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## **Airbnb in New York City: Law and Policy Challenges**

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### **Abstract**

This case will present Airbnb's operation in New York City (NYC). NYC is Airbnb's largest U.S. market, but it has proven to be a difficult business environment, due to the legal framework, which strictly curtails short-term rental activity there. Students will identify how, going forward, Airbnb should work with the authorities to change the law, allowing expansion of the operation in NYC. Though this case focuses on NYC, it is relevant for Asia-based students, due to Airbnb's plans to enlarge its operation there. This case can be used in a law and public policy class for either high level undergraduate or post-bachelors law students.

**Key words:** Airbnb, New York City, law, short-term, peer-to-peer, rental, platform, affordable housing

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## Factual Background

Airbnb provides a digital platform that connects people who have accommodations to rent (hosts) with people seeking to rent such accommodations (guests) (Airbnb).

Accommodations listed on the platform include private islands, castles, RVs, house boats, tree houses, yurts. Airbnb now operates in more than 34,000 cities and 191 countries, and boasts over 50 million guests.

In October of 2007, Brian Chesky and Joe Gebbia, two recent art school graduates sharing a loft in SF and struggling to cover their rent, inflated three air mattresses and charged conference attendees, unable to secure hotel rooms, \$80 per night to sleep on their living room floor (Gallagher). Shortly thereafter their engineer friend, Nathan Blecharczyk, came on board as the third co-founder, and in August 2008 launched Airbedandbreakfast.com, an online platform for people to rent out space in their homes. (Id.) They tried to develop the business, but met with skepticism. (Id.)

Unable to attract investors, Chesky and Gebbia raised \$40K selling breakfast cereal, packaged in 2008 presidential candidate-themed commemorative boxes, which they designed and assembled (Thompson, 2013). In 2009 Airbnb was accepted into the Silicon Valley venture capitalist, Paul Graham's business incubator, Y-Combinator and received \$20,000 (Salter, 2012). After that the company received \$600,000 from an angel investor (Wortham, 2010). In November of 2010 Airbnb announced that it had raised \$7.2 million in a Series A round of venture financing, led by Sequoia Capital and Greylock Partners (Id.). The following year Sand Hill Road venture capital firm, Andreessen Horowitz, lead a \$112 of funding round (Austin,

2011). Airbnb also expanded by acquiring German clone Acceleo (Bradshaw, 2011) and UK rival Crashpadder before the 2012 London Summer Olympics (Kerr, 2012).

In 2014 Airbnb closed another \$475 million funding round (Snyder, 2014). In June of 2015 Airbnb completed one of the biggest private funding rounds ever, raising \$1.5 billion, in a deal that placed the company's valuation at \$25.5 billion (Demos, 2015). Participants in this round included private-equity firms, General Atlantic Inc., Hillhouse Capital Group of China; investment firm Tiger Global Management, Singapore's Temasek Holdings, as well as venture-capital firms, Kleiner Perkins Caufield & Byers, GGV Capital, China Broadband Capital and Horizon Ventures (Id.). Mutual-fund firms, Wellington Management and Baillie Gifford also bought in, while T. Rowe Price Group Inc. and Fidelity Investments increased their already existing stakes (Id.).

Airbnb's current valuation already surpasses the market cap of major hotel chains like Marriott (\$20.6 billion), Starwood (\$14.1 billion), and Wyndham (\$10 billion), and it's close to eclipsing that of Hilton (\$27.4 billion) as well (Griswold, 2015). Among venture backed start-ups, which have not yet gone public, only Chinese phone maker, Xioami, and car hailing service, Uber, carry higher valuations (Nucosa, 2015).

## **Airbnb's Business Model**

After creating an online profile, guests browse the platform and select accommodations listed by hosts, according to their preferences. Airbnb hosts determine how accessible they wish to make themselves and their space. For instance, a host can offer a sofa bed or spare bedroom in her own home, while she is present and interact with her guest frequently (shared

room). A host who prefers little to no interaction with her guest can make her entire home available at times when she is away; traveling for business or pleasure (entire house/private stay). Hosts can also choose how frequently they want guests. Airbnb does not prohibit hosts from posting multiple listings.

