁹ "Unruh Civil Rights Act," Department of Rehabilitation, accessed April 5, 2025, <https://www.dor.ca.gov/Home/UnruhCivilRightsAct#:~:text=The%20Unruh%20Civil%20Rights%20Act,religion%2C%20sex%20and%20sexual%20orientatio>

based on third-party content and for the removal of content in certain circumstances.”¹⁰ If a host refuses to rent to someone because of race, Airbnb legally cannot be held responsible for such discrimination. This creates legal uncertainty, as Airbnb facilitates interactions on its platform but remains shielded from liability since the discriminatory actions are being carried out by individual users, not the company itself.

Discrimination on Airbnb’s Platform

While Airbnb has become a leader in the short-term rental market, the company has faced backlash from both hosts and guests who have experienced racial discrimination. Studies conducted by the Harvard Business School and other researchers, as well as guest stories shared through the #AirbnbWhileBlack campaign, have brought to light these issues. This evidence of racial discrimination has prompted widespread criticism of the company and a push for stronger anti-discrimination measures.

To test for discrimination, researchers at Harvard conducted a 2015 field experiment analyzing 6,400 Airbnb listings across five U.S. cities: Baltimore, Dallas, Los Angeles, St. Louis, and Washington, D.C.¹¹ They created guest profiles that were identical in every way except for gender and racially distinctive names—specifically representing White males,



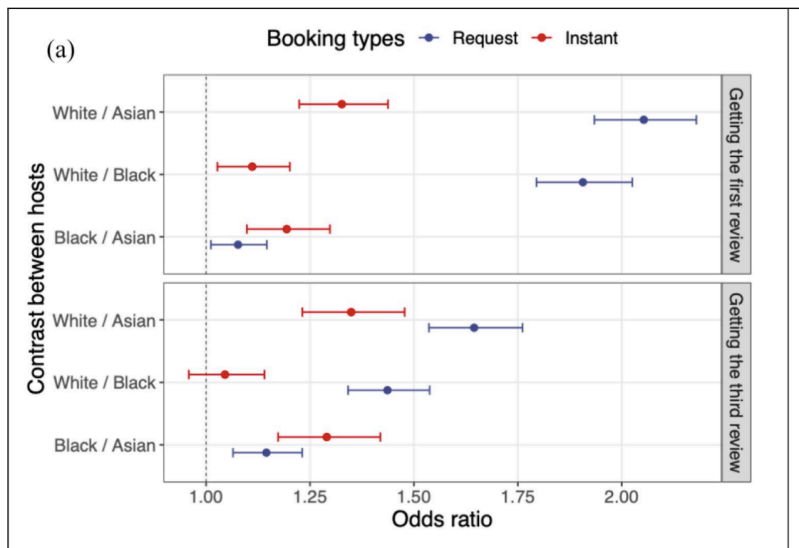
Host Responses By Race, Edelman et al. 8

¹⁰ "Department of Justice's Review of Section 230 of the Communications Decency Act of 1996," U.S. Department of Justice, accessed April 5, 2025, <https://www.justice.gov/archives/ag/departments-justice-s-review-section-230-communications-decency-act-1996>.

¹¹ Benjamin Edelman, Michael Luca, and Dan Svirsky, "Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment," *American Economic Journal: Applied Economics* 9, no. 2 (2017): 4, accessed April 5, 2025, <https://doi.org/10.1257/app.20160213>.

White females, African American males, and African American females. The researchers then tracked how hosts responded to messages from these accounts, noting whether they accepted, declined, requested more information, or gave no response. A graph of these response patterns by guest race is shown above.¹² White guests have significantly higher acceptance rates, with more “Yes” responses than African American guests. In comparison, African American guests experience higher rejection rates.

A key finding from the study revealed that “distinctively African American names are 16 percent less likely to be accepted relative to identical guests with distinctively White names.”¹³ Instances of racial discrimination persisted regardless of the host’s gender, race, and experience level. They were also consistent across various property types, locations, price ranges, and neighborhood demographics. The study concluded that Airbnb’s platform design enables racial discrimination, particularly regarding the visibility of guest names and profile pictures. Airbnb is



Odds Ratio Between Host Race and Booking Types For Getting The First Review (Upper Panel) and Third Review (Lower Panel), Yu and Margolin 1640

responsible for balancing information transparency with equitable treatment, ensuring that the platform does not inadvertently reinforce racial bias.

