

Platform Failures

How Short-Term Rental Platforms like Airbnb fail to cooperate with cities and the need for strong regulations to protect housing.

By **Murray Cox** and **Kenneth Haar**

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Travelling using services like Airbnb, the dominant short-term rental platform, have become popular for many tourists throughout the world. At the same time the platforms make it easy for residents and property owners to offer their homes to tourists. Many say it's too easy.

With a few clicks of a mouse, or taps on an app, any type of residential housing can be posted on the internet, mostly without any type of verification, except for those required for tourist dollars to flow.

The ease and incentive for short-term rental “hosts” to profit, have dangerously intertwined the tourism and housing markets, and a slew of commercial hosts now dominate Airbnb and other platforms, creating virtual full time hotels and hostels out of residential and social housing.

Any city or town on the tourist route now has to balance the housing needs of their residents against increased tourism, and most have turned to their housing laws, old and new, to protect communities and valuable housing for their residents.

While tourism has a very public face to it, the task of regulating a commercial activity like short-term rentals in residential homes, behind closed doors, is challenging.

Governments that expected cooperation from the platforms were met with opposition - a denial of any responsibility, or even that any issues existed. At the same time, platforms lobbied for no rules, ignored regulations, rejected demands and negotiations, sued cities in court, and most importantly, protected their data and the identity of their “hosts” and the location of the short-term properties, many of which were illegal.

Now a small number of cities are responding with innovative, proven regulations and enforcement, including those that successfully and **legally require the cooperation of platforms**. Platforms have responded, ironically claiming that they are voluntarily cooperating, and argue that cities should now negotiate with them, in the hopes of compromising or delaying regulations; or they claim that laws making them accountable are not even required.

Cities are all in agreement, platforms have failed to cooperate, and regulations are required..

This report shows how short-term rental platforms fail to cooperate with cities - by ignoring or blocking regulations, threatening to and engaging in excessive litigation, withholding data and knowingly shielding illegal activity.

We also show how cities are responding with innovative regulations, and how, in Europe, a supportive Digital Services Act could ensure that cities can prevent the attacks on their most valuable social resources both offline and online.

The Mirage of Cooperation and Self Regulation

It's not difficult to believe that short-term rental platforms are cooperating with cities or are self regulating to ensure their businesses don't negatively affect cities.

If we read press releases, or news reports, we frequently see claims from platforms showing their willingness to work with governments around the world.

"we are eager to work with our host community as well as city and state government on clear and fair regulations for short term rentals in New York"

Airbnb, June 10, 2019¹

after being forced by the City of New York to disclose data with a court-issued subpoena detailing how more than 17,000 Airbnb listings were suspected of being illegal under the city's housing laws. New York's regulations are clear, but they may not be fair to Airbnb.

"As we move forward, we want to continue to be good partners to everyone in Catalonia and work together to ensure everyone benefits from home sharing on Airbnb based on our experience of working with more than 500 governments and organizations around the world."

Airbnb, August 5 2020²

after the Catalonia government makes "home sharing" legal in Barcelona and other cities across the region. The law applied to private room rentals where the primary resident was present, and had been illegal since at least 2010, yet thousands appeared every month on Airbnb's web-site. Airbnb's history of lack of cooperation in the region included being fined €600,000 in 2016 for continuing to show unregistered listings in Barcelona.

Under close examination, platforms' claims of cooperation seem to be a thin veneer on years of resistance. Why would platforms want to appear to be cooperating with cities?

In the case of Airbnb, a private venture capital backed corporation, who has for a number of years been planning their Initial Public Offering (IPO, a listing

on the U.S. stock market), the answer is simple. Airbnb needs to appear to be cooperating, and to appear to be regulated so their current and potential investors, believe that there are no significant risks from regulations in the future. At stake is US\$38 Billion, the valuation given to Airbnb pre-COVID³, the personal fortunes of its founders, employees with stock options, and early investors.

Sometimes the veneer shows through, and we see short-term rental platforms' true nature, for example when a city decides to tighten regulations.

"We've been working in partnership with the city of New Orleans for the past two years, implementing a package of enforcement tools, including data sharing and a pass-through registration system...The city changed the rules in May 2018, and these unilateral changes are incompatible with...the registration system previously available through Airbnb."

Airbnb, June 2018⁴

after the City of New Orleans announced a 9 month moratorium on new licenses in some parts of the city, Airbnb shut-down their pass-through registration system, and more importantly, hid registration numbers, which were required by law.

"The Airbnb community — consisting of 19,000 Amsterdam landlords — is disappointed in your intention to have large hotels prevail over Amsterdam families who occasionally share their homes and punish them for the shortcomings of other platforms to promote responsible holiday rentals."

Airbnb, January 2018⁵

after Amsterdam's City Council decided to reduce their 60 day yearly cap down to 30 days. Airbnb ultimately refused to implement the 30 day cap in their platform, something they had done for the 60 day cap.

"we remain convinced that Paris' broken and disproportionate STR rules breaks EU rules and have a negative impact on the 1 in 5 Parisians that use Airbnb; we look forward to making our case in court and to working with everyone on better solutions for everyone in Paris."

Airbnb, February 2019⁶

after Paris fined Airbnb in court for €12.5 million for failing to follow local regulations and allowing 1,010 unregistered properties to be listed on its site after repeated attempts to remove them.

In this report we examine more of the many ways platforms fail to cooperate with cities in their mission to protect housing. We also look at instances of failed self regulation and failures of the new short-term rental market.

If you can't find us, you can't fine us

Platforms rely on it making it harder to find those breaking local laws

In the past, hospitality providers, including traditional Bed and Breakfasts, relied on physical signs in and around town; listings in local real-estate offices; accommodation registries coordinated with local, regional or national tourism agencies; or listings in well known guide books.

It made it easy for local authorities to determine whether commercial activity was occurring in legitimate locations, zoned appropriately, and that any permits, permission or other rules were being followed.

When short-term rental platforms arrived, the only public face of a short-term rental property became an anonymous digital listing with only an approximate location of the property with an unverified first name of the host.

The anonymous nature of a digital short-term rental listing makes it extremely difficult for local agencies to enforce their local zoning, building, tourist and housing laws.

This is compounded by the exponential increase of demand for short-term rental properties, including aggressive marketing to potential hosts or property investors, resulting in hundreds or thousands of new properties entering the short-term rental market, many without going through the steps to verify if the activity is allowed, or notifying the city.

Even in cities that have been battling the impacts of short-term rentals for years still have major issues with compliance because they can't locate who is responsible for illegal listings.

In Paris, 60% of Airbnb listings do not have a registration number⁵, required since 2017⁶, and in Berlin 80% of Airbnb listings⁷ do not have the registration number, a requirement since August 2018. In New York City, up to 85% of Airbnb listings are illegal.⁸

These non-compliant listings would likely be shut-down and revenue lost to platforms if cities were better able to enforce their short-term rental laws. Platforms have a vested interest and incentive in continuing to shield the identity of their hosts or the locations of illegally rented properties, and due to the majority of their revenue coming from illegal activity, it's not a stretch to say that the business model of short-term rental platforms like Airbnb rely on shielding illegal listings.

The opaqueness of location and identity by platforms which makes enforcement so challenging is not just an unintended consequence of the establishment of digital marketplaces, it has been planned, designed and built into their platforms.

In the case of Airbnb, the exact location of a listing is withheld until a booking is made, and only revealed to a new guest. In practice, this means that the location for a listing on a map, or in data scraped from a listing, could be anywhere from 0 to 150 meters from the actual address.

Listings in the same building, by the same host, are anonymised by Airbnb individually, and therefore may appear "scattered" in the area surrounding the actual address, even though the entire building could have been turned into a de facto, unregistered hotel.

While arguably protecting the privacy of hosts the anonymisation of a listing's location is oxymoronic given that they are offering "public" short-term accommodation.

Over time, Airbnb has changed their platform to make enforcement even more difficult by further anonymising addresses.

In 2015, Airbnb provided the street name in the public data for each listing. Multiple cities, including New York City, San Francisco, and Paris were using the street name to aid with compliance and the enforcement of their housing laws.

Near the end of 2017, Airbnb removed the street name from the public information available for a listing. As the street name might be useful for prospective guests, the only conclusion is that **Airbnb removed the street name solely to hide illegal activity on its platform and thwart compliance and enforcement efforts.**

Other measures used by Airbnb to evade scrutiny have been to reduce the number of search results from 1,000 to 300 listings. Airbnb searches previously returned 1,000 results, but after journalists and enforcement agencies started using searches to measure compliance and impact, in 2015 the number of search results were reduced to 300, making it much more difficult to manually survey the Airbnb supply in a city.

And at various times Airbnb has removed permit numbers from listings in jurisdictions that required the public posting them, a regulatory feature that allows the city to match an advertisement with the registration details including an identity and precise location.

Portland, Oregon's ordinance required the posting of the city's short-term rental permit number with any public advertisement. Airbnb originally included this field clearly in the web-page for each listing, however after journalists used this to reveal low compliance rates (less than 10%), in 2015 Airbnb removed the field from the listing page⁹.

After the City of New Orleans announced in 2018¹⁰ a 9 month moratorium on new licenses in some parts of the city, in retaliation, Airbnb hid registration numbers which were previously displayed and were required by law.

In spite of these efforts by platforms, cities are responding to the challenges of identifying short-term rental actors and increasing the efficacy of their housing laws by introducing mandatory registration systems, data disclosure by hosts and/or platforms and a requirement for platforms to only post listings that have been registered.

What's Illegal Offline, is legal Online?

Should short-term rental platforms be legally responsible for illegal listings on their sites?

Without the responsibility of short-term rental platforms, it's almost impossible for a city to enforce its housing laws. As we've seen, the challenge of knowing who owns and the location of a short-term rental listing leads to illegal "content" on platforms as high as 85%.

Yet platforms have claimed they are not responsible for policing their sites, citing privacy laws, claiming advertisements are "speech", and used shielding laws designed to promote and protect digital networks and markets, like the EU's e-Commerce Service Directive or the U.S. Communications Decency Act.

In practice, this has meant that platforms:

- Claim that only hosts should be responsible for illegal listings
- Refuse to supply detailed data on hosts, locations and short-term rental activity
- Accept listings that break the laws of where they're located
- Ignore requests to take down identified illegal listings

Platforms argue that they should not be required to ensure that the listings on their sites are complying with the complex housing laws which differ across the hundreds of thousands of cities and towns the platforms operate in.

In some cities, the laws are simple, for example in Berlin between May 2016 and August 2018¹¹, and Santa Monica since June 2015¹², when both cities enacted an outright ban on unhosted listings.

Unhosted short-term rentals are the antithesis of "home sharing" and are the most likely type of rental to impact residential communities because it's likely that no-one lives there, and a unit of housing has been removed from the long-term residential market, displacing families, and impacting housing prices. It was

this reason that both cities cited when they enacted their laws¹³.

Airbnb and other platforms refused to follow the law and continued to list unhosted Entire home listings and refused demands from those cities to remove listings which were clearly violating their laws.

[Say something about the number listings in both Berlin and Santa Monica during this period]

Platforms say that asking it to police their own listings is an attack on free speech¹⁴, using arguments that an e-mail service or social media platform might rightly use if the government asked them to examine and censor emails, social media posts or private messages.

Whether a listing is hosted or not, is the second question Airbnb asks when they sign up a host, and is a fundamental characteristic of the service they facilitate and their business model. Determining whether a listing was illegal or not would be a simple matter of using this property of their listings, in the exact same way they allow a potential guest search for an Entire home or a Private room. **In these cases Platforms are knowingly advertising illegal listings**, there is no other interpretation.

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Other cities that have or had effective bans on short-term rentals include New York City (Entire home listings since 2010) and Barcelona (Private room listings between 2010 and 2020), yet thousands of those listings are displayed on platforms like Airbnb.

SEE WHAT'S POSSIBLE

Earn up to €2,139 a month hosting in New Windsor

[How we estimate your earnings potential](#)

Tell us more about your place and we'll update your estimate

Address

Entire place ^

Entire place
Guests have the whole place to themselves—there's a private entrance and no shared spaces. A bedroom, bathroom, and kitchen are usually included. ✓

Private room
Guests have their own private room for sleeping. Other areas could be shared.