Hosts set the price for their accommodation, which they can modify according to seasonal demand, local special events and other factors. Airbnb recently added a pricing tool to the platform which creates ongoing suggestions for pricing based on several metrics (Lynley, 2015). Airbnb manages the payment through the platform. Airbnb earns revenue by charging hosts a 3% service fee for each reservation booked. The platform also charges guests a 6-12% service fee. Service fees are calculated based on the reservation subtotal. The exact percentage used depends on the subtotal of the reservation. It's a steady decline from 12% to 6% as the reservation amount increases.

Guests communicate their requests for accommodations to hosts through the platform, which they then have the discretion to either accept or deny. In order to protect the privacy of users and prevent them circumventing the platform, which would mean losing out on its fees, Airbnb blocks personal contact information until the transaction is completed. At the end of each stay Airbnb encourages hosts and guests to post reciprocal reviews, which become accessible to all users of the platform and presumably guide their decisions about future transactions.

In *Summer Travel Report: 2015*, Airbnb reported that during the summer months of 2015 nearly 17 million guests stayed with hosts around the world, up from 47,000 during the summer of 2010 (Airbnb). Additional triumphs in 2015 include launching in Cuba after the

Obama administration relaxed travel restrictions for US citizens wishing to travel to the island (Vyas, 2015); expanding its Business Travel Program on the heels of seven-hundred percent growth since starting last year (Claffey, 2015); and rolling out an official iPad app (Lawler, 2015).

### **The Legality of Airbnb's Operation**

Throughout the U.S., the short-term peer-to-peer rental activity facilitated by Airbnb raises several issues about the legality of its operation. This is because throughout the U.S. state and municipal governments promulgate a dizzying array of zoning and land use regulations which restrict short-term rental activity, usually occupancy of fewer than 30 days, in order to protect community character in the interest of home-owners and other long-term residents. Furthermore, American courts tend to uphold such regulations when they face constitutional challenges. For example, in *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (1991), the Court stated, "Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community."

Short term rentals, therefore, may be subject to: (1) full prohibitions; (2) quantitative restrictions, which cap the number of short-term rentals in a community utilizing a quota system or time limitations the; (3) proximity restrictions which limit the density of short term rentals or restrict them to a particular area; (4) operational restrictions which limit occupancy;

and (5) licensing requirements which are conditioned on meeting standards, registration and payment of a fee (Pindell, 2015).

With respect to the responsibility for compliance with zoning and land use regulation, Airbnb's Terms of Service, states:

"Hosts should understand how the laws work in their respective cities. Some cities have laws that restrict their ability to host paying guests for short periods. These laws are often part of a city's zoning or administrative codes. In many cities, hosts must register, get a permit, or obtain a license before listing a property or accepting guests. Certain types of short-term bookings may be prohibited altogether. Local governments vary greatly in how they enforce these laws. Penalties may include fines or other enforcement. Hosts should review local laws before listing a space on airbnb."

Additionally, Airbnb's Responsible Hosting webpage cautions potential hosts to: "Ensure you look up any permitting, zoning, safety, and health regulations that may apply. The governing authorities that regulate the use and development of property in your area may have useful information on such regulations." This page also provides individual links to regulatory information from approximately 50 U.S. localities and one "catch all" link for those which are not listed. Each link then opens to a template which reads as follows: "When deciding whether to become an Airbnb host, it's important for you to understand the laws in your city." There are then links to websites for each of the local entities responsible for implementing the law. Clicking through these links, potential hosts discover that zoning codes, drafted before the popularization of peer-to-peer rentals do not consider that the activity operates, according to Janelle Orsi, director of the Sustainable Economies Law Center in Berkeley, California "...in a

gray area, between personal and commercial, public and private" (Kamenetz, 2013). They find that these codes draw sharp distinctions between commercial and residential land uses, and therefore, may not accommodate the flexibility of use which would be required by the Airbnb business model (Cohen & Zehngebot, 2014).

In addition to zoning and land use regulations, state and municipal governments levy temporary occupancy taxes (TOT) on facilities that provide short-term accommodations in order to raise revenue to offset the extra "wear and tear" that tourism places on local resources (Rattigan, 2014). TOT typically applies to stays of 30 or fewer days (Carrns, 2015). Each locality charges different TOT rates. Hotels and other commercial lodging establishments collect TOT from guests and submit it to the appropriate taxing authority, which may be more closely aligned with tourism rather than municipal finance or some combination thereof (Rattigan, 2014). In the largest 150 U.S. cities the average TOT is 13.4% (King, 2014).

