Regulating Innovation in the Collaborative Economy: An Examination of Airbnb's Early Legal Issues

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Abstract Airbnb, a service through which ordinary people rent out their spaces to tourists, has become one of the most prominent companies in the collaborative economy. Hundreds of thousands of tourists sleep in Airbnb accommodations every night, yet a large number of these accommodations are actually illegal according to many jurisdictions' regulations on short-term rentals. This situation has made regulatory conflict an omnipresent issue for the company. Such regulatory tensions actually define the early years of many major innovations because the innovations are not perfectly compatible with existing regulatory frameworks. Moreover, Airbnb is a disruptive innovation within the collaborative economy, and operating within a tightly regulated industry, which made regulatory conflicts virtually inevitable for the company. Airbnb's rapid growth has forced policymakers to urgently rethink their applicable regulations by assessing the primary issues and impacts, both positive and negative, surrounding Airbnb—tourism, taxes, consumer protection, and local residents. In response, destinations have taken different approaches to regulating Airbnb, centred on renting restrictions, permits, enforcement, and taxes. As the regulatory landscape continues to evolve, more and more destinations will look to overcome the challenges associated with legalising, regulating, and taxing Airbnb.

Keywords Airbnb • Collaborative economy • Innovation • Regulation • Short-term rentals

1 Introduction

Often considered a poster child of the collaborative economy, Airbnb (www.airbnb. com) is an online service through which ordinary people rent out their spaces as tourist accommodation. Airbnb's popularity has grown exponentially in recent

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years, transforming the service from a niche product into a mainstream one. Nevertheless, a large portion of Airbnb accommodations are actually illegal because they contravene local short-term rental laws, and the company has consequently become embroiled in myriad regulatory battles across the globe. This chapter illustrates that such regulatory issues plague many major innovations, both inside and outside of the collaborative economy, because the innovations often do not fit within existing regulatory structures. The chapter subsequently explores the key issues for and against Airbnb that policymakers must consider as they seek an appropriate regulatory response. The chapter next examines the various approaches different jurisdictions are taking towards regulating Airbnb, as related to renting restrictions, permits, enforcement, and taxes. Finally, the chapter explores several challenges that will impact future Airbnb regulatory discussions, and how the regulatory environment surrounding Airbnb will likely evolve.

2 Airbnb and Its Legal Status

Airbnb describes itself as 'a trusted community marketplace for people to list, discover, and book unique accommodations around the world' (Airbnb, 2016a). As is characteristic of the collaborative economy, Airbnb has leveraged new internet and mobile technologies to greatly reduce previous trust and communication barriers, and has thereby modernised and popularised the age-old hospitality practice of ordinary people renting out residences to tourists. Airbnb is not the only company occupying this 'peer-to-peer short-term rental' sector (others include VRBO, Wimdu, and Onefinestay), but Airbnb is indisputably the most prominent. As with many other of these peer-to-peer short-term rental companies, Airbnb is much more than a simple 'matchmaker' platform like craigslist, as Airbnb is involved in numerous aspects of the rental process; for example, Airbnb handles the payments (earning its revenue by charging a commission), promotes security via a host/guest review system and various identity verification measures, offers hosts reimbursement for property damage, and even provides hosts access to free photographers.

Airbnb accommodations range from very modest to luxurious, and usually consist of an entire residence (house or apartment) or a private room in a residence where the host is also present. The level of professionalism ranges considerably, from hosts who periodically list their homes when away on vacation to professionally-managed full-time rental properties. As is typical of the collaborative economy, Airbnb guests are attracted by a combination of cost savings, practical benefits (e.g., household amenities), and an experiential facet based on the opportunity for authentic and unique local experiences and interactions (Guttentag, 2015; Tussyadiah, 2015). Since its inception in 2008, Airbnb's growth has been so swift that any numbers stated here will quickly be outdated, but by the summer of 2015

well over 500,000 guests were using Airbnb every night (Tsotsis, 2015), and by early 2016 the company boasted over two million listings worldwide (Airbnb, 2016a).

Despite this popularity, Airbnb is actually illegal in many jurisdictions due to zoning ordinances and other laws restricting unlicensed short-term rentals. Such issues have followed Airbnb across the globe, from Barcelona (Pellicer, 2014) to Berlin (Vasagar, 2014), from Malta (Cooke, 2013) to Myanmar (Pasick, 2013), from New York (Whitehouse, 2015) to New Orleans (Sayre, 2014), and from Tasmania (Beniuk, 2015) to Tel Aviv (Elis, 2015). Often, unlicensed rentals of under 30 days are prohibited, as is the case in Denver (Nowicki, 2014), Los Angeles (Morris, 2015), New Orleans (where the minimum increases to 60 days in the popular French Quarter) (Sayre, 2014), New York City (which permits such rentals only if the owner is also present) (Whitehouse, 2015), and Vancouver (Gallagher, 2014). Moreover, some jurisdictions have more specific limitations on short-term rentals, such as regarding areas where they can be located, their ratio within the community, the number of times they can be rented annually, or the number of allowable guests (Gottlieb, 2013). In addition to frequently being illegal, Airbnb also generally does not collect and remit the accommodation taxes that traditional forms of accommodation often charge.

Such issues were mostly trivial not long ago, but now that Airbnb and the broader peer-to-peer short-term rental sector have quickly become so immense, government bodies (mostly municipal) around the world are grappling with the question of how to respond. Airbnb's plan clearly was to establish itself as firmly as possible before confronting its regulatory concerns, and simply wait for policymakers to catch up (Yglesias, 2012a). This philosophy and the motives behind it were encapsulated nicely by the co-founder of Lyft, a ride-hailing company in the collaborative economy: 'If we took the approach of, "Hey, let's wait and see what the government does to create a path that is very, very clear for this new industry" ... then we wouldn't be operating anywhere' (Dubner, 2014).