An observational study of over 16,000 Airbnb listings in New York City, conducted

using data collected between 2009 and 2018, found that hosts of color face significant

¹² Edelman, Luca, and Svirsky, "Racial Discrimination," 8.

¹³ Edelman, Luca, and Svirsky, "Racial Discrimination," 1.

discrimination when acquiring early reviews, an essential factor for visibility, trust, and reputation.¹⁴ The study used facial recognition software to determine the perceived race of hosts based on their profile pictures and measured how long it took hosts of different races to receive their first and third reviews. The first review provides initial feedback to hosts and is critical for establishing early trust with potential guests. The third review triggers the display of the host's aggregate rating (star score), which is important in building credibility and future revenue. Significant racial disparities remained even when controlling for price, room type, and booking type. The graph above highlights the odds ratios of Airbnb hosts of different races in receiving their first and third reviews, depending on the booking type.¹⁵ Request means that a host's approval is needed before booking, while Instant signifies that guests can book the property automatically without being vetted. The odds ratio measures how likely one group is to obtain a review compared to the other. Values greater than one mean that the group is more likely to get a review, whereas a value equal to one indicates no significant difference. The graph shows that White hosts are more likely to receive their first and third reviews faster than Black or Asian hosts. The "White/Asian" odds ratio being close to 2.0 means that White hosts are twice as likely to get their first review under a request booking before an Asian host. The "Black/Asian" odds ratio for both reviews suggests no significant difference between the two races. This study highlights structural flaws in Airbnb's platform design, which will be explored further in later sections.

Although these studies draw on data from earlier years, their findings remain relevant as discrimination on Airbnb's platform remains an issue today. These studies uncovered information

¹⁴ Chao Yu and Drew Margolin, "Sharing Inequalities: Racial Discrimination in Review Acquisition on Airbnb," *Sage Journals* 26, no. 3 (2024): 1634, accessed April 20, 2025, https://www.researchgate.net/publication/358452529_Sharing_inequalities_Racial_discrimination_in_review_acquisition_on_Airbnb#fullTextFileContent.

¹⁵ Yu and Margolin, "Sharing Inequalities," 1640.

about how the platform's design enables discrimination, yet Airbnb has not updated these features. As Airbnb continues to prosper in the travel industry, discriminatory practices have turned this issue into a pressing policy concern demanding systemic solutions.

Social media campaigns using the hashtag #AirbnbWhileBlack have brought widespread attention to the experiences of African American guests who have been rejected because of racial bias. This compilation of discrimination claims provides an accountability mechanism for Airbnb, highlighting a crisis that needs to be addressed. The limitations of existing anti-discrimination laws described above further allow hosts to engage in discriminatory behavior when choosing guests. Media coverage from campaigns, lawsuits, and public backlash has brought this issue to policymakers' attention.

Analysis

Airbnb's Initial Response

Airbnb has taken action to address ways to reduce racial discrimination on its platform. The Airbnb Community Commitment affirms that all individuals belong in the Airbnb community regardless of their background or identity.¹⁶ All users must sign it before engaging with the platform. The company also “assembled a permanent team of engineers, data scientists, researchers, and designers whose sole purpose is to advance belonging and inclusion and to root out bias.”¹⁷ This product team helps alleviate the issues discussed in the Harvard field experiment. Other features include Instant Book, which allows guests to book some properties without host approval, and Open Doors, which makes sure that “if a guest is not able to book a listing because they have been discriminated against, Airbnb will ensure the guest finds a place

¹⁶ Brenna R. McLaughlin, "#AirbnbWhileBlack: Repealing the Fair Housing Act's Mrs. Murphy Exemption to Combat Racism on Airbnb," editorial, *Wisconsin Law Review*, 171, accessed April 5, 2025, <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2018/04/McLaughlin-Camera-Ready.pdf>.

