

New York SB 885

OPPOSITION TESTIMONY

May 14, 2023

New York State Legislature
Senate Committee on Housing, Construction And Community Development Committee

NetChoice respectfully asks that you **oppose** SB 885 as it:

- Denies your constituents the benefits of short-term rentals;
- Violates several privacy protective tenets of the US Constitution;
- Undermines the privacy rights of New York citizens;
- Violates Federal Law Under 47 U.S.C. Section 230; and
- Federal courts already found SB 885's Privacy Invasions illegal.

Government efforts to force Short-Term Rental (STR) providers to disclose data to the government and/or impose liability requirements on platforms that host STR properties jeopardize the privacy of New York's citizens.

We outline the problems with such an approach below and welcome further conversation on the matter.

Benefits to your constituents of short-term rentals

STR services provide necessary income to many of your constituents. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through certain short-term rental services is used to cover household expenses.

Consider, for example, families coming from across the country for graduation ceremonies at the City University of New York. STR services allow constituents to earn income by sharing their homes.

The presence of STR services also brings new money into areas under-served by hotels. Historically, travelers are not likely to encounter businesses in these under-served parts of New York. Conversely,

guests who stay in under-served areas via STR services, bring income to nearby restaurants, grocery stores, and businesses.

SB 885's unconstitutional requirements for STR property providers

The internet is an open resource that enables people from all parts of New York to freely communicate with one another and pursue their goals. While some nations discourage user-generated content, the United States created a fertile ground for business models that have transformed the world.

However, while the United States values the openness created by the internet, it also holds the privacy of American citizens in incredibly high regard and protects that privacy through the United States Constitution.

Unfortunately, SB 885 threatens to undermine that privacy and the protection offered to it by the U.S. Constitution by forcing STR property owners to provide detailed, personal information to the government. For example, it forces the owner to disclose their principal place of business, phone number, email address, home address as well as intimate information such as whether they rent or own and how they intend to use their living spaces. These forced disclosure requirements raise constitutional privacy concerns.

In the Supreme Court case *City of Los Angeles v. Patel*, the Court held that certain mandatory hotel disclosure requirements violated the privacy rights of U.S. citizens and the United States Constitution.¹ The Court noted that:

“[o]ver the past 45 years, the Court had identified only four industries that ‘have such a history of government oversight that no reasonable expectation of privacy . . . could exist for a proprietor over the stock of such an enterprise’”

and that

“[s]imply listing these industries refutes petitioner’s argument that hotels should be counted among them.”²

¹ 135 S. Ct. 2443 (2015).

² *Id.* at 2454.

While this case dealt specifically with forced disclosures of guest information, it shows that the Court recognizes privacy rights when it comes to forced disclosures in the hotel and STR industry.

SB 885 mandatory disclosure requirements force property providers to hand over a substantial amount of personal information to the government, as discussed above, with very few procedural safeguards.

Such an attempt by New York to impose mandatory disclosure requirements on STR property providers will likely see court actions, injunction petitions, and potentially even invalidation of the law by the court.

Violates Federal Law Under 47 U.S.C. Section 230

Section 230 of the federal Communications Decency Act says platforms can't be held strictly liable for content posted by others.³ However, SB 885 fails to recognize Section 230.

Consider SB 885's requirement that hosting intermediaries know if a host is licensed: "verify the registration status of a short-term residential rental unit and that the unit is associated with the short-term rental host who registered the unit" prior to publishing a listing." This is a clear violation of Section 230 and will face a swift injunction and ongoing legal fees as NetChoice outlined in its amicus brief in *HomeAway.com, Inc. v. City of New York*.⁴

SB 885 not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the the law.

Privacy invasion of New York residents from the SB 885's forced disclosure of STR information

Mandating STR property providers to disclose this personal, intimate data to the government grants virtually any New York public employee access to the private information of New York residents.

As you can imagine, this provides an easily abused resource of information about your constituents. As such, SB 885 threatens to greatly undermine the privacy of New York's citizens.

³ 47 U.S.C. § 230.

⁴ See, e.g. Brief for NetChoice as Amicus Curiae, *HomeAway.com, Inc. v. City of New York*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019), available at https://netchoice.org/wp-content/uploads/2020/04/FILED_NetChoice-Request-to-File-as-Amicus-in-Airbnb-v-New-York-City-18cv07712-and-HomeAway-v-New-York-City-18cv7742-copy.pdf.

This is a gross invasion of your constituents' privacy. At the same time, New York has already faced significant court actions when it previously attempted a similar effort to collect its citizens' private information. Such opposition came from citizen and privacy groups like Community Development Project at the Urban Justice Center and the Electronic Frontier Foundation.

Federal courts already found SB 885's Privacy Invasions illegal

It's not speculative to say that the privacy invasive requirements of SB 885 are unconstitutional as several courts have already ruled to that effect. Already, three federal courts blocked laws requiring the types of surveillance on behalf of the government that SB 885 requires. The courts ruled that mandating STR platforms to disclose their business records without legal process violated the Fourth Amendment and was preempted by the federal Stored Communications Act.

This includes a case that the City of New York itself lost when it attempted to implement the same privacy invasive requirements.⁵ Similarly, Boston faced the same legal outcome.⁶

Rather than continuing down a known failed legal route, we suggest that New York seek another path than the ones outlined in SB 885.

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Because it imposes monitoring requirements on platforms that host STR properties, invades the privacy of New York's citizens, creates new taxes, and is unconstitutional, we respectfully ask you to **oppose SB 885**. As ever, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.

⁵ *HomeAway.com, Inc. v. City of New York*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019).

⁶ *Airbnb, Inc. v. City of Boston*, Case No. 18-cv-12358-LTS (D. Mass. May 3, 2019);