3 Innovation vs. Regulation

Major innovations, by their very nature, often challenge regulatory structures by introducing novel products, services, and business models for which the most pertinent regulations—devised only for what previously existed—do not adequately apply. For example, today there are major regulatory debates surrounding innovations like food trucks, driverless cars, and drones. Airbnb has unsurprisingly argued that the regulations prohibiting its rentals are outdated and have not adapted to reflect modern technologies (e.g., Pedler, 2016), and there is some truth to this claim. As an amusing example, the Ontario Innkeepers Act still devotes significant space to describing when a hotel owner can place a lien on or sell a guest's horse (Johal & Zon, 2015). In addition to often lagging behind innovation, regulations can also unquestionably hinder innovative activities and will more generally limit personal freedoms (Chase, 2015). Nonetheless, regulations are (at least in theory)

intended to foster the overall public good (Chase, 2015; Koopman, Mitchell, & Thierer, 2014) and few would question their overall importance. For instance, Airbnb surely would desire regulatory protection against the (hypothetical) emergence of a rival service named Aerobnb. However, finding an ideal level of regulation is challenging, as policymakers must consider a variety goals including ensuring consumer protection, guaranteeing intellectual property, and fostering competition.

Innovations may also prompt regulatory action based on rent-seeking behaviour, as competitors encourage regulation and enforcement to protect their market position and hinder the innovation. Such manoeuvring is perhaps inevitable because innovations can pose an existential threat to incumbent products and businesses, Joseph Schumpeter, an influential Austrian-born economist who is widely recognised as the father of innovation studies, termed this process 'creative destruction,' and describes it as an intrinsic feature of capitalism (Schumpeter, 1942/2008). As he summarises, 'The competition from the new [innovation]... strikes not at the margins of the profits and the outputs of the existing firms but at their foundations and their very lives' (p. 84). Clearly fearing newfound competition from Airbnb, numerous hotel organisations and hotel workers unions, including the American Hotel & Lodging Association (O'Neill, 2014), the British Hospitality Association (Meyer, 2015), the French hotel union UMIH (Jenne, 2015), and the Australian Hotels Association (Ironside, 2015), have publically criticised Airbnb and advocated stricter regulations and enforcement. Such appeals parallel those made by restaurant associations against food trucks (e.g., Carman, 2013) and by taxi commissions against ride-hailing services such as Uber and Lyft (e.g., Greenfield, 2012).

Uber and Lyft, like Airbnb, form part of the collaborative economy, many aspects of which make it ripe for regulatory tensions. Firstly, collaborative economy innovations are based on rapidly advancing internet and mobile technologies, making it difficult for policymakers to keep pace. Secondly, several of the most popular collaborative economy services exist within highly regulated industries, such as Airbnb (short-term accommodation), Uber (transportation), and Prosper (finance). Thirdly, as Airbnb's CEO has highlighted, the collaborative economy has precipitated the emergence of micro-entrepreneurs who are challenging the distinction between businesses and people (Kessler, 2014). This blurring of traditional boundaries raises difficult questions regarding consumer protection (e.g., Should Airbnb accommodations meet the same safety standards as hotels?), where taxation and other liabilities lie (e.g., Is Airbnb liable if a guest is injured in an Airbnb accommodation?), and the employment status of collaborative economy workers (e.g., Should Uber drivers receive employee benefits?).

Moreover, Airbnb represents a specific type of innovation, known as a 'disruptive innovation' (Guttentag, 2015). This term is often overused to describe any novel product that 'disrupts' a market in a more colloquial sense (Yglesias, 2013). However, it really refers to a product whose appeal derives not from improved performance, as one may expect, but it rather underperforms in comparison with prevailing products' key attribute(s) while introducing an alternative package of benefits

generally centred on being cheaper, simpler, smaller, or more convenient. In other words, disruptive innovations are inferior 'good enough' products (Christensen, 1997; Christensen & Raynor, 2003). This notion seems to apply directly to Airbnb, which appears to underperform in comparison with traditional accommodations' key performance attributes (e.g., cleanliness, security, and quality assurance), but provides an alternative value proposition centred on its relatively low cost, practical benefits, and experiential authenticity (Guttentag, 2015). Because disruptive innovations are customarily simpler than existing products, they often will not meet existing standards within tightly regulated industries, which has led to regulatory clashes in industries including healthcare (Christensen, Grossman, & Hwang, 2009; Curtis & Schulman, 2006) and legal services (Campbell, 2012). In some cases, strict regulations may even prevent the emergence of disruptive innovations, as these inferior products, though 'good enough' for consumers, are not 'good enough' to meet established regulatory standards (Curtis & Schulman, 2006). Airbnb provides an excellent example of this issue, as Airbnb accommodations often will not meet the safety standards imposed on hotels and other traditional accommodations, and Airbnb emerged by simply ignoring the existing regulatory regime that would have otherwise suffocated it.

4 The Policymaker's Perspective: Airbnb's Issues and Impacts

Being a disruptive innovation within both the collaborative economy and a highly regulated industry, Airbnb's regulatory problems were virtually inevitable. As policymakers are forced to reassess their jurisdictions' relevant regulations in response to Airbnb's rise, they must consider a broad range of issues and impacts, both for and against Airbnb.

4.1 Tourism: Visitors, Traditional Accommodations and DMOs

Airbnb's most direct impacts are on the tourism sector. From a visitor perspective, Airbnb is essentially an unqualified benefit, as it has introduced new accommodations that differ from most existing options by being cheaper and providing a more authentic local experience. Even visitors who stay elsewhere may enjoy lower prices due to the new competition Airbnb offers. Nonetheless, tourism is a business, so from a destination perspective a central question is the potential economic impacts of Airbnb, as economic benefits could help compensate for other drawbacks. Unfortunately, the economic benefits of Airbnb are largely unknown. Airbnb has sponsored economic impact studies in various major cities, touting tens of

millions of dollars in economic activity (Airbnb, 2016b), but such studies are inherently biased (Crompton, 2006). Airbnb indisputably is lodging huge numbers of money-spending tourists, but this money may have been spent in a destination anyways, as Airbnb guests may simply use it as a substitute for traditional accommodations. Airbnb therefore may even allow visitors to spend less money overall by spending less on accommodation, although Airbnb contends the majority of its guests spend their accommodation savings elsewhere in a destination (e.g., Airbnb, 2015a, 2015b). Airbnb also touts its economic impacts by boasting that its guests tend to stay longer and spend more money than hotel guests (Airbnb, 2016b). However, it is possible that these behaviours are not actually influenced by Airbnb, and may simply result from Airbnb accommodations being particularly appealing for travellers on relatively long trips.