¹⁷ Laura W. Murphy, *Airbnb's Work to Fight Discrimination and Build Inclusion* (2016), 11, accessed April 5, 2025, https://news.airbnb.com/wp-content/uploads/sites/4/2023/06/REPORT_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf.

to stay.”¹⁸ Airbnb has also implemented Project Lighthouse “to uncover and address disparities in how people of color experience [Airbnb], and how [the company] is using these findings to guide [its] work to fight discrimination and make Airbnb more open and inclusive.”¹⁹ Through Project Lighthouse, Airbnb has suspended 4,000 accounts for violating the Airbnb Community Commitment.²⁰ Project Lighthouse is an essential first step in Airbnb’s commitment to monitoring and intervening. While future work is still required to combat racism on the platform, Airbnb has taken steps in the right direction in adopting new rules and policy changes to fight discrimination.

According to Airbnb’s 2024 update, the company reports that “the largest booking success rate disparity in 2021, between guests perceived to be Black and guests perceived to be White, was cut almost in half [in 2024].”²¹ However, a fully equal system has yet to be designed, as African American guests are still not booked at the same rate as White guests, and hosts of color continue to receive lower booking rates than White hosts.

Airbnb’s Economic Structure and Incentives

Airbnb’s profitability depends on the volume of bookings and guest satisfaction. The company generates revenue through service fees charged to both hosts and guests. Hosts typically pay a fee of 3-5% of the reservation value back to Airbnb, while guests are charged a fee between 0-20%.²² Positive guest experiences lead to favorable reviews, repeat bookings, and

¹⁸ Murphy, *Airbnb's Work*, 11.

¹⁹ Airbnb, "A Six-Year Update on Airbnb's Work to Fight Discrimination," Airbnb, last modified December 13, 2022, accessed April 5, 2025, <https://news.airbnb.com/sixyearupdate/>.

²⁰ Sarah Jackson, "Airbnb Suspended Almost 4,000 Hosts and Guests This Year for Violating Its Policy against Discrimination," Business Insider, last modified December 14, 2022, accessed April 5, 2025, <https://www.businessinsider.com/airbnb-suspends-4000-hosts-guests-violating-non-discrimination-policy-2022-12>.

²¹ Airbnb, "A Six-Year," Airbnb.

²² Daniel Pereira, "Airbnb Business Model," The Business Model Analyst, last modified May 10, 2024, accessed April 8, 2025, <https://businessmodelanalyst.com/airbnb-business-model/?srsltid=AfmBOorCauAwAwdpZlw80QeO7qoTHhAillyPAL71kYpK84vJOcsEbw8S>.

platform growth. Hosts are motivated to maintain guest satisfaction to maximize their income, receive high ratings, and improve their visibility in search results. However, this incentive structure can influence host behavior in subtle but significant ways through whom they choose to rent to or how much they charge.

Research shows that hosts face immediate consequences when rejecting guests of color. Each rejection results in the loss of roughly \$65 to \$100 in net revenue for hosts.²³ Listings remain vacant 25.9% of the time following such rejections.²⁴ Beyond these financial impacts, turning away potential guests reduces the number of positive reviews left by guests, lowering the host's credibility and limiting their future bookings.

Hosts of color similarly experience economic disadvantages due to racial bias. Statistically, guests are less likely to book with hosts of color than White hosts, leading hosts of color to charge 8-10% less on their listings to increase booking rates and accumulate reviews quicker.²⁵ Hosts are willing to lose out financially to help their visibility on the platform. As past reviews help hosts gain credibility for guest decisions, hosts without them appear riskier, so they reduce their prices to establish initial trust.

Platform Design and Market Incentives

Airbnb's platform design creates an information asymmetry that only perpetuates discrimination. By allowing hosts to see a guest's name and their race, ethnicity, and gender through their profile picture, Airbnb enables hosts to choose their guests based on those perceived characteristics. Although Airbnb does not intentionally promote racism, these design flaws create ways in which racial prejudice can be expressed.

²³ Edelman, Luca, and Svirsky, "Racial Discrimination," 3.

²⁴ Edelman, Luca, and Svirsky, "Racial Discrimination," 16.

²⁵ Yu and Margolin, "Sharing Inequalities," 1628.

In response to these concerns, Airbnb launched a two-year experiment in Oregon in 2022 where hosts could only view guests’ initials during the booking process. This began after three African American women filed a lawsuit alleging that Airbnb’s requirement of listing full names and profile pictures allowed guests to discriminate, violating Oregon’s public accommodation laws.”²⁶ However, Airbnb has not published any formal findings on the impact of this policy.

