

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.¹ 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.²

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.³ When he goes outside to collect his hanging laundry, he finds tourists have burned it.⁴ When he walks into his apartment building's hallway, he finds a tourist has defecated in it.⁵ 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."⁶

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.⁷ Europe is a top continent for tourism in the

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1. See Lisa Abend, *Beer, Sunburns and Bachelor Parties — Barcelona says "Enough!"*, TIME MAG. (Aug. 7, 2010), <http://content.time.com/time/world/article/0,8599,2009070,00.html> [<https://perma.cc/Z8Q7-8NKB>].

2. *Id.*

3. Sam Edwards, *Pissed-Off Barcelona Residents are Fighting Back Against Drunk, Naked Tourists*, VICE (June 10, 2015), <http://www.vice.com/read/barcelona-tourism-backlash-822> [<https://perma.cc/J6KY-2B5M>].

4. *Id.*

5. *Id.*

6. *Id.*

7. See Morgan Brennan, *The Most Amazing and Absurd Places for Rent*, FORBES (Sept. 16, 2011), <http://www.forbes.com/sites/morganbrennan/2011/09/16/the-most-amazing-and-absurd-places-for-rent/#6996de6f7264> [<https://perma.cc/Q95R-UUT4>].

world, hosting 51.4% of international tourists in 2014⁸—a 2.7% increase from the previous year—signifying that Europe’s tourism domination is unlikely to slow down any time soon.⁹ And Barcelona is one of many European cities that has become a hub for twenty-first century tourists.¹⁰ In 2016, Barcelona hosted 8.2 million tourists,¹¹ which makes the city the fourth most popular tourist destination in Europe with the third highest growth percentage.¹² 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,¹³ 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.”¹⁴ The consortium developed into the Catalan Tourist Board (CTB), which works in congruence with Barcelona’s local tourism organization, Barcelona Turisme,¹⁵ and seeks to “promote Catalonia as a leading tourist destination based on quality and the social and economic profitability of the tourism

8. YUWA HENDRICK-WONG & DESMOND CHOONG, MASTERCARD, 2014 GLOBAL DESTINATION CITIES INDEX (2014) [hereinafter HENDRICK-WONG & CHOONG (2014)], <http://newsroom.mastercard.com/mea/documents/mastercard-global-destination-cities-index-2014/> [<https://perma.cc/T4HX-GLNC>].

9. BARCELONA TOURISM ANNUAL REPORT, TURISME DE BARCELONA 44 (2014); see also YUWA HENDRICK-WONG & DESMOND CHOONG, MASTERCARD, GLOBAL DESTINATION CITIES INDEX 4 (2016) [hereinafter HENDRICK-WONG & CHOONG (2016)], <https://newsroom.mastercard.com/wp-content/uploads/2016/09/FINAL-Global-Destination-Cities-Index-Report.pdf> (noting that European cities outside of the top 20 destination cities are fast-growing and “poised to overtake the current [tourism] leaders in the coming years”).

10. In 1991, 1.7 million tourists visited Barcelona. See Ian Mount, *Airbnb, Uber under Attack in Barcelona*, FORTUNE, (May 28, 2014), <http://fortune.com/2014/05/28/airbnb-uber-barcelona/> [<https://perma.cc/Y5VS-JWWG>]. In recent years, Barcelona has welcomed over 7 million tourists annually. See *id.*; HENDRICK-WONG & CHOONG (2016), *supra* note 9, at 13.

11. HENDRICK-WONG & CHOONG (2016), *supra* note 9, at 2.

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.

14. *City of Barcelona Strategic Tourism Plan*, TURISME DE BARCELONA 1, 3–4 (2010).

15. See text accompanying *infra* note 133.

industry.”¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹ Despite these efforts, Airbnb remains a strong presence in Barcelona.²⁰

16. *About the Catalan Tourist Board*, GENERALITAT DE CATALUNYA, <http://act.gencat.cat/act-about-us/act-about-the-catalan-tourist-board/?lang=EN> [https://perma.cc/B8DV-WDHP] (last visited Apr. 23, 2017).

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.

19. See Special Urban Plan for Tourist Accommodation (PEUAT) (BOPB 2017), <https://bop.diba.cat/scripts/ftpisa.aspx?fnew?bop2017&03/022017003806.pdf&1> (last visited May 2, 2017); *About the PEUAT*, AJUNTAMENT DE BARCELONA, <http://ajuntament.barcelona.cat/pla-allofjaments-turistics/en/> [https://perma.cc/8MNB-9338] (last visited May 2, 2017) [hereinafter *About the PEUAT*].

