



Airbnb enforcement action

Factsheet | July 2019

ISSUES RAISED BY CONSUMER PROTECTION AUTHORITIES

airbnb's IMPLEMENTED CHANGES

Obligation to provide adequate and complete price information

Concern: Airbnb did not include all applicable extra charges, such as service and cleaning fees and local taxes, in the initial price quote given to consumers who performed a search for accommodation.

Explanation: Under EU consumer law, a price quote must include all fixed charges and taxes. If they can't be calculated in advance, consumers must be clearly informed of the possibility that extra charges may apply.

Airbnb now provides total price quotes which, from the outset, **include all mandatory charges and fees** (such as service and cleaning fees and local taxes).

Obligation to distinguish between private hosts and professional providers

Concern: Search results on Airbnb do not distinguish between accommodations offered by private hosts and those provided by professionals.

Explanation: Under EU consumer law, there cannot be any ambiguity about the business motives of a practice and the nature of the trader as these elements can affect consumers' ability to make an informed choice.

Airbnb now clearly distinguishes in all cases whether an accommodation is offered by a private host or a professional provider.



Obligation to provide an email address and link to the Online Dispute Resolution platform

Concern: Airbnb's Payments Terms of Service provided the address and the phone number of Airbnb Payments UK Ltd. but not an email address. In addition, the link to the Online Dispute Resolution (ODR) was not easy to find.

Explanation: EU Consumer law requires traders to provide consumers with an email address and an easily accessible link to the ODR platform.

Airbnb now provides easy access to the Online Dispute Resolution (ODR) platform at the beginning of its Terms of Service and Payments Terms of Service.

Airbnb now provides the email address of Airbnb Payments Ltd. in its Payments Terms of Service.

Jurisdiction and applicable law

Concern: Airbnb's terms led users to believe that a foreign court other than their national court had by default jurisdiction over the contract.

Explanation: Consumers living in the EU/EEA can take legal action against the trader in the courts of the Member State where they reside.

Airbnb has clarified that EU/EEA users can bring judicial proceedings against Airbnb, arising from or in connection with Airbnb's Terms of Service, before the courts of their country of residence.

Airbnb has added a separate paragraph on jurisdiction and applicable law which only applies to EU/EEA users, to avoid any confusion with different regimes in foreign countries.

Survival of terms

Concern: Airbnb informed users that some terms would remain in effect after termination of the contract, but it did not specify which terms

Explanation: Consumers have the right to know what terms remain in effect after termination of the contract. The possible survival of certain terms should not create a reasonable imbalance between the parties' rights and obligations, to the detriment of the consumer.

Airbnb has clarified that for EU/EEA residents no terms will remain in effect in case of termination of the contract.

Liability of the provider for personal harm or other damages to consumers

Concern: Airbnb's Terms of Service denied the right of consumers to sue the host in case of personal harm or other damages, regardless of whether the host responsibility was involved.

Explanation: Consumers should be confident that they can use their rights in case the operator does not or, only partly fulfils its contractual obligations. Terms and conditions cannot deny that operators may be held liable when their actions or omissions contribute to the conduct or the damage/loss on which a claim is based.

Airbnb has removed this term.

Power to unilaterally change terms and conditions

Concern: Airbnb reserved itself the right to change the Service Fees at any time and to modify its policy on Collection and Remittance of taxes or on Payment Services without clearly informing the user in advance and without giving, by reasonable notice to the user, the possibility to cancel the contract.

Explanation: The total price of a service should be provided before the consumer is bound by the contract. Standard terms giving the trader the power to unilaterally change the parties' rights and obligations, and without giving consumers the possibility to cancel the contract may be considered unfair under EU consumer law.

Airbnb has clarified that fee changes do not apply to bookings made prior to the changes.

Airbnb has clarified that, before making such changes, it will give users an early warning and let them terminate the contract at any time.

Right to remove user-generated content

Concern: Airbnb's Terms of Service cover the removal of user-generated content, but did not mention Airbnb's obligation to give consumers advance warning about content removal, or the right to appeal against such decision.

Explanation: Standard terms and conditions should specify:

- which content can be removed;
- the obligation to give consumers advance warning;
- consumers' right of appeal to the removal of content.

Airbnb has acknowledged its obligation to give users advance warning of the removal of user-generated content and to give them a right to appeal against such a decision.

Right to unilaterally suspend or terminate the contract for any reason

Concern: Airbnb reserved itself the right to cancel a booking without justification and without warning consumers nor granting them the right to appeal. Moreover, Airbnb did not acknowledge that consumers have the right to appeal against a decision of suspension or termination of a contract.

Explanation: Operators have the right to end a contract without notice in case of illegal conduct and to protect consumers or third parties from the consequences of illegal conduct. In all other cases, consumers should be informed with no delay about these decisions and be granted the right to appeal.

Airbnb has clarified that it will inform consumers about booking cancellations and that it will provide adequate justifications for such a decision.

Airbnb now grants consumers the right to appeal against its decision to cancel a booking or to suspend or terminate a contract.

Refunds and Pay-outs

Concern: Airbnb's refund policy was unclear, particularly on the applicable timeframe. The refund policy also limited Airbnb's liability in case of cancellations of confirmed bookings.

Explanation: The applicable terms to a contract must be made clear before a consumer is bound to the contract. The terms must be easy to understand and should not cause any significant imbalance of rights between operators and consumers to the detriment of the latter.

Airbnb:

- has simplified the terms relating to refunds, and it has clarified under which conditions consumers can claim a refund;
- now commits to process refunds without undue delay and;
- takes full liability in this respect.

Collection of damages

Concern: The rules in Airbnb's Terms of Service on Damage Claims denied users their right to claim legal remedies.

Explanation: In case of a dispute between the parties to the contract, the collection of evidence, the burden of proof and damage compensation should comply with the relevant rules on jurisdiction and applicable law. Leaving it to the trader to set out these rules unilaterally creates a significant imbalance between the rights of operators and the consumers to the detriment of the latter.

Airbnb has clarified that it will comply with the applicable statutory rules on the burden of proof.

Airbnb now acknowledges that users' contractual and statutory rights, as well as their right to take legal action before a court of law, remain unaffected.

Airbnb now acknowledges that users have the right to appeal against a decision by Airbnb on damage claims.