Nevertheless, regulations should not simply be fashioned to squeeze as much money as possible from tourists, and Airbnb certainly may strengthen the tourism economy in other ways. Airbnb accommodations tend to be spread throughout residential neighbourhoods rather than concentrated in a tourism core, so Airbnb may help to disperse tourist spending (Porges, 2013; Smerd, 2014). Airbnb also may reduce leakage from the local economy, as money is paid to local hosts (minus Airbnb's commission) rather than corporate hotels headquartered elsewhere. Additionally, Airbnb provides 'invisible infrastructure' (Capps, 2014) that can help support major events or seasonal tourist influx without the need for traditional accommodations that may not be sustainable. For example, Airbnb is the official 'alternative accommodation' sponsor of the 2016 Olympic Games in Rio de Janeiro, helping to ease the city's bed shortage (Associated Press, 2015). In addition to such economic benefits, Airbnb stays are purportedly more environmentally-friendly than hotel stays (Snyder, 2014), and the Airbnb host-guest interaction may promote intercultural understanding.

The question of whether Airbnb guests are regularly using Airbnb as a substitute for traditional accommodations has particularly salient implications for the regulatory debate. Airbnb has repeatedly denied that it competes directly with hotels, arguing that it draws a different type of tourist (e.g., Conley, 2014; Titcomb, 2014; Trenholm, 2015). Moreover, hotels in the U.S. have recently enjoyed exceptional performance despite Airbnb's emergence (Griswold, 2015b; Solomon, 2014), and some hoteliers and industry analysts claim Airbnb is too small and distinct from hotels to have a major impact (e.g., Grant, 2013; Karmin, 2015; Marcin, 2014). Nonetheless, while Airbnb's clientele may not perfectly resemble that of hotels, many of the hundreds of thousands of guests using Airbnb every night undeniably would have otherwise stayed in existing accommodations (hotels, hostels, bed-andbreakfasts, etc.). Furthermore, very early on Airbnb did in fact present itself as a hotel alternative (Airbnb, 2016c), and Airbnb is increasingly pushing into the hotel market by targeting business travellers (Newcomer, 2015). In addition, analyses of hotel metrics in Texas (Zervas, Proserpio, & Byers, 2015b), San Francisco (Swig, 2014), and New York City (Vivion, 2015) have concluded Airbnb is hurting hotel occupancy rates and prices, particularly in lower-priced hotels without a strong business clientele.

As was previously noted, the perceived threat of Airbnb has begun to mobilise the traditional accommodation sector, which has called for tighter regulations and stricter enforcement against Airbnb. The common refrain from these incumbents is that they desire a 'level playing field' in which Airbnb pays its taxes and is held to similar regulatory standards (e.g., Carney, 2015; Deese, 2015; Kenney, 2015a). Moreover, if Airbnb is hurting hotels then there could be a negative impact on hotel employment, which some policymakers may wish to protect (Dubner, 2014). This employment issue is partly offset by the money hosts earn and the ecosystem of businesses that have sprung up to serve Airbnb (Shankman, 2014), but collaborative economy jobs have been criticised for being precarious and offering no benefits (e.g., Keen, 2015). Also, Airbnb may have a particularly significant impact on non-hotel accommodations like bed-and-breakfasts (e.g., Kenney, 2015b) and hostels.

Hotels' opposition to Airbnb creates an awkward situation for local destination marketing organisations (DMOs) tasked with destination promotion, as DMOs are largely funded by hotels (via accommodation taxes) and hotels often feature prominently on DMO boards of directors (Sheehan & Ritchie, 2005). Therefore, even if a DMO feels Airbnb benefits a destination (e.g., by facilitating event hosting, fostering a destination's image as hip and trendy, engaging local residents with the local tourism sector, or simply providing a desirable accommodation alternative), the DMO may avoid publicly supporting Airbnb. San Francisco's DMO recently became the first to forge an official partnership with Airbnb (Sciacca, 2015) and Philadelphia followed shortly after (Hilario, 2015), whereas Baltimore's DMO has taken the opposite stance and sought stricter short-term rental restrictions (Munshaw, 2015). However, for the most part DMOs seem to have avoided Airbnb debates and allowed their two main stakeholders—hotels and municipal governments (Sheehan, Ritchie, & Hudson, 2007)—to confront the issue.

4.2 Taxes

In jurisdictions where Airbnb remains illegal and unregulated, it also is generally untaxed. Therefore, policymakers have an economic incentive to legalise, regulate, and tax Airbnb. In major destinations like San Francisco, the tax revenue from Airbnb can reach many millions of dollars (Green, 2015a). Moreover, taxing Airbnb eliminates the 'free rider' problem in which Airbnb and its hosts benefit from destination promotion without contributing to it via an accommodation tax.

Several years ago, Airbnb resisted accommodation taxes, arguing that accommodation tax laws needed to be updated for innovative services like Airbnb (Coté, 2012) and Airbnb hosts should individually be responsible for collecting and remitting the taxes (Levy & Goldman, 2012). However, as Airbnb's regulatory battles heated up, particularly in New York City, Airbnb wisely accepted its tax obligations and began using the promise of tax dollars as a bargaining chip for

regulatory acceptance (Hantman, 2014b; Wohlsen, 2013). For example, Airbnb recently sent a letter to all 213 New York State Legislators lamenting the millions of dollars in tax revenue that Airbnb could contribute if the laws were revised (Kerr, 2015). Amusingly, when Airbnb changed its stance on taxes, its hotel industry opponents in New York City, who had previously criticised Airbnb for not paying its taxes, were forced to similarly reverse course and began to oppose Airbnb taxation, worried that tax payments would grant Airbnb more formal legitimacy (Griswold, 2015a; Hantman, 2014c).