20. As of September 2016, Barcelona had approximately 21,000 active listings on Airbnb. Natasha Lomas, *Airbnb Faces Fresh Crackdown in Barcelona as City Council Asks Residents to Report Illegal Rentals*, TECH CRUNCH (Sept. 19, 2016), <https://techcrunch.com/2016/09/19/airbnb-faces-fresh-crackdown-in-barcelona-as-city-council-asks-residents-to-report-illegal-rentals/> [https://perma.cc/PH7S-NX8A]. As of July 2016, Barcelona was Airbnb’s sixth largest market overall and third largest market in Europe. Niall McCarthy, *Which Cities Have the Most Airbnb Listings? [Infographic]*, FORBES (July 7, 2016 at 8:01 AM), <http://www.forbes.com/sites/niallmccarthy/2016/07/07/which-cities-have-the-most-airbnb-listings-infographic/#44465a3b69b5> [https://perma.cc/X5MW-WERT]; see also *Airbnb’s Top Cities*, DEUTSCHE WELLE (Feb. 27, 2015), <http://www.dw.com/en/airbnbs-top-cities-shift-ranking-of-february-27/a-18285293> [https://perma.cc/4RAW-ZBLB] (showing

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.²¹ 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.²² 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.²³ 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.²⁴

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).

21. See generally Juho Hamari, *The Sharing Economy: Why People Participate in Collaborative Consumption*, J. ASS'N FOR INFO. SCI. & TECHN. (2015) (explaining the sharing economy generally, as well as the changed consumerism structure from producer-consumer to consumer-consumer transactions).

22. See AIRBNB, *Become a Host*, <https://www.airbnb.com> [<https://perma.cc/4YYY-HXTB>] (last visited Feb. 4, 2017).

23. See *infra* notes 39–39 and accompanying discussion.

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

25. *Travel Like a Human With Joe Gebbia, Co-founder of AirBnB!*, ALLENTREPRENEUR (Aug. 26, 2009), <https://allentrepreneur.wordpress.com/2009/08/26/travel-like-a-human-with-joe-gebbia-co-founder-of-airbnb/> [https://perma.cc/3VWS-X3GC].

quickly supplement their incomes in order to make their rent payment.²⁶ Luckily at the time, San Francisco was host to a major design conference, and all local hotels were sold out.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.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.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.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 billion³¹ and has listings in over thirty-four thousand cities and 190 countries around the world.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.³³ In 2008, an investor could have purchased ten percent of Airbnb for US\$150,000.³⁴ Today, ten percent of Airbnb is worth US\$3 billion.³⁵

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

26. *Id.*

27. *Id.*

28. *Id.*; see also Burt Helm, *Airbnb Is Inc.’s 2014 Company of the Year*, INC. (2014), <http://www.inc.com/magazine/201412/burt-helm/airbnb-company-of-the-year-2014.html> [<https://perma.cc/QN8Q-Q8J3>] (reporting that Airbnb offers more lodging worldwide than any hotel chain).

29. ALLENTREPRENEUR, *supra* note 25.

30. *Id.*

31. *The Richest People in Tech: #4 Brian Chesky*, FORBES (last updated Feb. 4, 2017), <http://www.forbes.com/profile/brian-chesky/> [<https://perma.cc/4YHG-UNY4>].

32. *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> [<https://perma.cc/M4JL-KNK6>] (last visited Feb. 12, 2017).

33. Blake Thorne, *Airbnb Founders Were Rejected Constantly in the Beginning*, BUSINESS INSIDER (Sept. 6, 2015), <http://mobile.businessinsider.com/airbnb-founders-were-rejected-constantly-in-the-beginning-but-the-way-they-were-rejected-can-teach-you-a-lot-2015-8> [<https://perma.cc/V8LW-7KCR>].

34. *Id.*

35. *Id.*

36. Helm, *supra* note 28.

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.³⁷ That same year the company was fined €30,000 by the Catalan government in Spain for listing “illegal” rentals on its website.³⁸ 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.³⁹ 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*.”⁴⁰ 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.⁴¹

37. Helene Fouquet & Ania Nussbaum, *Paris Airbnb Cops Want to Know If Your Rental Is Legal*, BLOOMBERG BUS. (Aug. 7, 2014), <http://www.bloomberg.com/news/articles/2014-08-07/paris-airbnb-cops-want-to-know-if-you-re-rental-is-legal> [https://perma.cc/73DZ-6ZLH].

38. George Mills, *Airbnb Fined €30,000 Over ‘Illegal’ Apartments*, LOCAL (July 7, 2014), <http://www.thelocal.es/20140707/airbnb-fined-30000-over-illegal-apartments> [https://perma.cc/83US-UZL5].

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).

