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“I Don’t Think My Landlord Will Find Out:” Airbnb and the Challenges of Enforcement

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ABSTRACT

Airbnb is an established part of the platform economy, which in many cities is operating unregulated. Some jurisdictions, however, have started regulating this sector, even imposing bans on short-term rentals (STR). Where regulatory limits have been instituted, local officials identify enforcement as a challenge. Amidst the dearth of enforcement resources, some local councils are turning to private companies, thereby introducing private enforcement which does not sit well in the planning (public) law context. We query whether traditional enforcement strategies can even succeed in the platform economy of STRs and whether alternatives to STR regulation make for a more realistic approach.

爱彼迎 (Airbnb) 作为平台经济已相当成熟，在许多城市运营，却没有相应的监管。不过有些地方的法律已开始对这一部门进行管理，甚至禁止短租业务 (STR)。然而在已有相关法规的城市，地方官员却发现他们面临着执行难的问题。有些地方的政府在执法资源严重匮乏的情况下，试图利用私营公司，这样一来却造成私人执法的情况，而这并不符合规划 (公共) 法的要求。本文探讨传统的执法策略能否在短租业务这样的平台经济中发挥效力，以及对短租业务的规管是否有更现实的路径。

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1. Introduction

Whilst short-term rentals (STRs) are not new to cities, the past few years have seen extraordinary growth in their use by tourists and business people. Airbnb notes that in the summer of 2010, about 47,000 people stayed with an Airbnb host. By the summer of 2015, it was estimated that almost 17 million people stayed in an Airbnb (Airbnb 2015). The STR sector has become contentious, with claims that it has heavily disrupted established housing and tourism industries (Gurran and Phibbs 2017). This paper contributes to the growing body of knowledge on the planning implications of the STR market by examining where planning enforcement is situated within STRs. Specifically, we question the effectiveness of traditional enforcement processes in the new Airbnb STR arena, wherein new forms of “enforcement,” both formal and informal, have sprung up as a way to adapt to the disruption.

The paper first sets out a short history on the rise of the sharing/platform economy, the motivations for regulation and the new place for STRs in this context. We then discuss how traditional enforcement processes are not working for the Airbnb STR era. From there, we make recommendations for alternatives to STR regulation, which, we suggest, provide examples for a better approach to more formal and complex STR regulation and which, in turn, may remove the need for scarce government resources to be allocated towards compliance and enforcement.

2. The Rise of the Sharing/Platform Economy

Over the past couple of years, we have heard a great deal about the so-called “sharing economy” (also referred to, for reasons we will discuss shortly, as the “platform economy”). As we write, firms such as Uber (the ridesharing app which is now worth more than both Hertz and Avis) have become household names. Koopman *et al.* (2015, p. 2) use the term sharing economy to refer to

... any marketplace that uses the Internet to bring together distributed networks of individuals to share or exchange otherwise underutilized assets ... The sectors in which the sharing economy has seen substantial growth – and has created the most disruption – include transportation, hospitality, dining, sale of goods, finance, and personal services.

The sharing economy is based on the idea of collaborative consumption, where a few individuals own the goods and others pay for the privilege to “borrow” them. This allows owners to capitalise on the unused potential of an asset and allows consumers to not have to purchase a particular asset.

In recent years, the number hospitality firms in this sector – particularly STR companies – has grown rapidly. Of the STR companies, including Stayz and Homeaway, Airbnb (the focus of this paper) is the biggest, the most (in) famous, and the most widely used. Airbnb connects travellers, or “guests” from all over the world to “hosts” who are looking to rent out their entire homes, or in some cases, an extra room, for short periods of time. Airbnb takes a percentage of the money paid by guests. Created in 2008, Airbnb now has more than 2 million listings in more than 191 countries. Recently, the company was valued at \$30 billion, which is just shy of the Hilton and Hyatt combined (approximately \$30.2 billion) (Kusisto 2016). The model of capitalising on a property asset is particularly attractive for property owners in Australia, where a great deal of individual capital is tied up in property ownership, especially single lot investment apartments, which are ideal for use as STRs. For instance, in Melbourne, global property services firm JLL has estimated that approximately 21,170 apartments are currently under construction across inner city, with an additional 16,707 apartments actively being marketed for completion over 2016–2021 (JLL 2016).

Sharing goods and services is nothing new: as Finck and Ranchordás (2016, pp. 7–8) explain “... the practice of sharing underused resources, knowledge, and assets is as old as mankind.” Indeed, the history of sharing housing – beginning with boarding houses – is centuries old (Jefferson-Jones 2015). What is new is the platform being used to facilitate sharing practices. Information technology has facilitated the connecting of producers and consumers and, importantly, it has allowed for the developing of mechanisms to establish trust between strangers. Trust mechanisms such as online ratings systems have played a key role in the uptake of sharing economy activity (Guttentag 2015, Maese 2015, Davidson and Infranca 2016, Finck and Ranchordás 2016, Lobel 2016). As Davidson and Infranca (2016, p. 237) explain:

For sharing-economy firms, the ubiquitous anonymity of urban life presents a source of competitive advantage and a market niche to develop. In more traditional sectors of the economy, producers and suppliers respond to the lack of social ties through the obvious mechanisms of the arm’s-length transaction – point-of-sale interactions, credit checks, and the like. And this is the basis for most economic activity in cities and elsewhere. But the sharing economy has found effective tools to replicate a version of the kind of trust economy associated with pre-urban community.

