



Universitat
de les Illes Balears

**DIGITAL PLATFORMS,
TOURISTIC SERVICES
PROVIDERS AND
CONSUMERS:
OBLIGATIONS AND
LIABILITY**

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INTRODUCTION

- **Digital platforms**
 - **Touristic intermediaries *versus* Internet Service providers**
- **Touristic service providers**
 - **Consumer-trader-prosumer.**
 - **Subjects of tourism activity (*General Touristic Acts*)**
- **Consumers**

WHO IS WHO IN THE NEW MARKETPLACE?

TOURISTIC
SERVICE PROVIDER

-ORGANISER
-RETAILER
-ONLINE TRAVEL AGENCIES

TRAVELLER/
TOURISTIC
SERVICES USER

TRADER/
PROSUMER

DIGITAL PLATFORM

CONSUMER/
SERVICES USER

INTRODUCTION

- Judgement of EU Court 2019, december 19th.
Case Airbnb Ireland.
- Digital Service Act and Digital Markets Act.

Position of contractual parts, obligations and liability.

WHO IS WHO IN THE NEW MARKETPLACE?

GENERAL TERMS

**DIGITAL PLATFORMS
(TOURISTIC SERVICES)**



As the provider of the Airbnb Platform, Airbnb does not own, control, offer or manage any Listings, Host Services, or tourism services. Airbnb is not a party to the contracts entered into directly between Hosts and Guests, nor is Airbnb a real estate broker, travel agency, insurer or an organiser or retailer of travel packages under Directive (EU) 2015/2302. Airbnb is not acting as an agent in any capacity for any Member, except as specified in the Payments Terms of Service (“Payment Terms”). To learn more about Airbnb’s role see Section 16.



https://www.airbnb.co.uk/help/article/2908?_set_bev_on_new_domain=1668253003_NG Y5Yzk1NjJmYWVi





7.2 Booking Modifications. Hosts and Guests are responsible for any Booking Modifications they agree to make via the Airbnb Platform or direct Airbnb customer service to make on their behalf, and agree to pay any additional amounts, fees or taxes associated with a Booking Modification.

https://www.airbnb.co.uk/help/article/2908?_set_bev_on_new_domain=1668253003_NG Y5Yzk1NjJmYWVvi





Force Majeure. Airbnb shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, epidemics or disease, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

https://www.airbnb.co.uk/help/article/2908?_set_beve_on_new_domain=1668253003_NGY5Yzk1NjJmYWVi





Booking.com

A4. Our Platform

1. We take reasonable care in providing our Platform, but we can't guarantee that everything on it is accurate (we get information from the Service Providers). To the extent permitted by law, we can't be held responsible for any errors, any interruptions, or any missing bits of information - although we will do everything we can to correct/fix them as soon as we can.
2. Our Platform is not a recommendation or endorsement of any Service Provider or its products, services, facilities, vehicles, etc.
3. We're not a party to the terms between you and the Service Provider. The **Service Provider is solely responsible** for the Travel Experience.

1. The Site is a Venue and We are Not a Party to any Rental Agreement or other Transaction Between Users of the Site.

We urge all users to be responsible about their use of this Site and any transaction entered into as a result of either listing a property or renting a property. We do not own or manage, nor can we contract for, any vacation rental property listed on a Site. The Site provides an on-line marketplace to allow homeowners and property managers who advertise on the Site (each, a “**member**”) to offer for rent in a variety of pricing formats, a specific vacation or short term rental property to potential renters or renters (each, a “**traveler**” and, collectively with a member, the “**users**”). “Members“ may also include property owners or managers who originally advertised their properties on another website and their listings have been redistributed on the Site. We also may offer online booking or other tools or services to allow users to communicate with each other and enter into rental agreements or other transactions.

**TOURISTIC TRADERS
AND
DIGITAL PLATFORMS**

ART. 3 GENERAL TOURISTIC ACT OF BALEARIC ISLANDS:

- TOURISTIC ACCOMODATION
- ON LINE TRAVEL AGENCIES
- DIGITAL PLATFORMS

**TOURISTIC TRADERS
AND
DIGITAL PLATFORMS**

I- Obligations of the traders in the Tourism Acts in Autonomic Communities and others laws.

II.- Liability/Non liability of the Digital Platforms/Internet Service Providers.