Shared room
Guests sleep in a bedroom or a common area that could be shared with others.

Figure X. Whether a property is hosted (“Private room”) or Unhosted (“Entire place” or “Entire home”) is the second question Airbnb asks a host when they signup.

In cases where the laws are more complex, for example

- verifying that a host is the primary resident of a property
- ensuring that the host has the legal right to rent the property, that does not violate their lease, property title, insurance, building by-laws, a city’s social housing laws, caps on permits or zoning
- yearly caps, which might span platforms

Cities respond to the concerns and realities of adjudicating the legality of renting, usually with a registration or permit system, which puts the onus on the city to verify each short-term rental.

Verifying that a short-term rental is legal or not, is then just a simple matter for the platform to ask for a permit number, and usually cities make this a requirement in their laws.

Platforms responded to this new regulatory requirement by adding a registration number field to the hosts’ signup process.

The registration system is an elegant solution, which does not require the platforms to understand or verify the complex laws of each market, however platforms still allow unregistered listings to appear on their site, and refuse demands by cities to remove them, even when the registration number is available on platforms for hosts to fill out.

We cited Berlin, which now has a permit system, although 80% of Airbnb listings do not have a permit number¹⁵, in Paris the level of illegal listings without registration numbers on Airbnb is more than 60%¹⁶, and in San Francisco, prior to the adoption of laws which make platforms legally responsible for displaying only registered listings, 80% of Airbnb listings did not have the required permit¹⁷.

Displaying listings without mandatory registration numbers is another example of short-term rental platforms knowingly and flagrantly advertising illegal services at rates that are commonly 80% or more.

The scale of illegal listings and the systematic lack of compliance of hosts and platforms is staggering and many would say criminal.

The high proportion of illegal content on platforms, the resulting impacts on residential housing and the failure of platforms to be responsible justify the need to regulate short-term rental platforms.

Platforms have failed to and refuse to police their own sites, and must be held responsible.

I'll see you in court

How platforms use the courts to block housing regulations.

The fight for our cities and housing has moved from our streets and city hall to the courts, and sometimes courts of a distant and foreign land.

As residential properties are converted to tourist accommodation and both hosts and platforms ignore existing housing laws, the struggle to limit the impact of short-term rentals turned to stronger, more specific and enforceable regulations, and the courts play an important arbitrator and at times a roadblock in this battle.

Platforms have used all of the following legal strategies in order to remain deregulated:

- Refusing to follow laws
- Challenging regulations in courts
- Threatening to sue
- Funding host court cases
- Claiming country of origin
- Lobbying for new shielding laws

Refusing to follow laws

While not an obvious legal strategy, it is if you consider that not following the law allows short-term rental platforms to continue to profit from the illegal properties on their sites and it forces a city to either try to enforce penalties; or ask the courts to issue a legal judgement to stop facilitating the illegal activity. In many cases, either or both are defended vigorously by platforms in court.

After Airbnb refused to remove unregistered listings from their platform, in February 2019, Paris initiated legal proceedings to fine the platform €12.5 million for 1,010 unregistered listings the city found on their platform.

Airbnb has defended the fines, claiming that the french national ELAN law, passed in November 2018, which allowed the fines, should have been notified to the European Commission and was not, so is unenforceable. They also claim that the same laws are incompatible

with the E-Commerce Directive, because it does not respect the freedom to provide services, and because it imposes a “general monitoring obligation” on operators of digital platforms, which is expressly prohibited by Article 15 of the E-Commerce Directive.

The case has still not been resolved and in the meantime the city of Paris estimates that “approximately 15,000 to 25,000 entire housing units are rented throughout the year, diverted from the traditional rental market” and that “more than 60% of the listings on Airbnb do not have a registration number”, and illegal under their laws.

Challenging regulations in courts

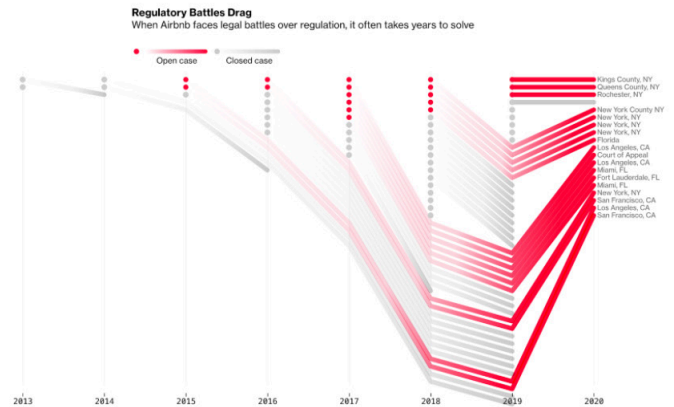
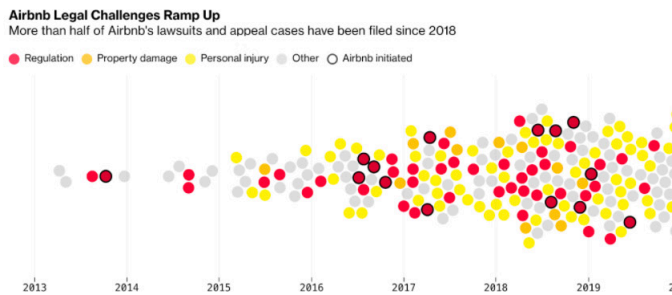
As regulations which limit short-term rentals have passed, platforms challenge them in court, sometimes even on the same day they are signed into law.

In the United States, Airbnb has sued Santa Monica²⁰, San Francisco²¹ and New York City²² over their cities’ regulations, which were all settled leaving the regulations intact.

While the cities triumphed, they were forced to expend significant legal resources and their regulations or enforcement were on hold until a decision was made. At the same time, the platforms continued to profit from the activity the laws were attempting to curtail.

Threatening to sue

The litigious nature of Airbnb has been studied by Bloomberg news²³, who found that “Airbnb has filed at least 11 lawsuits against an American city or state government since its founding in 2008 and has appealed an adverse decision at least three times. Half of these legal challenges have come in the past two years alone.” They also found that “it can draw on an in-house army of 120 lawyers and a legal budget that was about \$60 million in 2018.”



Source: Bloomberg News Staff reporting, Bloomberg Law

Cities, or their lawyers, can be reluctant to enact new regulations, for fear of the expected legal challenges, regardless of whether they have merit.

Even the Governor of New York State was threatened in a public letter by Airbnb²⁴, which said:

"As this unlawful bill would impose real harm on our community, out of respect for the process and to inform your considerations, we want to formally notify the state that if it is signed into law by Governor Cuomo, Airbnb would have no choice but to immediately file suit against the State of New York and ask a court to declare the statute invalid and unenforceable as well as to award any damages and fees as appropriate."

Smaller cities, without the legal resources of big cities or states can be understandably more cautious.

Many of the legal cases mentioned in this report initiated by the platforms have been unsuccessful, and could therefore be thought of as abusive of the courts.

Cities such as Barcelona, Paris and Vienna who were interviewed for this report cited ongoing court cases as reasons they had not proposed new regulations or continued enforcement.

Claiming country of origin

In Europe, Airbnb has used the EU's country of origin principle, to force European cities to appeal to the Irish courts, the headquarters of many software platforms, for the right to fine platforms, or to defend the regulations in their own city.

Berlin said that while their laws allow the city to ask platforms about the name and address of hosts, Airbnb has stated that they only have to obey Ireland's data laws.

European cities far away from Ireland make the point that while continental Europe courts share many similarities, and their lawyers are familiar with their processes, the Irish courts whose current legal system is modelled after English common law, are unfamiliar and challenging to navigate.

While country of origin laws might make sense for consumer protection, where a common standard of care could be established across the EU, when it comes to short-term rentals and its impact on housing, where cities need to be protected, the origin of the platform is irrelevant.

Lobbying for new shielding laws

In the EU, legal challenges have increasingly used shielding laws and concepts in the European Commission's The Single Market, their e-Commerce Directive and Services Directive, in both local, regional, national courts, and the European Court of Justice.

At the same time platforms use these arguments they are also lobbying Members of the European Parliament (MEPs), and European Commissioners and Committees responsible for the interpretation, redesign of these laws.

This topic is discussed further in "The Digital Services Act, or Airbnb vs European cities" [link]

If we have data, let's look at data. If all we have are opinions, let's go with mine²⁶

Platforms defend their data to hide their true nature, their impact on housing, and block enforcement.

Some of the earliest battles by the cities against platforms were about data, and they are still waging.

Cutting to the chase, data has shown the following truths about short-term rentals:

- **The majority of listings in most cities are for entire homes, not spare rooms**
In Paris²⁷, 86% of Airbnb listings are for entire homes
- **Many “hosts” manage multiple listings**
In Barcelona²⁸ 76% of entire homes and 50% of private rooms are in a portfolio of properties or rooms.
- **“Commercial” listings and revenue outnumber “home sharers”**
In Barcelona approx 65% of listings and 89% of revenue can be attributed to “commercial” activity, not “home sharing”
- **Full-time entire home listings can outnumber the number of available properties for long-term rent**
[Need to look through my notes for this example, I think from DG GROW report, but definitely others]
- **The presence of Airbnb in a neighbourhood contributes to higher rents**
In Barcelona, new rents were raised by 19% in some neighbourhoods, after controlling for other factors like gentrification²⁹
- **In cities with mandatory registration or permit systems, compliance rates are as low as 20%**
In Paris, 60% of Airbnb listings do not have a registration number³⁰, required since 2017³¹, and in Berlin 80% of Airbnb listings³² do not have the registration number, a requirement since August 2018.

These facts are all vigorously disputed by the platforms, but no alternative data or compelling analysis is ever provided.

Considering what can be accomplished with data, it's no surprise that platforms have defended their data.

Based on interviews with a number of cities³³, **access to detailed short-term rental data, down to the address level, is required by cities to create appropriate policies and enforce regulations**, and to-date, they list access to data as the major barrier to achieving their objectives of protecting housing from short-term rentals.

Apart from a few exceptions, platforms have never voluntarily shared detailed data with cities to help them enforce their housing laws, except where legally required by court issued subpoenas or data sharing regulations.

The major exception is data shared with tax authorities, either through regulations or agreements, however in most countries, the tax agencies are not able to share the data with other agencies, like housing ministries, or city governments.

Apart from a few exceptions, platforms have never voluntarily shared detailed data with cities to help them enforce their housing laws, except where legally required.

The one outlier is the City of Barcelona, which in August 2018, signed a Memorandum of Understanding with Airbnb, and earlier with other platforms, for the supply of monthly detailed platform data. Perhaps the high-profile nature of the fight against tourism in Barcelona and the publicity from protests against

Airbnb, including the occupation of an Airbnb unit by community activists, was a reason that compromises were made in Barcelona.

Ironically, in the one city where detailed data is voluntarily provided, Barcelona reports that 60-70% of addresses are missing or incorrect, and they rely on other measures to enforce their regulations which include matching registration numbers, scraped data and complaints from neighbours.

Other cities, like Amsterdam, also had Memorandums of Understanding with platforms for the supply of data, however they were for aggregated data, and the city described them as essentially useless.

The platforms most frequently cite privacy concerns when refusing to provide data, however even well constructed privacy regulations like the EU's GDPR allow for the provision of private customer data where there is a regulatory need (GDPR Art. 6 Lawfulness of processing).

The most encouraging development for the supply of short-term rental platform data are laws that make it a regular legal obligation. The notable examples have been San Francisco (passed in 2016, survived lawsuit in 2017 and came into effect 2018), French cities (under the national ELAN law, signed by decree November

2018, came into effect late 2019), and New York City (passed in 2018, survived legal challenge in 2020, and due to come into effect January 2021).

Based on the lack of cooperation from platforms, cities are encouraged to create laws which require platforms to supply data, rather than demanding or negotiating with platforms. It is also important that the EU's new Digital Services Act includes the ability for cities to request data from platforms where there is a public interest, such as the removal of housing by short-term rentals.