This trust factor facilitates the rental of an apartment for your vacation or car from someone with a high rating and likewise, they are more likely to rent to you if you have a high rating. Lobel characterizes

trust mechanisms such as online ratings systems as “... new forms of private regulation” that are integral in establishing “crowd confidence” (Lobel 2016, p. 42).

Crucially, while new forms of private regulation have contributed to the rise of the sharing economy, this rise has not been without controversy and in fact traditional regulation in the form of rules set out in both public and private law has proved to be a stumbling block to unfettered growth. Increasingly, regulators – particularly local governments – are introducing very strict limits and even outright bans on STR activity within their municipal boundaries. For instance, San Francisco, the birthplace of Airbnb, has been in prolonged struggle with the company over its attempts to limit STR activity in the city (MacMillan 2016). Berlin has effectively banned short-term rentals of more than 50% of a home, with only very limited exceptions; other German cities such as Munich are considering following Berlin’s example (O’Sullivan 2016). Some jurisdictions have been more lenient, choosing instead to allow for STRs, but with limitations: STRs are allowed in primary residences in Portland and Austin, for instance, but homeowners must obtain a license (Ren and Lamb 2016). The justifications for government regulation¹ appear to be one or more of the following: protecting health and safety of guests using STRs, protecting broader social welfare – primarily the access to affordable housing – of the existing community and protecting the future amenity of neighbourhoods for local residents.

In terms of health and safety regulations, the hotel and bed and breakfast industries have been particularly critical of the fact that in most jurisdictions, health and safety standards that apply to them (including disability access, fire safety and food safety standards), do not apply to someone listing a property on Airbnb (McNamara 2015). Essentially, they argue that it is not a level playing field and that the health and safety of STR guests could be at risk. For instance, Tourism Accommodation Australia chief executive Carol Giuseppi recently urged the New South Wales government, which is considering what laws to place on STRs, to enforce the same safety and insurance regulations on Airbnb operators as on hotel and bed and breakfast operators (AAP 2017). And there is evidence that some governments are responding to the call to apply health and safety standards to STRs. Earlier in 2017, the Town of Tisbury, located in Martha’s Vineyard in Massachusetts, tabled a proposal to require the registration and health and safety inspection of all rentals, including holiday rentals (MV Times 2017). San Francisco has considered modifying bed and breakfast laws to make them applicable to Airbnb rentals (McNamara 2015). In one Sydney council, Airbnb hosts found to have been operating illegal bed and breakfasts (defined as providing a bed and meals to guests) face fines of up to \$1 million (Burke 2015). The hotel and bed and breakfast lobby seems committed to ensure that this issue remains at the forefront of the minds of legislators in the future.

In terms of protecting the broader social welfare, cities such as New York, Paris, and Barcelona have adopted firm positions on regulation, claiming that it is necessary to prevent the supply of affordable housing being skewed away from those who require long-term housing (Lee 2016). In New York in 2010, the State legislature passed a law prohibiting apartment rentals for a period less than 29 days when the owner or tenant was not present (Gebicki 2017). When there was concern in 2016 that people were not abiding by the rule, lawmakers decided to give the law some extra punch in the form of escalating fines (up to \$7,500) for even advertising on sites such as Airbnb. The policy behind such a strict approach was the concern that New York needs to maintain a supply of affordable housing for permanent residents. Paris officials have had similar concerns about the impact of STRs on the supply of housing for long-term residents. To remedy this, the city has put in place a number of measures, including the “rule of compensation,” which states that the owner of an investment property who uses that property for STRs must buy a second property of at least equal size in the same district and offer it to a long-term renter (although, this rule has proved difficult to enforce). Primary residences cannot be rented out for more than four months (Zaleski 2016). Amidst concerns that locals were being “priced out of their homes” in Barcelona, the city requires STR operators to obtain tourist licenses. In 2015, the City fined Airbnb 600,000 Euros for marketing lodgings that failed to have required licenses. Airbnb recently instituted measures to appease the City, requiring that homeowners in central Barcelona will only be able to rent out one place on Airbnb (Phys.org 2017). In Sydney, the State government is currently considering blanket regulations of STRs and the impact of STRs on the already-stretched

supply of long-term rentals in Sydney has been a key point of discussion in the media and amongst anti-STR lobby groups such as “Neighbours Not Strangers.” Indeed, a recent study speculated that Sydney landlords are finding it more lucrative to purchase a property exclusively for STRs than for long-term rentals (Gurran and Phibbs 2017). Vancouver City Council has approved new rules that will require a \$C49 annual licence for anyone who lists their property as a short-term rental on websites such as Airbnb and Expedia. The regulations will also ban hosts from listing units that are not their principal residence and require Airbnb-style platforms to charge a transaction fee. These new laws are consequent of the deficiency in long term rentals (Doeing 2017).

Finally, government regulation in the name of protecting neighbourhood amenity from the (selfish) behaviour of individual residents has been a particular concern with strata properties, as McNichol (2015) explains:

Short-term guests are unlikely to treat the premises and the common areas with the same respect as a long-term tenant because they have no risk of eviction and no financial stake in the premises beyond a security deposit, if any. Neighbors also complain that short-term rentals create noise, traffic, parking problems and security and safety concerns.