According to its website, over the last few years, Airbnb has entered into agreements with 15 local governments in the US to collect TOT from guests and remit the revenue to the appropriate authority on behalf of hosts. In other localities hosts remain responsible for collecting TOT, but they may not be able to do so. This situation sometimes occurs when a local revenue agency is only authorized to collect TOT from licensed commercial lodging establishments and short-term peer to peer activity does not qualify for such a license, pursuant to another local authority which forbids commercial activity in a residential zone. In NYC, the law simply does not provide a mechanism for NYC hosts collect and remit TOT. In an August 21, 2013 letter, responding to a request from Airbnb for ruling on the platform's TOT payment obligations, the NYC Department of Finance clarified that *the platform* is not required

to collect or remit TOT (Goldman, 2013). However, the issue is still not fully resolved with respect to hosts, leaving open the possibility that they might be obligated to pay TOT the future.

Based on the foregoing, potential hosts risk violating different local laws when they utilize the platform, however, Airbnb disclaims liability. Finally, by utilizing the platform, hosts agree to the following Terms of Use: “You understand and agree that *you are solely responsible* for compliance with any and all laws, rules, regulations, and Tax obligations that may apply to your use of the Site, Application, Services and Collective Content.”

### **NYC’s Legal Framework Strictly Curtails Short-term Rentals**

In NYC the legal framework regulating rental housing is notoriously complex. In a 2009, case, *City of New York v 330 Cont. LLC*, 60 A.D.3d 226, the Court explained that rental apartments have been governed by a, “complex web of rules formed by the City's zoning resolutions dating back to 1916, the Multiple Dwelling Law (MDL), and the City's Administrative Code.” According to the References and Annotations to the MDL it is a state statute, which was originally enacted in 1929 to establish proper housing standards and protect the health, safety, morals welfare and reasonable comfort of the residents of NYC apartment buildings with three or more units. Since the early part of the twentieth century the local authorities have used this statute to curtail the illegal operation of hotels in residential buildings. The MDL has been amended from time to time, most recently in 2010, to curb the new proliferation of illegal hotel activity facilitated by platforms such as Airbnb (Pressler, 2013).

The MDL creates two building-use classifications, which require different NYC-issued Certificates of Occupancy (COs); Class A and Class B. Prior to the 2010 amendment, the statute stated that Class A buildings were to be “occupied, as a rule, for permanent residence purposes.” Class B buildings on the other hand, were to be “occupied, as a rule, transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals.” Because of their transient use, Class B buildings were subject to stricter fire safety standards than Class A buildings.

Though the statute created a distinction between the two types of buildings, it failed to define the terms, “permanent residency” and “transient residency.” As a result, permanent residency was traditionally interpreted to mean stays of 30 days or more. Equally important, the “as a rule” language created ambiguity, which Class A building owners interpreted to mean that some units could be occupied transiently, as long as the rest were occupied permanently. This ambiguity blurred the line between the building-use classifications and rendered them meaningless; effectively allowing mixed use.

In the *City of New York v 330 Cont. LLC*, NYC sued to enjoin the owner of three Class A buildings from renting out units on a transient basis, in violation of the CO. The Court refused to issue the injunction, agreeing with the interpretation of the “as a rule” language described above, which created a loophole for Class A building owners to legally operate short-term rentals in otherwise residential buildings. In response to this ruling, which would encourage more short-term rental activity in otherwise residential buildings, and at the behest of Mayor Michael Bloomberg, Senator, Liz Krueger and Assembly Member, Richard Gottfried took action. In February 2010 they introduced Bill S6873/A10008 in the New York State Legislature, to

amend the MDL. The bill passed and the amended version of the MDL went into effect in July 2011.

The amendment to the MDL eliminated the “as a rule” language, to make the distinction between Class A and Class B buildings unequivocal, thereby eliminating lawful mixed use. It also defined permanent residency as “occupancy of a dwelling unit by the same natural person or family for 30 consecutive days or more.” In addition to clearing up the ambiguous language, the amendment defined permanent resident as, “a natural person or a family so occupying a dwelling unit.” Permissible use would allow a permanent resident to have a paying guest for fewer than 30 days, but only when the permanent resident was present.