Cities that have obtained direct access to platform data, either through legal processes like subpoenas (New York City), through Memorandums of Understanding (Barcelona), or through the strength of their national laws (Paris) have also made the following observations:

- Hosts create multiple accounts and multiple listings to avoid detection
- The addresses are unverified, and there can be a significant amount of misleading information. Paris reports approx 7% missing data in files provided by Airbnb; Barcelona reports that approximately 60-70% of listings have missing or incorrect addresses. It's extremely likely that the more scrutiny there is on the data, the more hosts are likely to enter bad data to avoid detection.

KEY EXAMPLES OF DATA SHARING

2014	2015	2016	2018	2019	2019-2021
NYC: New York State Attorney General subpoenas Airbnb for data	NYC: Airbnb voluntarily provides data in a carefully orchestrated farce in an office in a New York City with data that could only be copied using analog methods	Amsterdam: Aggregate data provided under MoU	Barcelona: under MoU data sharing, 60-70% of addresses are missing or invalid	French ELAN laws require the disclosure of detailed data	NYC law passed for the supply of data, survived legal challenge and set to go into effect January 2021. City estimates that 85% of listings are illegal.

Data Sharing Partnership With the European Commission

In March 2020, the European Commission announced³⁴ that it had reached an agreement with collaborative economy platforms to publish key data on tourism accommodation.

The Commission said that the agreement, which was signed by Airbnb, Booking, Expedia Group and Tripadvisor will:

“contribute to more complete statistics on tourist accommodation around Europe, allow public authorities to better understand the development of the collaborative economy and support evidence-based policies.”

The non-legally binding agreement establishes an obligation for these platforms to share data on the number of guests staying and number of nights booked, aggregated at the level of municipalities.

While this announcement may be a step forward for tourism data, for policy decisions, cities require detailed data at least at the neighbourhood level, breakdowns on the different types of short-term rentals — hosted or unhosted, and occupancy data. This data is required to assess the impacts of short-term rentals on residential neighbourhoods and housing, and this can only be determined with detailed data.

Aggregated data will not help cities with enforcement against short-term rental use in social housing, registration compliance, use by property speculators instead of residents, nor the collection of taxes and duty.

This data will only allow cities to know that the “fire hose” is turned on, not where it is pointing nor the damage that is being done.

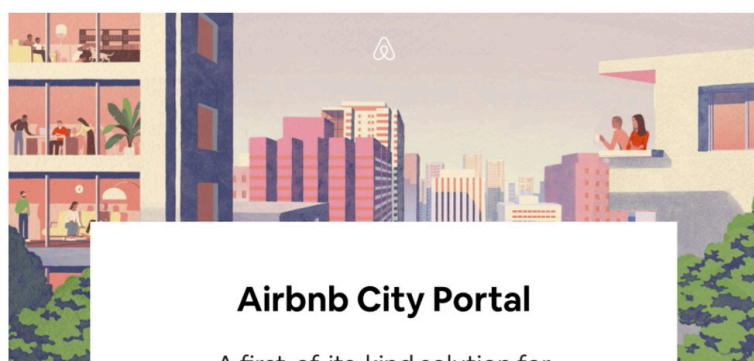
The Airbnb City Portal

In September 2020, via a media blitz³⁵, Airbnb announced³⁶ its “City Portal”³⁷ and said that it would allow for “Insights into local Airbnb activity” and provide “tools for enforcing regulations”.

Ideally timed only a few months before its long-awaited IPO, slated for December, it appeared that Airbnb was finally showing the world how it was cooperating with cities.

The reality was disappointing.

The Airbnb City Portal would only be available as a pilot for 15 cities, and many of its valuable features, would only be available if the local regulations allowed it.



Insights into local Airbnb activity

A dashboard with economic activity data and travel trends helps cities understand Airbnb's footprint in their communities.



Tools for enforcing regulations

Industry-first compliance tools help cities develop and manage fair short-term rental policies.



Direct communication and support

One-to-one support from Airbnb and centralized resources—such as our Neighborhood Support—enable more collaborative relationships.

Airbnb says that the Portal would provide:

“Industry-first compliance tools to help governments develop and manage fair short-term rental policies and regulations.

Governments with applicable short-term rental laws will be able to utilize City Portal to view Airbnb listings within their registration systems.”

It’s not clear from this statement, whether Airbnb will offer these tools only to governments that Airbnb feels have “fair” short-term rental policies and regulations, but what is clear, is that they will only get these tools if they have regulations like data sharing.

Currently, only a handful of cities have regulations which demand data sharing, so effectively the tools would only be useful for tourism planning.

Ironically this tool could be an impetus for cities to pass strong regulations that include data sharing and mandatory registration, to unlock the benefits of the portal, but until then, this appears to be another way for Airbnb’s Policy and Communications team to send sanitised data and market the positive benefits of “home sharing” directly to governments.

To Negotiate or Regulate?

Cities say Regulate

Platforms want cities to negotiate not regulate.

Cities and platforms in many cases have competing objectives. While tourism and economic development interests may be aligned, cities' concerns about sustainability, the impact on housing and residential livability, which may only be achieved with restrictions on short-term rentals, conflict with the platform's desire of unlimited market and revenue growth.

In cities where the scale of short-term rentals have already exceeded the limits on social resources and introducing regulations, or enforcement, would not just limit growth, but significantly reduce the current revenue for platforms.

Platforms are quite simply, afraid of regulations, and will do anything to avoid them, including offering to negotiate.

The first negotiation strategy from platforms is to offer something that they can afford to give up, and is valuable for cities. For many, that is the collection and payment of taxes.

Offering to pay taxes, is designed to provide an immediate benefit for cities, create a reliance on tax revenue, and forestall further discussions about a city's demands.

We talk about this strategy more in the section "Take this Big Bag of Money".

When cities were asked about negotiations with platforms³⁸, some reported some success at asking platforms to collect taxes, **but almost all said they had no success, or their demands were compromised on their other objectives**, such as:

- removing illegal listings
- removing or refusing listings without mandatory registration numbers
- displaying registration numbers
- providing detailed data for enforcement
- limiting bookings that exceed yearly caps

In the very few cases where platforms did agree to these additional demands, they are often withdrawn by the platform when the city discusses tightening short-term rental restrictions.

A good example is Amsterdam where the city and Airbnb had negotiated and signed an agreement that covered 2017-2018 which included the obligation for Airbnb to implement within their platform the city's 30 night yearly cap. When the City Council announced in 2018 to reduce their 60 night yearly cap down to 30 nights, Airbnb refused to implement it. When the agreement expired at the end of 2018, it was not renewed.

Other issues that cities report with negotiations:

- Failure to agree on restrictions
- Take significant resources and time
- Delay the implementation of city policy objectives
- Agreements are not a legal obligation and can (and have) been broken
- Negotiations need to be replicated/repeated with every platform

For this reason, every city surveyed and interviewed for this report recommended regulations over negotiations.

The final word on negotiations can be summed up by Airbnb:

if we enter an agreement with a government..., the terms of such agreement will likely be publicly available and could create a precedent that may put us in a weaker bargaining position in future disputes with other governments.

Airbnb, 2020³⁹

Platforms: We want to be regulated

The appearance of being regulated is better than being well regulated.

In the last section, we discussed how platforms would prefer to negotiate with a city than face restrictive regulations. When that fails, platforms commonly propose to be regulated.

In the early days of the regulatory journey for cities, platforms aggressively resisted any type of regulation, with legal action, million dollar marketing campaigns and lobbying which included mobilising their host community via “community organisers”.

The resistance to regulations from platforms was mostly unsuccessful, and cities have started to prove that they can successfully pass fair, enforceable and effective regulations whether the platforms like it or not.

Platforms have now decided that the appearance of being regulated is better than being well regulated.

To appear to be regulated is better for the platform’s story. A well functioning market with efficient regulations and cooperating actors makes politicians and even economists happy.

For platforms like Airbnb, who are still proving that their business model, the threat of unknown or impending regulation is a threat to their current and future investors.

The early attempts at regulating short-term rentals included regulations or demands which were negotiated, which were simply ineffective, or difficult to enforce.

These include:

- Aggregate data disclosure
- Large yearly caps that are impossible to enforce
- Registration systems with no platform accountability

With first-hand experience of what regulations don’t work, platforms suggest these same regulations, knowing that they won’t materially impact their business.

A perfect example is the case in New York City, where Airbnb literally provided the written text of a law for state legislators to introduce⁴⁰.

The legislation included a “mandatory” registration system, but no requirement for platforms to be accountable for ensuring that hosts register, or for removing listings without a registration number, without which, a registration system is now well known to have compliance levels as low as 10-20%.

The legislation proposes to change the housing laws which apply to New York City by allowing an entire apartment to be rented out full time by each host, a major change from the current laws which expressly prohibit unhosted short-term rentals.

Even more concerning in this example was the display of clear political interference and “pay to play” politics, the state senator who was a co-sponsor of the law in 2019 had received a donation from Airbnb of US\$500k for their election campaign⁴¹.

Fortunately, even though Airbnb’s legislation has been introduced in 2017, 2018 and 2019, it has never made it out of the housing committee. It doesn’t deter Airbnb from claiming they are working with the city and state on regulating the industry at every opportunity.

In addition to compromising a city’s policy objectives, bad regulations proposed by platforms delay and confuse the debate about the most effective way to regulate short-term rentals, and if passed, could lock a city into bad regulations for years.

Take this Big Bag of Money

Platforms selectively offer to collect taxes, but cooperate no further

While this report focuses on the impact on housing from short-term rentals and city and platform responses to regulate this activity, taxes play an indirect role in the discussion about housing.

Namely, where platforms offer to collect and pay taxes, they provide an immediate incentive to cities, who then may be reluctant to regulate or restrict short-term rental activities to protect housing if it means reducing their tax revenue.

Of course, **some cities have refused to accept taxes while there remains significant illegal short-term rental activity and impacts on their housing.**

New York City refuses to change their tax laws to allow platforms to collect tax while up to 85% of listings are breaking housing and other city laws.

Airbnb has tried to shame the city for not supporting the company's set of proposed, ineffective regulations, which did include tax collection, by donating US\$10m dollars to charity as representative of a "small part of the US\$100 million in annual tax revenue the state could receive if lawmakers were to approve the bill".⁴²

Collecting and paying taxes by platforms also displays what seems like cooperation to observers.

For example, Airbnb claims that it has "500 regulatory partnerships with local governments and organizations around the world"⁴³. While it's difficult to audit statements like this, most research suggests that **almost all of these agreements are for tax collection, and almost none are for following housing laws.**

The offer by platforms to pay taxes, while it has optical advantages, locks cities into tax revenue, and forestalls other regulations, is not extended to every city.

This may be because the **additional scrutiny or disclosure required by tax agencies may be discouraging for hosts operating illegally or in a gray tax market.** Platforms, who we know, operate in many cities with substantial illegal content, are also wary of giving cities tax data that then may be used for enforcement purposes.

This is one of the reasons why, when platforms offer to collect taxes, they routinely refuse to disclose the personal details of the hosts they are collecting taxes for.

In a study of tax agreements made by Airbnb, it was found that "the agreements Airbnb is getting states and cities to sign do not require Airbnb to disclose all information relevant to its tax status, and they consciously shield with secrecy the identity and addresses of local lodging operators...They do not contain actual tax information. In short, they do not do what normal tax agreements do."⁴⁴

Vienna is an example where almost all platforms are following the country's mandated tax collection and reporting laws, but Airbnb has refused to collect taxes or provide data, citing GDPR considerations. Airbnb has also refused to remove listings in social housing, also banned by national laws.

Housing activists argue that even if short-term rentals hosts and platforms do pay tax, it only addresses tax equity. Taxes may somewhat "level the playing field" with other hospitality providers, and help to pay for some of the social services they consume, but **taxes do not compensate a city for the destruction of housing, the displacement of families and the rising cost of housing,** all of which are common negative externalities caused by short-term rentals.

A FOCUS ON:

Impact on Cities

Still to come

How Cities are Regulating Short-Term Rentals

Airbnb reports that approximately 70% of the top 200 cities they are active in have “some form of regulation”.⁴⁵ It’s fair to say that **most cities are choosing to regulate short-term rentals.**

A regulatory system needs to answer the following questions in a clear, transparent and efficient way

- Defining what is permitted vs restricted
- Ensuring effective enforcement and managing compliance

Defining what is permitted vs restricted

Defining what short-term rental activity is allowed varies incredibly city to city, town to town and neighbourhood to neighbourhood. Every city has different housing characteristics and needs, and different intersections with the tourism market.