However, many of these concerns are also repeated in the context of single-family neighbourhoods. In general, the argument is that short-term residents are somehow “incompatible” with long-term residents and that as the number of STRs increases in a neighbourhood, the amenity declines. In Barcelona, for example, local officials describe the tourist boom as something that has “angered many city residents,” with locals feeling as if they are not able to enjoy their own city (Mount 2016). Preserving neighbourhood amenity has similarly been a concern in the tourist destination of New Orleans, particularly the French Quarter where strict rules – including a permit system – to protect neighbourhood amenity for permanent residents have been put in place. Unfortunately, a lack of enforcement resources has resulted in entire blocks of the French Quarter reportedly being occupied by tourists (Walker 2016). Neighbourhood amenity was a considerable concern for many people who made submissions to the recent Parliamentary Inquiry into STRs in New South Wales. While many of the submissions to the Parliamentary Committee from “mom and pop” hosts described the positive experiences of bringing tourists into residential neighbourhoods so that they could, in the words of Airbnb itself, “live like a local,” community groups such as “Neighbours Not Strangers” and “Playfair Airbnb” have formed around the argument that STRs are a commercial activity that does not belong in residential neighbourhoods. As the Neighbours Not Strangers website proclaims: “Short-term lets have no place in our homes.” According to those opposed to STRs, neighbourhoods are losing permanent residents and thus they are losing their character and amenity (Parliament of New South Wales 2016). Indeed, one of the findings made by Gurran and Phibbs is that STRs “blur traditional boundaries between residential and tourist areas ...” (Gurran and Phibbs 2017, p. 80) and this blurring has not been welcomed by everyone.

Of course, these are not the only motivations for the recent regulations surrounding STRs and neither are these motivations discrete. However, what is clear is that the issue of how best to regulate STRs (if at all) is very much unsettled. Indeed, quite literally one can find newspaper articles outlining the latest Airbnb/STR controversy almost daily. Not surprisingly, academics have turned their attention to the various impacts of STRs specifically and the sharing economy more generally. Academic literature on the sharing economy tends to be found more predominantly in American business, tourism and legal journals. Perhaps the most fundamental debate in the literature is whether the term “sharing economy” is appropriate to describe the activities of firms like Uber and Airbnb. For instance, Finck and Ranchordás (2016) argue that commercial (for-profit) activities are not genuine “sharing” and are distinct from true sharing economy activities, such as app-facilitated car-pooling or community tool banks, which are underpinned by the desire for sustainability and collaborative consumption. They argue that “the mere existence of a platform that provides access to a commodity does not necessarily convert the transaction into a sharing-economy exchange” (Finck and Ranchordás 2016, p. 10). They, along with Lobel (2016), use the broader term “platform economy” to encompass all activities

whereby a digital platform connects supply and demand “... in most cases, in order to grant one-time and uncommitted access to goods or services” (Finck and Ranchordás 2016, p. 10).

Whether using the term “platform economy” or “sharing economy,” the literature can be organized into two broad categories: on one hand, there are strong advocates who support the continued flourishing of an economy based on collaborative consumption in a changing world where steady, long term employment has decreased. In terms of regulation, these authors do not wish for the sharing economy (and these authors do tend to use the term “sharing economy” more than any other term) to be regulated; if it must be regulated, the regulations should be minimal (see, for instance, Cannon and Summers 2014, Jefferson-Jones 2015, Kaplan and Nadler 2015, Koopman *et al.* 2015). On the other hand, there are authors who are more hesitant, arguing that the sharing economy presents new challenges that are not necessarily addressed through a minimalist regulation approach (Guttentag 2015, Kreiczler-Levy 2015, Loucks 2015, Maese 2015, McNamara 2015, Interian 2016, Martin 2016). As Lobel (2016, p. 14) points out, amidst the heated debate, there is one consensus; that is, “a paradigmatic shift is underway and its costs, benefits, and implications for law are still unsettled.” Interestingly, none of the literature examined to date suggests that sharing economy activity should be outright prohibited; in fact, that might not be possible. Legal scholars Davidson and Infranca (2016), who have examined the sharing economy from an urban perspective, argue that the sharing economy and urban spaces are deeply intertwined – sharing economy firms are able to flourish because of dense urban conditions, which are in turn affected (both positively and negatively) by sharing economy activity (for instance, with car-sharing, reducing congestion; with Airbnb, bringing tourists into residential neighbourhoods). Finck and Ranchordás (2016, p. 17) similarly argue that a key feature of the sharing economy is its urban nature: while sharing economy activity does happen in rural areas, the sharing economy is “... an intrinsic urban phenomenon” that is effectively inevitable in cities where labour, goods and talent concentrate. Above all, there is a sense in the academic literature that sharing economy activity is here to stay and that governments will have to figure out a way to coexist with it.

Importantly, because of their urban nature, sharing economy firms like Airbnb are most likely to challenge local regulations (Davidson and Infranca 2016). So it is at the local level, as discussed above, that most policy experimentation is happening. However, regulations alone are not enough in accomplishing those goals if they are not enforced. And as the literature tells us, planning enforcement is a perennial challenge, even outside of the sharing/platform economy arena. In the case of enforcement of STR regulations, as will be seen below, traditional forms of planning enforcement are themselves being “disrupted.”

3. Planning Enforcement: A Portrait of a Perennial Challenge

A robust planning system is only as good as the compliance and enforcement it offers. An equitable planning process relies on transparency and accountability, and should be founded on the Rule of Law, with the expectation that like planning applications are treated in a similar fashion (Stein 2008). Enforcement, however, is often the poor cousin in the planning process, and particularly so in those jurisdictions where there is greater flexibility and discretion for decision makers to enforce against breaches of planning controls (Thomas 1997, Stein 2008, Harris 2010, Leshinsky 2012).

The integrity of development controls (and the whole planning system) is based on the readiness to take enforcement action where necessary, because public respect for the development control system is quickly undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before it impacts on amenity. Harris (2010), speaking in the context of England and Wales, laments that whilst planning reform has made significant progress since 2001, planning enforcement has not gained the same attention.