The amended MDL, subsequently, placed significant limitations on Airbnb’s operation in NYC. Ultimately, hosts were prohibited from legally renting out an entire house, because the law required a member of the household to be present. Furthermore, because the amended MDL required a host to be natural person, commercial landlords, typically organized as corporate entities, were, effectively, barred from the short-term rental business.

Despite these stringent legal restrictions on short-term rentals, NYC is Airbnb’s largest U.S. market, with 25,000 listings per night (Sreenivasan, 2015). In 2014, NYC hosted 56.4 million overnight visitors, making it the most popular, large city tourist destination in the U.S (NYC & Company, 2015). However, a 2015 study commissioned by Airbnb, reported that the average daily rate for a NYC hotel was an astonishing \$295 compared to the \$160 average daily rate for Airbnb accommodation is \$160 (HR&A Advisors, Inc., 2015). The study also reported that in 2014, 767,000 Airbnb guests visited NYC; an 85% increase over the previous year. Not

surprisingly, 87% of NYC Airbnb guests said that they use the platform because they want to be financially conscious.

Conditions in the NYC rental housing market fuel an appetite for Airbnb hosting, and at the same time, create apprehension about Airbnb's impact on the supply of affordable rental housing. First and foremost NYC rents are high. According to the June 2015 Rent Report from Zumper, the median monthly rent for a one-bedroom apartment in NYC stood at \$3,100 (Hunter, 2015). Apart from San Francisco, which overtook NYC for the first time September of 2014, no U.S. city has higher rental costs (O'Connor, 2015). Approximately half of NYC's residents living in rental housing are classified as rent burdened, with more than 24% spending over 30% of their income on rent and utilities (Kaperis, Ellen and Karfunkel, 2015). Another 30% of these households are classified as severely rent burdened, spending more than half of their income on rent and utilities (Id.).

Moreover, apartments are also in short supply. NYC renters contend with a 3.5% vacancy rate, one of the lowest in the country (Id.). This can be partially attributed to high demand, with 64% of the households in NYC are comprised of renters, a far higher share than the national average (Id.). Additionally, NYC established a rent stabilization program in 1969. Pursuant to the City Administrative Code, a Rent Guidelines Board sets maximum allowable rents and rates for rent increases, annually, in exchange for granting landlords tax breaks. This program currently covers approximately one million rental units, which residents rarely relinquish (Wishnia, 2015).

Community advocates opposed to Airbnb point to a positive correlation between the growth of the platform and a shrinking supply of affordable housing (New York Communities for

Change and Real Affordability for All, 2015). They argue that because higher profits can be earned from hosting than from the typical one-year residential rental arrangements, landlords are incentivized to convert apartments to full-time Airbnb properties (Id.). When these apartments disappear from the rental market, the cost of rent is driven up higher (Id.). There is particular concern about landlords who utilize the platform to list multiple properties, which of course, takes a bigger bite out of the rental housing market (Id.). For example, hospitality outlet, *Skift*, commissioned Connotate, a commercial data extraction and monitoring firm to perform an analysis of Airbnb hosts, based on the platform's publicly available listings and reported that hosts with multiple listings control 30% of Airbnb's inventory in NYC (Clampet, 2014).

In addition to commercial webscrapers such as Connotate, Murray Cox, a NYC-based, self-described community activist, technologist turned-photographer, conceived *Inside Airbnb*, an independent, web-based, non-commercial set of tools and data, which provides answers to questions such as:

- How many listings are in a particular neighborhood and where are they?
- How many houses and apartments are being rented out frequently to tourists and not to long-term residents?
- How much are hosts making from renting to tourists, compared that to long-term rentals?
- Which hosts are running a business with multiple listings?

Cox's work has been utilized by affordable housing advocates to dispel Airbnb's assertion that most hosts are regular New Yorkers trying to make end meet. Airbnb, however, refuses to

comment on data obtained from webscrapes because they use, "inaccurate information to make misleading assumptions about our community" (Whitehouse, 2014). Nonetheless, the platform refuses to provide information to refute these findings, which may lend them credibility.