41. His plans include launching a cleaning service that will offer fresh sheets and towels, among other special accommodations, to renters. Austin Carr, *Inside Airbnb’s Grand Hotel Plans*, FAST COMPANY (Mar. 17, 2014), <http://www.fastcompany.com/3027107/punk-meet-rock-airbnb-brian-chesky-chip-conley> [https://perma.cc/M2QX-D7GT].

What separates Airbnb from a regular hotel chain? The company's answer is simple: user experience.⁴² The founders focus on consumers' needs and behaviors. They took advantage of the rise of the Internet and how consumers were purchasing everything online.⁴³ They recognized the world's affinity to sharing—photos, important life events, or daily thoughts—on social media sites.⁴⁴ 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.”⁴⁵ With sixty million users worldwide,⁴⁶ Airbnb is just one success story that has emerged as a result of the new sharing economy.⁴⁷

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.⁴⁸ Traditionally, consumers were the “passive recipients of proposed deals” from corporations and producers.⁴⁹ 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.”⁵⁰ Social media has only amplified these effects.⁵¹

42. One Airbnb employee notes, “Putting experience over any other consideration will lead to good things.” Helm, *supra* note 28 (internal quotation marks omitted).

43. *See id.*

44. *Id.*

45. *Id.*

46. AIRBNB, *supra* note 32.

47. Uber and Lyft are successful ride-sharing companies that have emerged as a result of the sharing economy. *See Uber, Airbnb, and Consequences of the Sharing Economy*, JOURNALIST'S RESOURCE (Oct. 19, 2015).

48. *See* S. Umit Kucuk & Sandeep Krishnamurthy, *An Analysis of Consumer Power on the Internet*, 27 *TECHNOVATION* 47, 47 (2007) (likening the relationship between manufacturers in the Industrial Revolution to consumers in the digital revolution); Danielle Sacks, *The Sharing Economy*, *FAST COMPANY* (Apr. 11, 2011), <http://www.fastcompany.com/magazine/155/the-sharing-economy.html> [<https://perma.cc/AZ2N-WQ5M>] (“This could be as big as the Industrial Revolution in the way we think about ownership.”) (internal quotation marks omitted).

49. Kucuk & Krishnamurthy, *supra* note 48, at 48.

50. *Id.* at 47–48.

51. *See* Lauren I. Labrecque et. al, *Consumer Power: Evolution in the Digital Age*, 27 *J. INTERACTIVE MARKETING* 257, 257 (2013).

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 (Ratneshwar 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.⁶¹ 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.⁶² This virtual sense of community among consumers⁶³ 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.”⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.⁶⁷ Lisa Gansky, founder of the photo-sharing site Ofoto, stated, “We’re moving from a world where we’re organized around ownership to one organized around access to assets.”⁶⁸ C2C trans-

61. See Cait Poyner 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); Kucuk & 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.

67. “Forbes estimates the revenue flowing through the share economy directly into people’s wallets will surpass [US]\$3.5 billion this year, with growth exceeding [twenty-five percent].” Tomio Geron, *Airbnb And The Unstoppable Rise Of The Share Economy*, FORBES (Jan. 23, 2013), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/#7e6aed5e6790> [https://perma.cc/8CD2-X3SA].

68. *Id.*

actions are often mediated by firms and social networks⁶⁹ that facilitate communication between consumers and allow users to be both a consumer and a producer.⁷⁰ Such “community-driven business models” are challenging companies to adapt to the modern consumer’s affinity for resource sharing.⁷¹

Notably, Airbnb is a product of entrepreneurs who capitalized on the demands of the sharing economy culture.⁷² Airbnb demonstrates the “true innovative spirit of collaborative consumption” that defines twenty-first century start-up companies.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 *at home*.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.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.”⁷⁶

C. *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

69. See Labrecque et al., *supra* note 51, at 265.

70. Hamari, *supra* note 21, at 5.

71. Labrecque et al., *supra* note 51, at 265.

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, *supra* note 21, at 2.

73. Bryan Walsh, *Today’s Smart Choice: Don’t Own. Share.*, 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>].

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

75. See Russell W. Belk, *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”).

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.*

80. *See* HENDRICK-WONG & CHOONG (2016), *supra* note 9, Chart A, at 2.

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.

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 million⁹² 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.

89. Emily Payne, *London Is Named World's Most Popular Travel Destination*, DAILY MAIL (June 3, 2015), http://www.dailymail.co.uk/travel/travel_news/article-3108839/London-named-world-s-popular-travel-destination-New-York-falls-five.html [<https://perma.cc/K3C6-3BFH>] (internal citation marks omitted) (emphasis added).

90. £13.3 billion equates to US\$19.3 billion. HENDRICK-WONG & CHOONG (2014), *supra* note 8, Table 2, at 6.