* Note, we don’t discuss here consumer protection, health and safety or quality of life regulations, which are important, but we limit our discussion to regulations designed to protect housing and residential communities.

The most common approaches taken by cities can include:

- Bans on hosted or unhosted short-term rentals
- Bans in particular neighbourhoods
- Use only by the legal primary resident of a home
- Occasional unhosted rentals when the primary resident is away (usually implemented by yearly caps ranging from 30 nights per year to 180)
- Limiting hosted rentals to a % of a home (either by number of guests, rooms or floor space)
- Limiting the activity to a % or number of apartments in a building or neighborhood
- Restrictions in social housing

Most of the above measures can be summarised as attempts for each city to restrict short-term rental activity to their idea of legitimate “Home Sharing” and not to allow destructive commercial activity.

Ensuring effective enforcement and managing compliance

Without an effective enforcement and compliance strategy for short-term rental laws, most cities report very low compliance rates, commonly as low as 10-20%. This is because platforms provide a screen for illegal hosts to hide behind - hiding their identity, location and activity.

The most common approaches to enforcement and managing compliance include:

For hosts:

- Mandatory registration or permits
Evidence is usually supplied to ensure each applicant/property is consistent with allowed use
- Limits to the number of permits issued
- Host reporting requirements, either after each booking, or regularly

For platforms:

- Only allowed to display or accept transactions for permitted listings
- Process for removing unpermitted listings
- Data disclosure
usually including name, address and if used, a registration number, and commonly booking summaries (number of guests, number of nights, fees)

Examples of city regulations

City	Permit or Registration System	Platform Data Disclosure	Platform Accountability	Limits on use
Amsterdam	Yes	No. MoU's with Platforms have expired	Yes*	30 days/yr
Berlin	Yes	?	?	?
Barcelona	Yes	Yes	Must display permit numbers Must remove illegal listings via Laws and	Number of permits
New York City	No	Yes	No	Ban on "unhosted"
Prague				
Paris	Yes	Yes	Yes	120 days, must be a resident
San Francisco	Yes	Yes	Yes	90 days/yr. Primary resident.
Vienna	No	Yes, For taxes, although Airbnb refuses to comply.	No	100% agreement from building neighbours. No more than 20% of building. No social housing.

Recommended Regulatory Approaches

Three regulatory features are recommended based on the experience of cities who have adopted these measures, or are moving in their direction.

Mandatory Registration System

A mandatory registration system involves requiring hosts to apply for a permit, license or registration, usually from the city. The city determines if the host and property meets the permitted use and the issued number must be displayed with all advertisements.

A mandatory registration system alone does not enforce itself. Early adopters of mandatory registration systems (Barcelona; San Francisco and Portland, both in the United States) discovered that hosts ignored the registration requirement and platforms continued to advertise listings without permits. It was not uncommon to see compliance rates as low as 20%. Famously, even Brian Chesky, the CEO of Airbnb listed his apartment on Airbnb, without a permit, publicly breaking the city's law.

Platform Accountability

A complementary policy to a mandatory registration system is platform accountability.

Under platform accountability, a platform can only accept advertisements or transactions from hosts that have registered their short-term rental property.

The permit number must be displayed in advertisements, and most laws require that platforms must make a field available in their systems for hosts to enter a permit number when they create a listing and for it to be prominently displayed.

Cities such as Amsterdam, Barcelona, Paris, San Francisco; with platform accountability regulations, have processes in place for notifying platforms that a short-term rental listing doesn't have a permit number, it is invalid, or it has been denied or revoked. Platforms must respond, usually within a set period of time, by removing the illegal listing.

Without laws that require platform accountability, platforms usually just ignore requests to remove illegal listings.

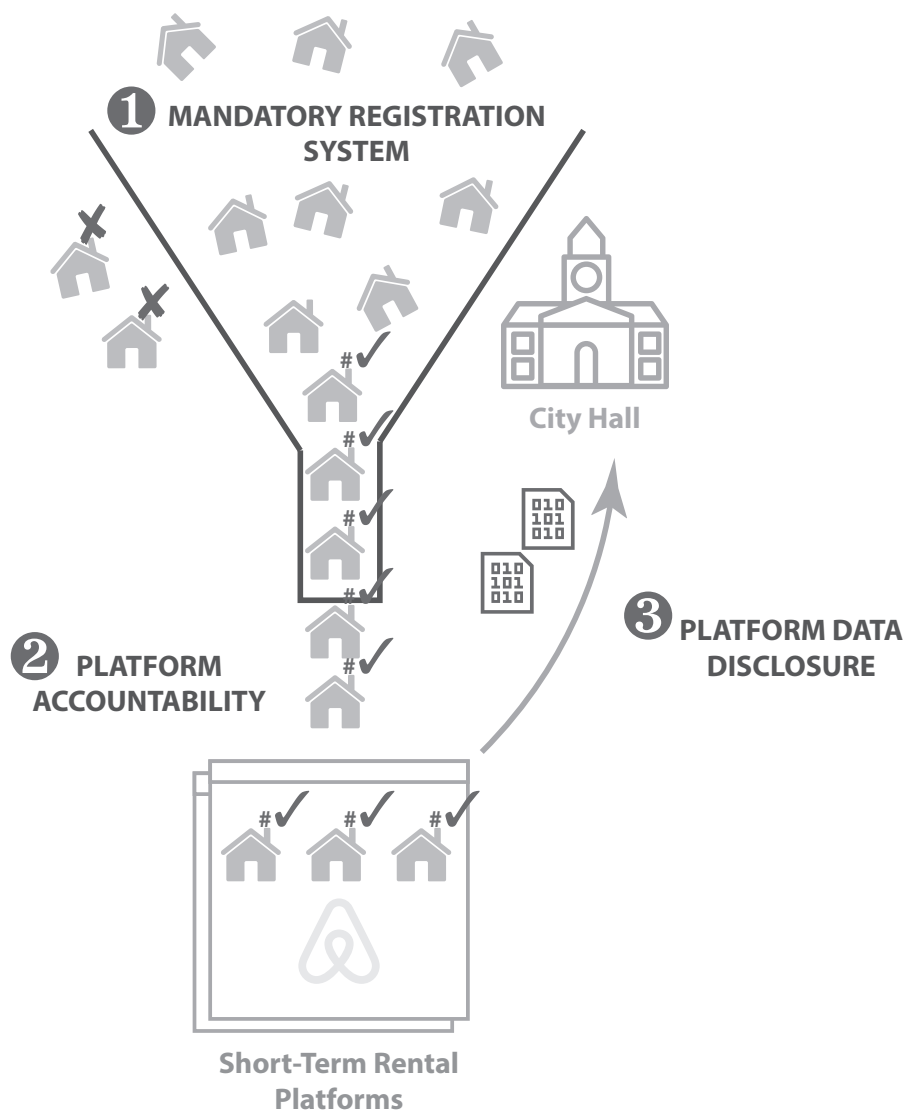
What is elegant about a mandatory registration system with platform accountability is that platforms do not have to police their platforms to ensure that a city's sometimes complex housing laws have been followed.

Platform Data Disclosure

For cities adopting mandatory registration systems, platforms must be monitored to ensure hosts are going through the registration, and that platforms are not listing unregistered listings.

Cities such as Amsterdam, Paris and San Francisco have, via their local, regional or national laws, adopted platform data disclosure regulations that legally require platforms to send regularly, mostly monthly, files containing all of the active listings on their platform.

The information most often required is the registration number, a platform identifier or URL, the name or other details of the host and property address. For some cities, details about bookings during the period are also required.



City Case Studies

To understand the impact of short-term rentals on cities, their progressively restrictive regulatory measures, amidst a failure to work with platforms, it is necessary to examine each city's experience and timeline in detail.

The following section includes case studies from a number of high-profile and representative cities, primarily in Europe, and key cities in the United States, including the birthplace of Airbnb, San Francisco, which has had the greatest success in regulating short-term rentals including strict rules for platforms.

The Authors would like to thank the participation of the cities of Amsterdam, Berlin, Barcelona, New York City, Paris, Prague, San Francisco and Vienna.

Amsterdam

KEY REGULATORY FEATURES

- Mandatory permits, which will be boosted by national registration laws, including requirements for platforms to follow them (in force January 1, 2021)
- Restriction to 30 nights/year for entire homes
- Ban in social housing
- Ban in 3 central neighbourhoods

PLATFORM / MARKET FAILURES

- Airbnb withdrew tools to enforce yearly caps in retaliation after the city council reduced the cap from 60 to 30 days per year
- Data provided to city by platforms was aggregated and essentially useless
- Still extensive illegal use, with €6m in fines issued in 2019

Amsterdam has been on a successively more restrictive regulatory journey against short-term rentals since 2014 when they introduced regulations that banned the activity in social housing (about 45% of Amsterdam's housing stock); limited it to occasional use by the primary resident - no more than 60 nights per year; and restrictions on renting rooms, for example, no more than 4 guests at a time.

On January 1, 2019, the city further strengthened regulations and reduced the 60 nights per year limit down to 30 nights a year.

Regulations were tightened again, when on July 1, 2020, it became compulsory to obtain a permit to short-term rent a property, and the activity in three central districts was prohibited entirely.

The ban in the three districts, Burgwallen-Oude Zijde; Burgwallen-Nieuwe Zijde and Canal Belt-South, were instituted after research had shown that their residents had been under serious pressure from the extraordinary number of tourists staying in their area. 75% of surveyed residents were in favour of bans, but felt that they didn't go far enough.

The city of Amsterdam signed one of the world's first Memorandum of Understandings (MOU) with Airbnb in December 2014 which covered the years 2015-2016, and practically concerned the collection of taxes.

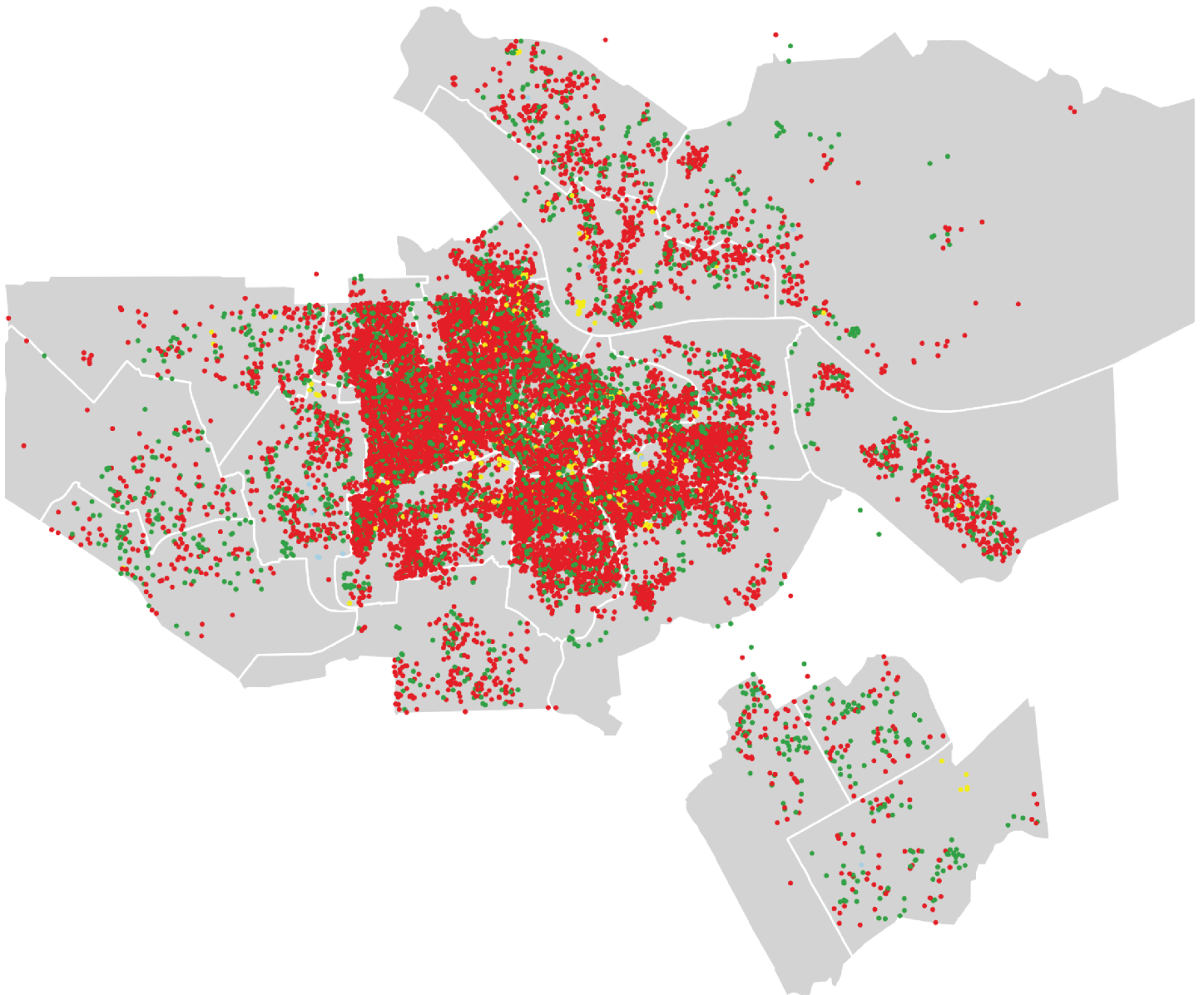
Another MOU was signed with Airbnb in December 2016⁴⁰ covering 2017-2018 and provided a voluntary agreement by Airbnb to enforce automated limits to ensure entire home listings are not shared for more than 60 nights; and to share aggregated information on the impacts of home sharing.