Meanwhile, Airbnb hosting has been embraced by some financially hard-pressed, but enterprising New Yorkers as a modern twist on the long-standing practice of renting out space in their homes to make ends meet (Jefferson-Jones, 2015). According to Airbnb, a typical host's income from using the platform covers 21% of their annual rent (HR&A Advisors, Inc.). The platform publicizes stories about how Airbnb provides income to help regular New Yorkers remain in their homes whether they are facing unexpected medical bills; coping with the uncertainty of freelancing; wishing to dedicate more time to their families; or pursuing a new career path (Airbnb ). However, hosts who are renters may risk losing their homes, because a residential lease is a private contract, which usually forbids a tenant from subleasing absent the landlord's permission. Tenants who do so create an event of default which can result in eviction (Schram, 2015). Considering the state of the rental housing market, landlords would not hesitate to use non-sanctioned Airbnb hosting as a pretext to evict tenants and then charge higher monthly rent or utilize the platform themselves.

In addition to affordable housing concerns, Airbnb hosting raises quality of life and safety concerns among some multi-dwelling building residents (Pressler, 2013). NYC is, by far, the most densely populated major city in the U.S. (U.S. Census Bureau, 2013). As a result more than 85% of the residents live in multi-dwelling buildings, with close to half living in buildings with 20 units or more (Id.). Residents of these buildings live in close proximity, which

necessitates exercising consideration for the neighbors. They also share keys, which allow access to the entire building, including common areas such as hallways and elevators, and therefore, share responsibility for security.

### **Airbnb's Legal Challenges in NYC**

In 2011, when the amendments to the MDL first went into effect a profile about the platform reported that it was only handling 10,000 guests a night (Wortham, 2011). At that time, legal compliance was an afterthought. CEO Brian Chesky told the *New York Times* that people who use the service are responsible for making sure they are not violating local and stated, "We're not classified as the brokers; we're just the service." However, as Airbnb's NYC operation grew, it began to attract greater scrutiny from the local authorities (Kopytoff, 2013). As a result of this stepped-up scrutiny, hosts bore the brunt of non-compliance, with some being cited by the authorities and facing large fines.

For example, in 2012, host, Nigel Warren, rented out his bedroom for 3 nights, while away on vacation. Upon Warren's return, he found that he and his landlord faced fines totaling nearly \$40,000 for violating the MDL (Leiber, 2012). Warren begged his landlord not to evict him and hired an attorney for \$400 per hour (Id.). When Warren asked Airbnb for assistance with paying his legal bills, the platform initially denied his request, pointing out that hosts are responsible for legal compliance (Id.). Warren admitted that he had not read Airbnb's Terms of Service, but maintained that the platform should not make casualties of the very people who make the site a success (Id.). Ultimately, Airbnb reversed its position and agreed to assist

Warren after the columnist who reported on his plight contacted Airbnb on his behalf (Hantman, 2013).

Shortly after the Warren story broke, Airbnb hired David Hantman, the former head of government relations at Yahoo, as its head of public policy (Swisher, 2012). Under his direction, Airbnb would begin to engage in dialogue with local governments, "to clarify and even change the patchwork of laws that apply to its hosts" (The Economist, 2013). In line with this strategy, Airbnb publicized its advocacy on behalf of Warren and used his predicament to argue that the MDL had been misinterpreted and wrongly applied in his case (Hantman, 2013). Although Warren had rented his bedroom to a guest and went on vacation, his roommate, a member of the household, remained present so there was no violation of the MDL. When the administrative law judge from the New York City Environmental Control Board (NYCEC), the agency with jurisdiction over violations of the MDL, dropped the charges against Warren, Airbnb portrayed the case as a huge victory for him and all law-abiding NYC hosts (Hantman, 2013).

The celebration was, however, short lived. One week later, the New York State Office of the Attorney General (NYSOAG), "launched an investigation of users of web platforms like Airbnb who run large-scale enterprises in violation of fire safety, zoning, tax, and other applicable laws," and subpoenaed three years of data pertaining to all 15,000 Airbnb hosts in New York State, in order to identify these large scale operators (NYSOAG, 2014). Initially, Airbnb told NYC hosts, via the Public Policy blog, that the NYSOAG was only targeting a small number of so-called bad actors, such as illegal hotel operators and slumlords, who abuse the platform and said that it would work with the NYSOAG to weed them out (Hantman, 2013).