91. See Paris Tourism Research Dep't, *Tourism in Paris: Key Figures 2013*, PARIS OFFICE DU TOURISME ET DES CONGRÈS 6 (May 14, 2014) [hereinafter 2013 Tourism in Paris] ("In 2012, Paris accounted for [fifty-one percent] of the 515,887 jobs in tourism-related activities in the Île-de-France region.").

92. *Id.* at 4.

tourist tax revenue,⁹³ respectively.⁹⁴ 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”⁹⁵ which plays a major role in the country’s economic success.⁹⁶ Even Germany, which is not home to one of the top twenty international destination cities, recognizes the importance and positive effects of tourism.⁹⁷ Germany has made a concerted effort to expand its appeal as an international tourist destination, assigning more than €28million of its budget to the National Tourist Board in 2014.⁹⁸

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.⁹⁹ Tourism is important to the region and its residents as a vital part of Catalonia’s economy.¹⁰⁰ According to the Catalan

93. Paris Tourism Research Dep’t, *Tourism in Paris: Key Figures 2014*, PARIS OFFICE DU TOURISME ET DES CONGRÈS 4 (May 13, 2015) [hereinafter 2014 Tourism in Paris].

94. “The amount of the tourist tax is reached by multiplying the number of days the hotel is open by the number of rooms, and then by a tariff which varies according to the category of the establishment (between €0.20 and €1.50).” 2013 Tourism in Paris, *supra* 91, at 7. Key figures for 2016 have not been released as of February 4, 2017, but in 2015, hotel arrivals in greater Paris dropped by 1.1% compared to 2014. Paris Tourism Research Dep’t, *Tourism in Paris: Key Figures 2015*, PARIS OFFICE DU TOURISME ET DES CONGRÈS 8 [hereinafter 2015 Tourism in Paris] (last updated Feb. 2, 2017). However, it is noteworthy that the deadly attacks in January and November of 2015 “had a strong impact on tourism” that year. *Id.* at 3. See generally *Charlie Hebdo Attack: Three Days of Terror*, BBC NEWS (Jan. 14, 2015), <http://www.bbc.com/news/world-europe-30708237> [<https://perma.cc/7WVB-PW9L>]; *Paris Attacks: What Happened on the Night*, BBC NEWS (Dec. 9, 2015), <http://www.bbc.com/news/world-europe-34818994> [<https://perma.cc/HE77-YJVE>]. In context, the 1.1% drop in tourism figures is not indicative of an ongoing downward trend in Parisian tourism. See 2015 Tourism in Paris, *supra* note 94.

95. *French Government Endorses Airbnb in Paris*, FODOR’S TRAVEL (Apr. 24, 2015), <http://www.fodors.com/community/europe/french-government-endorses-airbnb-in-paris.cfm> [<https://perma.cc/U9EE-VNHC>].

96. *France, the World’s Leading Tourist Destination*, FRANCE DIPLOMATIE (Oct. 2013), <http://www.diplomatie.gouv.fr/en/french-foreign-policy/economic-diplomacy-foreign-trade/facts-about-france/one-figure-one-fact/article/france-the-world-s-leading-tourist> [<https://perma.cc/82Q8-MJ4P>] (reporting that eighty-three million tourists visited France in 2013, which made up seven percent of the country’s GDP).

97. *Germany Draws Record Number of Tourists*, LOCAL (Feb. 11, 2015), <http://www.thelocal.de/20150211/germany-draws-record-number-of-tourists> [<https://perma.cc/M6KT-P9QM>].

98. *Id.*

99. TURISME DE BARCELONA, *supra* note 9, at 50.

100. Catalan Tourist Board (CTB), *Catalan Tourist Board 2014 Report*, GENERALITAT DE CATALUNYA, at 67, <http://act.gencat.cat/wp-content/uploads/2015/10/Memòria-ACT->

Tourist Board (CTB), tourism generates twelve percent of Catalonia's GDP and creates jobs for 12.7 percent of residents.¹⁰¹ Indeed, the Catalan government created the CTB to implement policies that stimulate tourism in the region.¹⁰² The CTB aims "to promote Catalonia as a leading tourist destination based on quality and the social and economic profitability of the tourism industry."¹⁰³

Engaging the private sector in promoting Catalonia as a primary, international tourist destination is at the center of the CTB's mission.¹⁰⁴ The CTB endorses a sustainable and accessible model of tourism, believing that everyone is entitled to tourism as "a fundamental social right."¹⁰⁵ A sustainable tourism is one that is responsible and weighs economic and sociocultural concerns.¹⁰⁶ Economically sustainable tourism pursues short and long-term profitability and distributes equitably its benefits among the region's residents.¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹ Rather than focus on limiting tourism or the number of people visiting the region, the CTB seeks to educate visitors about responsible tourism, encourage

2014_idiomes.pdf [<https://perma.cc/STF8-CPBY>] (last visited Apr. 23, 2017) [hereinafter *CTB 2014 Report*].