Airbnb’s Instant Book feature was developed to limit hosts’ ability to discriminate. Black and Asian hosts benefit when Instant Book is enabled, as it narrows the time gap in their review acquisition and limits the opportunity for guest bias.²⁷ Approximately 60% of users book through this feature.²⁸ However, hosts tend to underutilize it due to the risks of being unable to vet guests. The reluctance of Airbnb to anonymize all bookings reflects the company’s economic incentives for maximizing transaction volume and overall profitability.

Airbnb’s Impact on Rent and Housing Supply in New York City

Lawmakers in cities like New York have criticized Airbnb for operating as “illegal hotels.”²⁹ Disputes have arisen in New York over unpaid sales taxes and the lengths of rentals without a host present. The Attorney General of

	Frequently rented entire-home listings	Very frequently rented entire-home listings	Rental units converted to ghost hotels	Plausible range for housing lost to Airbnb
New York City	12,200	5,600	1,400	7,000 - 13,500
Manhattan	7,000	3,100	500	3,600 - 7,500
Brooklyn	4,200	2,000	600	2,600 - 4,800
Midtown Manhattan	2,000	900	90	1,000 - 2,000
Downtown Manhattan and Williamsburg	2,700	1,200	150	1,300 - 2,900
Eastside Manhattan	900	400	60	500 - 600
North-Central Brooklyn	1,700	900	270	1,200 - 2,000

Combined Estimate of Housing Lost to Airbnb, Wachsmuth 32

²⁶ Elliot Njus, "Airbnb Settles Oregon Discrimination Suit," The Oregonian/OregonLive, last modified August 13, 2019, <https://www.oregonlive.com/business/2019/08/airbnb-settles-oregon-discrimination-suit.html>.

²⁷ Yu and Margolin, "Sharing Inequalities," 1636.

²⁸ Jeff Brown, "Increase Your Airbnb Bookings by 20% – by Accepting Instant Bookings," IntelliHost, last modified December 19, 2022, accessed April 22, 2025, <https://intellihost.co/increase-airbnb-bookings-instant-booking-policy/>.

²⁹ Rebecca Jarvis, "Hotel Industry Fighting Back against Airbnb," ABC News, last modified April 22, 2014, accessed April 22, 2025, <https://abcnews.go.com/blogs/business/2014/04/hotel-industry-fighting-back-against-sites-like-airbnb>.

New York has engaged in legal battles over Airbnb’s impact on “available housing stock, lost revenue for the city, and potential job losses for the tourism industry.”³⁰ Moreover, Airbnb in large cities has led to declines in long-term rental units, which are already experiencing housing shortages. For example, “Airbnb has removed between 7,000 and 13,500 units of housing from New York City’s long-term rental market,” exacerbating housing shortages, raising rents, and displacing low-income residents.³¹ The table above demonstrates the loss of housing to Airbnb broken down by different areas of New York City.

Wachsmuth’s report also expands on Airbnb being a “Racial Gentrification Tool,” stating that in March of 2017, “White Airbnb hosts in Black neighborhoods earned an estimated \$160 million, compared to only \$48 million for Black hosts—a 530% disparity. The loss of housing and neighborhood disruption due to Airbnb is 6 times more likely to affect Black residents, based on their majority presence in Black neighborhoods, as residents in these neighborhoods are 14% White and 80% Black.”³² These findings illustrate that Airbnb’s expansion into large cities catalyzes deeper economic and racial inequities. While Airbnb markets itself as a community-centered platform, the company inadvertently causes housing loss, market disruption, and racialized gentrification.

Past Precedents

Legal cases and past precedents that set key context for Airbnb’s discrimination issues include *Jones v. Alfred H. Mayer Co.*, *Shelley v. Kraemer*, and *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*.

³⁰ Jarvis, "Hotel Industry," ABC News.

³¹ David Wachsmuth, *The High Cost of Short-Term Rentals in New York City* (2018), 32, accessed April 22, 2025, <https://www.mcgill.ca/newsroom/channels/news/high-cost-short-term-rentals-new-york-city-284310>.

³² Wachsmuth, *The High*, 8.