4.3 Consumer Protection

Beyond the tax question, when hotels demand a level playing field with Airbnb or when policymakers question its merit, they often reference consumer safety concerns including security, health, and fire safety (e.g., King, 2015; Sreenivasan, 2015; Valencia, 2014). Such concerns are understandable, and in fact one Airbnb guest has died after falling from a broken rope swing (Stone, 2015), another died from carbon monoxide poisoning (with several accompanying guests hospitalised) (Hill, 2015), two separate sexual assaults have reportedly been committed against Airbnb guests (Joshi, 2014; Lieber, 2015b), one guest was bitten by a host's Rottweiler (Lieber, 2015a), and another found a hidden camera in her rental (Brandom, 2015). However, while Airbnb can do more to prevent such tragedies, it must be acknowledged that given the massive number of Airbnb users it is almost unavoidable that some crimes and injuries would occur, and such incidents obviously occur in hotels as well (e.g., Hussain, 2015; Leland, 2015; MacBride & Flores, 2015). Also, the vast majority of Airbnb crimes actually seem to be property crimes perpetrated against hosts rather than guests (e.g., Nerman, 2015; Sernoffsky, 2015), and many Airbnb accommodations are in buildings that already abide by various safety standards.

Airbnb promotes security via identity verification measures and a review system, the latter of which is a defining security feature in many collaborative economy enterprises. Such systems serve the dual purpose of allowing two parties to learn more about one another before agreeing to a transaction, and creating an incentive for both parties to conduct themselves acceptably (Jøsang, Ismail, & Boyd, 2007). Several authors have posited that these self-regulatory reputation-based feedback mechanisms are more effective than traditional government regulatory regimes, and the latter are therefore mostly anachronistic and inefficient (Cohen & Sundararajan, 2015; Grossman, 2015; Koopman et al., 2014; Sundararajan, 2012, 2014). Grossman (2015), for example, envisions a new regulatory paradigm centered on accountability rather than permission, as information accessibility replaces the need for traditional licensing, and companies share data with regulators to help prevent and respond to problems. Koopman et al. (2014) similarly argue that information accessibility has minimised the need for traditional regulations, which should be relaxed for both incumbent businesses and new entrants, and Sundararajan (2014)

and Cohen and Sundararajan (2015) advocate almost wholly self-regulatory agencies with limited government oversight.

There is no question that regulatory agencies should exploit the copious realtime data now generated by consumers, which presents some obvious advantages over the information that can be gathered by a licensed inspector. However, one must be careful about overstating the collaborative economy's ability to use reputational feedback mechanisms for self-regulation. Advocating reliance on review mechanisms for consumer protection would seemingly suggest TripAdvisor is sufficient to regulate hotels, which is a notion that Sundararajan (2012) actually presents, but one with which most people would quickly disagree. The problem with relying on user reviews as a regulatory mechanism is that review systems like Airbnb's can exhibit numerous weaknesses. To begin, Airbnb reviews predictably focus on issues like cleanliness, location, and host friendliness, rather than issues like fire safety, the presence of carbon monoxide detectors, or the host's criminal record, which are the sort of issues most likely to be considered by government regulations. Additionally, several aspects of the Airbnb review system may artificially inflate the positivity of reviews: firstly, guests may not wish to post a negative review because it could signal pickiness that would lead future potential hosts to reject reservation requests (Mulshine, 2015); secondly, a guest must complete a stay in order to leave a review, and therefore cannot review a place that was so terrible the guest left early (Paris, 2015); thirdly, guests may be disinclined to criticise an individual person (i.e., the Airbnb host) despite having no issue criticising a faceless hotel property (Ho, 2015); and fourthly, until a recent policy change that postdates many existing reviews, Airbnb published hosts' and guests' reviews immediately, so each were discouraged from criticism out of fear of a retaliatory negative review (Rubin, 2014). Given such issues, it is unsurprising that research has found Airbnb reviews to be extremely positive, as compared with accommodation reviews on other websites (Díaz Armas, Gutiérrez Taño, & García Rodríguez, 2015; Zervas, Proserpio, & Byers, 2015a). In fact, Zervas et al. (2015a) looked at 600,000 Airbnb listings and found 95% enjoyed a 4.5 or 5 star rating, and virtually none had fewer than 3.5 stars. Consequently, rather than providing a substitute for traditional regulations, review systems are better suited to simply complement and bolster traditional regulatory practices, like in New York City where health authorities have used Yelp to help detect outbreaks of foodborne illness (Knox, 2014).

4.3.1 Hosts and Residents

Short-term renting permits Airbnb hosts to leverage what is likely their largest asset to generate additional income, which may help to cover mortgage payments and avert foreclosures (Gottlieb, 2013). In fact, Airbnb often boasts that a large percentage of its hosts use their earnings to help cover mortgage or rent payments and other basic expenses (Airbnb, 2016b). Restricting such economic activity requires a strong justification, and interestingly few have considered whether short-term rental

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regulations constitute violations of individual property rights, although a recent lawsuit in Tennessee makes this very claim (Garrison, 2015c). Jefferson-Jones (2015) provides the most focused analysis on this question, connecting it to the long history of boarding houses in the U.S. and arguing that short-term rental restrictions do, in fact, represent an unconstitutional 'taking' of private property (i.e., 'inverse condemnation') without just compensation.

Nevertheless, Jefferson-Jones (2015) glosses over some serious concerns with Airbnb accommodations. Whereas Airbnb may provide a net benefit for both the host and guest, it produces a negative externality in terms of its impacts on the host's neighbours, which is notably absent from most other collaborative economy services (e.g., ride-hailing). This concern is a basic reason for zoning laws—much like many people would not want their neighbours hosting weekly garage sales, or opening a mechanic business in their driveway, or running a beauty salon from their living room, it is understandable for people to not want to live across the hall from what is essentially a hotel room. Tourist guests, who may behave more hedonistically when on vacation (Carr, 2002) and have no long-term vested interest in the community, may prove disruptive for nearby residents. For instance, unknown transient guests may raise safety concerns or disturb neighbouring residents by noisily coming and going late at night or partying loudly (e.g., Leland, 2012; Lu, 2015; Shute, 2014). As one Airbnb critic scribbled on an Airbnb subway ad in New York City, 'The dumbest person in your building is passing out a set of keys to your front door!' (Pressler, 2014). Additionally, in neighbourhoods where Airbnb accommodations are abundant—like New York City's East Village (Fermino, 2015) or Paris's Marais (French, Schechner & Verbergt, 2015)—they can more generally harm the fabric of the community by filling purportedly residential areas with throngs of tourists. Consequently, while Airbnb is beloved by many, it has also led to conflicts between neighbours (e.g., CBC News, 2015; Coltrain, 2015) and triggered both informal and organised protests from some community activists (e.g. Curth, 2015; Dzieza, 2015; Langfield, 2014). In effect, Airbnb has produced a sort of 'NIMBYism¹' in which Airbnb is popular in theory, but many people do not want it near them. In fact, an online poll found that when asked if people should be permitted to rent their rooms to strangers, 26% of respondents answered it should be freely allowed and only 12% answered it should be completely banned, yet when asked if their neighbours should be permitted to rent their rooms to strangers only 17% said it should be freely allowed and 20% stated it should be completely banned (Ali, 2015).