Richardson *et al.* (1983) and Hawkins (1984) examined how regulators apply legislation to reach their goals. Such research has demonstrated that enforcement of the law does not relate only to legal action but also to a series of mechanisms including education, advice, persuasion and negotiation.

Scholtz (1991) advocates that a co-operative approach can increase the efficacy of enforcement. Hutter (1988) developed a binary model of enforcement styles to facilitate the understanding of law enforcement processes. One of the most important elements of this model approximates to a compliance strategy of enforcement where a key objective is to achieve compliance through the remedy of existing problems and prevention of new ones (Reiss 1984). An effective way to achieve compliance is perceived to be through co-operative and conciliatory processes, which tend to be long-term and founded on negotiation and persuasion. Punitive measures were perceived to be a last resort, when all other options were exhausted. This set in the assumption that the enforcement of regulations occurs through bargaining rather than the consistent, even handed application of general decision rules (Prior 2000). Further models include the deterrent model (Reiss 1984), and the sanctioning strategy (Hawkins 1984). While the objective of both models is to prevent the occurrence of violations, Hawkins (1984) views the approach as primarily concerned with delivering retribution, which may have several objectives ranging from inflicting punishment to utilitarian aims. Hutter (1997) calls for a persuasive strategy, which connects to the accommodative or compliance model of enforcement and is based upon informal procedures including educating and persuading offenders to comply with regulations. Hutter (1997) stresses that, unlike the sanctioning approach (Hawkins 1984), the ultimate objective is to gain compliance and not effect retribution whereas Reiss (1984) states that this characterises situations where violations are unpredictable and preventative actions are not possible. Braithwaite *et al.* (1987) suggest another approach which complements Hutter's (1997) model. It falls somewhere between the persuasive and insistent strategies, and is typified by regulators as being flexible in interpretation of the rules and willingness to instigate legal action. This mirrors the "flexible enforcement" ideal of Bardach and Kagan (1982).

Planning enforcement regimes continue to exhibit characteristics of a weak compliance mechanism and the same can be said some seventeen years after the work of Prior (2000) in this area of research. Thomas (1997, p. 53) noted that any regulatory system needs ultimate penalties, if it is to be meaningful. Planning authorities have only limited resources with many municipalities providing low priority for enforcement. Enhanced powers, in themselves, are only part of the solution to ineffective planning enforcement, and hence achievement of environmental policy objectives. Other important factors include the organization and resourcing of enforcement activity, relationships between enforcement agencies (in this case planning authorities, prosecution services and the courts), the behavior of the "street level" regulators themselves, and the overall climate for compliance, including analysing and understanding the motivations of violators. A facilitative model, if applied to planning enforcement practice, has implications for the role of third parties, the scope for more self-certification by applicants for planning permission (such as notices of "commencement" and "completion" of development) which would assist planning authorities with a limited capacity to effectively police conditional planning permissions granted annually. It might also sit favourably with the new consumer-centred focus of local government, where unintended non-compliance could be minimised by dissemination of clear information about development, and about how the planning authority will prioritise non-compliance. A systematic approach requires levels of resourcing and political will that have been found wanting to date. If most non-compliance with regulations is due to ignorance, then measures aimed at enforcing compliance may have limited impact. Any legislative effort towards improving enforcement regimes may therefore be wasted unless it is guided by appropriate enforcement strategies, and the local capacity to ensure compliance with the law. More serious consideration must be given to alternative models, such as the facilitative model. This also requires more research on the operational effectiveness of these regimes in comparative jurisdictions. Policy-makers face difficult choices in designing and implementing enforcement strategies. A failure to take a wider perspective on effective enforcement strategies, and instead to focus exclusively on measures that promote systematic compliance risks the enforcement regime being ineffectiveness in planning generally, namely "over-commitment", arising from the initial establishment of a policy, leading to a rise in public expectations which cannot then be fulfilled (Sorensen and Auster 1989).

4. Discussion

Legislation, when drafted well and supported by sound policy, should operate effectively (Xanthaki 2008, Mousmouti 2014) reducing the need for lengthy and expensive enforcement processes. STR regulations in cities such as Berlin have not been functioning to restrict STR as was anticipated by the statutory intent (Hill 2017). There is a dearth of data on the effectiveness (or not) of Airbnb regulation. AirDNA (<https://www.airdna.co/>), a company which provides analytics and reports based on Airbnb data gathered from information publicly available on the Airbnb website, recently undertook a study (His 2017), and found that regulatory impacts on Airbnb were the highest when hosts were targeted as the principal offenders. They found that in Berlin and Santa Monica, being cities that fined short-term vacation rental hosts, listings dropped by 49% and 37% respectively. In Berlin, the impact of the ban on entire home listings could be related to the punitive \$100,000 fine. However, even with a \$500 fine, Santa Monica has brought about a significant drop in the number of Airbnb listings. Such a dip in the percentage of listings was also reflected in a sizeable drop in revenue.

The authors point out that Barcelona, which limits the licensing of tourist accommodations, presents somewhat of a puzzle. The freezing of tourist accommodation licenses for vacation rentals – including hotels, bed and breakfasts, hostels, and the like – actually increased the number of Airbnb listings in the city. One interpretation Airdna suggest for this, is that Airbnb and hotels are substitutes for each other. If the threat for a hotel violating the freeze is more than the threat for an Airbnb host violating the freeze, there might be a surge in listing on Airbnb. However, they conclude, this did not explain why monthly revenues marginally fall. For San Francisco, the 90 day cap on renting entire home listings led to a 5% decrease in listings. Compared with fining Airbnb hosts in Berlin and Santa Monica, this was viewed to be a modest decrease. Furthermore, they found in their study, that there was no significant decrease in revenue in San Francisco because prices adjusted upwards and compensated for the drop in listings and reservation days.