Jones v. Alfred H. Mayer Co. (1968) established critical standards for addressing racial discrimination in property transactions. Joseph Lee Jones, a Black man, was denied from purchase a home from Alfred H. Mayer Co., a housing developer in Missouri, because of his race. Jones sued under 42 U.S.C. § 1982, which guarantees that all citizens have the same property rights as White citizens.³³ The Supreme Court ruled in favor of Jones, holding that Congress has the authority under the Thirteenth Amendment to ban racial discrimination in private real estate sales. Although the case predates digital platforms like Airbnb, the case established that racial discrimination is unlawful in both public and private property transactions.

Shelley v. Kraemer (1948) involved racially restrictive covenants that barred African American and Asian families from buying homes in St. Louis. When the Shelleys, an African American family, attempted to purchase a home, a White neighbor sued to enforce the covenant. The Supreme Court ruled that private parties may enter into racially restrictive covenants and honor them without state involvement under the Fourteenth Amendment. However, “they may not seek judicial enforcement of such a covenant [as this violates] the Equal Protection Clause of the Fourteenth Amendment.”³⁴ Although Airbnb does not directly deal with racially restrictive covenants, Shelley set the necessary groundwork for modern discrimination laws.

Furthermore, *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC* (2012) addressed how anti-discrimination laws apply to shared living spaces. Roommate.com, an online platform that matched individuals seeking roommates, required users to disclose their sex, sexual orientation, and familial status to allow for filtering based on these traits. The Fair Housing Councils of San Fernando Valley and San Diego sued, alleging violations of the FHA and California’s Fair Employment and Housing Act (FEHA). The Ninth Circuit ruled that the

³³ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968),” Justia, accessed April 28, 2025, <https://supreme.justia.com/cases/federal/us/392/409/>.

³⁴ “*Shelley v. Kraemer*,” Oyez, accessed April 28, 2025, <http://www.oyez.org/cases/1940-1955/334us1>.

FHA and FEHA do not apply to the selection of roommates, as these acts only prohibit discrimination based on the “sale or rental of a dwelling.”³⁵ This case creates ambiguity for Airbnb, suggesting that if hosts only rent out part of their home, they may not be subject to the same anti-discrimination laws as hosts who rent out entire properties, since their guests can be considered roommates.

These cases reveal the legal ambiguities surrounding their application to Airbnb since its presence as a digital platform is unexplored compared to traditional real estate markets.

Recent Legal Cases

Recent lawsuits and incidents involving Airbnb include *Gregory Selden v. Airbnb*, the Oregon Discrimination Settlement mentioned above under Platform Design and Market Incentives, and the Dyne Suh Incident.

In *Gregory Selden v. Airbnb*, Selden, an African American man, sued Airbnb after a host denied his booking request, which he believed was racially motivated due to his profile picture displaying his race. Selden later made a second account with the same background information but instead used a profile picture of a White individual, which the same host then accepted. However, when Selden brought the issue to court, the court ruled that because Selden agreed to Airbnb’s Terms of Service, which included a binding arbitration clause, his discrimination claims had to be resolved through arbitration rather than a regular court. In arbitration, Selden lost as the host’s property was a private, owner-occupied residence, which was exempted under the FHA. The court stated that, “as a condition of simply participating in today’s digital economy, the applicable law is clear: Mutual arbitration provisions in electronic contracts—so long as their existence is made reasonably known to consumers—are enforceable, in commercial disputes and

³⁵ Fair Housing Council of San Fernando Valley v. Roommate.com, LLC (9th Cir.). Accessed April 28, 2025. <https://cdn.ca9.uscourts.gov/datastore/opinions/2012/02/02/09-55272.pdf>.

discrimination cases alike.”³⁶ This case further highlights the complexities and limited legal protections surrounding discrimination on Airbnb.

Airbnb has also had instances of discrimination that traditional statutes do not address. In 2017, Dyne Suh’s Airbnb reservation was abruptly canceled after the host texted, “I wouldn’t rent to u if u were the last person on earth. One word says it all. Asian.”³⁷ Suh filed complaints to Airbnb and the California Department of Fair Employment and Housing. Under California’s Unruh Civil Rights Act, the host was fined \$5,000 in damages and required to undergo restorative measures, including civil rights training, completing a college-level course on Asian American studies, and volunteering at a civil rights organization.³⁸ This incident highlights the limitations of existing federal laws and past court cases in addressing discrimination on Airbnb’s platform.

