NOTE

WINNING THE BATTLE, LOSING THE WAR: EUROPEAN CITIES FIGHT AIRBNB

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INTRODUCTION

Montse Cugat was born and raised in Barcelona. She fondly remembers when Las Ramblas, the city’s main boulevard, was a quaint, peaceful neighborhood, fit to raise a family. Unfortunately, this pretty picture is a distant memory for Mrs. Cugat, who, after living on the same street for the past forty years, “can’t breathe because of the stink of urine and vomit” upon leaving her home in the morning.

Mrs. Cugat is not alone in noticing a negative change in her neighborhood. When Nando Prieto walks out onto his apartment balcony, he finds tourists have urinated on it. When he goes outside to collect his hanging laundry, he finds tourists have burned it. When he walks into his apartment building’s hallway, he finds a tourist has defecated in it. Mr. Prieto used to have neighbors, but now he lives next to a “constant, changing stream of visitors who stay for a few days at a time.”

Barcelona is pointing the finger at Airbnb—an online service platform that allows residents to list and rent their property, and tourists to find open rentals around the world—for this uncouth stream of visitors. Europe is a top continent for tourism in the

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2. Id.
4. Id.
5. Id.
6. Id.
world, hosting 51.4% of international tourists in 2014—a 2.7% increase from the previous year—signifying that Europe’s tourism domination is unlikely to slow down any time soon. And Barcelona is one of many European cities that has become a hub for twenty-first century tourists. In 2016, Barcelona hosted 8.2 million tourists, which makes the city the fourth most popular tourist destination in Europe with the third highest growth percentage. For residents like Mrs. Cugat and Mr. Prieto, temporary visitors and tourists have effectively replaced permanent neighbors as tourism figures increase.

While the revenue generated by tourism in Barcelona is welcome, over-crowding and the deterioration of Barcelona’s historical sites, art, and culture by crowds of disrespectful tourists is not. The surge in tourism has created such problems for some of the city’s most notable landmarks—La Sagrada Familia, Park Güell, and the Ciutat Vella neighborhood—and its residents that the Catalan government created the Turisme de Catalunya Consortium to control tourism’s “cross-cutting impact on society” and address “the effects of tourism [that] are often a nuisance and inconvenience to the local community.” The consortium developed into the Catalan Tourist Board (CTB), which works in congruence with Barcelona’s local tourism organization, Barcelona Turisme, and seeks to “promote Catalonia as a leading tourist destination based on quality and the social and economic profitability of the tourism


12. Id. at 13.

13. La Sagrada Familia and Park Güell are among architect Antoni Gaudí’s most famous works. Four of Gaudí’s works account for the ten most visited sites in Barcelona, attracting 7.7 million visitors annually. Turisme de Barcelona, supra note 9, at 45.


15. See text accompanying infra note 133.
industry. Government officials and local residents agree tourism is important for Barcelona, but not at the expense of its residents’ quality of life.

They claim that tourism driven by Airbnb has effectively turned residential apartment buildings into “youth hostels” for partygoers looking for a cheap place to stay. However, its popularity and widespread use throughout the city makes boycott of Airbnb’s services difficult for residents. Barcelona’s surge in international tourist arrivals creates a lucrative market for residents to list their apartments online for a few days to make ends meet. Unfortunately, the same market on which many of Barcelona’s residents rely is being blamed for negatively affecting their lifestyles. Barcelona’s government has repeatedly tried to curtail tourism-related problems by enacting legislation to prohibit rental of housing used for tourism properties (HUTs) and other tourist accommodations. Its latest attempt is the Special Tourist Accommodation Plan (PEUAT), which came into effect on March 6, 2017 and aims to limit and decrease the number of tourist accommodations available for rent. Despite these efforts, Airbnb remains a strong presence in Barcelona.

17. Edwards, supra note 3.
18. See text accompanying supra notes 157–162. This Note focuses on unlicensed rental properties in Barcelona listed on Airbnb. Different laws use different nomenclature when referring to this category of tourism accommodations in Barcelona. The following terms are used throughout to refer to “Airbnb-style” rentals, depending on the context: housing used for tourism properties (HUTs), private touristic dwellings, and touristic dwellings. These terms are interchangeable, and all refer to the same type of tourist accommodation at the subject of this Note.
Airbnb’s success is largely due to a marked shift in the international economic framework, as the traditional producer-consumer relationship has drastically changed in the twenty-first century. Economists and scholars refer to this new economic structure as the global sharing economy, characterized by consumer-to-consumer transactions via an online platform. Companies like Airbnb facilitate seamless consumer-to-consumer transactions on an international scale, allowing European hosts to rent their properties to U.S. and other tourists with the click of a button. While consumerism and tourism have changed, the law has remained stagnant, ineffectively regulating a market which it was not drafted to address. To supplement weak legislation, governments are punishing Airbnb with monetary fines in an attempt to hinder the company’s operation. However, what these governments have failed to realize is that Airbnb is not a fad that will slowly fade away in a decade’s time. Rather, Airbnb is illustrative of the marked shift from a producer-to-consumer-based economy to a global sharing economy based on consumer-to-consumer transactions via the Internet, against which monetary fines are futile.

Barcelona is a salient example of how a shift in global macroeconomic structure combined with outdated local legislation can leave city officials unable to regulate their visitors’ detrimental behaviors, enforce existing laws, or promote a sustainable form of tourism in collaboration with a company like Airbnb. This Note thus suggests Barcelona officials embrace collaborative consumption by lifting bans on HUTs listed on Airbnb, as well as enact policies that control the number of tourists visiting the city and better monitor their behavior throughout their stay. The Note focuses on the seemingly detrimental effect Airbnb has had in Barcelona, Spain—namely, exacerbating the city’s problem with overcrowding and noxious tourist behavior. It highlights that while preventing Airbnb’s operations would seemingly solve the city’s tourism-related issues, halting the company’s operations actually further harms Barcelona residents, by limiting residents’ access to the free

Barcelona was Airbnb’s fifth largest market overall and third largest market in Europe in 2015).


24. See infra notes 72–73 and accompanying discussion.
market and by curtailing tourism, which serves to generate profit and job opportunities for the city and its residents. It explains why the existing legislation banning Airbnb rentals in Barcelona does not and will not effectively combat the city’s problems.

This Note’s proposal would allow Barcelona residents to list their properties on Airbnb without restriction, and in compliance with existing regulations governing licensed and legally operating HUTs. By abandoning the current ban on issuing rental licenses, Barcelona’s government will be able to better control surging tourism rates, better manage Barcelona’s overcrowding problem, and decrease drunken, disorderly disturbances by tourists, because it will be able to channel its resources into more effectively monitoring the city’s tourists and promoting a responsible and sustainable tourism structure. While specific to Barcelona, this proposal will serve as a template for similarly-situated cities, all of which will have to enact or amend legislation to regulate and adapt to Airbnb and the global sharing economy.

Part I provides a brief history of the emergence of Airbnb and its journey to becoming a multibillion-dollar international company. It goes on to explain how Airbnb’s business model is a product of the global sharing economy and illustrative of a shift in the world’s economic framework. Part I also highlights the steadfast trend of promoting tourism in Barcelona and cities across Europe generally, and outlines Barcelona’s existing legislation governing tourist accommodation rental. Part II analyzes why existing legislation in Barcelona has proven ineffective against Airbnb and asserts that it will continue to fail if not amended. It advocates for a policy that will permit Airbnb to operate in Barcelona, and focuses on monitoring HUT rental and discouraging disruptive tourist behavior. Finally, the Note concludes by advising cities to embrace the global economic shift and amend their legislation governing Airbnb.

I. BACKGROUND

A. The Rise of Airbnb

As many twenty-somethings often do, Airbnb cofounders Joe Gebbia and Brian Chesky found themselves short on money when their rent in San Francisco, California, increased in 2007.25 Already employed full-time, Gebbia and Chesky needed a way to

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quickly supplement their incomes in order to make their rent payment.\(^\text{26}\) Luckily at the time, San Francisco was host to a major design conference, and all local hotels were sold out.\(^\text{27}\) Realizing they could fit a few air mattresses in their apartment, Gebbia and Chesky embraced their entrepreneurial spirits and rented these air mattresses to tourists looking for a place to stay during the conference. This is the “ah-ha” moment that started the international “home-sharing empire,” Airbnb.\(^\text{28}\)

Gebbia and Chesky could have listed their apartment on Craigslist, but they felt the platform was too “impersonal” to find renters they would feel comfortable housing.\(^\text{29}\) Gebbia recounts, “Our entrepreneur[ial] instinct said ‘build your own site.’ So we did.” They called it “AirBed and Breakfast” because in addition to providing air mattresses to sleep on, Gebbia and Chesky prepared breakfast for their guests every morning.\(^\text{30}\) What started as a way to make ends meet quickly turned into an international home rental powerhouse. As of September 2016, Airbnb is worth US$30 billion\(^\text{31}\) and has listings in over thirty-four thousand cities and 190 countries around the world.\(^\text{32}\) Gebbia and Chesky did not anticipate that three air mattresses and homemade scrambled eggs would make them billionaires, especially after their initial rejection by seven top Silicon Valley investors.\(^\text{33}\) In 2008, an investor could have purchased ten percent of Airbnb for US$150,000.\(^\text{34}\) Today, ten percent of Airbnb is worth US$3 billion.\(^\text{35}\)

Despite its international success, Airbnb still battles opponents, namely hotel lobbyists and governments.\(^\text{36}\) For example, in 2014 Paris Mayor Anne Hidalgo made it her agenda to crack down on

\(^\text{26. Id.}\)
\(^\text{27. Id.}\)
\(^\text{29. Alleentrepreneur, supra note 25.}\)
\(^\text{30. Id.}\)
\(^\text{34. Id.}\)
\(^\text{35. Id.}\)
\(^\text{36. Helm, supra note 28.}\)
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Airbnb rentals, assembling a twenty-person team of officials to conduct surprise inspections of apartments “whose owners [were] suspected of . . . unlawfully renting to visitors” on Airbnb. That same year the company was fined €30,000 by the Catalan government in Spain for listing “illegal” rentals on its website. This sanction deterred neither the company from operating in Catalonia, nor residents from listing their properties on Airbnb’s website. Consequently, eighteen months later, the Barcelona City Council issued another fine—this time in the amount of €60,000—to Airbnb for listing unlicensed apartments on its website. For a multi-billion-dollar company like Airbnb, however, €90,000 is pocket change.