101. *Id.*; see also Neringa Sinkeviciute, *Tourism Boom in Barcelona: Strengthening the Economy or Troubling Local Residents?*, CATALAN NEWS AGENCY (Oct. 7, 2014), <http://www.catalannewsagency.com/life-style/item/tourism-boom-in-barcelona-strengthening-the-economy-or-troubling-local-residents> [<https://perma.cc/CZ6K-25Q7>].

102. GENERALITAT DE CATALUNYA, *supra* note 16.

103. GENERALITAT DE CATALUNYA, *supra* note 16.

104. *See id.*

105. 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).

106. *Id.* In promoting sustainable tourism, the CTB also weighs environmental concerns; however, these are beyond the scope of this Note. For more information on sustainable tourism and the environment, see *id.*

107. *Id.*

108. *Id.*

109. *See id.*

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.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.¹¹¹ Central to this commitment is creating and implementing policies that fulfill client expectations and respond to market trends.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.”¹¹³ In combining Catalonia’s “traditional offerings with newer products,” the CTB promotes Catalan tourism experiences via new, online platforms.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.”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.¹¹⁶ As of this writing, Catalunya Experience’s social media presence in figures is as follows: over 1,061,300 followers on Facebook;¹¹⁷ over 221,000 followers on Instagram and over 1,695,600 posts with the hashtag #catalunyaexperience;¹¹⁸ over 62,700 followers on Twit-

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.” *Id.* It instructs tourists to “[e]nsure respect and preservation of the culture, the customs, the gastronomy and the transitions of local villages.” *Id.*

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.” *Id.*

112. *See id.* at 67–69.

113. *Id.* at 67–68.

114. *Id.* at 68–69.

115. *Id.* at 72.

116. CTB, *Catalan Tourist Board 2015 Report*, GENERALITAT DE CATALUNYA, <http://act.gencat.cat/wp-content/uploads/2016/10/Memoria-ACT-2015.pdf> [<https://perma.cc/N4BH-J846>] (last visited Apr. 23, 2017) [hereinafter *CTB 2015 Report*].

117. Catalunya Experience, FACEBOOK, https://www.facebook.com/catalunyaexperience.usa/?brand_redir=62428887813 [<https://perma.cc/J3KM-HTQH>] (last visited May 2, 2017).

118. Catalunya Experience (@catalunyaexperience), INSTAGRAM, <https://www.instagram.com/catalunyaexperience/> [<https://perma.cc/77DR-3QPK>] (last visited May 2, 2017) (In the search bar, type #catalunyaexperience to see photos).

ter;¹¹⁹ over 5,400 followers on Google+ and as of 2015, 3.9 million page hits,¹²⁰ and over 6,400 subscribers and 2,097,000 views on its YouTube channel.¹²¹ While these figures are staggering, what is more impressive is the majority of these numbers increased by at least thirty percent since 2015.¹²² The social media campaign has been quite successful, as evidenced by Catalunya Experience's extensive following of users worldwide.

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.¹²³ 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.¹²⁴ Barcelona residents in particular have demonstrated their dissatisfaction with the city's tourist regulations—or lack thereof—by organized protest.¹²⁵

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.¹²⁶ 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.¹²⁷ Locals want to put an end to “drunken

119. Catalunya Experience (@catexperience), TWITTER, <https://twitter.com/catexperience?lang=EN> [<https://perma.cc/RLW3-85PW>] (last visited May 2, 2017).

120. Catalunya Experience, GOOGLE+, <https://plus.google.com/+Catalunyaexperience1> [<https://perma.cc/9V8F-K7GE>] (last visited May 2, 2017); *CTB 2015 Report*, *supra* note 116, at 69.

121. Catalunya Experience, YOUTUBE, <https://www.youtube.com/user/CatalunyaExperience> [<https://perma.cc/SCF5-AR2V>] (last visited May 2, 2017).

122. Compare text accompanying *supra* notes 117–121, with *CTB 2015 Report*, *supra* note 116, at 69.

123. See Abend, *supra* note 1.

124. O'Sullivan, *supra* note 39.

125. Feargus O'Sullivan, *Barcelona Organizes Against 'Binge Tourism'*, ATLANTIC CITYLAB (Aug. 17, 2014), http://www.citylab.com/politics/2014/08/barcelona-organizes-against-binge-tourism-and-eyes-a-street-protester-for-mayor/379239/#disqus_thread [<https://perma.cc/2HLL-AYSD>].