Economic and Legal Contrasts with Traditional Hotels

Unlike traditional hotels, Airbnb’s platform design enables individual hosts to discriminate against potential guests, which is something hotel booking systems are structured to prevent. As public accommodations, hotels must comply with laws such as the Civil Rights Act of 1964, which prohibits discrimination based on race and other characteristics. In contrast, Airbnb hosts can circumvent this, as most properties are privately owned, allowing bias to be a factor in booking decisions.

Despite this, Airbnb has overtaken the hospitality industry due to its ability to offer travelers a budget-friendly, personalized experience. Travelers tend to favor Airbnb because of its lower prices and home-like atmosphere. In 2022, “hotels reported an average daily rate

³⁶ "Selden v. Airbnb, Inc.," Justia, accessed April 30, 2025, <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2016cv00933/179136/19/>.

³⁷ Madison Park, "Former Airbnb Host Fined \$5,000 for Refusing Asian American Guest," CNN, last modified July 14, 2017, accessed April 28, 2025, <https://www.cnn.com/2017/07/14/us/airbnb-host-fine-asian-comment/index.html>.

³⁸ Park, "Former Airbnb," CNN.

(ADR) 26.6% higher than short-term rentals.”³⁹ This has caused hotels to lose approximately \$450 million annually in direct revenue.⁴⁰ Airbnb has also caused a “2-3% decrease in hotel revenue for every 10% increase in Airbnb market share.”⁴¹

While traditional hotels are held liable for discriminatory practices under the Civil Rights Act and the FHA, Airbnb’s model operates in a legal gray area where many hosts can bypass these protections from statutes like the “Mrs. Murphy” Exemption. Airbnb’s decentralized system makes it harder to regulate, thus pushing away potential customers who might find challenges when booking.

Broader Discrimination Across the Sharing Economy

In a similar way, there have been numerous instances of discrimination across the sharing economy on platforms such as Uber, Lyft, TaskRabbit, and Fiverr.

Cases of racial bias have been documented on ridesharing platforms such as Uber and Lyft. In 2018, the National Bureau of Economic Research found that in Boston, Los Angeles, and Seattle, “Uber drivers are two times more likely to cancel a ride if the passenger’s name is one used predominantly by African Americans.”⁴² African Americans also face longer wait times and higher cancellation rates. The design of these platforms, which has visibility of the rider’s name and profile picture, enables opportunities for bias. For example, “African American riders

³⁹ Scott Sage, "Airbnb vs. Hotels: How Guests Choose & Why It Matters," AirDNA, last modified March 3, 2024, accessed April 22, 2025, <https://www.airdna.co/blog/3-things-airbnb-hosts-need-to-know-about-hotels>.

⁴⁰ Andrea Galvan, "How Airbnb Disrupts the Hotel Industry," globalEDGE, last modified March 5, 2024, accessed April 22, 2025, <https://globaleedge.msu.edu/blog/post/57383/how-airbnb-disrupts-the-hotel-industry#:~:text=Beyond%20revenue%2C%20hotels%20are%20also,increase%20in%20Airbnb%20market%20share.>

⁴¹ Galvan, "How Airbnb," globalEDGE.

⁴² Yanbo Ge et al., *Racial and Gender Discrimination in Transportation Network Companies* (National Bureau of Economic Research, 2016), 2, accessed April 26, 2025, <https://doi.org/10.3386/w22776>.

[wait] between 29 and 35 percent longer for a [UberX].”⁴³ Specifically, male riders with African American-sounding names in areas with few taxis are the most targeted.⁴⁴

Discrimination within Uber has been identified in two forms: “direct, like when a driver cancels on a rider because of their race, and systemic, where history has informed patterns in where people live.”⁴⁵ In cities like Chicago, historical practices such as redlining and other racially segregated housing patterns have shaped neighborhoods in ways that impact rideshare wait times today. In South Chicago, where many Black residents reside, longer wait times remain because the area is further from downtown, deterring drivers from accepting trips there.

In response, Uber and Lyft have taken steps to combat discrimination. Both companies have adopted similar anti-discrimination policies and community guidelines while investing in DEI initiatives and working towards inclusive hiring practices. However, ongoing challenges remain, with continued reports of ride cancellations and service refusals based on demographic characteristics.