Airbnb also may harm local property markets by reducing housing stock and in turn precipitating an increase in housing prices. Such issues primarily result from residences being used as permanent short-term rentals with absentee hosts, yet there are even reports of landlords evicting tenants in order to convert long-term housing into more lucrative short-term rentals (e.g., Aron, 2015). Nonetheless, it is unclear

¹'Not in my backyard'.

to what extent Airbnb truly reduces housing stock. Airbnb claims to make housing more affordable by providing hosts with supplemental income to help cover high rents or mortgages (Hantman, 2014a), and therefore has recently positioned itself as a champion of middle class economic stability (Said, 2015c). The company also portrays its hosts as ordinary people renting spare rooms (Chesky, 2013) and notes that roughly 80–90% of its hosts rent their primary residences (Airbnb, 2016b). However, this number obscures the much larger proportion of Airbnb inventory owned by hosts operating full-time rentals as a more professional enterprise, as has been illustrated in various independent analyses based on data extracted from the Airbnb website. For example, Slee (2014) looked at 14 of the world's largest cities and found an average of 38% of Airbnb accommodations were managed by hosts with multiple listings. Similarly, at the time of writing, data for 32 major worldwide cities extracted from Airbnb and presented on the website insideairbnb.com indicated an average of 64% of the cities' Airbnb listings were for entire homes/ apartments, 37% were managed by hosts with multiple listings, and 83% were available for renting at least 90 days per year. Examining the consequences of such patterns, reports by Airbnb-commissioned consultants, government analysts, and a pro-labor advocacy group have reached contradictory conclusions regarding Airbnb's impact on housing, with some finding Airbnb has minimal impact and others concluding that Airbnb is removing substantial levels of housing stock (Green, 2015b; Kusisto, 2015; Rosen, 2013; Samaan, 2015). It is also nearly impossible to tease out the impact of Airbnb from other important variables like job growth or demographic trends (Rosen, 2013), and Airbnb may be receiving blame better directed at other issues like restrictions on housing development or real estate investing by absentee foreign owners (Badger, 2014; Cutler, K.-M., 2014; Yglesias, 2012b).

5 Existing Regulatory Approaches

Airbnb's regulatory battles have developed into high-stakes and highly contentious affairs, characterised by heated legislative meetings (e.g., Karni, 2015; Mesh, 2014), high-priced lobbying (e.g., O'Brien, 2015; Thomas, 2015), campaign-style advertising (e.g., Mosendz & Smith, 2014), special interest groups (e.g., Hawkins, 2014; Tam, 2013), and citizen protests (e.g., Dzieza, 2015; Swan, 2014). These battles have resulted in destinations taking vastly different approaches to Airbnb. Some destinations have strongly opposed the service, such as New York City, where enforcement against illegal Airbnb accommodations has increased (Fickenscher, 2015), the State Attorney General subpoenaed Airbnb's data and released a critical report on the company's operations (Schneiderman, 2014), a state legislator sponsored a bill that would fine hosts for merely posting an Airbnb listing (Lovett, 2015), and another state legislator secretly recorded her own undercover Airbnb sting operation (Golding, 2015). Likewise, Berlin recently passed a law banning unregistered short-term rentals (Vasagar, 2014); Barcelona recently began

experimenting with new punishments for unlicensed short-term rental owners (Quijones, 2015) and fined Airbnb for marketing unlicensed listings (AFP, 2015); and Santa Monica, California recently passed new laws prohibiting short-term rentals in which the host is not present, and established a proactive enforcement department (Lepore, 2015). Nonetheless, during the past few years an increasing number of destinations have made moves towards legalising, regulating, and taxing Airbnb, such as Amsterdam (Weber, 2013b), London (Shankman, 2015), Nashville (Garrison, 2015a), Paris (France 24, 2015), Philadelphia (Lattanzio, 2015), Portland (Law, 2014a), Sacramento (Ortiz, 2015), San Francisco (Musil, 2014), and San Jose, California (Rosenberg, 2014). Developments are occurring so quickly that there is little reason to discuss any particular city in significant detail; rather, it is more useful to examine the key facets of the regulatory regimes that are being contemplated by nearly all destinations and will continue to define the Airbnb regulatory framework well into the future.

5.1 Renting Restrictions: Quotas and More

Much of the new short-term rental legislation focuses on capping the number of nights an entire home can be rented out annually. This focus addresses the concern that a plethora of casual hosts conceal a smaller number of commercial multi-unit operators who receive a large portion of Airbnb's bookings and remove housing stock (Cutler, 2015). For example, Amsterdam now permits renting an entire home for up to 60 days per year (Zabludovsky, 2014); London permits up to 90 days (Shankman, 2015); Paris permits up to four months (Schechner & Verbergt, 2015); Philadelphia permits up to 90 days unlicensed or 180 days with a license (Lattanzio, 2015); Portland requires homeowners to reside on-site at least nine months per year (Law, 2014a); San Francisco permits up to 90 days per year, while also only allowing one rental per host (Brustein, 2014); and San Jose permits up to 180 days per year (Rosenberg, 2014). Taking a much tougher stance on short-term renting, New York City (Whitehouse, 2015), Catalonia (Zillman, 2015), and Santa Monica (Lepore, 2015) allow short-term rentals only if the host is present during the stay, with Catalonia also limiting such rentals to four months annually.