The study also found that Airbnb regulation in Berlin and San Francisco had the biggest impact on professional Airbnb hosts. In Berlin, the fine led to a 60% decrease while the overall group posted a 49% decrease. Professional hosts were able to adjust their price to compensate for the decrease in Airbnb listings and their monthly revenue fell by 55%, which is the same amount as the overall group. In comparison, in Santa Monica, where hosts are also subject to a fine, the regulations had almost the same effect on professionals and the overall group. The authors suggest that the one factor that sets Berlin apart from Santa Monica was the sheer magnitude of the fine, which could certainly be a differentiating factor. San Francisco's 90 day cap on entire home listings also served to deter many professional hosts. They faced a 16% decrease in monthly listings compared with a 5% decrease in the overall group. The number of reservation days fell by 35%, which is double the overall group. This contributed to a 30% decline in monthly revenue.

The authors suggest that cities that enforce regulation targeting individual hosts with fines, like Berlin and Santa Monica, have the biggest impact on the number of Airbnb listings in those cities. Airbnb professionals, on the other hand, were most affected by steep fines and caps. Some cities have attempted to target Airbnb itself. Findings from the study suggest that it is inconclusive, however, whether this approach has a real impact on the number of Airbnb listings. This is an area requiring further research with the biggest challenge being the acquisition of accurate and reliable data.

This is not assisted by the complexity of the platform on which STR companies such as Airbnb operate. The bottom line is that it is difficult to know who is listing properties (address are not included on websites such as Airbnb) and for what period of time, as well as what actually transpires in terms of stay length etc. This makes it more difficult to pass effective legislation, and under such circumstances, where there is a default enforcement process to accompany such legislation, such a process may not even be able to adequately support STRs that are legally operating in the platform economy. Ultimately, traditional enforcement processes themselves may not be the solution for STR regulation. This is an area that requires more empirical analysis; to that end, a longer term study is underway by the authors in this space.

Kim *et al.* (2016) examined the effects of regulation of STR on property sales prices. Though their case study was quite limited, being confined to the island of Anna Maria in Florida, they suggest that non-resident ownership decreased following rental regulation and that regulation decreased property values except in areas where the density of non-resident owned properties in a neighbourhood was quite high.

Municipalities have limited resources and time to spend on door knocking properties for STR breaches. The dearth of enforcement resources and compliance personnel has led some councils to turn to private companies such as “BNB Shield”² (recently referred to by CNN Tech as the “Airbnb police” (Kelly 2016)) to locate illegal STRs using software that monitors and identifies listings. A similar company – “Host Compliance”³ – in addition to offering software that monitors and identifies illegal listings, also offers to help local councils “research, draft and enforce short-term rental regulations.” This raises concerns about the role of private companies in drafting and enforcing planning controls. Planning law, after all is public law, and the expectation at least in common law jurisdictions, is for law to be publically scrutinised. The involvement of profit-oriented private companies particularly in drafting anti-STR regulations certainly warrants greater academic scrutiny.

Enforcement in general is expensive and time-consuming, and STRs only add another degree of complexity, given how difficult they are to detect. As mentioned above, advertisements on websites like Airbnb do not include addresses and listings can disappear as quickly as they appear. Airbnb has not always been willing to cooperate with local councils in either sharing data or in removing listings that do not comply with local regulations. Only recently has Airbnb started to reach agreements with cities to remove listings from its website that are illegal. For instance, the company recently reached agreements with London and Amsterdam to block hosts from renting out homes for longer than the cities’ regulatory limits (90 days for London, 60 days for Amsterdam) (Mohdin 2017). Ultimately, shortcomings in resources for compliance and enforcement, leads councils to only chase the “worst offenders.” In Dublin, for example, where owners need permission for a change in use from commercial to residential to use their property as a STR, it was recently estimated that only 1% of illegal STR listings (that is, those operating without the required change-of-use permission) were being issued enforcement orders (Cogley 2017).

A lack of clarity in the law compounds enforcement difficulties by hampering voluntary compliance. In Sydney, for instance, there are currently no blanket restrictions against STR regulations so each council has their own rules, which vary from council to council. What might be legal in one council might not be in another. As there are currently 128 local councils in NSW (30 of which make up the Sydney metropolitan area),⁴ this has led to a large amount of variation in the legality of STRs across the state. Indeed, councils even vary as to how they label STRs, from “short-term tourist and visitor accommodation” to “holiday accommodation” and many labels in between (Parliament of New South Wales 2016). Some councils require development approval (e.g. Waverley Council) while others do not (e.g. Pittwater Council) and where STRs are allowed without approval some councils impose specific conditions which also vary from council to council. For instance, section 6.29 of Blue Mountains Council’s Local Environmental Plan, STRs are allowed in dwelling houses of no more than three bedrooms, as long as that house is connected to a reticulated sewerage system, is not on “bush fire prone land” and does not interfere with the amenity of neighbours. So as the number of STR listings has increased exponentially in Sydney, so has the number of local laws to deal with it, resulting overall in a confusing and fragmented regulatory approach (Inside Airbnb 2016, Parliament of New South Wales 2016). It is difficult for people to voluntarily comply if the rules are not clear. Related to this (and not in the realm of planning), are issues of land tax – in Australia, residents who advertise their properties as STRs are now getting notices that the part of the building that they use for STRs will be subject to land tax (which, for principle residences is normally exempt); the law, however, is not settled on this issue (Gogarty and Griggs 2017). Once again, the rules are not clear, making voluntary compliance difficult. More needs to be considered when drafting STR regulation operating in the Airbnb sphere and this is a matter the authors are addressing in their own on-going research into STR regulation, compliance and enforcement.