Similarly, TaskRabbit and Fiverr, platforms that connect freelancers to individuals and businesses for services, have faced issues of discrimination. A study examining 13,500 worker profiles found that user bias impacts task selection, hiring, and work evaluations, with workers favored based on race, gender, and ethnicity.⁴⁶ Platform design again plays a role, as the visibility of workers’ names and profile pictures allows users to act on personal biases.

Both platforms have attempted to mitigate bias. TaskRabbit has implemented “a ‘Quick Assign’ feature where customers can simply request that a task be completed within a given

⁴³ Ge et al., *Racial and Gender*, 2.

⁴⁴ Ge et al., *Racial and Gender*, 4.

⁴⁵ Abby Verret, "Uber and Lyft Are Dramatically Reducing Wait-Time Disparities for Black Riders, but the Impact of Systemic Segregation Persists," Carnegie Mellon University College of Engineering, last modified September 30, 2024, accessed April 26, 2025, <https://engineering.cmu.edu/news-events/news/2024/09/30-ride-sharing-equity.html>.

⁴⁶ Anikó Hannák et al., "Bias in Online Freelance Marketplaces: Evidence from TaskRabbit and Fiverr" (conference session at 2017 ACM Conference on Computer Supported Cooperative Work and Social Computing), 2, accessed April 26, 2025, <https://dl.acm.org/doi/10.1145/2998181.2998327>.

timeframe, at a given price, by any available worker.”⁴⁷ Fiverr has introduced greater anonymity options that include not requiring profile pictures, helping to limit bias in hiring decisions.⁴⁸

There remains uncertainty surrounding whether the Civil Rights Act of 1964 applies to Uber and Lyft. Drivers are technically “independent contractors who aren’t covered by the workplace protections of the Civil Rights Act.”⁴⁹ Uber has faced lawsuits for alleged Civil Rights Act violations, including claims of “firing minority drivers based on how customers rate them.”⁵⁰ A former driver has stated that “Uber is aware that passengers are prone to discrimination in their evaluation of drivers, but Uber has continued to use this system, thus making it liable for intentional race discrimination.”⁵¹ Meanwhile, taxis and buses are considered “public accommodations” and must comply with the Act. However, the classification of Uber and Lyft remains unclear. Similarly, TaskRabbit and Fiverr are not public accommodations, so they avoid regulation under the Act.

The application of California’s Unruh Civil Rights Act also remains ambiguous. Although all four platforms are businesses, their workers are considered independent contractors, complicating whether the companies fall under the Act’s definition of a business establishment.

Lastly, all four platforms are protected under Section 230 of the CDA. Since the platforms act as neutral intermediaries to the discriminatory acts, they are shielded from liability for biased behavior carried out by users and workers

⁴⁷ Hannák et al., "Bias in Online," 14.

⁴⁸ "Fiverr Enterprise's Privacy Policy," Fiverr, last modified January 2024, accessed April 26, 2025, [https://www.fiverr.com/legal-portal/legal-terms/fiverr-enterprise-privacy-policy#:~:text=In%20certain%20cases%2C%20we%20may,e.g.%20fraud%20prevention\);%20or](https://www.fiverr.com/legal-portal/legal-terms/fiverr-enterprise-privacy-policy#:~:text=In%20certain%20cases%2C%20we%20may,e.g.%20fraud%20prevention);%20or).

⁴⁹ Bloomberg, "Uber's Rating System Violates Civil Rights, Says Class Action," Los Angeles Times, last modified October 26, 2020, accessed April 26, 2025, <https://www.latimes.com/business/technology/story/2020-10-26/ubers-rating-system-violates-civil-rights-says-class-action>.

⁵⁰ Bloomberg, "Uber's Rating," Los Angeles Times.

⁵¹ Bloomberg, "Uber's Rating," Los Angeles Times.

The four platforms, like Airbnb, all demonstrate similar information asymmetries stemming from their platform design choices. By displaying guest names and profile pictures, these platforms enable users to make decisions based on visible traits, perpetuating discrimination. Rather than minimizing bias and promoting broader participation, companies have actively chosen to keep these design features to enhance transparency and user trust rather than prioritize the inclusion of all users.

Conclusion & Implications

Policy Recommendations and Proposed Reforms

Policy recommendations to help combat issues of discrimination on Airbnb include updating legislation, reforming Section 230 of the CDA, encouraging state-level action, and revising platform-specific mandates enforced by companies.