Though continually receiving negative backlash from governments in Airbnb’s major markets worldwide, Airbnb’s founders are not worried about the future of their company. Rather, Gebbia said, “I’m reminded of other innovations over the course of the last hundred years that also had their opponents and detractors. They were misunderstood at first, but once they were understood, they were inevitable.” The company plans to further expand and dominate the hospitality and accommodations industry. Chesky envisions Airbnb becoming “nothing less than a full-blown hospitality brand,” focusing on ways to improve the Airbnb user’s overall experience when booking through the website.

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39. Feargus O’Sullivan, Tourist-Heavy Barcelona Is Cracking Down on Airbnb, ATLANTIC CityLab (Dec. 23, 2015), http://www.citylab.com/housing/2015/12/barcelona-airbnb-tourism/421788/ [https://perma.cc/L7TV-7HGJ]. Similar to those in Barcelona, users in Berlin were not discouraged from using Airbnb to list their apartments, despite the state court of Berlin’s ruling that landlords can evict their tenants for subletting their apartments on the website. One Berlin resident said she would continue to rent her apartment on Airbnb and does not believe the court’s decision will deter people. Eviction Doesn’t Scare Berlin Airbnb Hosts, LOCAL (Feb. 19, 2015) [hereinafter Berlin Airbnb Hosts], http://www.thelocal.de/20150219/airbnb-subletters-unp [https://perma.cc/D5RX-KKBQ].

40. Helm, supra note 28 (emphasis added).

What separates Airbnb from a regular hotel chain? The company’s answer is simple: user experience. The founders focus on consumers’ needs and behaviors. They took advantage of the rise of the Internet and how consumers were purchasing everything online. They recognized the world’s affinity to sharing—photos, important life events, or daily thoughts—on social media sites. According to its founders, Airbnb does not simply provide lodging for travelers. Chesky says, “[Airbnb is] about people and experiences. At the end of the day, what we’re trying to do is bring the world together. You’re not getting a room, you’re getting a sense of belonging.” With sixty million users worldwide, Airbnb is just one success story that has emerged as a result of the new sharing economy.

B. A Seismic Shift in the Global Economic Structure

The Internet continues to change the world’s economic framework, as markets abandon the producer-consumer relationship in favor of consumer-to-consumer (C2C) transactions. Traditionally, consumers were the “passive recipients of proposed deals” from corporations and producers. Now, with increasing access to product information via social networks and online forums, the “voice of the consumer is stronger than before,” making the consumer an active participant in “value creation.” Social media has only amplified these effects.
Due to widespread access to information via the Internet, the modern consumer is “tech-savvy, informed, [and] connected.”52 Modern consumerism developed as a response to the rise of the Internet, where companies like Airbnb conduct business entirely online, consisting only of a website and/or mobile application populated and updated by their users.53 Consumers have grown to value transparency and increased bargaining power—tracking an order online is not an enhanced feature, rather an expected norm.54 These values have heavily influenced the economic landscape, giving the consumer the power to access information, products, and services on an international scale.55 Consumers are no longer confined to regional stores and brands, as “the rise of Internet commerce removed geographic . . . constraints” and expanded the average consumer’s market from local to international.56

Access to international goods is not the Internet’s only benefit to consumers.57 Rather, consumers can shop from the comfort of their own homes, connecting with other consumers and producers from around the world.58 They do not need to obtain product information from a retailer or other expert; rather, consumers value recommendations provided by other online shoppers.59 This practice—product evaluation based on online reviews posted by other consumers—is called collaborative filtering, and it is shaping economic transactions.60 Consumers increasingly trust one another’s recommendations instead of those of producers and

52. Kucuk & Krishnamurthy, supra note 48, at 50; see Labrecque, supra note 51, at 261 (explaining that the rise of the Internet has granted consumers access to information that was “previously unavailable or difficult to obtain” such as professional and private product and service reviews).
53. Hamari, supra note 21, at 3–4 (discussing the online social platforms upon which Airbnb relies).
54. Kucuk & Krishnamurthy, supra note 48, at 50.
55. See Craig J. Thompson, Postmodern Consumer Goals Made Easy!!!!, in THE WHY OF CONSUMPTION: CONTEMPORARY PERSPECTIVE ON CONSUMER MOTIVES, GOALS, AND DESIRES 120, 123 (Rameshwar et al. eds., 2005) (“We can now ‘virtually’ be anywhere, and be ‘virtually’ anyone, at ‘virtually’ anytime.”).
56. See Labrecque et al., supra note 51, at 260.
57. For example, a U.S. consumer has quick and easy access to products from and information about a company, which, before the Internet, was seemingly impossible. See Kucuk & Krishnamurthy, supra note 48, at 51.
58. Id. at 53.
59. Id. at 54.
60. Id. (“[Collaborative filtering] is important support for consumers’ decisions, and can help decrease confusion.”).
retailers. They form meaningful relationships with one another, benefiting not only from product and service sharing, but from “the sense of belonging and shared social relationships” that come with them. This virtual sense of community among consumers has contributed to, in part, the emergence of the sharing economy.

The sharing economy, often referred to as “collaborative consumption,” is “[t]he peer-to-peer-based activity of obtaining, giving, or sharing the access to goods and services, coordinated through community-based online services.” The sharing economy demonstrates a marked shift in how consumers obtain goods and services, departing from the conventional producer-consumer structure to C2C transactions mediated by online information systems. As collaborative consumption continues to steer the direction of global economic transactions, the traditional producer-consumer relationship fades. Instead of turning to producers to obtain products, consumers are turning to each other through social networks that eliminate the need for product ownership. Producers may thus be in danger, as consumers no longer look to buy things, rather simply to borrow them. Without sales, producers cannot expect to generate the same amount of revenue as they did previously.

61. See Cait Poynor Lamberton & Randall L. Rose, When Is Ours Better Than Mine? A Framework for Understanding and Altering Participation in Commercial Sharing Systems, J. MARKETING 12 (2012) (explaining that communication among consumers fosters trust, which is a key component to participation in the sharing economy); Kuçuk & Krishnamurthy, supra note 48, at 54 (discussing information filtering between consumers and how it shapes what products they purchase and how they decide to make those purchases).

62. Labrecque et al., supra note 51, at 265.

63. Social media has given rise to increased network-based power among consumers, defined as “the metamorphosis of content through network actions designed to build personal reputation and influence markets through the distribution, remixing, and enhancement of digital content.” For a more in depth discussion of network-based power, see Labrecque, supra note 51, at 263–64. The scope of this Note requires only an understanding that consumers value other consumers’ opinions and create online relationships via product and services websites.

64. Hamari, supra note 21, at 1.

65. Id. at 2–3.

66. Id. at 4–5.


68. Id.
actions are often mediated by firms and social networks\textsuperscript{69} that facilitate communication between consumers and allow users to be both a consumer and a producer.\textsuperscript{70} Such “community-driven business models” are challenging companies to adapt to the modern consumer’s affinity for resource sharing.\textsuperscript{71}

Notably, Airbnb is a product of entrepreneurs who capitalized on the demands of the sharing economy culture.\textsuperscript{72} Airbnb demonstrates the “true innovative spirit of collaborative consumption” that defines twenty-first century start-up companies.\textsuperscript{73} It provides consumers with a twenty-first century alternative to the traditional hotel reservation system with its online platform that merges each of the above characteristics of the sharing economy: service provision; participation in an online community; and collaborative filtering. The result is that people can travel internationally without having ever owned their vacation property, and still feel \textit{at home}.\textsuperscript{74}

Marketing professor Dr. Russell Belk recommends that companies that wish to remain competitive and successful should look forward and adapt to the global sharing economy.\textsuperscript{75} He notes that the rise of collaborative consumption may mark the start of the “post-ownership economy,” moving away from the notion that, “You are what you own” and embracing a new motto: “You are what you share.”\textsuperscript{76}

C. \textit{Tourism Expansion in European Destination Cities}

Tourism plays a prominent role in the success of Airbnb and rise of the international sharing economy. The controversy surrounding Airbnb’s operations cannot be fully understood without looking at the rising trend of international tourism in Europe and European destination cities’ dependence on revenue generated by

\textsuperscript{69} See Labrecque et al., \textit{supra} note 51, at 265.