There are, at present, alternatives that can be considered other than onerous STR regulation and therefore the need for punitive enforcement. These include:

- Self-enforcement e.g. Airbnb can throw offenders off its site
- Education on regulation – i.e. STR means under 90 days etc. (as per jurisdiction)
- Municipalities, for instance, could legalise STRs but place specific restrictions on numbers rather than imposing complex regulatory processes, which require operational enforcement to uphold prohibitions (Lee 2016)
- Property purchasers could be restricted from using Airbnb for a period of time after settlement of their property (a year?), thereby placing more long term housing opportunity on the market.
- A further approach would be to assign STR permits and restrict the number of permits in neighborhoods, which offer excellent amenity for locals. This, however, may not prevent an underground STR market from operating

Limited resources for enforcement are better targeted at the large corporate landlords who have put thousands of their apartments on the STR market, thereby detracting from long term housing supply. Airbnb's cooperation is critical to any effective enforcement scheme that prevents conversion and hotelisation; investors should be discouraged from converting whole buildings into cottage hotels, as has been the case for many buildings in central Venice (Usborne 2016).

Community benefit agreements (CBA) are a model put forward by Lee (2016), and carry some similarity to planning agreements (Leshinsky, 2008). CBAs have been used in the US by local industries when negotiating with unions and affordable housing advocates. Under a typical CBA, developers of large projects are given tax credits and the permission to build lucrative developments such as luxury apartments, malls, or sports stadiums in exchange for a commitment to hire local residents, set aside affordable housing, or donate to public projects.

5. Conclusions

As Airbnb continues to expand its reach into neighbourhoods around the globe, it is challenging the already limited ability of municipalities to enforce restrictions on how people choose to use their land. STRs now operate within the platform economy and this makes it virtually impossible to monitor or regulate this commercial activity unless regulators get detailed data on STRs informing them which hosts are renting, for how many nights, and how much they are charging per night. Private surveillance firms have been hired by municipalities to assist with breaches of STR regulation but such private enforcement does not sit well within the public land use planning system, particularly when private companies draft and enforce public regulations.

Challenges also exist with getting STR companies such as Airbnb on board, and on finding ways to discourage investors from “hotelisation”, which can impact on long-term tenants’ opportunity to remain in rental properties. Of interest to the authors is whether practically STRs can be regulated, and if so, how effective is this legislation? To date, worst offenders have been prosecuted in cities such as New York, Barcelona and Dublin. Ultimately such regulation may sit well on the books, especially in relation to addressing important urban policy agendas such as affordable and available housing, but we question more broadly whether platform (web) entities such as Airbnb in reality operate “beyond” law (enforcement)?

Enforcement requires resources and these are limited at the municipal level. Taxpayer funds may be better spent on traditional land use and planning breaches e.g. illegal use or building permit breaches. Practical economics may suggest that there is no point in allocating scarce city funds for STR enforcement. STR regulation may in fact have been hastened by cities. Understandably in times of affordable housing shortages, municipalities have been looking for strategies to keep rental properties on the long-term market. The hotel and tourism sector is also an important lobby in this context, as it has much to lose from STR popularity, and it has been involved in pushing for the regulation of STRs.

More research is required on the effectiveness of such regulation and until a body of robust evidence is collected in this field of enquiry, a better approach may be working collaboratively with STR companies for self-regulation or offering incentives to landlords not to cut long-term tenancies short. To address affordable housing shortages, new landlords, for instance, could be offered some type of municipal rebate or concession for offering their property for long-term occupation. Some regulation, such as in the areas of taxation and occupational health and safety will be necessary for STR operation, which will also carry enforcement processes. As it stands, however, more must be understood regarding the regulatory objectives at the front end of STR regulation, because planning enforcement is not well equipped or financed to deal with STR letting breaches at the back end. Without proper planning in regulatory context, we will only continue, as Sorensen's and Auster's noted in 1989, with "ineffectiveness in planning" arising from the initial establishment of a policy, leading to a rise in public expectations which cannot then be fulfilled.

Notes

1. According to Baldwin and Cave (1999), there are a number of reasons that might motivate a government to regulate in any area, including: limiting monopolies and encouraging competition; spreading the benefits of windfall profits; minimizing externalities in production by compelling the internalization of spillover costs; discouraging anti-competitive behaviour and predatory pricing; and rationalizing production processes and coordinating the market. Governments may also use regulation to safeguard interests such as health and safety in the context of unequal bargaining power; overrule individual decisions in the name of broader social welfare and further social policies; and plan for the well-being of future generations. In the case of STRs, it is either one of, or a combination of all of, those last three reasons that appear to underpin recent regulations or the demand for regulations.
2. See <http://www.bnbshield.com>.
3. See <https://hostcompliance.com>.
4. Council amalgamations made in mid-2016 are being reviewed by the new Premier of NSW and a number of forced amalgamations are being challenged in Court and thus their fate remains uncertain.