Congress must amend the FHA by eliminating the “Mrs. Murphy” Exemption for short-term rentals and temporary housing stays. This would extend anti-discrimination measures to all dwelling types, including single-family homes and private rooms on platforms like Airbnb. By closing this loophole, the law will strengthen tenant protections and prevent landlords from discriminating against guests.

Similarly, reforming Section 230 of the CDA to enforce the liability of platforms for third-party content involving discrimination is critical in addressing user bias. Platforms like Airbnb should be held responsible for the actions of their users. Through more rigorous screening of hosts and guests before granting them access to the platform and ongoing surveillance to detect and prevent discriminatory behavior, these platforms can tackle these problems before they even begin. While such actions would encourage greater auditing and

platform-level reform, they may also raise concerns about the overreach of executive control and potential user resistance.

Stronger state-level approaches, like California's Unruh Civil Rights Act, should be implemented to offer broader protections against discrimination in business establishments. By expanding similar laws to those in other states, Airbnb users can comfortably use the app without fear of discrimination. However, to ensure the application of the Act, Airbnb must legally be classified as a business establishment, so it is subject to all anti-discrimination standards. The Unruh Civil Rights Act played an essential role in the Dyne Suh incident after a host canceled on her because of her race. Similar protections would help users nationwide if adopted. However, this needs to be done in a manner that is not fragmented across different states to ensure consistency and equal enforcement.

Lastly, platform-wide mandates, such as the implementation of anonymized booking features, will help reduce discrimination by limiting the visibility of user information that can lead to biased decision-making. Potential changes include adopting Oregon's policy of displaying guests' initials during the booking process and hiding profile pictures until after the reservation is confirmed. While these actions address the root cause of the problem, they may also decrease user trust and reduce willingness to use the platform for travel needs. Another potential reform is expanding the Instant Book feature to cover more listings or making it the default option to reduce discriminatory practices. However, this limits host control, which may cause pushback from those who want the ability to choose who they rent to. Additional mandates should include increased penalties for discriminatory behavior, such as suspending hosts and banning repeat offenders, alongside regular audits to collect data and monitor ongoing discrimination issues.

Predictive Outlook and Final Recommendations

In the short term, tensions will likely remain as Airbnb's classification remains ambiguous, as it straddles the line between a public accommodation and a network of private properties. Until this is clarified, regulatory approaches will continue to vary across cities and states, causing nonuniform action and penalties for users participating in discriminatory actions. Similarly, technological advancements, such as AI and anonymized profiles, may help reduce bias, but only if platforms update their designs. Additionally, public relations risks related to Section 230 of the CDA and the "Mrs. Murphy" Exemption may pressure companies to self-regulate to maintain user trust and brand integrity. Consistency is needed to gain loyalty from users.

In the medium term, more states may adopt anti-discrimination laws similar to California's Unruh Civil Rights Act. However, progress will depend on continued pressure from civil rights organizations, racial justice advocates, and public awareness campaigns. Viral movements, such as the #AirbnbWhileBlack campaign, and high-profile incidents, like the Dyne Suh example, can potentially spur greater state reform. Similarly, reframing discrimination as a barrier to economic access and fairness within the sharing economy might help attract support. Highlighting how discrimination reduces transaction volume, hurts platform profitability, and inhibits growth might prompt market-driven stakeholders to advocate for change. Additionally, pressure from the tech and business sectors to improve consumer trust and legal clarity may also drive legislative change.

In the long term, federal updates to laws such as the FHA, CDA, and the Civil Rights Act could provide legal clarity on platform liability and anti-discrimination policies. This would require congressional action, including committee hearings, expert testimony, legislative debates,

and reconciliation of proposals. New digital civil rights legislation will be needed to address and update platform duties in this modern marketplace. This includes mandatory reporting on bias and improved mitigation strategies to strengthen accountability. Growing demand for digital equity, especially among millennials and Gen Z consumers, may further influence state-level and federal action.

Ultimately, discrimination will persist with weak enforcement of policies. Platforms like Airbnb must find a balance between profitability and user trust. With rising public pressure, evolving regulation, and technological innovations, the sharing economy needs to learn how to adapt to prioritize fairness for its users and close the liability gap. Airbnb's long-term success depends on its commitment to equity and transparent practices in an increasingly digital world. Policymakers must take swift action to hold platforms accountable and foster greater fairness across the sharing economy.