\textsuperscript{70} Hamari, \textit{supra} note 21, at 5.

\textsuperscript{71} Labrecque et al., \textit{supra} note 51, at 265.

\textsuperscript{72} The sharing economy is characterized by “sharing the consumptions of goods and services through activities such as renting, swapping, or trading” which “includes services such as . . . Airbnb.” Hamari, \textit{supra} note 21, at 2.

\textsuperscript{73} Bryan Walsh, \textit{Today’s Smart Choice: Don’t Own. Share.}, \textit{Time Mag.} (Mar. 17, 2011), http://content.time.com/time/specials/packages/article/0,28804,2059521_2059717_2059710,00.html [https://perma.cc/UV5W-KCR4].

\textsuperscript{74} See Labrecque et al., \textit{supra} note 51, at 265 (explaining that sharing a product enables consumers to enjoy its benefits without owning it).

\textsuperscript{75} See Russell W. Belk, \textit{You Are What You Can Access: Sharing and Collaborative Consumption Line}, 67 J. Bus. Res. 1595, 1599 (2014) (asserting that only a company trying to fail “should put its head in the sand and assume that emerging challenges will just go away”).

\textsuperscript{76} Id.
tourism. This Section outlines the steadfast, upward trend of foreign tourism throughout Europe, which can be attributed, in part, to increased globalization supported by the international sharing economy. The below Subsections demonstrate Barcelona’s complicated relationship with tourism, which proves to have both beneficial and detrimental consequences for its residents.

1. European Cities’ Dependence on Tourism

Tourism is a robust industry for many European cities. 51.4% of international tourists visit Europe, making the continent the number one tourist destination world-wide.77 Tourism is a lucrative business for destination cities: for the past eight years tourist expenditure has continually grown more quickly than world gross domestic product (GDP).78 These figures suggest a “very powerful trend in the making” characterized by increased international travel and tourist spending.79

Nine European cities—Amsterdam, Barcelona, Istanbul, London, Milan, Paris, Prague, Rome, and Vienna—are among the global top twenty tourist destinations.80 For example, as of 2016, London and Paris are the second and third destination cities world-wide hosting international overnight visitors; London hosted 19.88 million international overnight visitors in 2016, and Paris 18.03 million.81 Since 2010, each of these nine European destinations has experienced an increase in the number of international visitors per year.82 This growth in tourism is best contextualized by

77. TURISME DE BARCELONA, supra note 9.
78. HENDRICK-WONG & CHOONG (2016), supra note 9, at 3; see HENDRICK-WONG & CHOONG (2014), supra note 8, at 2 (noting that tourist expenditure growth exceeded world gross domestic product (GDP) growth annually over the period of 2009 through 2014, despite the global economy “struggling with a fragile and uncertain recovery” during this period).
79. HENDRICK-WONG & CHOONG (2014), supra note 8, at 35. MasterCard’s Global Destination Cities Index for 2014 suggests the increasing rate of tourism is a product of “rapid growth of mass tourism due to the expanding middle class in many emerging markets . . . and proliferating innovations in luxury travel.” Id.
81. See id. These figures mark a steady increase in number of tourists over the past six years. In 2010, London hosted 14.71 million international overnight visitors, compared to 19.88 million in 2016. See HENDRICK-WONG & CHOONG (2014), supra note 8, Table 1, at 4. Other European destination cities experienced similar increases—in Amsterdam, visitors increased from 5.86 to 8.00 million; Barcelona, from 6.18 to 8.20 million; Istanbul, from 6.45 to 11.95 million; Milan, from 5.83 to 7.65 million; Paris, from 13.27 to 18.03 million; Rome, from 6.65 to 7.12 million; and Vienna, from 4.64 to 6.12 million. See id.; HENDRICK-WONG & CHOONG (2016), supra note 9, Chart A, at 2. Prague did not make the top 20 list until 2016. See HENDRICK-WONG & CHOONG (2016), supra note 9.
82. See text accompanying supra note 81.
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the ratio between international visitors and residents in the top global destination cities. In 2014 the number of international visitors exceeded the amount of residents in every ranked European destination city, except Istanbul.\(^{83}\) Additionally, this ratio increased from 2009 to 2014 in every city, demonstrating the steadily rising number of international visitors to Europe.\(^{84}\) For example, the ratio in London is 2.3 visitors per resident, which increased from 1.8 in 2009.\(^{85}\) Paris’s ratio increased from 1.1 visitors per resident in 2009 to 1.3 in 2014; Barcelona from 1.0 visitors per resident in 2009 to 1.5 in 2014; Amsterdam from 1.9 visitors per resident in 2009 to 2.6 in 2014.\(^{86}\)

Because tourism significantly influences these cities’ economies, destination cities have come to greatly value tourists.\(^{87}\) With multiple destination cities across the continent,\(^{88}\) the European tourism market is quite competitive. Consequently, high tourism rates are something worth boasting. For example, after being named the number one international tourist destination in the world, London’s then-mayor Boris Johnson rejoiced and stated, “I’m delighted that London has proudly held on to this coveted title, as we celebrate another triumphant and record-breaking year for tourism in the city.”\(^{89}\) By welcoming 18.69 million tourists that year, London benefited from £13.3 billion in expenditures from international visitors.\(^{90}\) Similarly, Parisians recognize that without tourism, the city would lose a significant amount of tax revenue, which would leave many of its people unemployed.\(^{91}\) In 2013 and 2014, the hotel industry generated €39.9 million\(^{92}\) and €41.2 million in

\(^{83}\) HENDRICK-WONG & CHOONG (2014), supra note 8, at 7.
\(^{84}\) Id.
\(^{85}\) Id.
\(^{86}\) For a complete list of these figures, see id.
\(^{87}\) See TURISME DE BARCELONA, supra note 9, at 44 (“Today, tourism is one of the most important activities in cities and the areas around them, making a significant impact on their economy, as well as their social, physical and environmental contexts.”).
\(^{88}\) See HENDRICK-WONG & CHOONG (2014), supra note 8, at 3.
\(^{90}\) £13.3 billion equates to US$19.3 billion. HENDRICK-WONG & CHOONG (2014), supra note 8, Table 2, at 6.
\(^{92}\) Id. at 4.
tourist tax revenue, respectively. The French government also recognizes the importance of attracting tourists to the country—it is “consistently identifying new ways to keep the tourism industry flourishing” which plays a major role in the country’s economic success. Even Germany, which is not home to one of the top twenty international destination cities, recognizes the importance and positive effects of tourism. Germany has made a concerted effort to expand its appeal as an international tourist destination, assigning more than €28 million of its budget to the National Tourist Board in 2014.

2. Catalonia’s Commitment to Growth of Sustainable Tourism

The European destination city tourism trends, described in the previous subsection, are no different in Barcelona, which generates at a minimum €26 million per day directly from tourism-related activities. Tourism is important to the region and its residents as a vital part of Catalonia’s economy. According to the Catalan...
Tourist Board (CTB), tourism generates twelve percent of Catalonia’s GDP and creates jobs for 12.7 percent of residents.\footnote{Id.} Indeed, the Catalan government created the CTB to implement policies that stimulate tourism in the region.\footnote{Generalitat de Catalunya, supra note 16.} The CTB aims “to promote Catalonia as a leading tourist destination based on quality and the social and economic profitability of the tourism industry.”\footnote{Generalitat de Catalunya, supra note 16.}

Engaging the private sector in promoting Catalonia as a primary, international tourist destination is at the center of the CTB’s mission.\footnote{See id.} The CTB endorses a sustainable and accessible model of tourism, believing that everyone is entitled to tourism as “a fundamental social right.”\footnote{CTB, Catalonia, A Responsible Tourism Destination, Generalitat de Catalunya, http://act.gencat.cat/wp-content/uploads/2015/02/Turisme_responsable_ENG.pdf [https://perma.cc/M3NP-RA83] (last visited Apr. 23, 2017).} A sustainable tourism is one that is responsible and weighs economic and sociocultural concerns.\footnote{Id.} Economically sustainable tourism pursues short and long-term profitability and distributes equitably its benefits among the region’s residents.\footnote{Id.} Sociocultural sustainability, as put forth by the CTB,

ensures respect for the social and cultural values of the town and for an accessible tourism for everyone through a balanced and rational management of the use of the areas, boosting employment, making sure the locals benefit and adapting the environment to the needs of all. Consequently, [it] improves the quality of life of residents and visitors and promotes social cohesion.\footnote{Id.}

The sociocultural aspect of sustainable tourism is geared toward boosting tourism in the region, while considering the permanent residents’ needs, values, and quality of life.\footnote{See id.} Rather than focus on limiting tourism or the number of people visiting the region, the CTB seeks to educate visitors about responsible tourism, encourage
private sector engagement in achieving sustainable tourism, promote the region as a desirable destination with diverse attractions, and embrace cohesion between local residents and tourists.\textsuperscript{110}

The CTB recognizes how competitive the tourism industry is, and to make Catalonia a front-runner, it must act with the client in mind.\textsuperscript{111} Central to this commitment is creating and implementing policies that fulfill client expectations and respond to market trends.\textsuperscript{112} In its 2014 Report, the CTB notes, “[T]ourism, as an industry, needs to promote innovation and the ability to adapt to the needs of consumers, reinforce our current tourism offerings, improve the quality of our services and offer newer products.”\textsuperscript{113} In combining Catalonia’s “traditional offerings with newer products,” the CTB promotes Catalan tourism experiences via new, online platforms.\textsuperscript{114} By initiating sales online and expanding its presence on social networks, the CTB is dedicated to increasing tourism opportunities via “the channels that are most relevant to [its] target audience.”\textsuperscript{115}

Since announcing its online market strategy in its 2014 Report, the CTB has created a comprehensive social media presence under the name Catalunya Experience.\textsuperscript{116} As of this writing, Catalunya Experience’s social media presence in figures is as follows: over 1,061,300 followers on Facebook;\textsuperscript{117} over 221,000 followers on Instagram and over 1,695,600 posts with the hashtag #catalunyaexperience;\textsuperscript{118} over 62,700 followers on Twitter.