The aggregated data, provided 6-monthly, was not useful to the city, as they required more detailed data for their continued policy analysis and enforcement.

After Amsterdam's City Council decided to reduce their 60 night yearly cap down to 30 nights, Airbnb retaliated and refused to implement the new 30 night yearly cap in their platform, something they had done for the 60 night yearly cap.

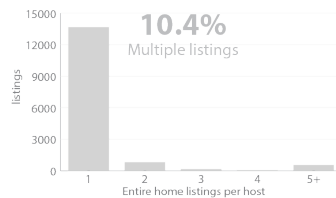
The city has not pursued any additional agreements with platforms after their expiration and considers that regulations and enforcement are more effective and appropriate than non-legally binding agreements not backed up by laws.

Even despite Amsterdam's current set of restrictive regulations, they have only been able to stop the growth. Illegal short-term rental activity persists, with the city issuing €6 million of fines in 2019. The impacts of Short-Term Rentals, particularly the removal of housing stock and the erosion of a peaceful living environment in residential neighbourhoods, are still acknowledged by the city,

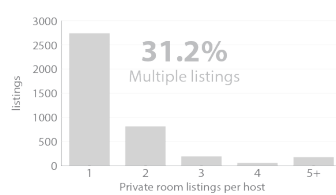


Multiple listings

Entire homes

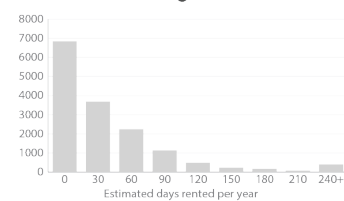


Private rooms

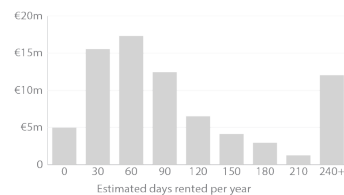


Occupancy

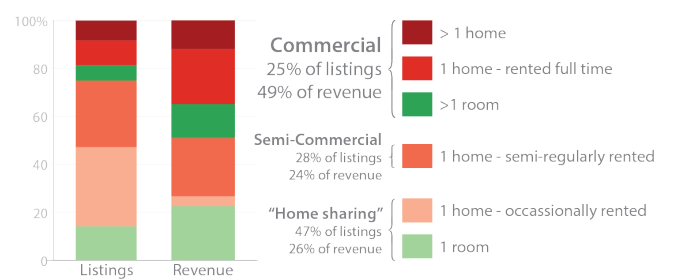
Entire home listings



Entire home revenue



“Home Sharing” vs Commercial



The city estimates that about 1 in 15 apartments are listed on Airbnb and in some neighborhoods it is as much as 1 in 9. Surveys of residents found that in 16 of 99 neighborhoods, short-term rentals are the most mentioned nuisance factor.

Some indirect impacts on residential neighborhoods with high concentrations of short-term rentals, include the reconfiguration of the commercial business, with many more offering services, some exclusively, that are applicable to tourists. [say more]

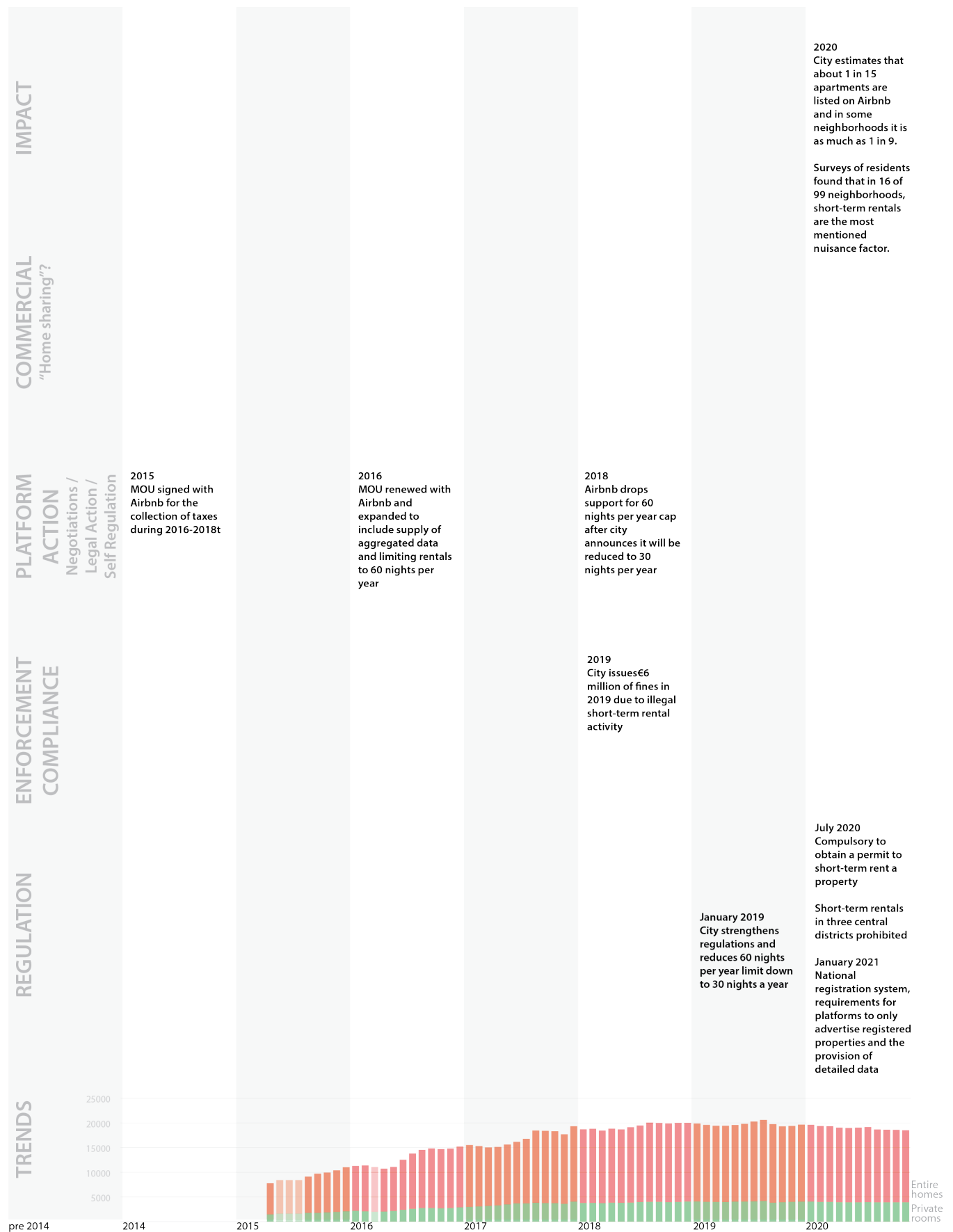
The city says that it has been successful at regulating the activity in social housing, mainly because much of Amsterdam's social housing was built away from the older picturesque city centre, in locations that are not

as desirable to tourists. The city also said that neighbours of social housing are much more likely to report illegal hotels.

It has been more difficult to enforce regulations in the city centre, with older housing which is privately owned. The private housing market is unregulated, and much more susceptible to disruption from short-term rentals, and the increased cost of housing due to the loss of supply.

The city is looking forward to new regulations, which include a national registration system, which goes into effect on January 1, 2021. The legislation includes requirements for platforms to only advertise registered properties and for the provision of detailed data, essential for the city and never delivered through negotiations with the platforms.

Amsterdam – timeline



Barcelona

KEY REGULATORY FEATURES

- Mandatory Registration
- Fixed number of Licenses, by “Zone”
- Mandatory display of license numbers (by hosts and platforms)

PLATFORM / MARKET FAILURES

- Until 2017, platforms refused to remove listings without a registration number
- Platforms now remove listings after being notified by the city, but platforms allow them to relist
- Data provided by platforms have 60-70% of addresses missing or not accurate
- Cost of new long-term rentals increase by up to 19% due to Airbnb
- Majority of short-term rental activity is commercial not “home sharing”

Overtourism became a visible issue in Barcelona in recent history when demonstrations were held in 2012 and again in the summer of 2014 with complaints that tourism was disturbing residents’ daily life and was also increasing housing costs.

By this time, a regional Catalan law had been in place since 2012, allowing short-term rentals for less than 31 days at a time, as long as a registration number was displayed. At the same time, hosted short-term rentals, in private rooms, were illegal.

Both unhosted rooms and entire apartments without authorisation proliferated sites like Airbnb, and the platform was fined €30,000 in 2014 and a massive €600,000 in 2016 for accepting listings without the required registration number.

Researchers also observed property portfolios being built on short-term rental platforms finding that 55% of hosts offered more than one listing on the Airbnb website, and the average host had 5.2 listings³⁴.