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.”¹²⁸ 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.”¹²⁹

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.¹³⁰ Yet despite these demonstrations, Barcelona remains one of the most popular destinations for rowdy, foreign college students and twenty-somethings.¹³¹ 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.”¹³²

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.¹³³ 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.¹³⁴

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.¹³⁵ 85.9 and 79.9 percent believe tourism generates a lot of money for the city and creates jobs, respectively.¹³⁶ And while most news stories concerning tourists report their drunken, unruly

128. *See id.*

129. *See* Camilo S. Baquero, *Barceloneta Rebels Against Rowdy Tourists*, EL PAIS (Aug. 21, 2014), http://elpais.com/elpais/2014/08/21/inenglish/1408633977_166018.html [<https://perma.cc/BB6G-W6BZ>].

130. *See* Sam Edwards, *Barcelona Residents in Revolt Over City’s ‘Tourism Monoculture’*, EL PAIS (May 4, 2015) [hereinafter Edwards, *Tourism Monoculture*]; Baquero, *supra* note 110.

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).

134. Stephen Burgen, *Barcelona Cracks Down on Tourist Numbers with Accommodation Law*, GUARDIAN (Jan. 27, 2017), <https://www.theguardian.com/world/2017/jan/27/barcelona-cracks-down-on-tourist-numbers-with-accommodation-law> [<https://perma.cc/5D9Y-2ZYU>].

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.¹³⁷ 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.¹³⁸ 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).¹³⁹ Title II of Decree 159/2012 regulates touristic dwellings.¹⁴⁰

Decree 159/2012 applies to private touristic dwellings—properties provided by an owner, directly or indirectly, to third parties, in

137. *Id.* at 158.

138. *See* Ley 29/1994, de 24 de noviembre, de Arrendamientos Urbanos (B.O.E. 1994, 24), http://noticias.juridicas.com/base_datos/Privado/129-1994.html [<https://perma.cc/HE4F-QYBW>].

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 tourist 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.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 basis¹⁴²—and it must be rented in its entirety, as opposed to by room.¹⁴³ Further, the dwelling must be rented at least twice per year, and the rentals may not exceed thirty-one consecutive days.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.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.¹⁴⁶ Article 67 requires all rentals be furnished with working appliances that are available for immediate use by the renters.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.¹⁴⁸ As an additional measure, Article 70 requires the property owner

141. *See id.* arts. 1, 66.

142. *Id.* art. 66.

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_datos/Privado/129-1994.html [<https://perma.cc/HE4F-QYBW>]. In other words, the LAU makes illegal the subset of a primary residence both in part or in its entirety. *Id.*

144. *See* Decree 159/2012, art 1; Stucklin, *supra* note 140.

145. *See* Stucklin, *supra* note 140.

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.

147. *Id.* art 67.2.

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.¹⁴⁹

Article 68 mandates the licensing system.¹⁵⁰ 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.¹⁵¹ The municipality then registers the property with the Catalan Tourism Registry (CTR).¹⁵² Once these steps are completed, issuance of a license is at the discretion of the CTR.¹⁵³ If issued a license, it must be visibly displayed on the property.¹⁵⁴ Accordingly, if any changes are made to the property, they must be properly recorded and reported to the municipality, which then informs the CTR.¹⁵⁵ Despite limiting which properties may be registered as touristic dwellings, Article 68 does not provide any infor-

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/YA8V-SYHJ>] (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>].

150. See *id.* art. 68.

151. See *id.* arts. 68.1–3.

152. *Id.* art. 68.8.

153. See *id.* art. 68; see also Stucklin *supra* note 140.

154. See Decree 159/2012, arts. 67, 68; Stucklin, *supra* note 140.

155. *Id.* art. 68.4.

mation on how municipalities enforce the limitation.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.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 2014.¹⁵⁸ Over the past three years, Barcelona's mayor, Ada Colau, has halted the issuance of licenses for private touristic dwellings.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.¹⁶⁰ Mayor Colau told reporters, "It was necessary to put things in order. Up to now, tourism policies had been drawn up piecemeal."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."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.¹⁶³ The purpose of the ban is to halt increase of touristic

156. See *id.* art. 68.

157. See Edwards, *Tourism Monoculture*, *supra* note 130.

158. Louise Brace, *Barcelona Suspends the Issue of Further Touristic dwelling Licences for One Year*, SPAIN-HOLIDAY.COM, <http://www.spain-holiday.com/rentalbuzz/barcelona-suspends-the-issue-of-further-holiday-rental-licences-for-six-months> [<https://perma.cc/ZZ5M-RERS>] (last updated June 5, 2014).