\textsuperscript{110} See id. In its publication about responsible tourism, the CTB gives “practical advice for responsible tourism,” writing, “When you are looking for accommodation or a place to eat, find out whether the establishment is committed to sustainable and responsible tourism.” \textit{Id.} It instructs tourists to “[e]nsure respect and preservation of the culture, the customs, the gastronomy and the transitions of local villages.” \textit{Id.}

\textsuperscript{111} See CTB 2014 Report, supra note 100, at 68. In its promotional efforts, the CTB aims to keep “the client in mind, by advertising . . . using multiple channels and by developing new commercial connections.” \textit{Id.}

\textsuperscript{112} See id. at 67–69.

\textsuperscript{113} \textit{Id.} at 67–68.

\textsuperscript{114} \textit{Id.} at 68–69.

\textsuperscript{115} \textit{Id.} at 72.


\textsuperscript{117} Catalunya Experience, \texttt{Facebook}, \texttt{https://www.facebook.com/catalunyaexperience.usa/?brand_redir=62428887813} (last visited May 2, 2017).

\textsuperscript{118} Catalunya Experience (@catalunyaexperience), \texttt{Instagram}, \texttt{https://www.instagram.com/catalunyaexperience/} (last visited May 2, 2017) (In the search bar, type #catalunyaexperience to see photos).
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Despite the CTB’s encouraging and innovative plans for sustainable tourism in Catalonia, any increase or continuation of tourism in the region creates the potential for overcrowding and rowdy tourist behavior in what formerly were quiet, quaint neighborhoods. Consequently, for Barcelona and other destination cities, tourism is both a blessing and a curse—one on which its residents have come to simultaneously depend and resent.

Local residents in particular have demonstrated their dissatisfaction with the city’s tourist regulations—or lack thereof—by organized protest.

3. Detrimental Effects of Tourism in Barcelona

While the CTB celebrates tourism growth, the tourism industry’s relationship with the residents is less enchanted. In recent years, residents have grown increasingly embittered with the influx of international visitors and their disrespectful, detrimental behaviors. Residents feel it interferes with their daily lives and ruins Barcelona’s reputation as a family-friendly city with a distinguished history and rich culture. Locals want to put an end to “drunken behavior” and other negative impacts that come with tourism.

120. Catalunya Experience, GOOGLE+, https://plus.google.com/+Catalunyaexperience1 [https://perma.cc/9V8F-K7GE] (last visited May 2, 2017);
123. See Abend, supra note 1.
126. See, e.g., id.
127. See, e.g., Sinkeviciute, supra note 101. Barcelona locals believe the city has gained international notoriety as a “booze- and drug-fueled party town.” Sinkeviciute, supra note 101.
tourism” propelled, for example, by cheap boat parties filled with “unlimited beer, sangria, and soft drinks.” Public drunkenness and nudity are becoming increasingly more common: as one resident lamented, “The police don’t know what to do about these things anymore.”

During summer 2014, Barcelona erupted in a series of anti-tourism protests, as thousands of residents marched through the streets demanding an end to the bad tourist behavior destroying their city. Yet despite these demonstrations, Barcelona remains one of the most popular destinations for rowdy, foreign college students and twenty-somethings. Jessy, an exchange student from Amsterdam, described Barcelona as the best place she had ever visited, stating, “I don’t think I’ve ever been as drunk as I was yesterday; alcohol is so cheap it’s hard not to get drunk.”

Indeed, in a study conducted by Barcelona Turisme—the board responsible for promoting tourism within Catalan’s capital city—67.7 percent of Barcelona’s citizens believe tourism leads to uncivil behavior. Most notably, when asked by the City Council what the biggest problems facing the city were, Barcelona’s residents overwhelmingly indicated tourism, next to unemployment.

The negative perception of tourism by residents is not the entire story, however. Despite expressing frustration over inappropriate tourist behavior, an overwhelming majority of residents support and believe in the tourism industry. In fact, 88.4 percent of surveyed citizens believe tourism spreads a positive image of Barcelona. 85.9 and 79.9 percent believe tourism generates a lot of money for the city and creates jobs, respectively. And while most news stories concerning tourists report their drunken, unruly

128. See id.


131. See Sinkeviciute, supra note 101.

132. Id.

133. BARCELONA TOURISM ACTIVITY REPORT, TURISME DE BARCELONA 157 (2015) [hereinafter 2015 REPORT, TURISME DE BARCELONA]; see also TURISME DE BARCELONA, supra note 9, at 86 (In 2014, 53.6 percent of residents believed tourism leads the uncivil behavior throughout the city).


135. 2015 REPORT, TURISME DE BARCELONA, supra note 133, at 157.

136. Id.
behavior, when residents were asked whether they enjoyed having contact with tourists, 79.6 percent indicated yes. These figures indicate that while tourist behavior is perceived as undesirable, tourism’s overall value is high among Barcelona residents. The challenge for government officials is passing legislation that promotes tourism, but minimizes its disruptive, party culture.

D. Property Rental Law in Spain

Both the Catalan government and Barcelona City Council have attempted to remedy the detrimental effects of rowdy tourists felt by Barcelona’s residents. This Section details the government’s efforts to regulate tourism—primarily by placing limitations on available tourist accommodations—and curtail overcrowding and discourage inappropriate behavior. The below Subsections outline current legislation governing tourist accommodations, and detail the government’s additional efforts in punishing Airbnb for operation in violation of these regulations. Further, it introduces the government’s newly enacted Special Tourist Accommodation Plan (PEUAT) aimed at Airbnb and rentals listed on its website, and explains the controversy surrounding the law’s approval.

1. Decree 159/2012

In 2012, the Spanish government amended its legislation and granted its autonomous regional governments, like Catalonia, the sole power to regulate private holiday rentals, which includes a variety of tourist accommodations. Pursuant to this grant of authority, the Catalan government enacted Regional Decree 159/2012 of 20 November 2012 on tourist accommodation establishments and homes for tourist use (Decree 159/2012). Title II of Decree 159/2012 regulates touristic dwellings. Decree 159/2012 applies to private touristic dwellings—properties provided by an owner, directly or indirectly, to third parties, in

137. Id. at 158.
139. Regional Decree 159/2012 Tourist Accommodation Establishments and Homes for Tourist Use (B.O.E. 2012, 159) (Spain) [hereinafter Decree 159/2012].
140. See id. art. 66 seq. Please note that Decree 159/2012 does not apply to touristic apartments—which are properties created solely for tourist use, functioning like a hotel—and laws governing their use are outside the scope of this Note. For more information on tourist apartments, see Mark Stucklin, Property Owners Registering for Touristic dwellings in Catalonia, SPANISH PROPERTY INSIGHT (2016) http://www.spanishpropertyinsight.com/legal/registering-for-holiday-rentals-in-catalonia/ [https://perma.cc/3CBN-T98R].
return for payment—but it does not apply to the majority of Airbnb rentals, due to its highly nuanced definition of touristic dwelling.\textsuperscript{141} To qualify as a private touristic dwelling, the property must be secondary—meaning no one can be registered as living in the property on a regular basis\textsuperscript{142}—and it must be rented in its entirety, as opposed to by room.\textsuperscript{143} Further, the dwelling must be rented at least twice per year, and the rentals may not exceed thirty-one consecutive days.\textsuperscript{144} Many properties listed on Airbnb are primary residences and available to be rented by room, and therefore are not characterized as private touristic dwellings as defined by the law. Even if the property satisfies all requirements under Decree 159/2012, its rental is not permitted without a license from the municipality.\textsuperscript{145} Consequently, a large portion of Airbnb rentals are not in compliance with Decree 159/2012 and operate illegally, because they do not satisfy the law’s requirements or do not have a valid rental license.