In 2015, with the election of activist mayor, Ada Colau, who ran on a platform of regulating tourism and addressing the housing crisis, a massive enforcement effort, the “Shock Plan” was created in 2016 to ad-

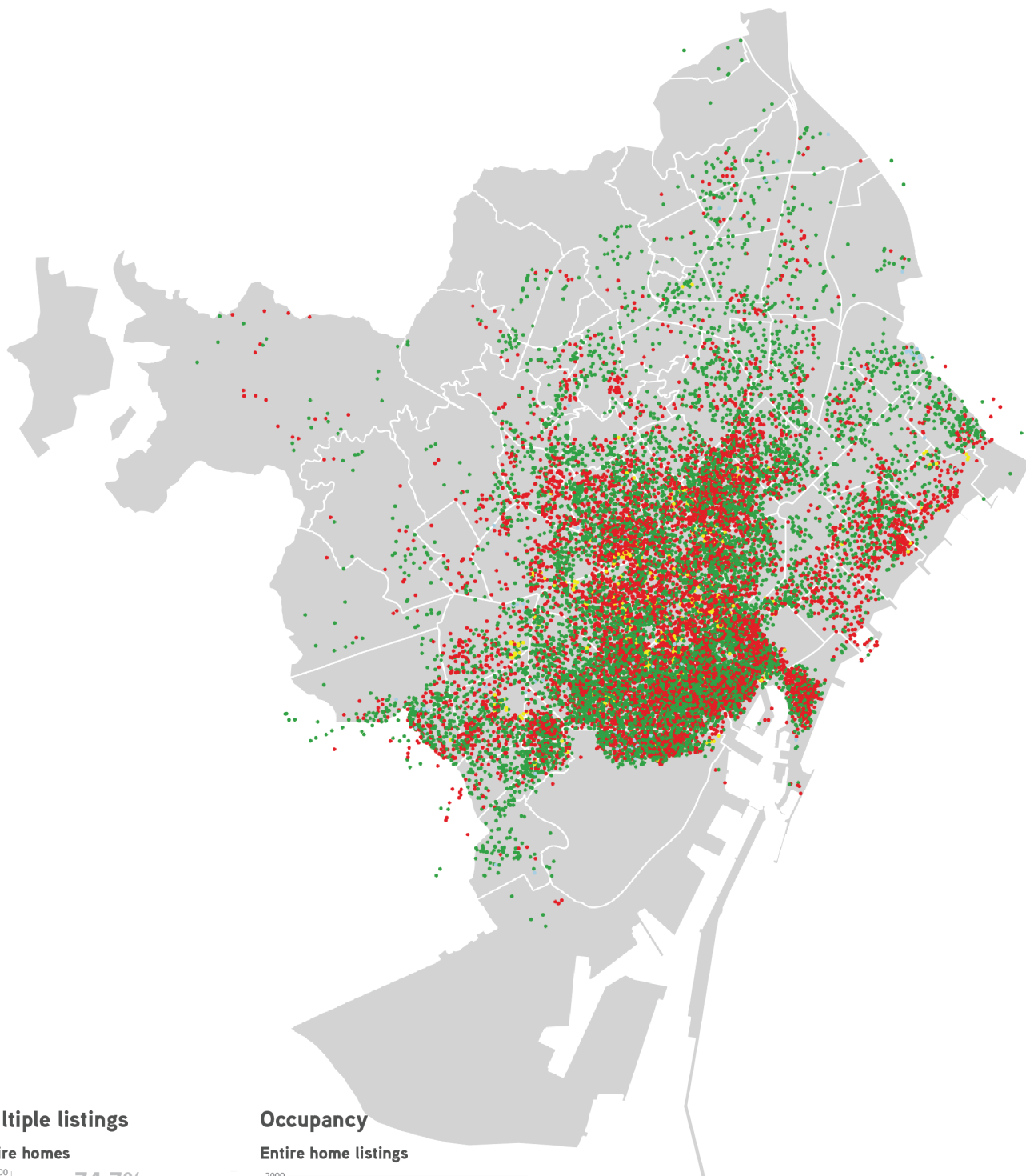
dress illegal short-term activity. Under the plan, the city issued cease orders to 615 illegal apartments and opened a total of 1,290 investigations into illegal activity. Data from the city suggested that about 40% of the supply of homes for tourist use was not registered.

In 2017, PEAUT (Plan Especial Urbanístico de Alojamiento Turístico) was created and signed into law, which froze the number of permits for homes for touristic use, at 9,600, and monitored their distribution across the city.

At the same time, as a result of the high publicity of the enforcement efforts against illegal short-term activity, including fining the platforms directly, the city was able to negotiate and sign agreements in 2017 with Booking.com, HomeAway, Niumba, Rentalia and TripAdvisor and later with Airbnb to establish procedures to remove illegal listings from those platforms. These agreements were consistent with the regional laws.

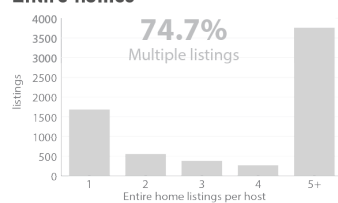
Another agreement was signed with Airbnb in August 2018, the first of its kind in the world, for the provision of detailed data of listings on their platform.

This agreement for the supply of detailed data from a short-term rental platform, has never been repeated,

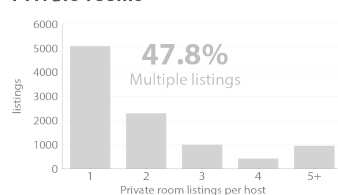


Multiple listings

Entire homes

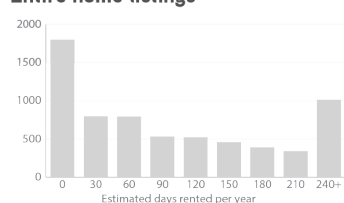


Private rooms

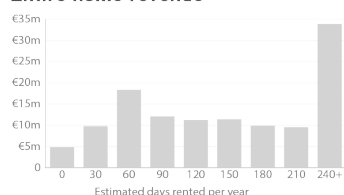


Occupancy

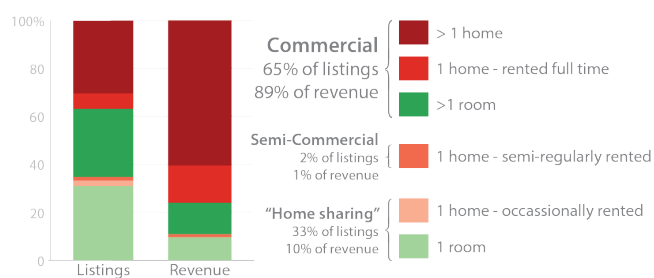
Entire home listings



Entire home revenue



"Home Sharing" vs Commercial



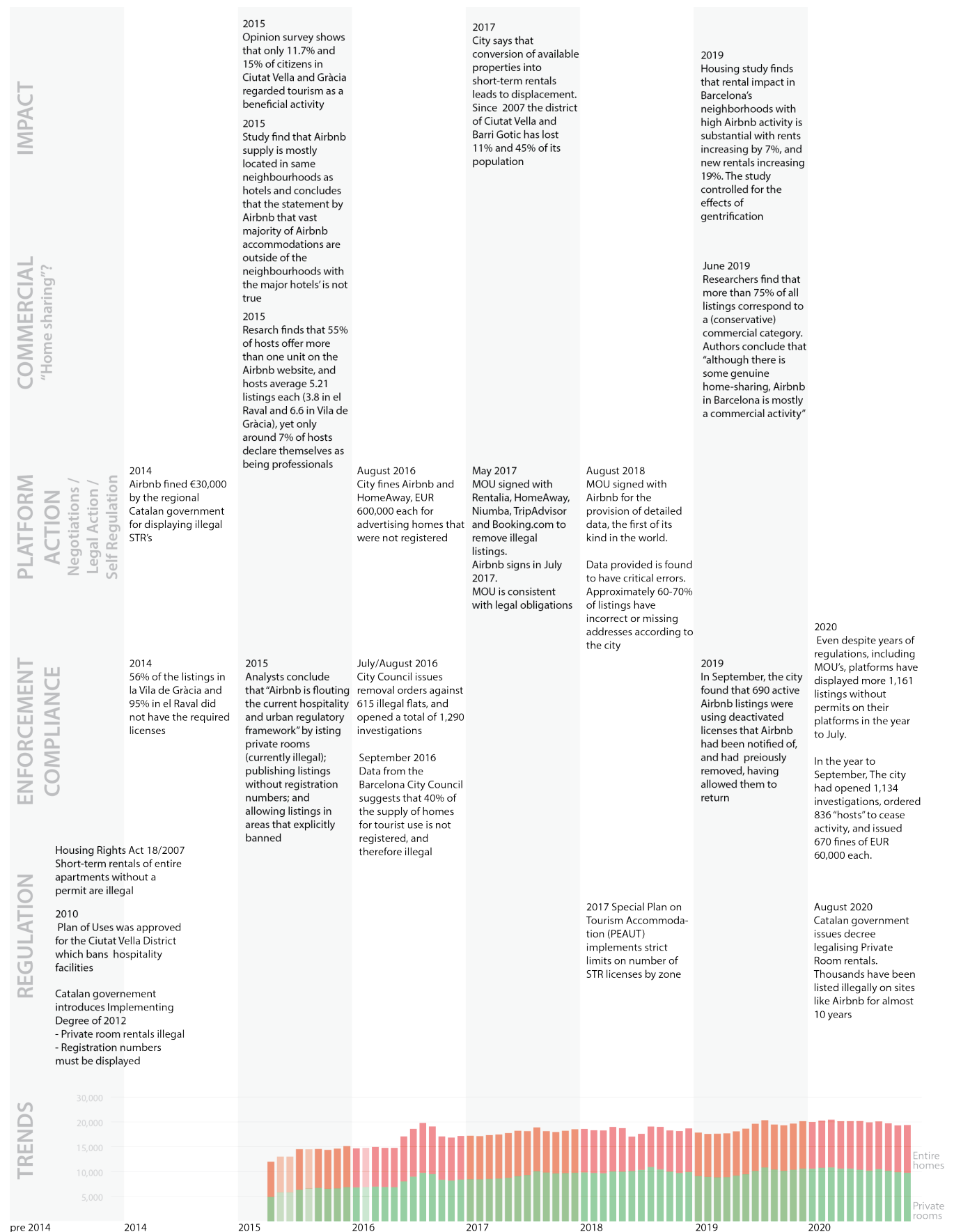
except where platforms were legally required to provide data, for example in San Francisco or Paris.

In any case, the data has proven almost worthless to the city, they report that 60-70% of listings in the data provided by Airbnb has addresses that are missing, or incorrect, making it difficult to cross-check illegal listings with their registration system.

The lack of quality of address data could be a result of the adaptive behaviour of hosts, who knowing their data would be disclosed to the city, alter it, or it could be a testimony to the lack of quality of Airbnb's verification processes and their "trust" systems.

A new PEAUT law is now being considered which could include the expiration of authorisations to rent entire apartments (holiday tourist units), for example after 5 years. Currently an authorization does not expire, and is only lost if an apartment ceases to be used for touristic purposes. This new measure could force tourist accommodation back to residential use. Another measure being considered includes introducing limits on the number of rooms offered in "hosted" rooms, similar to the limits on entire apartments. And because of the unique circumstances of COVID-19 which has dramatically impacted tourism demand, the city is exploring ways to incentivise hotels and short-term rental operators to convert their properties back to residential use.

Barcelona – timeline



Berlin

New York City

KEY REGULATORY FEATURES

- Ban on unhosted short-term rentals
- “Home sharing” limited to no more than 2 guests
- From 1/2021 platforms required to provide data on active rentals

PLATFORM / MARKET FAILURES

- Platforms have ignored unhosted ban
- 15,000 units of housing lost
- Self-regulation via data releases and limiting commercial activity have failed
- Approximately 85% of short-term rental listings presumed illegal

The fight between New York City and short-term rental platforms can best be described as challenging.

The city has not compromised on its laws which protect residential housing during a statutory affordable housing crisis, and continue to prohibit “unhosted” short-term rentals which remove an entire apartment from its precious rental market. More than two-thirds of New Yorkers are renters.

The current laws are more permissive for private room rentals, with the primary resident permitted to “host” no more than two paying guests, as long as the apartment is not subject to the city’s rent-regulation laws.

Short-term rental platforms, and in particular Airbnb, want to redefine “home-sharing” to include the lucrative renting of entire apartments, and have refused to remove apartments from their platform that clearly violate New York City’s laws.

Various housing researchers have concluded that a successively higher number of apartments have been converted illegally to hotel accommodation by short-term rentals, with 8,058 in 2016⁴², and 13,500 units of housing lost in 2018⁴³.