159. Clare Vooght, *The Town That Hates Tourists: Barcelona's Mayor Stops Issuing Licences for New Hotel and Holiday Homes*, DAILY MAIL (July 3, 2015), http://www.dailymail.co.uk/travel/travel_news/article-3148710/The-town-hates-tourists-Barcelona-s-mayor-stops-issuing-licences-new-hotels-holiday-homes.html [<https://perma.cc/VKB8-U5EB>]; see also Decree 159/2012, art. 68.

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/#Ym5saB6rb5qP> [<https://perma.cc/8QU5-RQ4H>]; Vooght, *supra* note 159.

161. Plautz, *supra* note 160.

162. Vooght, *supra* note 159.

163. See Stucklin, *supra* note 140; see also Decree 159/2012, Title II (outlining the licensing requirements).

dwelling 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

164. Vooght, *supra* note 159.

165. Adrian Croft, *Barcelona Mayor's Tourism Crackdown Puts Airbnb in Firing Line*, REUTERS (Aug. 26, 2015), <http://www.reuters.com/article/us-spain-tourism-airbnb-idUSKCN0QVILR20150826> [<https://perma.cc/RHJ8-PRUV>]; Fiona Govan, *Barcelona Draws Battle Lines to Curb Airbnb Type Tourism Boom*, LOCAL (Aug. 28, 2015), <http://www.thelocal.es/20150828/barcelona-should-follow-example-of-paris-and-accept-tourism-tax-says-airbnb> [<https://perma.cc/UG2P-YGY6>].

166. See, e.g., Abend, *supra* note 1; Edwards, *supra* note 3; discussion *supra* note 20.

167. Lauren Frayer, *For Barcelona, Tourism Boom Comes at High Cost*, NAT'L PUB. RADIO (NPR) (Mar. 1, 2017, 10:10 AM), <http://www.npr.org/sections/parallels/2017/03/01/517071122/for-barcelona-tourism-boom-comes-at-high-cost> [<https://perma.cc/H2V9-NVZ2>].

168. Hazel Plush, *Barcelona Unveils New Law to Keep Tourists Away*, TELEGRAPH (Jan. 27, 2017), <http://www.telegraph.co.uk/travel/destinations/europe/spain/catalonia/barcelona/articles/barcelona-unveils-new-law-to-keep-tourists-away/> [<https://perma.cc/T456-ZNLT>].

169. James Badcock, *Spain's Airbnb-style Listings Outnumber Hotel Beds*, TELEGRAPH (June 26, 2015) <http://www.telegraph.co.uk/news/worldnews/europe/spain/11701684/Spains-Airbnb-style-listings-outnumber-hotel-beds-says-report.html> [<https://perma.cc/4FVG-PU82>].

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.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.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.¹⁷³

These figures are staggering, considering Mayor Colau’s license bans are supposed to eliminate illegal rentals and freeze an increase in rentals.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.¹⁷⁵ After the €30,000 and €60,000 fines in 2014 and 2015 against Airbnb proved ineffective,¹⁷⁶ Barcelona authorities increased the maximum penalty to €600,000 and again fined Airbnb in November 2016.¹⁷⁷ 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.”¹⁷⁸ This decision, though unfavorable for Barcelona officials, has not ceased the City Council’s efforts in curtailing Barcelona property rental on Airbnb.¹⁷⁹

171. *Airbnb in Barcelona*, INSIDE AIRBNB (Jan. 3, 2016), <http://insideairbnb.com/barcelona/index.html?neighbourhood=&filterEntireHomes=false&filterHighlyAvailable=false&filterRecentReviewsfalse&filterMultiListings=false> [https://perma.cc/HN4V-4QPR] (reporting that 78%— about 11,520 out of 14,699—of listings operate in violation of Catalan law).

172. TURISME DE BARCELONA, *supra* note 9, at 8.

173. *Id.*

174. *See* text accompanying *supra* notes 159–162.

175. *Barcelona Hits Airbnb and HomeAway with Massive Fines*, LOCAL (Nov. 24, 2016), <https://www.thelocal.es/20161124/barcelona-fine-airbnb-homeaway> [https://perma.cc/K3DR-Y7QE].

176. *See* Mills, *supra* note 38; O’Sullivan, *supra* note 39.

177. *See, e.g.*, Plush, *supra* note 168; LOCAL, *supra* note 175.

178. Abigail Miller, *Airbnb Escapes 30,000-euro Fine in Spain Imposed for Advertising Lodgings That Didn’t Have Permits to Host Tourists*, DAILY MAIL (Dec. 13, 2016), http://www.dailymail.co.uk/travel/travel_news/article-4028492/Airbnb-escapes-30-000-euro-fine-Spain-imposed-advertising-lodgings-didn-t-permits-host-tourists.html [https://perma.cc/F3CC-8UD5].

179. *See* text accompanying *infra* Section I.D.3.