Some destinations are also enacting laws relating to more detailed aspects of short-term renting. For instance, Amsterdam limits rentals to four guests simultaneously (Zabludovsky, 2014); Nashville mandates the number of guests can be no more than twice the number of sleeping rooms (Garrison, 2015a); Portland permits hosts to rent up to two bedrooms (Law, 2014a); and Carlsbad, California restricts rentals to coastal neighbourhoods (Seaside Courier, 2015). Moreover, several cities have taken the stance that the government should not subsidise properties that are used to earn short-term rental profits; for example, Amsterdam prohibits short-term rentals in rent-controlled properties (Dutch News, 2015), a New York City judge

evicted a tenant for renting his rent-stabilised apartment on Airbnb (Plautz, 2015a), and Boston ordered the owner of an affordable housing unit to stop renting it on Airbnb (Rocheleau, 2015).

5.2 Permits and Safety

In order to promote consumer safety and community wellbeing, many destinations have enacted licensing systems and/or other safety requirements. For instance, Grand Rapids, Michigan requires hosts obtain a \$287 rental license (Sidorowicz, 2014), Louisville requires hosts pay a \$250 annual licensing fee and comply with health and safety requirements, although the license requirement is waived for hosts who rent out no more than twice per year (Roldan, 2015a); Roanoke, Virginia has created a new 'homestay' permit for short-term renting (Chittum, 2015); Philadelphia requires a rental license for hosts renting out their homes for over 90 days annually (Lattanzio, 2015); Portland requires hosts obtain a \$178 permit (that involves a basic safety inspection), acquire a business license, and inform their neighbours and neighbourhood association of their rental intentions (Nius, 2014); and San Francisco requires hosts register in-person at City Hall and pay a \$50 fee (Weinberger, 2015). However, initial compliance with licensing regulations has been limited—after roughly one month in Grand Rapids only four of approximately 70 listings were properly licensed (Sidorowicz, 2014); after about six months in Portland only about 10% of its roughly 1600 rentals were properly licensed (Peltier, 2015); and after nearly 1 year in San Francisco only about one-fifth of the city's more than 6000 rentals had applied for a registration (CBS, 2015).

5.3 Rule Enforcement

Enforcement may be needed to pressure hosts into complying with licensing requirements and other regulations, but destinations have struggled considerably to institute enforcement measures that are both appropriate and practical. When initially confronted with the rise of short-term rentals, several destinations took an initially tough stance that was later tempered. Some, including Sydney (McKenny, 2014), Perth (Hennessy, 2015), Tasmania (Beniuk, 2015), and the Canary Islands (Perthen, 2012), threatened hosts with excessively large fines of up to hundreds of thousands of dollars, yet it does not appear the violators have ever actually been forced to pay these amounts. Likewise, city officials in both Boulder, Colorado (Kuta, 2015) and Louisville (Lopez, 2015) sent numerous hosts cease-and-desist letters, but in both cases such actions were dropped in favour of re-examining the old short-term rental laws. In fact, reports from numerous destinations—including Amsterdam (Weber, 2013a), Malibu (Stevens & Groves, 2014), and San Diego

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(Halverstadt, 2015)—of imminent crackdowns against Airbnb actually preceded more formal regulatory discussions.

Nonetheless, even new regulations have proved extremely difficult to enforce, as illustrated by the non-compliance with licensing requirements. For instance, a Louisville Assistant County Attorney described short-term rental enforcement as 'a nightmare' that has strained staff resources (Roldan, 2015b), the Amsterdam City council claimed its 22 full-time inspectors were not enough to cope with the city's short-term rental complaints (Dutch News, 2014), and San Francisco's short-term rental laws were deemed unenforceable by the department originally tasked with enforcing them (Matier & Ross, 2015b). In response, several locations have significantly expanded their enforcement bodies—San Francisco has created a six-person Office of Short Term Rental Administration (Kokalitcheva, 2015): Santa Monica created a new three-person enforcement department (Lepore, 2015); Quebec has planned to increase its number of inspectors (Presse Canadienne, 2015); and New York City, dealing with a significant rise in complaints (Gartland, 2015), has doubled the budget and more than doubled the staff of its enforcement department (Fickenscher, 2015). Enforcement is challenging because it is often difficult to definitively prove regulatory violations, even though rentals are publicly listed on the Airbnb website. For example, it can take significant time and effort to prove an Airbnb host is not living in a rental property, or that the property is exceeding an annual night quota. Enforcement has traditionally focused on investigating complaints, but numerous places, including New York City (Fickenscher, 2015), Paris (Schechner & Verbergt, 2015), Berlin (Nezik, 2015), and Santa Monica (Lepore, 2015) have transitioned to a more proactive approach in which violators are actively sought out using short-term rental websites.

Some jurisdictions have also considered requiring Airbnb to cooperate with enforcement efforts, either through sharing data or incorporating restrictions into the website. For example, in 2014 Portland's Revenue Division Director proposed requiring Airbnb to provide names and addresses for all local hosts in order to ensure licensing compliance, but the requirement was never established (Law, 2014b). Somewhat similarly, a California law proposed in early 2015 would require Airbnb to provide information on addresses being used for short-term rentals, the nights rented, and the revenue earned (Rosenhall, 2015). Airbnb predictably has resisted such efforts intensely, citing privacy concerns and the burden associated with compliance (e.g., Mason, 2015; Schaal, 2013). Nevertheless, in November 2015 Airbnb somewhat softened its tone by pledging to be 'transparent with our data and information' as part of a broader 'Airbnb Community Compact' (Airbnb, 2015c; Chesky, 2015). The following month Airbnb released anonymous New York City data and promised to make similar releases elsewhere (Isaac, 2015), including San Francisco (Nevius, 2015). Nonetheless, some policymakers criticised the endeavor, arguing that anonymous data was not actionable in terms of aiding enforcement of the existing regulations (Kulwin, 2015). Even without data sharing, there is also the potential for Airbnb to incorporate restrictions directly into its booking engine. For example, San Francisco legislation proposed in early 2015

would have prohibited Airbnb from listing units not in good standing (Cutler, 2015), and the proposed California law mentioned above would require Airbnb to prohibit bookings in jurisdictions where short-term rentals are banned (Mason, 2015). Additionally, Portland demanded Airbnb begin posting host license numbers on the website, threatening a fine of \$500 for each host violation, but Airbnb refused to comply and the city did not follow through with the fines (Walters, 2015).

