

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Speaker Corey Johnson
New York City Council
224 West 30th St, Suite 1206
New York, NY 10001

RE: **Opposition to NYC Council Bill - Int. No. 981**

Dear Speaker Johnson and members of the Council,

We ask that you not move forward with NYC Council Bill - Int. No. 981 ("Int. 981").

This bill would:

- impose unworkable requirements on Short-term rental (STR) platforms in New York City,
- force disclosure of private information of city residents to city employees, and
- be so broad it would capture advertisements on NewYorkTimes.com and other sites.

We do, however, agree with reasonable requirements for STR hosts and regularly advocate for such requirements.

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 NYU. STR services allow constituents to earn income by sharing their homes.

The presence of STR services also brings new money into areas underserved by hotels as travelers are not likely to encounter businesses in areas under-served by hotels. Conversely, guests who stay in districts via STR services bring income to these districts as they visit restaurants, grocery stores, and businesses in these areas.

Big hotel chains benefit most from Int. 981 passage

Big hotel chains are backing Int. 981 for entirely selfish reasons. Big hotel chains see STRs as a threat to their business model – however, it's not for the reasons you may think.

Presently, the hotel industry enjoys record setting occupancy and pricing. However, the presence of STR services is seen by some in the hotel industry as forcing hotels to keep prices at reasonable levels. For instance,

LaSalle Hotel Properties's CEO told investors that a law curtailing short-term rental services would allow hotels to boost their prices by eliminating competition.¹

Lower hotel room prices mean that visitors to New York have more money to spend with New York businesses. Likewise, when your constituents travel, STR services help them find more reasonably priced accommodations.

Int. 981 imposes these requirements and liability on newspapers like Post-Gazette.com

We are sure that the Council would think it absurd to hold *newspapers* responsible for what customers write in their classified listings. But that is precisely what Int. 981 would require of classified sections of online newspapers, bulletin boards in universities, and internet websites.

Int. 981 requires every business that advertises a room for a fee to comply with a litany of requirements – even if the advertiser is not a party to the rental transaction. Advertisements, of course, would include paid-for ads in the classified section of the local newspaper. Failure to comply with the onerous rules of Int. 981 would result in stiff penalties.

Much like the Classified ads listing in the New York Times, STR hosting platforms are just that, platforms for hosts to list their STR availability.

It would be absurd to impose Int. 981's requirements on the Times's classified section and we ask that you not do so for STR services.

Int. 981 would undermine a key benefit of the internet and would likely be unconstitutional

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.

Moreover, this openness is bolstered by Section 230 of the federal Communications Decency Act, which says platforms can't be held strictly liable for content posted *by others*.

However, Int. 981 fails to recognize Section 230. This not only threatens a core tenet of the internet but is at odds with federal law – resulting in the likely injunction of the Int. 981.

Int. 981 exposes the privacy of New York residents to city employees and law enforcement

The 4th Amendment of the US Constitution protects New York citizens from unlawful search and seizure is a core privacy protection.

Unfortunately, Int. 981 ignores this privacy protection and instead requires platforms to disclose records and information about hosts to city employees. And this disclosure does not require the city's employees to first obtain a warrant.

Moreover, Int. 981 gives the administering agency broad authority to determine what information must be disclosed. This could include tax ID numbers, names and hometowns of guests, and such other information as the agency may require.

¹ Gaby Del Valle, *Hotel CEO: New Airbnb Regulations Should Allow A 'Big Boost' In Hotel Room Rates*, Gothamist (Oct. 27, 2016) (Passage of a law limiting short-term rental services "should be a big boost in the arm for the business, certainly in terms of the pricing.")

This not only exposes the operating procedures and income of businesses but could also expose the privacy of New York residents using the platform and people staying in New York homes.

The hotel industry has successfully defeated in court disclosure mandates like Int. 981. When the city of Los Angeles demanded that a hotels proprietary business records, the hotel industry fought back in court – ultimately winning at the US Supreme Court (*see In re Patel*, 576 U. S. ____ (2015)). To protect this court ruling, we could see the hotel industry opposing Int. 981. And if Int. 981 is passed, New York would likely see a similar court outcome.

Legal arguments aside, Int. 981 grants public employee access to private information of New York residents. As you can imagine, this provides an easily abused resource of information about your constituents and guests staying in the state.

Rather than advance Int. 981, which imposes all these burdens and unintended consequences, we instead encourage you to look to reasonable regulations that have proven beneficial in other jurisdictions.

We've seen high compliance rates when localities create reasonable registration and regulation for STRs.

A thoughtful approach to home-sharing by creating a registration process would benefit all New York residents.

We welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org