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References

- AAP, 19 Apr 2017. *NSW to regulate Airbnb and homeshare sites*. Available from Sky: [Newskynews.com.au](http://www.newskynews.com.au).
- Airbnb, 2015. *Airbnb summer travel report 2015*. Available from: <http://blog.atairbnb.com/wp-content/uploads/2015/09/Airbnb-Summer-Travel-Report-1.pdf> [Accessed 16 Nov 2017].
- Baldwin, R. and Cave, M., 1999. *Understanding regulation: theory, strategy, and practice*. Oxford: Oxford University Press.
- Bardach, E. and Kagan, R., 1982. *Going by the book: the problem of regulatory unreasonableness*. Philadelphia, PA: Temple University Press.
- Braithwaite, J., Grabosky, P., and Walker, J., 1987. An enforcement taxonomy of regulatory agencies. *Law and policy*, 9, 323–351.
- Burke, L., 28 Nov 2015. *Is Airbnb creating an accommodation grey market? Hoteliers fear modern competitor?* Available from News.com.au: www.news.com.au.
- Cannon, S. and Summers, L.H., 13 Oct 2014. How Uber and the sharing economy can win over regulators. *Harvard business review*, 13, 1–4.
- Cogley, M., 5 Jun 2017. Only 1% of illegal Airbnb rentals in the capital are penalised. *The Times*. Available from: <https://www.thetimes.co.uk/article/only-1-of-illegal-airbnb-rentals-in-the-capital-are-penalised-bjndg50cl> [Accessed 16 Nov 2017].
- Davidson, N.M. and Infranca, J.J., Jul 2016. The sharing economy as an urban phenomenon. *Yale L. & Pol'y Rev*, 34, 215–279.
- Doeing, K., 14 Nov 2017. *Vancouver approves \$49 annual licence for Airbnb short-term rentals*. Available from: <http://www.news1130.com/2017/11/14/vancouver-annual-licence-short-term-rentals-airbnb/>.
- Finck, M. and Ranchordás, S. (2016). Sharing the city. *Vanderbilt journal of transnational law*, 1–70. Available from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2741575 [Accessed 31 Jul 2017].

- Gebicki, M., 5 Feb 2017. *Major blow for Airbnb users: New law to restrict New York City apartment rentals*. Available from: <http://www.theherald.com.au/story/4444330/major-blow-for-airbnb-users-new-law-to-restrict-new-york-city-apartment-rentals/?cs=34>.
- Gogarty, B. and Griggs, L., 24 Jan 2017. Airbnb hosts beware—it's not just Centrelink using robo-debt systems. *The Conversation*. Available from: <https://theconversation.com/airbnb-hosts-beware-its-not-just-centrelink-using-robo-debt-systems-71488> [Accessed 16 Nov 2017].
- Gurran, N. and Phibbs, P., 2017. When tourists move in: How should urban planners respond to Airbnb? *Journal of the American planning association*, 83 (1), 80–92.
- Guttentag, D., 2015. Airbnb: disruptive innovation and the rise of an informal tourism accommodation sector. *Current issues in tourism*, 18 (12), 1192–1217.
- Harris, N., 2010. Discretion and expediency in the enforcement of planning controls. *Town planning review*, 81, 675–700.
- Hawkins, K., 1984. *Environment and enforcement: regulation and social definition of pollution*. Oxford: Clarendon Press.
- Hill, S., 2017. How the Berlin government could rein in Airbnb and protect local housing. *Salon*. Available from: http://www.salon.com/2017/06/30/how-the-berlin-government-could-rein-in-airbnb-and-protect-local-housing_partner/ [Accessed 16 Nov 2017].
- His, H., 2017. *Airbnb regulation: how is new legislation impacting on the growth of short-term-rentals?* Available from: <http://blog.airdna.co/effects-airbnb-regulation/> [Accessed 16 Nov 2017].
- Hutter, B.M., 1988. The reasonable arm of the law? *The Law Enforcement Procedures of the Environmental Health Officers*. Oxford: Clarendon Press.
- Hutter, B.M., 1997. *Compliance: regulation and environment*. Oxford: Clarendon Press.
- Inside Airbnb, 2016. *Sydney*. Available from: <http://insideairbnb.com/sydney/> [Accessed 16 Nov 2017].
- Interian, J., 2016. Up in the air: harmonizing the sharing economy through Airbnb regulations. *Boston college international & comparative law review*, 39, 129–161.
- Jefferson-Jones, J., 2015. Airbnb and the housing segment of the modern “sharing economy”: are short-term rental restrictions an unconstitutional taking? *Hastings constitutional law quarterly*, 42 (3), 557–576.
- JLL, 2016. *Melbourne's apartment supply pipeline broadens*. Available from: <http://www.jll.com.au/australia/en-au/news/1066/melbournes-apartment-supply-pipeline-broadens> [Accessed 16 Nov 2017].
- Kaplan, R.A. and Nadler, M.L., 2015. Airbnb: a case study in occupancy regulation and taxation. *University of Chicago law review, dialogue*, 82, 103–105.
- Kelly, H., 2016. Meet the Airbnb police. *CNN Tech*. Available from: <http://money.cnn.com/2016/10/01/technology/airbnb-police/index.html> [Accessed 31 Jul 2017].
- Kim, J.H., Leung, T., and Wagman, L., 2016. Can restricting property use be value enhancing? Evidence from short-term rental regulation. *The journal of law & economics*, 60, 309–334.
- Koopman, C., Mitchell, M., and Thierer, A., 2015. *The sharing economy: issues facing platforms, participants, and regulators*. Arlington, VA: Mercatus Centre, George Mason University Public Interest Comment.
- Kreiczler-Levy, S., 2015. Consumption property in the sharing economy. *Pepperdine law review*, 43 (61), 61–124.
- Kusisto, L., 11 Oct 2016. Airbnb offers landlords an incentive; home-rental giant gives landlords revenue if they permit tenants to rent out units on site. *Wall street journal* [Online]. Available from: <https://www.wsj.com/articles/airbnb-offers-landlords-an-incentive-1476178200> [Accessed 16 Nov 2017].
- Lee, D., 2016. How Airbnb short-term rentals exacerbate Los Angeles's affordable housing crisis: analysis and policy recommendations. *Harvard law & policy review*, 10, 229–253.
- Leshinsky, R., 2012. Use of planning agreements to support sustainability and environmental preservation: a case study from Victoria, Australia. *International journal of law in the built environment*, 4 (2), 157–172. doi:10.1108/17561451211242521.
- Leshinsky, R., 2008. Knowing the social in urban planning law decision-making. *Urban policy and research*, 26 (4), 415–427.
- Lobel, O., 2016. *The law of the platform*. Legal studies research paper series. University of San Diego School of Law. Research Paper No. 16-212.
- Loucks, T., 2015. Travelers beware: Tort liability in the sharing economy. *Washington journal of law, technology & arts*, 10 (4), 329–342.
- MacMillan, D., 28 Jun 2016. Airbnb sues San Francisco to block rental registration law; startup is seeking injunction to prevent the city from fining Airbnb for unregistered listing. *Wall street journal*. Available from: <https://www.wsj.com/>.
- Maese, M., 2015. Rethinking ‘host’ and ‘guest’ relations in the advent of Airbnb and the sharing economy. *Texas A&M journal of property law*, 2, 481–509.
- Martin, C.J., 2016. The sharing economy: a pathway to sustainability or a nightmarish form of neoliberal capitalism? *Ecological economics*, 121, 149–159.
- McNamara, B., 2015. Airbnb: a not-so-safe resting place. *Colorado technical law journal*, 13 (1), 149–170.
- McNichol, A.L., Fall 2015. Airbnb: a (soon to be) victim of its own success. *Legal professionals*. Available from: http://www.kutakrock.com/files/News/3170900e-afb9-4c33-9731-59e07489781b/Presentation/NewsAttachment/13994e1d-512e-457d-888f-83e6f5ac0d71/AirBNB_Fall15@Law.pdf.