Beyond those displaced directly or indirectly by the converted apartments, researchers have estimated that **the cost to every New York renter has been US\$616m in 2016 alone⁴⁴, or \$470 for each renter, estimated in 2018⁴⁵.**

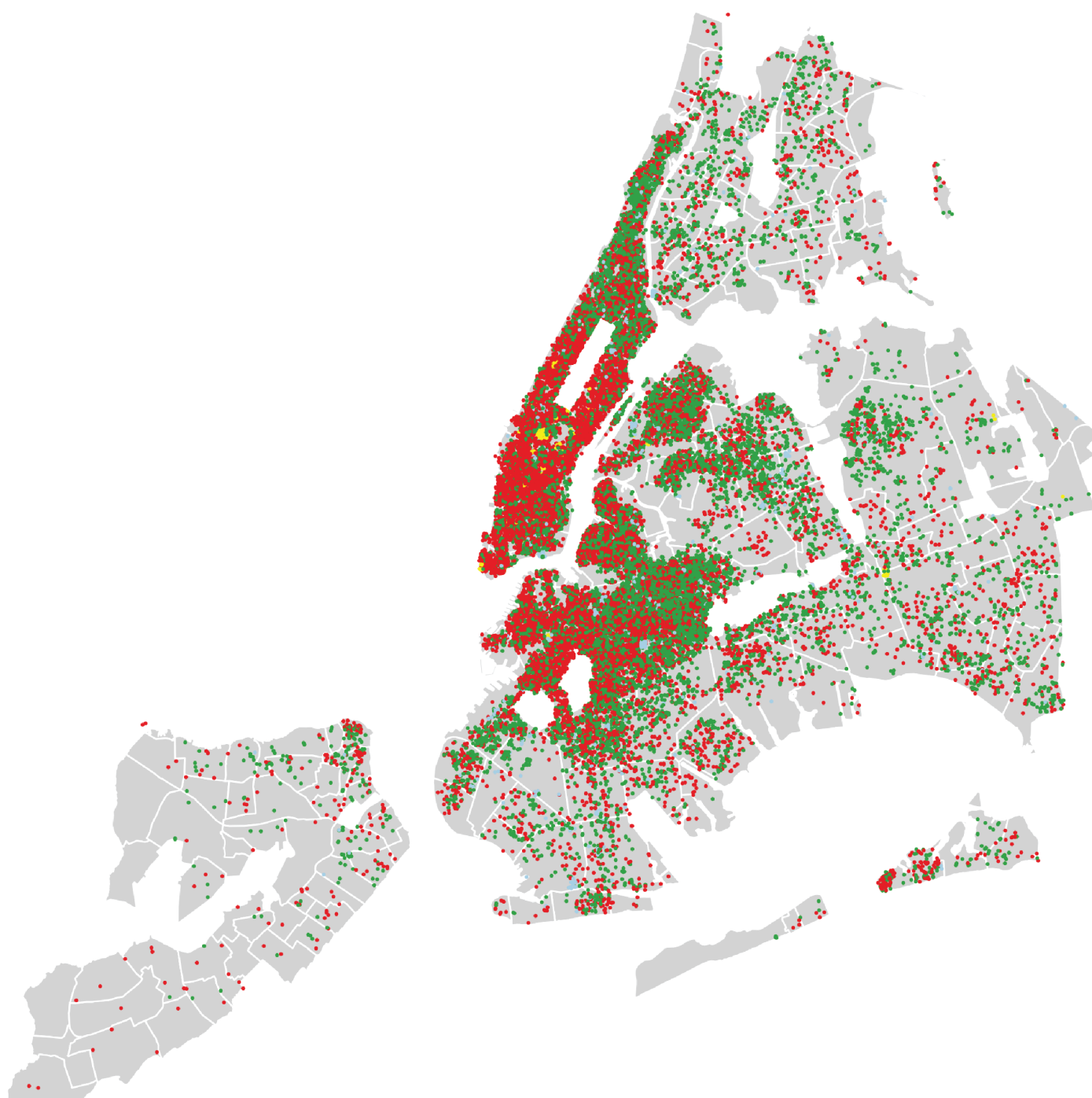
By the city’s own estimate, approximately 15,000 units of housing have been taken off the market by the cumulative effect of individual hosts renting entire apartments or rooms; and the creation of large syndicates with multiple properties.

In a typical month, based on the data it has received by subpoena from platforms, inspections, and scraped data, the city estimates that 85% of listings on platforms like Airbnb are illegal.

Instead of following the city’s regulations, platforms have fought them in the courts, like the state’s October 2016 Anti-Advertising law, which Airbnb threatened to sue while it was being considered, and then following through with a federal district court filing hours after it was signed into law [link].

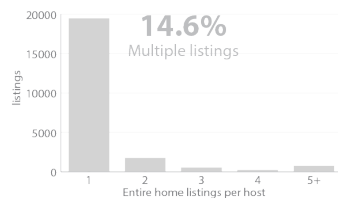
Efforts by the platforms to appear to self-regulate have been cynical, or back-fired, like the public data disclosure by Airbnb of December 2015, in an isolated room in Manhattan, where escorted guests were allowed only to “view” the data or copy it manually by making notes. The data was revealed⁴⁶ to have been manipulated by Airbnb prior to the release, when they had quietly removed 1,500 commercial listings from their platform to attempt to claim that commercial use was a diminishing trend. Airbnb has since admitted that they have “seen an increase in the number of, and revenue from, professional hosts on our platform.”⁴⁷

The policy that Airbnb created after this data fiasco, the “one host, one home” policy, went against New

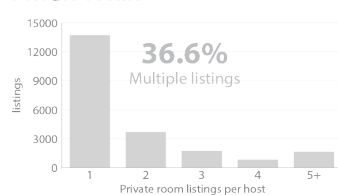


Multiple listings

Entire homes

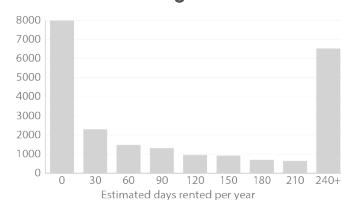


Private rooms

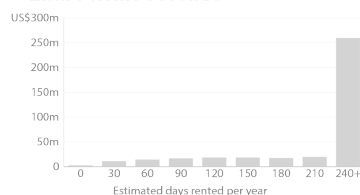


Occupancy

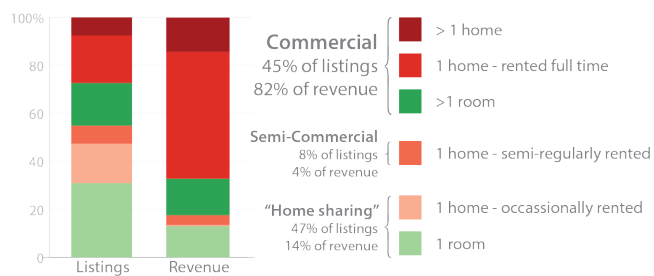
Entire home listings



Entire home revenue



"Home Sharing" vs Commercial



York City's unhosted law, and in Federal Court in 2020, were forced to withdraw this policy from evidence as an example of self-regulation after it became obvious that they would be forced to disclose how easy it was for commercial operators to bypass, as showcased by the US\$21m lawsuit filed by city against a group who used 130 apartments across 35 buildings and 100 Airbnb accounts to run a massive illegal hotel network.

Recent improvements to the city's short-term rental laws were made in July 2018, when New York City Council unanimously passed the Homesharing Surveillance Ordinance which requires platforms to provide data on active short-term rentals on their platforms. The city said that the law "provides the city with the critical data it needs to preserve our housing stock".

Airbnb and later HomeAway sued the city in August 2018 and the presiding federal judge issued an injunction stopping the law in January 2019. In June 2020, 22 months after the platforms' lawsuit, a settlement agreement was announced with the city, which effectively allowed the law, with some slight modifications, to go ahead.

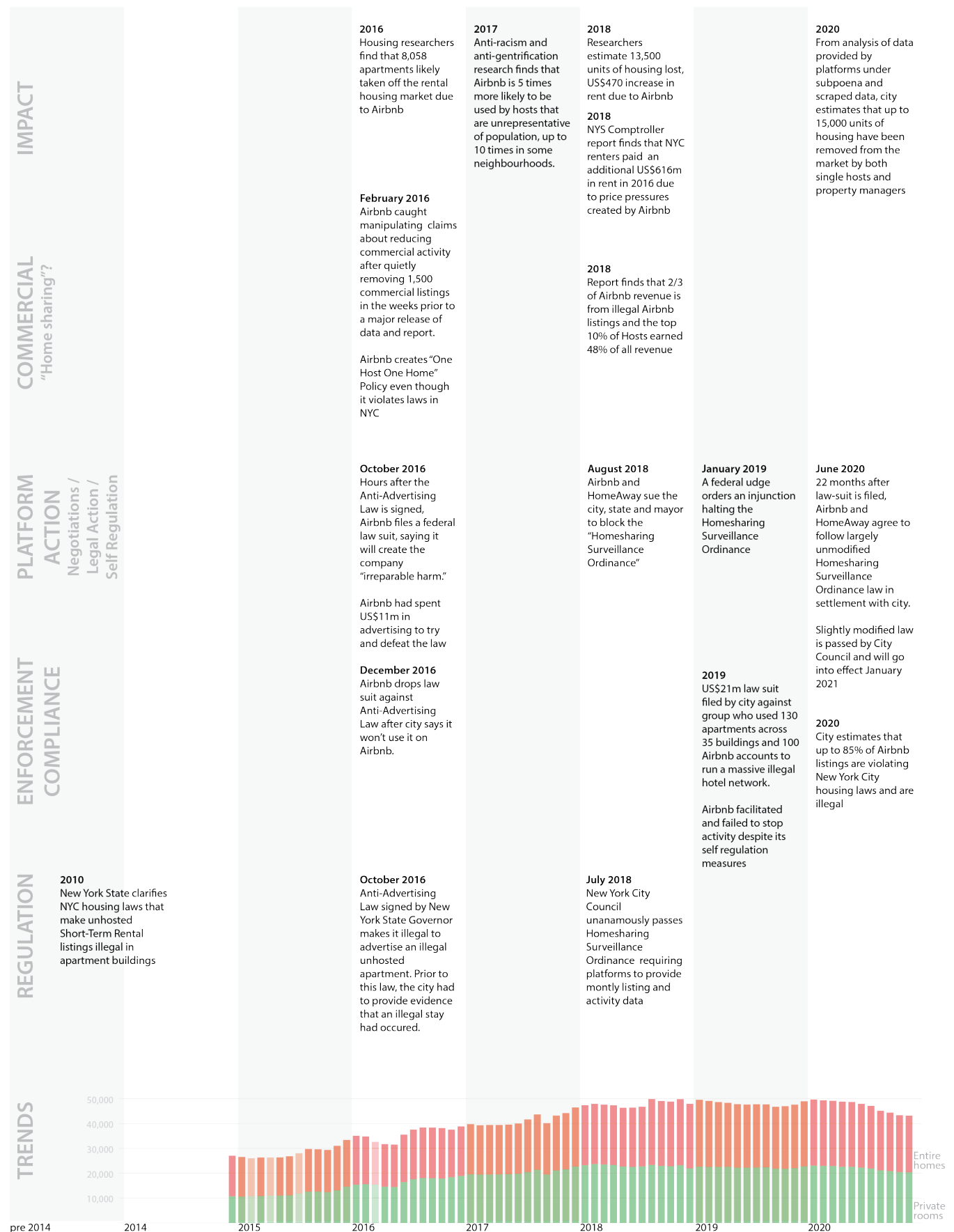
The Homesharing Surveillance Ordinance goes into effect January 2021, and the city said it will request January-March data to be delivered in May 2021. With the high proportion of presumed illegal listings, even Airbnb themselves have suggested⁴⁸ that many hosts could decide to stop hosting in New York City:

"when new regulations requiring us to share host data with the city are implemented, our revenue from listings there may be substantially reduced due to the departure from our platform of hosts who do not wish to share their data with the city"

Other possibilities are that hosts will simply enter fake addresses or fake identities into the platforms, making the data useless. This is the experience for Barcelona where 60-70% of the data they receive from platforms have missing or incorrect addresses.

Housing activists in New York City are currently advocating for a registration system which requires that hosts seek permission before using residential properties for short-term tourist rentals, which would allow the city to verify that all of their current laws are being followed, and that the identity of hosts and locations of properties is verified, a simple measure which the platforms have been unable or unwilling to do.

New York City – timeline



The Digital Services Act, or Airbnb vs European cities

Will the Digital Services Act finally bring an end to the destructive impact of short-term rental platforms on the housing market in European cities?

The European Commission has now released its proposal for a 'Digital Services Act' — a new law that is to update legislation on platforms, replacing the wildly outdated e-Commerce Directive. No doubt, what will take center stage in the political tug-of-war that will now open, are platforms like Facebook, Twitter, Google, Apple and Amazon, but another key component of the new law is about short-term rental platforms. Since Airbnb expanded massively in Europe from about 8 years ago, cities have struggled to control the phenomenon to avoid a detrimental impact on the access to affordable housing for citizens. But existing EU law has represented a severe obstacle. Now the question is if the final version of the Digital Services Act will finally allow public authorities to not just adopt adequate rules to protect affordable housing, but to enforce it as well.