Articles 67, 68, and 70 of Decree 159/2012 set forth a series of stringent requirements that aid in Barcelona’s City Council oversight of touristic dwelling rental, and ability to ensure each rental is habitable.\textsuperscript{146} Article 67 requires all rentals be furnished with working appliances that are available for immediate use by the renters.\textsuperscript{147} To promote safety, all property owners must provide the neighbor’s contact information and any other phone numbers the renter may need in case of emergencies or administrative issues.\textsuperscript{148} As an additional measure, Article 70 requires the property owner

\textsuperscript{141} See id. arts. 1, 66.
\textsuperscript{142} Id. art. 66.
\textsuperscript{143} Id. art. 1 (asserting that tourist accommodation establishments cannot be formed in housing and cannot become primary residence of the tourist users); id. art. 66.2. Before 2012, the Spanish National Government regulated private touristic dwellings under the 1994 Urban Tenancy Act—Ley de Arrendamientos (LAU). Decree 159/2012 is consistent with the LAU in restricting private rental activity. Under the LAU, it is illegal to share a residence with third parties who are not tenants under the contract between landlord and tenant, if the third party directly pays the listed tenant for use of the space. See Ley 29/1994, de 24 de noviembre, de Arrendamientos Urbanos (B.O.E. 1994, 24), http://noticias.juridicas.com/base_dados/Privado/129-1994.html [https://perma.cc/HE4F-QYBW]. In other words, the LAU makes illegal the sublet of a primary residence both in part or in its entirety. Id.
\textsuperscript{144} See Decree 159/2012, art 1; Sticklin, supra note 140.
\textsuperscript{145} See Sticklin, supra note 140.
\textsuperscript{146} See id. arts. 67, 68, 70. Articles 66–72 govern private touristic dwellings, but this Note’s proposed legislation only responds to the preceding three selected portions of Decree 159/2012.
\textsuperscript{147} Id. art 67.2.
\textsuperscript{148} Id. art. 67.3.
to submit to the municipality information about the tourists who stay at the property as well as the details of the stay.\footnote{149. See id. art. 70. Airbnb, though not regulated by Decree 159/2012, performs a similar operation. To book a room on Airbnb, users must create an account and provide a photo and basic information such as name, gender, city of residence, email, and phone number. See Airbnb, supra note 32 (follow “sign up” link and create an account). This information is provided to Airbnb to ensure parties’ safety and liability. Help Center: Trust & Security—Guests, Airbnb, https://www.airbnb.com/help/article/241/i-m-a-guest—what-are-some-safety-tips-i-can-follow?topic=245 [https://perma.cc/25QB-LC6G] (last visited Feb. 24, 2017) (to navigate the website, click the following links: “Help”, “Trust & safety”, “Guests”, “I’m a guest. What are some safety tips I can follow?”). Further, Airbnb retains the right to release its users’ personal information or information about properties listed on its website. Privacy Policy, Airbnb, https://www.airbnb.com/terms/privacy_policy [https://perma.cc/QL2M-KF4E] (last updated Oct. 27, 2016) (to navigate the website, complete the following: click “Help”, scroll to bottom of screen and click “Terms & Privacy”, click “Privacy Policy”). Additionally, Airbnb hosts may require a user to be verified before allowing the user to rent the residence. Verification, Airbnb, https://www.airbnb.com/help/article/1237/how-does-providing-identification-on-airbnb-work?topic=356 [https://perma.cc/YASV-SXHJ] (last visited Feb. 24, 2017) (to navigate the website, click the following links: “Help”, “Trust & Safety”, “Online Security”, “Verification”). A “verified user” has matched their provided information with an official government-issued identification and has linked their Airbnb account to another online account, such as Facebook, Google, or LinkedIn. Id. As a service to hosts, Airbnb provides a Host Guarantee and the option to have Host Protection Insurance, which guards against any damages that may occur by a guest. See Help Center: Trust & Safety—Host, Host Guarantee & Host Protection Insurance, Airbnb, https://www.airbnb.com/help/topic/358/host-guarantee—host-protection-insurance [https://perma.cc/29DH-Y7GX] (to navigate website, click the following links: “Help”, “Trusts & Safety”, “Hosts”, “Host Guarantee & Host Protection Insurance”). Finally, Airbnb provides a list of helpful tips for guests on how to stay safe and what precautions to take prior to traveling or using the website. Help Center: Trust & Safety—Host, Guest Safety, Airbnb, https://www.airbnb.com/help/topic/360/guest-safety [https://perma.cc/FH48-4MXS].}

Article 68 mandates the licensing system.\footnote{150. See id. art. 68.} To obtain a license, first the owner must complete a series of documents and register the property as a private touristic dwelling with Barcelona’s local municipality.\footnote{151. See id. arts. 68.1–3.} The municipality then registers the property with the Catalan Tourism Registry (CTR).\footnote{152. Id. art. 68.8.} Once these steps are completed, issuance of a license is at the discretion of the CTR.\footnote{153. See Decree159/2012, arts. 67, 68; Stucklin, supra note 140.} If issued a license, it must be visibly displayed on the property.\footnote{154. See id. art 68.} Accordingly, if any changes are made to the property, they must be properly recorded and reported to the municipality, which then informs the CTR.\footnote{155. Id. art 68.4.} Despite limiting which properties may be registered as touristic dwellings, Article 68 does not provide any infor-
mation on how municipalities enforce the limitation.\textsuperscript{156} As a result of these provisions, many unlicensed properties circumvent the system by listing their rentals on Airbnb.

2. Bans and Fines

Residents recognize that the government’s legislation, in particular Decree 159/2012, has not been effective in eliminating overcrowding and drunken tourism or their effects. Unsatisfied with the government’s implemented regulations of tourism, many residents urged the government to ban touristic dwellings altogether in an effort to decrease the number of visitors.\textsuperscript{157} In response to further protests, Barcelona’s City Council has taken further action, such as suspending the issuance of all touristic dwelling licenses for up to a year at a time, starting in 2014.\textsuperscript{158} Over the past three years, Barcelona’s mayor, Ada Colau, has halted the issuance of licenses for private touristic dwellings.\textsuperscript{159} The mayor ordered this ban in an attempt to curtail the negative effects of tourism in the city, including overcrowding and inappropriate, harmful tourist behavior.\textsuperscript{160} Mayor Colau told reporters, “It was necessary to put things in order. Up to now, tourism policies had been drawn up piecemeal.”\textsuperscript{161} Officials believe that if they can temporarily suspend licensing additional tourist accommodations, they can slow the number of tourists that visit Barcelona and “create a plan for sustainable tourism.”\textsuperscript{162}

To operate legally, a touristic dwelling must have a license to act as a rental, and the license number must be displayed on its exterior.\textsuperscript{163} The purpose of the ban is to halt increase of touristic

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\textsuperscript{156} See id. art. 68.

\textsuperscript{157} See Edwards, Tourism Monoculture, supra note 130.


\textsuperscript{160} See, e.g., Jessica Plautz, Barcelona Halts Licenses For New Tourist Accommodations, MASHABLE (July 2, 2015), http://mashable.com/2015/07/02/barcelona-hates-tourists/#Ym5saB6b5b5P [https://perma.cc/8QU5-RQ4H]; Vooght, supra note 159.

\textsuperscript{161} Plautz, supra note 160.

\textsuperscript{162} Vooght, supra note 159.

\textsuperscript{163} See Stucklin, supra note 140; see also Decree 159/2012, Title II (outlining the licensing requirements).
dwellings to avoid increasing the number of tourists flocking to the city.164 These bans were renewed in 2015 and 2016 by Colau in an attempt to control the rising number of tourist accommodations that have too rapidly expanded, according to some residents and government officials.165 In part, the initial 2014 suspension’s failure is evidenced by its continued renewal. These bans fail to regulate the number of tourists staying in banned properties, because they cannot control one of the most prominent rental platforms in the world—Airbnb.166

Despite the ban on issuing rental licenses, Barcelona residents continue to list their homes on Airbnb. Janet Sanz, the deputy mayor in charge of urban planning in Barcelona, estimates there are 7,000 illegal rentals in the city.167 Similarly, there are an estimated 50,000 illegal beds in these unregistered rentals.168 According to Exceltur, a Spanish tourism association, and a report completed by advisory services firm Ernst & Young, Airbnb dominates the private touristic dwelling market in Spain.169 Ernst & Young reports 2.7 million beds listed via online platforms like Airbnb, versus 2.4 million in hotels and licensed private touristic dwellings.170

An independent organization called Inside Airbnb that provides global data on Airbnb usage reports that seventy-eight percent of listings for entire residences or private rooms in Barcelona do not

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164. Vooght, supra note 159.
166. See, e.g., Abend, supra note 1; Edwards, supra note 3; discussion supra note 20.
170. Sixty-four percent of beds available in Barcelona are in private touristic dwellings, as opposed to hotels. However, Barcelona’s government and tourism organizations are unable to account for rentals on Airbnb with any degree of certainty. Id.
have a license number from the government, and therefore operate unlicensed and illegally.\footnote{171} Unsurprisingly, Barcelona Turisme recognizes that the number of private touristic dwellings accounted for in its 2014 report would definitely increase if unlicensed establishments were included.\footnote{172} The report concedes that “the number of illegal establishments is unknown,” making its data incomplete and not fully representative of private touristic dwelling use in the region.\footnote{173}

These figures are staggering, considering Mayor Colau’s license bans are supposed to eliminate illegal rentals and freeze an increase in rentals.\footnote{174} In congruence with the ban, Barcelona officials continue to fight Airbnb by fining the company for permitting residents to list unlicensed properties on its website.\footnote{175} After the €30,000 and €60,000 fines in 2014 and 2015 against Airbnb proved ineffective, Barcelona authorities increased the maximum penalty to €600,000 and again fined Airbnb in November 2016.\footnote{177} While the government has failed to recognize the ineffectiveness of fines against the company, a Spanish court annulled the 2014 fine against Airbnb, stating in its ruling, “The regulation of this new phenomenon of consumption has been left orphaned . . . and this can’t be substituted by imposing a fine.”\footnote{178} This decision, though unfavorable for Barcelona officials, has not ceased the City Council’s efforts in curtailing Barcelona property rental on Airbnb.\footnote{179}


\footnote{172. Turisme de Barcelona, supra note 9, at 8.