- Mohdin, A., 3 Jan 2017. *Airbnb is losing one of its biggest advantage over hotels*. Available from: <https://qz.com/876984/airbnb-is-gradually-losing-one-of-its-biggest-advantages-over-hotels/> [Accessed 16 Nov 2017].
- Mount, I., 25 Nov 2016. Barcelona to fine Airbnb and HomeAway E600,000 each. *Financial Times*. Available from: www.ft.com.
- Mousmouti, M., 2014. The “effectiveness test” as a tool for law reform. *IALS student law review*, 2 (1), 4–8.
- MV Times, 26 Apr 2017. Rentals, regulation, and Airbnb. *MV Times*. Available from: <http://www.mvtimes.com/2017/04/26/rentals-regulation-airbnb/>.
- O’Sullivan, F., 1 Dec 2016. The city with the world’s toughest anti-Airbnb laws. *Citylab*. Available from: www.citylab.com, <http://www.citylab.com> [Accessed 16 Nov 2017].
- Parliament of New South Wales, 2016. *Adequacy of the regulation of short-term holiday letting in New South Wales*. Final Report. Sydney, Australia: Legislative Assembly Committee on Environment and Planning.
- Phys.org, 7 Feb 2017. Airbnb imposes limits on rentals in Barcelona. *Phys Org*. Available from: www.phy.org.
- Prior, A., 2000. Problems in the theory and practice of planning enforcement. *Planning theory & practice*, 1 (1), 53–69.
- Reiss, A., 1984. Selecting strategies of social control over organisational life. In: J. Hawkins and J.M. Thomas, eds. *Enforcing regulation*. Boston, MA: Kluwer-Nijhoff, 23–35.
- Ren, J. and Lamb, G., 26 Apr 2016. The long and the short of it: city of Vancouver tackling short-term rentals. *Lexology*. Available from: www.lexology.com, <http://www.lexology.com> [Accessed 16 Nov 2017].
- Richardson, G.M., Ogus, A.I., and Burrows, P., 1983. *Policing pollution: a study of regulation and enforcement*. Oxford: Clarendon Press.
- Scholtz, J.T., 1991. Co-operative regulatory enforcement and the politics of administrative effectiveness. *American political science review*, 85, 115–136.
- Sorensen, A. and Auster, M.L., 1989. Fatal remedies: the sources of ineffectiveness in planning. *Town planning review*, 60 (1), 29–44.
- Stein, L.A., 2008. *Principles of planning law*. Oxford: University Press South Melbourne.
- Thomas, K., 1997. *Development control: principles and practice*. London: UCL Press.
- Usborne, S., 28 Sep 2016. Don’t look now, Venice tourists—the locals are sick of you. *The Guardian* [online]. Available from: <https://www.theguardian.com/world/shortcuts/2016/sep/27/dont-look-now-venice-tourists-locals-sick-of-you-cruise-liners> [Accessed 16 Nov 2017].
- Walker, B., 5 Mar 2016. Airbnb Pits Neighbor against neighbor in tourist-friendly New Orleans. *The New York Times*. Available from: <http://nityi.ms/21QHSYv>.
- Xanthaki, H., 2008. Quality of legislation: an achievable universal concept or an utopia pursuit? In: L. Mader, M.T. de Almeida, eds. *Quality of legislation. principles and instruments* (Nomos 2011), 80–81.
- Zaleski, E., 2 Jan 2016. Paris for Parisians! city hall rousts out Airbnb clients. *Daily Beast*. Available from: www.thedailybeast.com.