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, 2017.¹⁸⁰ 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."¹⁸¹ The PEUAT divides the city into four areas, each of which is subject to different regulations regarding tourist accommodation establishments.¹⁸² 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).¹⁸³

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."¹⁸⁴ 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.¹⁸⁵ 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.¹⁸⁶

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.¹⁸⁷ 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.”¹⁸⁸ Those in the traditional hospitality industry feel unfairly attacked by these provisions.¹⁸⁹ 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.”¹⁹⁰ President of the Barcelona Association of Tourist Apartments¹⁹¹ (Aparatur), 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.¹⁹² 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.¹⁹³ 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.¹⁹⁴ 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.¹⁹⁵ As this

187. See Katherine LaGrave, *Barcelona Approves New Law to Limit Tourist Numbers*, CONDÉ NAST TRAVELER (Jan. 27, 2017), <http://www.cntraveler.com/story/barcelona-approves-new-law-to-limit-tourist-numbers> [<https://perma.cc/C2Q7-XZEY>]; *About the PEUAT*, *supra* note 19.

188. *About the PEUAT*, *supra* note 19.

189. Cristina Roca, ‘Barcelona Could Die of Success’: Why a Spanish City Is Cracking Down on Tourism, CBC NEWS (Mar. 21, 2017, 5:00 AM), <http://www.cbc.ca/news/world/barcelona-tourism-1.4043864> [<https://perma.cc/GBQ3-75BP>].

190. *Id.*

191. *About Us*, APARTUR, <http://apartur.com/en/about-us-p20.htm> [<https://perma.cc/93M6-CAJL>] (last visited May 2, 2017).

192. *The Opposition Allows Colau to Freeze Tourist Apartments*, BARCELONA HOME GUIDE, <http://barcelona-home.com/events-and-guide/event/the-opposition-allows-colau-to-freeze-tourist-apartments/> [<https://perma.cc/S9XQ-VT63>] (last visited May 2, 2017).

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).

(CTB). 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.²⁰⁰

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.²⁰¹ With the speed of the Internet and the rise of the global sharing economy, C2C transactions are seamlessly orchestrated around the world.²⁰² A company like Airbnb, operating solely online and allowing consumers to interact directly, is a product of this new global sharing economy.²⁰³ 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.²⁰⁴ 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-

200. 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.

201. See, e.g., *Uber, Airbnb, and Consequences of the Sharing Economy*, *supra* note 47; Kucuk & Krishnamurthy, *supra* note 48.

202. 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.

203. See *supra* Section I.B.

204. See *id.*; *Uber, Airbnb, and Consequences of the Sharing Economy*, *supra* note 47.

ernment 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.²¹¹ 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.²¹² 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.²¹³

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.²¹⁴ Rather, the emergence of the global sharing economy creates an environment in which Airbnb will continue to flourish.²¹⁵ 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.²¹⁶ However, Airbnb will not be deterred by government opposition in the region.²¹⁷ 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.”²¹⁸ 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*.”²¹⁹ Accordingly, Barcelona needs to listen and adapt.²²⁰

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.²²¹ It is imperative that Barcelona, a city that depends on revenue generated by tourism,²²² 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.

220. O’Sullivan, *supra* note 39.

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.

225. Roca, *supra* note 189; see, e.g., Catherine Bennett, *Barcelona Steps up Crackdown on Airbnb, Threatens Further Fines*, REUTERS (Aug. 11, 2016, 2:53 PM), <http://www.reuters.com/article/us-spain-airbnb-idUSKCN10M1YY> [<https://perma.cc/S665-SH2X>]; Lomas, *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.²²⁶ 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.²²⁷ 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.²²⁸ 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.²²⁹ 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.²³⁰ In turn, the resident must vacate the property and sleep elsewhere.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.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.²³³ The registration process

230. See discussion *supra* Section I.A.

231. See *id.*

232. See, e.g., text accompanying *supra* notes 1–17 (explaining residents' dissatisfaction with and desire for rowdy, drunken tourist behavior to change).

233. See Decree 159/2012, art. 68.

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.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.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

234. *See id.*

235. *See* 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.²³⁶ If Barcelona maintains its reputation as a city riddled with drunken tourists and partygoers,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.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.²³⁹ Neither Barcelona's residents nor its officials want tourism eliminated in the region,²⁴⁰ and strategically distributing law enforcement officials throughout the city would help eliminate intolerable tourist behavior, while allow the industry to flourish.

236. See Baquero, *supra* note 129 (explaining how police are unable to discourage or handle rowdy and crude behavior by tourists).

237. See text accompanying *supra* notes 125–132.

238. See discussion *supra* Sections I.C.2–3.

239. See discussion *supra* Section I.C.2.

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.