\footnote{173. Id.

\footnote{174. See text accompanying supra notes 159–162.


\footnote{176. See Mills, supra note 38; O’Sullivan, supra note 39.

\footnote{177. See, e.g., Plush, supra note 168; Local, supra note 175.


\footnote{179. See text accompanying infra Section I.D.3.}
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3. The Special Tourist Accommodation Plan

In response to resident protests and continued tourism-related issues, the Special Tourist Accommodation Plan (PEUAT) was approved by Barcelona’s Full Council on January 27, 2017, and came into effect on March 6, 2017. The plan is described as “an urban planning instrument to regulate and control tourist accommodation in the city and guarantee the fundamental rights of local residents.” The PEUAT divides the city into four areas, each of which is subject to different regulations regarding tourist accommodation establishments. It identifies multiple types of tourist accommodation establishments in Barcelona, including guest houses, tourist apartments, hostels, youth hostels, collective residences with temporary accommodation, hotels, and hotels-apartments, but the PEUAT’s main purpose is to manage housing used for tourism (HUTs).

The law defines HUTs as “dwellings repeatedly offered directly or indirectly by their owners to third parties for a temporary stay, in exchange for financial compensation.” Pursuant to this definition, rentals listed on Airbnb are subject to the PEUAT’s regulations. Though the plan consists of different regulations for each area, it bans the increase of HUTs throughout the entire city due to the excessive number of existing HUTs in Barcelona, particularly in high-volume areas like the Ciutat Vella neighborhood. This policy is consistent with previous bans issued by Barcelona’s mayor and City Council, as it is in effect a renewal of those bans.

Though the PEUAT is a response to the very tourism-related issues residents complain and protest about, the law has been met with some controversy. While the PEUAT prohibits an increase in HUT rental licenses, it also issues a freeze on hotel and tourist apartment construction and limits the number of beds hotels and

180. See About the PEUAT, supra note 19.
181. Id.
182. In creating four areas with specific regulations, the PEUAT considered the following factors: “the distribution of tourist accommodation in its territory, the ratio between the number of tourist places available and the current resident population, the scope and conditions in which certain uses are provided, the impact of these activities on public areas and the presence of tourist attractions.” Id.
183. See id.
184. Id. The definition of HUT overlaps with that of touristic dwelling under Decree 159/2012. See Decree 159/2012, art. 1.
185. See About the PEUAT, supra note 19; text accompanying supra note 14.
186. See text accompanying supra notes 159–162.
tourist apartments may offer. In some areas, the PEUAT hopes to not just limit, but decrease the number of available tourist accommodations by “gradually redistribute[ing] them away from the city center.” Those in the traditional hospitality industry feel unfairly attacked by these provisions. Manel Casals, president of the Barcelona Hotel Association, believes the law targets legal accommodations and “demonizes hotels” while failing to control unlicensed properties that “get away without paying taxes.” President of the Barcelona Association of Tourist Apartments (Apartur), Enrique Alcantara, refers to Colau and supporters of the PEUAT as “the opposition” and feels Colau failed to give an opportunity for those affected by the plan to publicly raise questions and debate the issues. On the other hand, those in favor of the plan “doubt it’s radical enough” to regulate and establish a balance between tourism and Barcelona’s residents. Having been in effect for less than two months, the full results of the PEUAT are yet to be seen.

II. ANALYSIS

Instead of working together to make Barcelona a leader for tourist destination cities in the new global sharing economy, Barcelona’s government and Airbnb act as adversaries. As explained in Part I, the relationship between Barcelona and Airbnb is strained at best. This is, in part, due to the rise of illegal tourist accommodations in Barcelona listed on the company’s website. Further, as Barcelona officials seek to restrict the number of available tourist accommodations, Airbnb refuses to pay fines issued by the city’s government, increasing the tension between the parties.


188. About the PEUAT, supra note 19.


190. Id.


193. Roca, supra note 189.

194. See discussion supra Section I.D.

195. See discussion supra Section I.D.
power struggle endures, there exists a separate conflict of interest in continuing to promote Catalonia’s capital city as a leading tourist destination, while retaining the city’s residents and reducing inappropriate tourist behavior. \(^{196}\) Underscoring both disputes is the seismic global shift from a producer-consumer economy to a sharing economy, \(^{197}\) against which many legislatures worldwide are ill-equipped to adapt, further contributing to the tourism-related problems in Barcelona and similarly situated cities.

Pursuing the interests of Barcelona’s residents and its tourism sector need not be mutually exclusive, however. The PEUAT is Barcelona’s latest effort at striking the balance between curtailing the negative effects of tourism felt by its residents, and allowing its tourism industry to flourish and boost the region’s economy. \(^{198}\) Yet mandating “no growth” for HUTs city-wide is not going to solve the tourism-related problems, namely overcrowding and rowdy, drunken tourist behavior. Attacking Airbnb is not going to make the city less crowded; it will not make the tourists better behaved. What the government fails to realize is that it is targeting the wrong body: instead of enacting legislation that aims to decrease the number of available tourist accommodations, it must focus on controlling the vast number of tourists visiting the city. The PEUAT may affect the number of tourist accommodations available to tourists, but limiting beds does not limit people, nor does it decrease the disproportionate ratio of residents to tourists. As Casals, president of the hotel guild, astutely notes, “You’re not going to regulate tourism by limiting the number of beds. They’re not regulating tourism, they’re only regulating where people sleep.” \(^{199}\)

Building on Section I.D above, Part II first discusses how the current focus of the PEUAT is misinformed, because it does not regulate Airbnb rentals, nor does it address the main contributing factor of overcrowding and uncontrollable tourist behavior: the number of tourists. Then it explains the permanence of the shift to a global sharing economy and the inevitability of legislative change required to address that shift. This Note proposes that instead of targeting a company that is illustrative of a greater global economic change, Barcelona officials should concentrate their efforts on promoting a sustainable tourism that is both tourist- and resident-friendly, as advocated by the Catalan Tourist Board

\(^{196}\) See discussion supra Sections I.C.2–3.

\(^{197}\) See discussion supra Section I.B.

\(^{198}\) See discussion supra Section I.D.3.

\(^{199}\) Roca, supra note 189 (emphasis added).
The proposal is specific to Barcelona because the city is a salient example of how local governments are wrongfully targeting collaborative consumption companies, like Airbnb, to solve tourism-related issues. However, these struggles are felt beyond Barcelona, as every major city that hosts tourists across not only Europe but the world will need to address its existing regulatory infrastructure to allow for companies like Airbnb to operate.\footnote{This Analysis concentrates on international tourist destination cities. However, the effects of Airbnb are felt beyond this narrow scope. Any city in which Airbnb operates—even if the city is not tourist-centric—will need to enact new or amend existing legislation to address the world’s new sharing-based economic structure and the companies that continue to emerge from this shift.}{\footnote{See, e.g., Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47; Kucuk & Krishnamurthy, supra note 48.}}\footnote{See Kucuk & Krishnamurthy, supra note 48, at 50 (“Due to the advances in this technology, online consumers can easily track and control their transactions 24 h[ours] a day, 7 days a week.”); supra Section I.B.}{\footnote{See supra Section I.B.}}\footnote{See id.; Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47.}

A. The Negligence of a De Jure Ban on Airbnb and the Necessity of Regulating this Liability-Laden New Industry

The present state of Catalan law is outdated, as it fails to adequately regulate the touristic dwelling market. Unsurprisingly, lawmakers were unable to anticipate the emergence and dominance of companies like Airbnb, as these businesses are the product of a relatively recent global phenomenon.\footnote{See, e.g., Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47; Kucuk & Krishnamurthy, supra note 48.}{\footnote{See Kucuk & Krishnamurthy, supra note 48, at 50 (“Due to the advances in this technology, online consumers can easily track and control their transactions 24 h[ours] a day, 7 days a week.”); supra Section I.B.}} With the speed of the Internet and the rise of the global sharing economy, C2C transactions are seamlessly orchestrated around the world.\footnote{See supra Section I.B.}{\footnote{See id.; Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47.}} A company like Airbnb, operating solely online and allowing consumers to interact directly, is a product of this new global sharing economy.\footnote{See supra Section I.B.}{\footnote{See id.; Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47.}} Current legislation is unworkable in the sharing economy, however, because it effectively seeks to ban companies like Airbnb which, short of China-style Internet censorship, are nearly impossible to shut down due to the direct nature of C2C transactions on the Internet.\footnote{See id.; Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47.} The following Subsection analyzes the weaknesses in Barcelona’s legislative and regulatory actions against Airbnb, while explaining how the existing structure will only prolong, not solve, Barcelona’s tourism-related issues.