Airbnb conveyed a message that law-abiding hosts had nothing to fear. Nonetheless, hosts reacted angrily at the prospect of Airbnb turning over their data to the authorities; with some threatening to leave the platform.

Unable to reach an agreement with the NYSAG, Airbnb filed a motion in state court objecting to the broad sweep of the subpoena (Hantman). In *Airbnb v. Schneiderman*, 44 Misc.3d 351 (2014), the Court agreed with Airbnb, but only on the grounds that the subpoena was overbroad, pointing out that the platform's own privacy policy allowed it to disclose, "any [user] information in its sole discretion that it believes is necessary to respond to, *inter alia*, subpoenas." The next day the NYSOAG issued a second subpoena which was narrower in scope, requesting anonymized data on the 124 most active NYC hosts (Schneiderman).

The parties then agreed to a settlement, with both Airbnb and the NYSAG claiming victory. Airbnb complied with the narrower subpoena. Before doing so, however, it purged 2,000 hosts, "bad actors," who listed multiple properties (Gilette, 2014). Additionally, Airbnb agreed to provide further information to the NYSAG upon request; add a pop-up box to the platform warning NYC hosts about the MDL; and email the content of pop up box to all NYC hosts (Id.). Airbnb also notified NYC hosts about its obligation to comply with the subpoena. Perhaps to deflect host anger, Airbnb attempted to use the settlement agreement to mobilize them into political action, stating, "The law that made this investigation possible is still on the books. And we need to change that law to allow anyone in New York who wants to rent out their own home to do so" (Hantman, 2014,).

In October of 2014, the NYSOAG released *Airbnb in the City*, a scathing report based on the host information provided by the platform in May 2014. Topline findings included:

- 72% of the platform's NYC listings violated the law;
- Commercial hosts accounted for a disproportionate share of activity and revenue offering hundreds of unique units, with 6% receiving over 37% of the revenue; and
- Thousands of residential units in New York City were dedicated primarily or exclusively to private short-term rentals taking them off the rental housing market.

After the release of the NYSAG's report, the debate about Airbnb's impact on the rental housing market became more heated. On January 20, 2015, The NYC City Council Committee on Housing and Buildings held an oversight hearing to gather information about the effect of short-term rentals and home-sharing sites on the housing market. At the hearing Airbnb representatives came under fire when they denied the accuracy of the NYSOAG's findings about the prevalence of illegal listings, but admitted that the platform did not track such activity (Jorgensen, 2015).

Meanwhile, the authorities have stepped up their enforcement efforts against illegal Airbnb activity. The Mayor's Office of Special Enforcement (OSE) is a multi-agency task force, which was formed in 2006. From the time of its formation, the mandate of OSE has included coordinating investigations using inspectors from the NYC Department of Buildings and the Fire Department to root out illegal hotel activity. In 2014, the city responded to 1,157 complaints, and 1,200 violations were issued as a result on-site inspections by the OSE (Dutton, 2015). According to the acting director, during that time, OSE has been began utilizing Palantir, a sophisticated technology, which allows the same amount of staff to get 30% more work done (Maritz, 2015). OSE issued 568 violations during the first four months of 2015, compared to only 310 during the same period last year (Gonzalez, 2015). On July 1, 2015, OSE's budget was

doubled to \$2.8 million, which will allow it to expand the staff from 12 to 29 people (Fickensher, 2015). In October 2015 there was a bill before the New York City Council, which if passed would raise fines against hosts who violate the law (Fermino, 2015).

### **Airbnb's Way Forward**

Early in its history, Airbnb resisted regulation; emphasizing that that it was at the vanguard of the sharing economy, beyond the reach of antiquated laws (Streitfeld, 2014). In 2013 CEO, Brian Chesky told an assembly of hosts, "This is a new economy, the sharing economy...There are laws for people and there are laws for business, but you are a new category, a third category, people as businesses. As hosts, you are micro-entrepreneurs and there are no laws written for micro-entrepreneurs" (Guynn, 2013). However, in a recent interview, he, stated, "We want to be regulated" (Bloomberg Business, 2015). Airbnb's dramatic reversal regarding regulation can be attributed to a combination of factors related to concerns about the platform's financial future. As discussed above, there is a tremendous amount of private equity invested in Airbnb and speculation that the company will go public at some point in the next few years. Of course, obtaining SEC approval to go public and generating investor excitement would require Airbnb to minimize legal risk factors.