5.4 Taxes

As was previously discussed, Airbnb initially resisted calls to collect and remit taxes, but as its regulatory battles intensified the company changed its attitude and began using taxes to gain acceptance and legitimacy. Indeed, taxation agreements have often closely coincided with moves to legalise Airbnb, such as in Amsterdam (Lomas, 2014); Nashville (Garrison, 2015a); Philadelphia (Lattanzio, 2015); Portland (Law, 2014a); San Jose (Rosenberg, 2014); and San Francisco (Musil, 2014), where Airbnb also agreed to pay back-taxes for several prior years (Matier & Ross, 2015a). It is therefore reasonable to assume that regulatory acceptance will soon come in destinations where Airbnb had recently begun collecting taxes at the time of writing, including Florida (Perry, 2015); Illinois (Ecker, 2015); Malibu (Sawicki, 2015); North Carolina (Knopf, 2015); San Diego (Horn, 2015); Washington, D.C. (Badger, 2015); and Washington state (Plautz, 2015b). These taxation agreements virtually all involve Airbnb collecting and remitting standard accommodation taxes, which means Airbnb and its hosts now contribute towards destination marketing and can no longer be criticized as 'free riders.' Taking taxation a step further, Tucson, Arizona recently raised the property tax rate for short-term rental hosts by reclassifying their properties from residential to commercial (McNamara, 2015), which is a development traditional bed-and-breakfasts have previously fought in some destinations (Stankus, 2012). Also, due to the housing concerns that Airbnb raises, Nashville has earmarked some of its shortterm rental tax revenue for an affordable housing fund (Garrison, 2015b), and in early 2016 the mayor of Chicago proposed a 2% surcharge on vacation rentals that would be similarly dedicated towards affordable housing (Spielman, 2016).

6 The Challenging Future of Airbnb Regulation

Because Airbnb has grown so rapidly, policymakers have been forced to tackle this innovation urgently and with little warning. Many cities undoubtedly wish to quickly establish a workable regulatory framework, and presumably Airbnb is similarly eager to be legalised and regulated, as there is widespread speculation that the company will go public in the relatively near future, and major regulatory

question marks would complicate an initial public offering (Logan & Alpert Reyes, 2015). The clear trend regarding Airbnb's regulatory landscape is one of increased legalisation, regulation, and taxation. In 2014, the U.S. Conference of Mayors even adopted a resolution in support of 'shareable cities' in which services like Airbnb are legalised with appropriate regulatory controls (Cutler, J., 2014). As Airbnb's current hockey stick growth curve eventually levels off, and the company is further brought into the regulatory fold, Airbnb will be seen less as a maverick service and more of a traditional one. This increased acceptance will likely lead to open competition with hotels, representation on DMO boards, and increased partnerships with other tourism firms (airlines, meeting organizers, etc.). It has become quite apparent that Airbnb has a long-term place in the tourism accommodation market, and it is sensible that policymakers are mostly focusing on using regulation to mitigate negative impacts rather than prohibit the service. To date, however, destinations have struggled to craft suitable regulatory controls that overcome the many challenges posed by Airbnb.

One major complication is that the public holds very mixed opinions toward Airbnb. For example, in November 2015 San Francisco voters rejected a proposed tightening of restrictions on short-term rentals, but the vote was relatively close (55–45%) even though the Airbnb-funded winning 'No' side spent over 15 times as much money campaigning as did the opposition (Said, 2015b). Around the same time, Boulder, Colorado residents voted at a similarly close margin (57.5–42.5%) to accept an ordinance that permitted and taxed short-term rentals (Burness, 2015). Also, a 2015 survey found that the proportion of prospective renters in New York City who were more likely to lease in an Airbnb-friendly building nearly doubled from 10% to 19% within the previous year, yet a slightly larger percentage (20%, down from 25%) still indicated they would be less likely to lease in such a building (Clarke, 2015). Moreover, as was described previously, when asked in an online poll if 'people' should be allowed to rent their rooms to strangers the response was generally positive, but when asked about 'neighbours' more respondents felt the activity should be banned than allowed. Finally, in a 2014 poll in New York City, 56% of respondents agreed that residents should be permitted to rent rooms in their homes to strangers, while 36% felt the practice should be banned (Fischer, 2014; Parry, 2014). In other words, Airbnb is a highly divisive issue and, quite simply, large numbers of people will be displeased with any potential regulatory framework. Nevertheless, the public seems more amenable than not towards allowing and regulating short-term rentals, thus generally paving the way for their continued acceptance, both via legislation and residential policies (e.g., condominium bylaws).

However, shaping a workable short-term rental regulatory framework remains very challenging in large part because Airbnb listings are extremely varied. A spare bedroom that is rented out occasionally and a full property that is rented out year-round are highly distinct, making it very difficult to discuss Airbnb as a whole. As a result, two people can perceive Airbnb on very different terms, with neither being completely right or wrong. Such complications certainly impacted the results from two of the surveys just described, as the question prompts merely asked about

renting 'rooms' and avoided mention of entire residences (Fischer, 2014). In fact, some of Airbnb's peer-to-peer short-term rental competitors, like VRBO, only involve renting full residences. Also, as was stated earlier, many Airbnb listings are owned by more professionally-oriented multi-unit operators, and these hosts unsurprisingly account for a disproportionate share of Airbnb revenue. For example, Slee's (2014) analysis of 14 of the world's largest cities found that on average only about 15% of hosts managed multiple listings, but this cohort represented 38% of the total inventory and was estimated to receive about 45% of all bookings. Likewise, a study (sponsored by the American Hotel & Lodging Association) analysing 12 major U.S. markets found hosts operating three or more listings represented just 7% of the hosts but generated 25% of the revenue (O'Neill & Ouvang, 2016), and New York City data released by Airbnb showed that hosts with three or more listings represented just 2% of all hosts but received 24% of all revenue (Popper, 2015). In other words, a large percentage of Airbnb's business derives from permanent operations that often violate local laws, such as annual night quotas, even in places where Airbnb has been legalised (e.g., Brustein, 2014). Though Airbnb would obviously loathe losing this portion of its business, this issue arguably represents many regulators' biggest concern about short-term rentals, and it likely must be sorted out to some degree prior to an Airbnb initial public offering.