1. Airbnb’s Operation Under Current Legislation

The region’s regulatory structure is no match for Airbnb’s operations, as illustrated by Barcelona’s current legislation on private touristic dwellings. In enacting Decree 159/2012, the Catalan gov-
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The government sought to regulate private touristic dwellings and control the number of tourists vacationing in the region. While Articles 67, 68, and 70—which regulate the use and registration of private touristic dwellings—employ strict requirements, they fail to adequately address the concerns of Barcelona’s residents.205 Instead of regulating Airbnb under Decree 159/2012, the law bans its operations, which effectively ignores the perceived problem rather than facing it head-on.

The majority of properties listed on Airbnb do not qualify for rental licenses as required by Decree 159/2012, deeming their rental illegal and leaving these listings outside the scope of rental regulations.206 Primary residences, as well as rooms in secondary residences, both of which are popular rental styles on Airbnb, will never have the right under Decree 159/2012 to obtain a rental license.207 Thus, these limitations effectively amount to a de jure ban on Airbnb-style listings. This action, though intended to be conscientious, it is rather negligent because such a ban forces residents into an underground economy not subject to any governmental regulation. While true that residents are blatantly violating the law in listing their unlicensed properties on Airbnb, the Catalan government and Barcelona City Council must be prudent in acknowledging the reality of the situation, versus legislating in a vacuum. For these reasons, Decree 159/2012 will continue to be ineffective in combatting overcrowding and inappropriate tourist behavior.

Further, Barcelona’s renewed suspension on issuance of touristic dwelling licenses is illustrative of the city’s continued failure to control the private rental market.208 The perpetual bans issued by Mayor Colau beginning in 2014 have yet to curtail the number of rentals listed on Airbnb.209 As reported by Barcelona Turisme, the government and its tourist agencies are aware that Airbnb continues to operate and list unlicensed dwellings despite the suspension.210 Barcelona can indefinitely renew the bans, but this will prove fruitless. While the government has stopped issuing private touristic dwelling licenses, Barcelona’s residents have not stopped

205. See discussion supra Section I.D.1.
206. See id.
207. See Decree 159/2012 arts. 1, 66 (B.O.E. 2012, 159).
208. See discussion supra Section I.D.2.
209. See id.
210. See TURISME DE BARCELONA, supra note 9, at 8.
using Airbnb to rent their residences to tourists. Consequently, tourism-related issues remain prominent, and Barcelona’s residents remain frustrated.

The PEUAT aims to eliminate the inadequacies of Decree 159/2012 and regulatory bans by employing a more methodical plan and stringent regulations to combat tourism-related issues. However, what is perceived as an innovative, radical law is just a renewal of previous, failed legislation. Its provision establishing “no growth” for HUTs across the city is simply different nomenclature for a halt on issuance of rental licenses for private touristic dwellings. “Housing used for tourism” encompasses the same type of property as “private touristic dwelling”, and both the PEUAT and Decree 159/2012 require a license to make rental operation legal. For the reasons explained above, instituting a no growth status for HUTs will be ineffective in reducing the number of tourists visiting Barcelona and eliminating illegal listings on Airbnb, as this policy is more of the same. Instead of focusing on tourists, it concentrates on accommodations, of which the latter will continually circumvent the system and operate illegally, due to the direct nature of C2C transactions online.

B. Legislation and the Global Sharing Economy

Barcelona’s failure to amend its current legislation hurts more than helps the city, because it only delays the inevitable. Though Airbnb was founded within the last decade, its recentness does not suggest it is merely a trend that will fade as quickly as it arrived. Rather, the emergence of the global sharing economy creates an environment in which Airbnb will continue to flourish. It is in the city’s best interest to evolve sooner rather than later, and accept the changes brought by Airbnb and similar companies. Without proactive change, legislatures will ultimately be forced to amend their legislation after wasted years of fruitless battles.

Because Airbnb is serious about expansion, it has an implicit interest in fostering positive relationships with governments in its

211. Despite a three-year suspension on issuance of private touristic dwellings, Airbnb continues to operate in Barcelona with over 11,000 listings currently. Airbnb in Barcelona, supra note 171.
212. See discussion supra Section I.D.
213. See discussion supra Section I.B.
214. See, e.g., Uber, Airbnb, and Consequences of the Sharing Economy, supra note 47 (explaining that the global sharing economy, of which Airbnb is a product, is not a temporary fad but rather indicative of a permanent shift in economic structure).
215. See id.; see also Labrecque et al., supra note 51, at 265.
top markets, like Barcelona. However, Airbnb will not be deterred by government opposition in the region. When fined for allowing its users to list unlicensed apartments in Barcelona, Airbnb issued a statement which read, “Barcelona should stay on the cutting edge of innovation, and we’re disappointed to see a ruling that affects diverse companies and that will hold the city back.” Much to the government’s dismay, Airbnb executives have not overstated its innovativeness. While the Barcelona City Council chooses to ignore this truth, as previously mentioned the Spanish court does not, stating in its ruling annulling a 2014 fine against Airbnb, “The regulation of this new phenomenon of consumption has been left orphaned. . . and this can’t be substituted by imposing a fine.” Accordingly, Barcelona needs to listen and adapt.

Airbnb, a product of the global sharing economy, has proven its permanence over the years. The Catalan government and Barcelona City Council are faced with a choice—continue to fight against Airbnb and the new global sharing economy, or serve as an international model by amending legislation to work with Airbnb to solve the region’s tourism-generated problems. If Barcelona continues its tumultuous relationship with Airbnb, periodically punishing the company, it may win the battle but it will certainly lose the war. Hopefully the government will learn that fining a multibillion-dollar corporation is a futile method of deterrence, and any ban on Airbnb’s usage is an ineffective form of regulation. The reality of the global sharing economy and Internet consumerism is that people can and will find ways to interact under the radar and rent their apartments, legally or not. It is imperative that Barcelona, a city that depends on revenue generated by tourism, engage in the sharing economy to compete with other international destination cities. However, its engagement should not be at the expense of its residents’ happiness and well-being.

216. See Mount, supra note 10 (explaining how Barcelona is a perfect market for a company like Airbnb).
217. See discussion accompanying supra notes 36–41.
218. Mills, supra note 38.
219. Miller, supra note 178.
221. Seventy-eight percent of apartments in Barcelona listed on Airbnb are unlicensed and effectively operating without the government’s permission. Airbnb in Barcelona, supra note 171 (reporting that 11,520 out of 14,699 listings operate in violation of Catalan law).
222. See text accompanying supra notes 100–101.
C. Legislation That Works With, Not Against, Airbnb to Promote Sustainable Tourism

This Section seeks to highlight that Airbnb’s operation in Barcelona does not perpetuate the city’s tourism-related problems of overcrowding and inappropriate tourist behavior. It explains that the expansion of properties in Barcelona listed on Airbnb and the surging number of tourists flocking to the city, though happening concurrently, do not have a causal relationship. Banning Airbnb is a misdiagnosis, not a cure. Thus, this Section explains how governments worldwide must cease bans on Airbnb’s operations and start to work with, not against, the company to effectively regulate tourism.

This Note proposes amendments to the PEUAT lifting the ban on HUT rentals and abolishing the license system, instead of imposing a “no growth” status for HUTs and attacking Airbnb’s operations. It also advocates for a redistribution of Barcelona’s municipal resources that would allow the city to sharpen its focus in overseeing tourist accommodations and managing tourist behavior.

1. Abolishing the Licensing System

To control tourism, overcrowding, and rowdy tourist behavior, the city needs to turn away from limiting the availability of tourist accommodations and toward monitoring the number visitors and their behavior. As evidenced by its sustained presence in cities banning its operations, like Barcelona, Airbnb can and will continue to operate online with or without the consent of governments;223 the people will continue to use Airbnb whether or not it is legal.224

Critics may argue that following the enactment of the PEUAT, unlicensed properties—many of which are illegally listed on Airbnb—will soon be punished, which will discontinue this practice and help lessen tourism’s negative effects felt by residents. Indeed, in January Mayor Colau “committed to doubling the number of inspectors who track down illegal rentals” in Barcelona, and she is determined to fight companies like Airbnb by further increasing fines.225

223. See discussion supra Section I.D.2.
224. See text accompanying supra note 20.
The PEUAT may accomplish limiting the number of unlicensed apartments listed on Airbnb, but bearing in mind the circumstances, this is a lofty goal. Increasing inspectors tasked with “finding and then shutting down illegal apartments one by one is a lengthy, inefficient process” considering there are an estimated 6,000 unlicensed properties operating throughout the city. At the time of this writing, using Airbnb to rent a property in Barcelona for the coming weekend, there are over 300 listings still available, which constitutes only 4% of listings originally available for these dates. The sheer number of listings, compounded with the fact that rental listings on the website are highly dynamic, makes the inspectors’ job extremely challenging. Depending on the day and number of guests, the available listings change. Therefore, an unlicensed property may be available to rent only one weekend of one month during the calendar year. Further, once a property is booked, its listing disappears from the website, making it impossible for inspectors to know it is being rented, unless they identified and recorded the property at the time of its listing. To diligently monitor a few properties that are consistently listed for rental is manageable; to identify, find, and shut down thousands of unlicensed properties that are inconsistently listed on the website is a pipe dream.