On May 12, 2015, Airbnb released an economic impact study about NYC, and used the occasion to share the objectives listed below with its host community (Pomeranc, 2015).

- Create rules that allow New Yorkers share only the home in which they live. Current law prevents many people from sharing their home unless they are present. We need

thoughtful laws that let New Yorkers share only the home in which they live, while preventing abuse.

- Strengthen laws that prevent illegal hotels. We oppose large-scale illegal hotels. We need tougher policies for unlicensed hotel operators.
- Help our community pay \$65 million more in taxes. We want to collect and remit hotel and tourist taxes in New York on behalf of our hosts, but currently cannot do so. If New York changes the rules, we estimate that the City and State will receive an additional \$65 million in tax revenue annually.
- Fix the law to help New Yorkers who need it most. If your apartment is rent-regulated, you often can't share your home, even if you are present. Home sharing is an economic lifeline for thousands of New Yorkers. These New Yorkers should be able to share their space as long as they do not earn more through home sharing than they pay in rent.

## Questions for Discussion

1. Does the MDL effectively address concerns about the supply of affordable housing in NYC?

By restricting hosts to renting out space only in their own homes, the MDL eliminates the prospect of landlords removing affordable housing from the market and therefore addresses these concerns. However, limiting hosting to times when hosts or members of their households are present does not address these concerns, and therefore, the MDL goes too far. Such restrictions perhaps address concerns about neighbors' quality of life and safety, because hosts would presumably be more discerning about guests who stay in their homes while they are present.

2. Why is Airbnb expressing a willingness to collect TOT and submit it on behalf of its hosts in NYC?

Collecting TOT is a quid pro quo for "fixing the law" to further legitimize the platform. If we examine the 15 U.S. cities where Airbnb collects TOT, we see that in each one, concessions were made by the authorities to liberalize laws restricting short-term rental activity at around the same time that they began accepting TOT from Airbnb hosts. Collecting TOT could also create a paper trail which might allow local government to monitor illegal-host activity. Beyond that, Airbnb may be offering to collect the TOT as a way to protect the platform from host backlash, if, in the future they are required to pay it retroactively.

3. In addition to offering to collect and remit TOT on behalf of hosts, what other concessions can Airbnb offer to local government?

Take on greater responsibility for ensuring that hosts are complying with the law and remove those who are not. For example, in NYC, a solution could be engineered to prevent "whole house" and multiple property listings, which violate the MDL. Furthermore Airbnb's security department could routinely monitor listings to weed out so-called bad actors. After all, the platform did so before turning over information to the NYSOAG in May, 2015. Of course, there will be unscrupulous hosts, who take elaborate measures to beat the system no matter what security measures the platform utilizes, but there is no meaningful oversight at this time. Without addressing the issue of illegal hosting, it is doubtful that Airbnb will gain any traction with the local authorities to change the existing legal framework

Share meaningful data on how the platform is being utilized in order to quantify the impact on the supply of affordable housing. Airbnb has dismissed the work of webscrapers as flawed and inaccurate, but refuses to provide information to refute their findings. While Airbnb has released economic impact studies which show that hosts use the platform to help them afford the high cost of housing in NYC, they do not address the number of properties which have been permanently removed from the rental housing market because of the platform and the impact on housing costs.

#### 4. Should people who live in rent-regulated housing be prohibited from hosting?

Rent-regulated housing is a highly controversial issue in NYC and is probably not a good one for Airbnb to take on. An argument could be made that people who live in rent-regulated housing already receive a tax-funded benefit, and therefore, should not be allowed to utilize the platform to further defray the cost of their housing. Furthermore, not all rent-regulated

tenants are low income earners and not all low income earners have access to rent-regulated housing in NYC. On the other hand, it could be argued that some rent-regulated tenants pay near market rates and all face annual rent increase, and therefore, should be able to host if they do not engage in profiteering. Allowing rent-regulated tenants to utilize Airbnb, subject to income caps, would require careful monitoring to prevent abuse.

5. Discuss the questions above in the context of your city.

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