Permanent vacation rentals certainly deserve their place in destinations, but it is natural for regulations to distinguish full-time vacation rentals with absentee hosts from other short-term rental properties. Not surprisingly, some destinations, including Nashville (Nashville.gov, 2016); Austin, Texas (AustinTexas.gov, 2016); and Raleigh, North Carolina (Specht, 2015) have enacted or are considering multitiered regulatory systems that differentiate between rentals that are and are not owner-occupied principal residences. Even for permanent rentals, Airbnb will likely prompt a general easing of regulations that may ultimately affect other forms of tourism accommodation. Koopman et al. (2014), for example, argue that rather than applying old regulations to new innovations, 'The better alternative is to level the playing field by "deregulating down" to put everyone on equal footing, not by "regulating up" to achieve parity' (p. 19). In particular, bed-and-breakfasts may have their often fairly onerous regulations (Staley, 2007) eased significantly, quite likely to the point that bed-and-breakfasts are not even legislatively distinguished from other peer-to-peer short-term rentals. Hotels will always receive greater regulatory oversight than smaller accommodations, but even they may enjoy an easing of regulations.

Regardless of how their new regulatory frameworks are crafted, as destinations increasingly revise their laws to legalise short-term rentals, they will become less hesitant to prosecute violators, as has occurred in San Francisco (Barmann, 2015). Likewise, destinations will undoubtedly bolster their ability to field and respond to complaints, and more and more destinations will seek out violators proactively. Such actions will further push Airbnb to better comply with local ordinances.

However, the question remains to what degree Airbnb will cooperate directly with local governments, particularly with regards to multi-unit operators. To date, Airbnb has resisted such cooperation, combining open defiance with an appeal for

self-regulation. In late 2015 Airbnb's CEO claimed, 'We succeeded not because of [the professional hosts] but in spite of them,' (Said, 2015a), and the company's previously mentioned Community Compact pledged that in cities with long-term housing shortages the company would ensure 'hosts agree to a policy of listing only permanent homes on a short-term basis' (Airbnb, 2015c). Indeed, when comparing New York City Airbnb data subpoenaed by the New York State Attorney General covering the period of January 2010 to June 2014 (Schneiderman, 2014) with data later voluntarily released by Airbnb covering the period of November 2014 to November 2015 (Popper, 2015), the percentage of hosts with at least three unique listings had dropped from 6% to 2% and their share of the total revenue had dropped from 37 to 24%. Also, Airbnb has removed listings from some of its professional operators managing large numbers of properties in New York City (Newcomer, 2016; Walker, 2014), Los Angeles (Logan & Alpert Reyes, 2015), and Amsterdam (Pieters, 2016). Nevertheless, one must appreciate the context of these gestures before perceiving Airbnb as eager to fully cooperate with local regulatory bodies. The New York State Attorney General originally had to subpoena Airbnb to receive its data; full access to the voluntarily released data required an in-person appointment at Airbnb's New York office (Griswold, 2015c); shortly before releasing both the subpoenaed data and the voluntary data Airbnb manipulated its numbers by removing thousands of illegal listings, and the company only acknowledged the second purge after it was discovered by independent analysts (Cox & Slee, 2016; Kerr, 2014; Newcomer, 2016); many of the listings removed in the second purge were soon re-listed by their hosts (Clark, 2016; Cox & Slee, 2016); and bulk removals of professional hosts have only occurred in a few places and only following intense pressure and scrutiny (Kerr, 2014; Kidd, 2015; Logan & Alpert Reyes, 2015).

In other words, it is naive to think Airbnb will readily begin removing illegal accommodations that generate a sizeable portion of its revenue. Nonetheless, it also seems likely that Airbnb will eventually cooperate more closely with local governments by sharing data that can be used to monitor both impacts and regulatory violations, and by taking a more proactive stance in prohibiting listings that egregiously violate local laws. Data sharing is critical to a regulatory system that uses consumer-generated data (Grossman, 2015), and Airbnb undoubtedly understands its need to cooperate more on this front in order to obtain the more modernised regulatory frameworks it has encouraged. Also, while an intervention forcing Airbnb to delist illegal properties would not be unprecedented—U.S. state attorneys general previously pressured craigslist into eliminating its 'adult services' section (Associated Press, 2010)—it is much more probable that greater enforcement against hosts and the threat of stricter regulations will prompt Airbnb to become more proactive in its efforts to limit major violations (e.g., Said, 2016). Indeed, Airbnb's about-face on taxes and the recent softening of its tone on data sharing demonstrate the company is willing to pragmatically shift positions in its quest for greater legitimacy, so although Airbnb will clearly fight hard to defend its turf from regulators, increased future pressure will likely lead to increased compromise. In the end, a world full of outraged policymakers, hosts incurring hefty fines, and public referendums with questionable outcomes is not the ideal environment for Airbnb to thrive, and the company is certainly cognizant of this reality.

7 Conclusion

When considering the regulatory issues surrounding Airbnb, it is also important to remember that Airbnb is a global company operating in diverse destinations with different traditions and needs. Urban destinations with rent-controlled housing are different from beach communities with a long-standing vacation rental tradition; small destinations like Yellowknife, Canada, which is eager for more visitors (Williams, 2015), are different from major destinations like the Canary Islands, which is already so overrun with tourists that it is considering instituting visitor caps (Hutchinson, 2015); and countries with a tradition of significant government intervention are different from countries with a more neoliberal regulatory tradition. Consequently, there is not a one-size-fits-all regulatory framework for all destinations, and policymakers must independently assess the issues surrounding Airbnb in order to formulate the most sensible approach for their communities.

Nonetheless, destinations will often face many of the same questions regarding Airbnb, such as how it impacts tourism, how the service should be taxed, how guests' and hosts' safety can be assured, and how negative externalities can be minimised. These issues have challenged policymakers, but such circumstances often follow major innovations like Airbnb that shake up the status quo. The regulatory challenges created by Airbnb clearly demonstrate how the emerging collaborative economy has produced important and difficult questions about regulation in the digital age. It is a fascinating future, and one which is still being written.

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