Even if inspectors were to shut down a majority of unlicensed rentals listed on Airbnb, this fails to decrease crowding in the city. Permitting every residential property in Barcelona to be listed on Airbnb may increase the number of tourists in the city, but it does not increase the number of people. Airbnb facilitates the distribution of available accommodations for tourists; it does not increase the number of available beds in Barcelona. One listing on Airbnb does not equal one additional accommodation. Rather, it takes a

226. Roca, supra note 189.
227. On May 3, 2017, to book a rental in Barcelona using Airbnb for May 5–7, 2017, there are over 300 available rental options. See AIRBNB, supra note 32 (To conduct a similar search, proceed to Airbnb’s main page and input the destination, arrival and departure dates, and number of guests.). The remaining available rentals represent only 4% of properties originally listed. According to these figures, over 7,500 rentals in Barcelona have been listed on Airbnb, and more than 7,000 have been booked. See id. (These figures are current at the time of this writing, but as this Note explains, Airbnb listings rapidly change). These figures are consistent with previous searches on Airbnb. Natasha Lomas, a writer for TechCrunch, conducted a similar search in September of 2016. See Lomas, supra note 20. She, too, found over 300 listings in Barcelona for a weekend rental two weeks from the time of her writing. Id.
228. See generally AIRBNB, supra note 32.
229. Id.
bed primarily slept in by a Barcelona resident and temporarily rents it to a tourist.\textsuperscript{230} In turn, the resident must vacate the property and sleep elsewhere.\textsuperscript{231} This shift may increase the ratio of tourists to residents at certain times, but it does not increase the number of people in the city. Prohibiting Barcelona’s residents from listing their properties on Airbnb as HUTs does nothing to solve overcrowding. By banning Airbnb and subjecting HUTs to a licensing system, the Catalan government and Barcelona City Council seemingly misunderstand the concept of home-sharing platforms, like Airbnb, and will continually fail to decrease overcrowding in the city employing its present method of attack.

2. Monitoring Tourist Behavior

Critics may argue that even if allowing unrestricted HUT rental on Airbnb throughout the city will not contribute to overcrowding, it will increase the ratio of tourists to residents and further exacerbate the “drunken tourism” residents lament.\textsuperscript{232} Controlling tourist behavior may become even more unmanageable if there are no restrictions placed on the number of tourists that may enter the region.

Yet what critics fail to recognize is by surrendering its battle against Airbnb, Barcelona may better monitor tourist behavior and more adequately control other tourism-related issues. As explained above, tracking and shutting down unlicensed rentals is an inefficient use of the city’s resources, if not almost impossible to achieve. This Subsection proposes that instead of doubling the number of inspectors investigating illegal rentals and employing similar accommodation-focused policies, the city can better control tourist behavior by: (1) working with its residents and Airbnb to make the Catalan Tourism Registry (CTR) a more comprehensive database, and (2) creating a strategic plan that increases and distributes law enforcement officials proportionately throughout the city according to tourist numbers.

a. Catalan Tourism Registry

Pursuant to Decree 159/2012, rentals must be registered with the CTR to obtain a valid license.\textsuperscript{233} The registration process

\textsuperscript{230} See discussion supra Section I.A.
\textsuperscript{231} See id.
\textsuperscript{232} See, e.g., text accompanying supra notes 1–17 (explaining residents’ dissatisfaction with and desire for rowdy, drunken tourist behavior to change).
\textsuperscript{233} See Decree 159/2012, art. 68.
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includes completing and submitting a series of informational documents about the rental to the municipality, and reporting to the municipality material changes, if any, made to the property.\textsuperscript{234} Though this Note proposes abolishing the licensing system, it does not suggest eliminating the registration process, which is instrumental in keeping Barcelona officials informed and better equipped to manage tourist accommodations. Instead, Barcelona’s City Council should pass a law that requires all residential properties acting as HUTs to register with the municipality, according to the system under Decree 159/2012. Further, Barcelona officials should work with Airbnb to develop a reporting system, in which Airbnb either informs the municipality when a Barcelona property is being hosted on its website or when a Barcelona listing has been booked. Airbnb could even add a step to the listing process for hosts in Barcelona by providing a link to the municipal registration forms the host must complete before the property can be listed on the company’s website. In the alternative, Barcelona officials and Airbnb could agree that Airbnb will release rental information upon request, to shift the reporting burden from the company to the municipality.

Barcelona is in a great position to create a robust tourist accommodation database, as it already has procedures in place to report to the CTR. With the help of its residents and Airbnb, and without having to focus its attention on finding illegally listed, unlicensed rentals, the city can work towards improving and expanding its database. Residents will be inclined to report their property listings to the municipality, because they will not face being fined or denied a license. Similarly, Airbnb will not be discouraged from contributing to the municipality’s reporting system, because the city will not use the information to shut down rentals and decrease Airbnb’s business in the region. Airbnb retains the right to release its users’ personal information or information about properties listed on its website, and without threat of fines or prohibited operations, Airbnb would be inclined to work with Barcelona to ensure its rental database is accurate and up-to-date.\textsuperscript{235}

Improving the CTR would benefit all interested parties. Barcelona officials would be able to monitor rental properties more easily and effectively; Barcelona residents would enjoy the security of

\textsuperscript{234}. See id.
\textsuperscript{235}. See \textsc{Airbnb}, Privacy Policy, supra note 149; see also Lomas, supra note 20 (reporting how Airbnb regards itself as “part of the solution in Barcelona” and hopes the city soon will, too).
having the municipality and its law enforcement officials involved in the rental system; Airbnb would be able to expand and grow its presence in Barcelona without conflict; and tourists renting HUTs would be ensured a habitable space while experiencing all Barcelona has to offer.

b. Increased and Strategic Police Presence

A comprehensive, well-monitored database would provide Barcelona’s municipality with improved information regarding tourism accommodation statistics. Specifically, the City Council would have better access to data of where and when tourists are renting HUTs. Such information would allow the municipality to increase its police presence in areas with high tourist concentration to better control any inappropriate behavior. Strategic police distribution would put the city in a better position to respond to any raucous behavior. Quick and efficient police response is crucial to establishing a minimum standard of behavior for tourists.\(^\text{236}\) If Barcelona maintains its reputation as a city rifled with drunken tourists and partygoers,\(^\text{237}\) these detrimental behaviors will persist.

Again, by not dedicating its resources to hunting down unlicensed properties, Barcelona can focus its attention on regulating tourist behavior, without discouraging tourism generally. Not only is this proposal a more efficient use of the city’s resources, but it satisfies the interests of Barcelona’s residents, who want to see this disrespectful behavior eliminated, as well as those of organizations promoting sustainable tourism in the region, such as the Catalan Tourist Board and Barcelona Turisme.\(^\text{238}\) The tourism industry is crucial to this region, and the CTB and Barcelona Turisme are committed to promoting a responsible and sustainable tourism that provides a positive experience for tourists, highlights the region’s culture and charm, and ensures its residents’ high quality of life.\(^\text{239}\) Neither Barcelona’s residents nor its officials want tourism eliminated in the region,\(^\text{240}\) and strategically distributing law enforcement officials throughout the city would help eliminate intolerable tourist behavior, while allow the industry to flourish.

\(^\text{236}\) See Baquiero, supra note 129 (explaining how police are unable to discourage or handle rowdy and crude behavior by tourists).
\(^\text{237}\) See text accompanying supra notes 125–132.
\(^\text{238}\) See discussion supra Sections I.C.2–3.
\(^\text{239}\) See discussion supra Section I.C.2.
\(^\text{240}\) See discussion supra Sections I.C.1, I.C.3.
CONCLUSION

This Note began with a discussion of an innovative company, Airbnb, and its place in the new global sharing economy. Airbnb has expanded rapidly across the globe, facilitating C2C transactions and contributing to the rise of collaborative consumption. Despite its widespread success and millions of users, Airbnb faces criticism from government officials who seek to ban Airbnb because they believe it threatens established, local markets by operating through loopholes in property and housing legislation. In Barcelona, Airbnb is blamed for exacerbating the city’s struggles with overcrowding and inappropriate tourist behavior. Instead of seeking to regulate Airbnb listings, government officials have employed an unenforceable, ineffective de jure ban on Airbnb.

As demonstrated, Airbnb has become a permanent fixture in the new economic framework, despite any opposition it faces. With the rise of technology and a consumer-driven economy, people will find ways to use Airbnb’s services, even if they are illegal. This has proven true in Barcelona, where thousands of rental properties are illegally listed in the city. Instead of fighting the future of commerce, Barcelona and other global tourist destination cities need to enact or amend legislation to effectively regulate Airbnb. Bans or excessive fines on Airbnb only delay the inevitable—that is, recognition of Airbnb’s importance in the new global sharing economy and ultimate adoption of new legislation.

This Note proposes amendments that will allow Airbnb to serve Barcelona, but give government officials better tools to regulate its operation. With more information about listings on Airbnb, Barcelona’s government can enact effective plans to alleviate overcrowding and deter detrimental behavior from international tourists. It allows the city’s sustainable tourism model to expand, while striking a balance between growing with the global sharing economy and monitoring Airbnb-style listings. The biggest mistake that cities can make is to resist change, when they now have the opportunity to amend legislation and be ahead of the curve, innovatively participating in the new global sharing economy.