***Specific laws on Tourism versus Electronic
Commerce Act/Digital Services Act***

**INTERNET SERVICE
PROVIDERS/DIGITAL
PLATFORMS**

- Information obligations
- Personal data
- Opinions of users and “traders”

**ACCOMODATION
RENTALS
AND INFORMATION**

(Spanish case law)

-SJCA núm. 2 de Valencia de 23 de noviembre de 2017 (Homeaway vs. Generalitat valenciana).

-STSJ de Cataluña (Sala de lo Contencioso-Administrativo) de 13 de noviembre de 2019.

STJUE Airbnb Ireland de 19 de diciembre de 2019.

-STSJ de las Illes Balears (Sala Contencioso-administrativo) de 29 de abril de 2020.

-STS de 30 de diciembre de 2020.

6.2. [...] Some landlords and leases, or homeowner and condominium association rules, restrict or prohibit subletting, short-term rentals and/or longer-term stays. Some cities have zoning or other laws that restrict the short-term rental of residential properties. Some jurisdictions require Hosts to register, get a permit, or obtain a license before providing certain Host Services (such as short-term rentals, longer-term stays, preparing food, serving alcohol for sale, guiding tours or operating a vehicle). In some places, the Host Services you want to offer may be prohibited altogether. Some jurisdictions require that you register Guests who stay at your Accommodation. Some jurisdictions have laws that create tenancy rights for Guests and additional obligations for Hosts. For example, some places have landlord-tenant, rent control, and eviction laws that may apply to longer stays. Check your local rules to learn what rules apply to the Host Services you plan to offer.

REGULATION (EU) 2022/2065 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 19 October 2022

on a Single Market For Digital Services and amending
Directive 2000/31/EC (Digital Services Act)

DSA: Council gives final approval to the protection of users' rights online

The Council today took an important step to ensure a safer online environment by approving the **Digital Services Act** (DSA). The DSA protects the digital space against the spread of illegal content and ensures the protection of users' fundamental rights.

New rules online

The DSA defines clear responsibilities and accountability for providers of intermediary services, such as **social media**, online **marketplaces**, very large online **platforms** (VLOPs) and very large online **search engines** (VLOSEs). The rules are designed **asymmetrically**, which means that larger intermediary services with significant societal impact (VLOPs and VLOSEs) are subject to stricter rules.

<https://www.consilium.europa.eu/en/press/press-releases/2022/10/04/dsa-council-gives-final-approval-to-the-protection-of-users-rights-online/>

DIGITAL SERVICES ACT

- Provider of intermediary services.
- Providers on hosting services.
- Providers of on line platforms.
- Providers of very large on line platforms.

**DIGITAL SERVICES
ACT**
Whereas 17

“The rules on liability of providers of intermediary services set out in this Regulation should only establish when the provider of intermediary services concerned cannot be held liable in relation to illegal content provided by the recipients of the service. Those rules should not be understood to provide a positive basis for establishing when a provider can be held liable, which is for the applicable rules of Union or national law to determine. Furthermore, the exemptions from liability established in this Regulation should apply in respect of any type of liability as regards any type of illegal content, irrespective of the precise subject matter or nature of those laws”.

DIGITAL SERVICES

ACT

Art. 6

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that the provider:

a.- does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or

b.- upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content

Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.

**DIGITAL SERVICES
ACT**
Whereas 18

“The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally by a merely technical and automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of the intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.”

WHEREAS 24:

In order to ensure the effective protection of consumers when engaging in intermediated commercial transactions online, certain providers of hosting services, namely online platforms that allow consumers to conclude distance contracts with traders, should not be able to benefit from the exemption from liability for hosting service providers established in this Regulation, in so far as those online platforms present the relevant information relating to the transactions at issue in such a way as to lead consumers to believe that that information was provided by those online platforms themselves or by traders acting under their authority or control, and that those online platforms thus have knowledge of or control over the information, even if that may in reality not be the case.

The Digital Services Act and Digital Markets Act set a high global benchmark for regulating digital services with clear obligations tailored to the importance of the online platforms.

https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment/europe-fit-digital-age-new-online-rules-platforms_en

OBLIGATIONS

- PERSONAL DATA
 - Airbnb or host?
 - Digital Market Act: Article 5.
- GUEST REVIEWS IN DIGITAL PLATFORMS
 - Fair competition/Consumer protection

PERSONAL DATA

Art. 5 DMA

The gatekeeper shall not do any of the following:

(a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;

(b) combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;

(c) cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice versa; and

(d) Sign in end users to other services of the gatekeeper in order to combine personal data.

- Unless: **consent of the end user**

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CONCLUSIONS



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**Thank you for your
attention**

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