Coming to Brussels

At the end of 2014, Airbnb went to Brussels and initiated a long lobbying effort. In the face of an almost vertical spike in number of apartments and houses rented out via the platforms in European cities, municipalities had begun taking measures to restrict the spread in order to protect access to affordable housing for locals. The company's countermove was to go to Brussels to seek help from the EU institutions to use European law to roll back the wave of restrictions falling on the company in big cities across Europe.

The biggest win was about data. When a city adopts a restriction, the first thing required to enforce it, is information. Without evidence, no enforcement. And Airbnb was successful in making access to data about the activities of the platform and its hosts hard to access for public authorities. An old EU law, the

e-Commerce Directive, was brought in by the platforms that argued that under those rules, they were only obliged to work with authorities if specific evidence in individual cases were brought to them, so-called 'notice-and-take down'. In no way were they compelled to hand over data systematically. Airbnb won over the European Commission and it won a case at the European Court of Justice, a victory in the first stage.

It is broadly acknowledged that the e-Commerce Directive is outdated and that a new rulebook on platforms, based on experiences from the last two decades, needs to be written. This has reignited the lobbying machine of the platforms, and there is no guarantee for success. They have received first class treatment by the European executive, the European Commission, so far. And they will in large part only have to defend the status quo.

A safe haven of immunity

The e-Commerce Directive was adopted two decades ago in June 2000 on the back of the growing importance of the internet and the quick emergence of major information platforms. A public debate on what can be allowed to be posted or not, lead to demands for legal clarity, and European lawmakers acted quickly: a Directive was adopted with an unusual speed, in that a major directive that would normally take perhaps a year to adopt, was pushed through in three months. The European Parliament, for instance, had only one discussion of the text, and not the usual two.

For platforms, the main achievements were, that for many issues, they would only have to abide by rules in the 'country-of-origin', which in the case of Airbnb and giants like Facebook and Google, is Ireland. As for

their obligations to monitor their sites for illegal content, the directive was inspired by the US approach in the so-called Communications Decency Act, Section 230 of 1996, which granted immunity to platforms for illegal content posted on their site. The European version was to become slightly different, in that a ‘notice-and-take down’ clause was added, which obliged the platforms to cooperate with authorities when a specific illegal activity could be substantiated. But on the other hand, the platforms could not be obliged to monitor their sites systematically for illegal activities.

This approach was to become crucial for short-term rental platforms. It seemed to provide ample space for platforms to refuse to cooperate with public authorities.

Obviously, something here doesn’t sound quite right. The notion of ‘illegal content’ was — when the Directive was discussed and adopted — directed towards ‘information platforms’, and not eg. platforms in the service economy. The internet of 2000 was very different from the internet of 2020. For a start, the Airbnb phenomenon was hardly visible on the horizon at the time. It was not until 12-13 years later that the short-term rental platforms made such an impact locally, that the limitations of the e-Commerce Directive became obvious. While public authorities in Europe can ask the platforms for the removal of specific, substantiated illegal postings, such an approach is highly inadequate when it comes to potentially thousands of illegal listings in any city. To cope with that, some kind of systematic transfer of data is necessary.

But still, these few sentences in the directive were to become the main point of contention, when the issue of short-term rental platforms became politically loaded some 12-13 years later.

Airbnb secures a safe haven

With the e-Commerce Directive in hand, then, the only challenge for Airbnb when it arrived in Brussels in late 2014, was to make sure the company was covered, and then to get help from the EU institutions to enforce its rights under that EU law.

As the e-Commerce Directive was written in another era, and developed to regulate information platforms, not service economy platforms, it was not clear if Airbnb and other short-term rental platforms were even

covered by the Directive. But the European Commission turned out to be an important and powerful ally. Only a year and a half after Airbnb’s first encounter with the Commission, the European executive had produced an interpretation of the two laws most relevant to the platforms — the e-Commerce Directive and the Services Directive — and as far as the former is concerned, Airbnb could not ask for more. A set of criteria, including a novel one whereby the platform must own the ‘underlying service’, left little doubt that Airbnb could enjoy the safe haven of the e-Commerce Directive, according to the Commission⁴⁴.

In the following years, the Commission would act in several ways to protect the interests of Airbnb, including the initiation of formal complaint procedures against Berlin, Brussels, Paris and Barcelona about local regulation of Airbnb. Also, the Commission ran a series of workshops to identify the appropriate regulation at local level — with massive industry participation and only sporadic contributions from municipalities.

Still, while the Commission’s interpretation of EU law can have immediate consequences, the authoritative voice in that regard, is the European Court of Justice (ECJ). For Airbnb, then, the stakes were high when a case regarding the requirement to hold an estate licence in France was presented to the ECJ. Among the questions, the Court would have to answer was if Airbnb is to be considered ‘an information society services provider’ covered by the Directive or not. The Commission for its part had no doubt — it intervened in favour of Airbnb⁴⁵. In the end, Airbnb got the decision it wanted⁴⁶.

Airbnb and the Digital Services Act

What the decision of the ECJ means for Airbnb and similar platforms, is that they are first and foremost interested in two things: to have their rights under the e-Commerce Directive repeated and consolidated under the new Digital Services Act, and to have elements in the new law that secures enforcement.

This agenda is reflected in several letters from Airbnb to the European Commission, in which the company lays out its preferences for the Digital Services Act. The most comprehensive one is dated March 2020, and the brunt of the document concerns the limits to its obligations to cooperate with cities about data. For a

start, the company underlines that following the rights obtained under the e-Commerce Directive, that it has “no general monitoring obligations”. But it takes the argument further than that.

In the document, the company highlights that it has entered into a series of data-sharing agreements with cities on a voluntary basis, and claims that these “address many of the concerns of local and national regulators”, which seems to imply a preference for voluntary agreements. As for the legal requirements, Airbnb wants to limit its obligations even further, for instance when Airbnb suggests “a cautious approach to regulating harmful content”. Also, they claim that due to data privacy rules in the EU, the General Data Protection Regulation (GDPR), there are legal restrictions on how they “share such data with governments and local authorities”.⁴⁷

This argument is a recurrent one in Airbnb’s lobbying document, but not a very strong one. Provided there is a specific purpose for collection of data, public authorities are not prevented from asking Airbnb for sharing information if it is in the public interest, as clearly stated in article 6 of the GDPR.⁴⁸

In sum, what we see is a company fighting tooth and nail to retain and expand the privileges it has come to enjoy under the e-Commerce Directive, and while the company does make attempts to limit the space open to cities to regulate the platforms and their activities in the first place, its main focus seems to be to escape obligations to handle the data crucial to enforcement.

What Airbnb hopes to see is a Digital Services Act that consolidates the ‘safe haven’ privileges of the e-Commerce Directive, and then to add an extra layer of enforcement: an “EU level regulatory or oversight authority for platforms”. This idea of the Commission could serve the purpose of keeping cities on an even tighter leash, depending on what will be in the Digital Services Act.

The cities and the right to regulate

Notwithstanding what is in the Commission’s proposal, the position of Airbnb is a sign that the battle over the Digital Services Act could be a bitter one. For on the other side, we find housing groups as well as municipalities who will be vying for a move in the opposite direction with the new law.

In the run up to the publication of the draft directive, many cities have reiterated that there is a need to adopt a different approach on data collection, than the one in the e-Commerce Directive. In March 2020, 22 cities issued a common statement, in which they present three main demands:

1. Holiday rental platforms must be obliged to share relevant data with city administrations
2. Where national or local registration-schemes apply, short-term rental platforms should be obliged to publish the registration numbers of their listings.
3. Platforms are liable for fulfilling their obligations according to national and local legislation and legal enforcement is possible and effective.

Were this to become reality, it would mark a clear break from the past two decades of platform regulation. And the stakes are clear. According to the 22 city leaderships if “city administrations do not have access to relevant rental data from the online platforms, we will see further unplanned growth of short-term rentals, to the detriment of the availability of affordable housing and the social cohesion in our cities.”⁴⁹

This issue is not reserved for a select group of cities, in fact they appear only to be the tip of the iceberg. In the European Committee of Regions, a body representing regional authorities, an unusually strong statement on platform regulation was adopted in December 2019. On the question of data, for instance, the Committee said it “believes “that the European framework must require platforms to provide public authorities with the data necessary to enforce the rules applicable to the platform and/or its sector of activity on a legal basis..... Public authorities should not have to rely on the willingness of platforms to share data with them, as experience gathered in several European cities shows that where platforms claimed they were willing to cooperate, ‘in practice they don’t, or only do so on a voluntary basis.”⁵⁰

EU law: a very concrete obstacle

This strong reaction from both cities and regions, is no wonder. There is no shortage of examples of just how crippling the e-Commerce Directive has turned out to be for the cities’ attempt to bring the Airbnb phenomenon under some control. Both municipalities, regional

governments and national governments have lost cases over access to data in court on numerous occasions, and Airbnb has come out triumphant and even gloating. In connection with a court case between Berlin and an Airbnb host, the court made a special mention of the e-Commerce Directive's limitations to the transfer of data, and the monitoring obligations of platforms, asserting that Member States are prevented from imposing monitoring obligations of a general nature.⁵¹

The message was not lost on Patrick Robinson, the head of Airbnb in Europe: "Where we see the right kinds of processes, the right steps being taken by cities, by police forces, tax agencies, that data is available to people."⁵² In other words, Airbnb reserves the right to refuse to cooperate with public authorities, if they dislike the regulation they are trying to enforce.

And for now, Airbnb has scored a win in one court after the other. **To name but a few recent examples:**

In Munich, the city council has decided that citizens cannot rent out to tourists for more than eight weeks per year, and to enforce the measure, platforms have been asked to provide the names of the hosts that pass this limit. This was contested by Airbnb, and after examining the e-Commerce Directive and the German law that implemented the directive, the court, the Bayerische Verwaltungsgericht, decided against the city.⁵³

On the Balearic Islands, including Mallorca restrictions have been adopted that prohibits renting out in some areas in the cities. This came on the back of studies that showed the number of apartments rented out in Palma de Mallorca alone had gone up by 50 percent from 2015 to 2017 to reach 20,000 units. The rent in Palma had soared by 40 percent over five years, and short-term rental was one of the factors.⁵⁴ To enforce the new rules, the local authorities focused on having the ads on the platforms carry the registration number of the host. Airbnb refused, and won in court, because an obligation to abide by the local rules "does not apply to information society service providers included in Directive 2000/31/EC on e-Commerce."⁵⁵

Finally, there is Vienna, a city world famous for its considerable stock of social housing with deep historic roots that date about 100 years back. Viennese with a

moderate income can live in apartments in the city on a manageable rent, low by most European standards. And in Vienna, it is outright forbidden to rent out an apartment owned by the social housing branch of the city – but enforcement is difficult when it comes to Airbnb. While other platforms have been willing to remove those apartments from their websites, Airbnb refused and proposed a less comprehensive approach.⁵⁶

In response, the city has threatened to sue. At the time of writing, that has not happened yet. Airbnb on its part believes it is well protected from such demands by European law, and indeed the City of Vienna may not come out a winner. It is hardly a coincidence that Vienna figures prominently among those who are now making an effort to use the Digital Services Act to carve out a new space for cities to not only regulate the platforms, but to be able to enforce regulations as well.

What is in the DSA?

This ongoing battle between municipalities and citizens groups, including housing organisations on one side and Airbnb and similar platforms on the other, raises a lot of questions about the Digital Services Act, whether it will continue to prevent public authorities from adequately protecting the public interest, not least when it comes to access to affordable housing.

Such questions cannot be answered at this stage.

[TEXT ABOUT THE CONTENT OF THE COMMISSION'S PROPOSAL FOR A DSA – TO BE INSERTED LAST MINUTE]

But this notwithstanding, the presentation of the proposal does set the agenda of the coming months of political struggle over the law, but it is only the beginning. Now the proposal will be debated at the national level – and in some cases, governments will need the support from national parliaments for its position – and it will be debated in the European Parliament. This leaves ample space for the required improvements in the text, amendments that could put an end to the privileges that allowed Airbnb to leave a destructive mark on local communities in cities where citizens are struggling to find affordable housing.