Legal advise subletting in the Netherlands, Italy and France

Main target HousingAnywhere: helping the university to increase the supply of rooms for incoming exchange students, by asking the outgoing exchange students to post their rooms on HousingAnywhere.com. With this simple mechanism, the university gets in a very easy way more rooms available for its students.

Responsibility of the university:

• The university is not responsible: the university is just supporting a platform where students can find each other. It’s the same as advertising on Facebook: then you also support a website where students can talk with each other, but what they discuss amongst them, is not the responsibility of the university.

• Disclaimer 1: to make sure that the university is not responsible for anything, we created together with the Queens University in Kingston, Ontario, Canada, a disclaimer/waiver on our website, explaining that the university is not liable for anything. Students MUST thick this checkbox that they have read and understand the disclaimer, both in the case of posting a room, and in case of reacting to a room.

• Disclaimer 2: we know that people mostly do not read a disclaimer, therefore we have made an extra disclaimer, saying very short: “I understand that both my university and HousingAnywhere are NOT involved in any issues that might arise with a future tenant, like rental payments, ruining an apartment, tenant not showing up, etc.”

This makes the students once more aware of the fact that the university does not have anything to do with the platform.

Responsibility students

• Landlord: To sublet an apartment, students need permission from their landlord. Therefore, we created a checkbox on the platform under the “submit your room”-page, where students mandatory have to thick: “I have permission from my landlord”.

We are not able to check if they really have permission from their landlords in the end, but at least we make the students aware of the fact that they need to ask this permission. It is also in their own interest.

• Landlord contract: in case of a sublet agreement, the contract between the landlord and the main tenant remains. The main tenant remains responsible for the rented apartment.

• Sublet contract: the main tenant and the subtenant should sign a contract between each other to agree on the terms that they discussed. We provide a sample contract on our website: www.HousingAnywhere.com → Country Information. The basis for this contract is a sublet
Legal issues for HousingAnywhere.com

contract that was provided by the University of Cologne (Germany) and Copenhagen Business School (Denmark). Law students from the Netherlands adapted this sublet contract for us to make it applicable in every country. In many countries a notification between the landlord and the tenants is also sufficient to make a transaction legal, even in case of a verbal (non written) lease contract.

Safety
On HousingAnywhere.com only people with a valid student email account (like @university.com) can post rooms (a verification email will be send to the advertiser to check if the email address exists). This way, only students of your university and other universities can post rooms. This make sure that we do not have anonymous users, and therefore, no scams. On platforms that are accessible to everyone, like Craigslist.com, scams often happen. In the past 4 years HousingAnywhere.com received 0 complaints about anything whatsoever. This is to thank to the student-to-student concept: students are more fair to each other, and students simply know that in case they cheat on the system, they are easily traceable to their real names, using their student email account.
Subletting legal issues

By Joost Mulder, Advocaat (attorney/lawyer) at Schaap & Partners in Rotterdam, the Netherlands

Terms:

- **Subletting**: the tenant is renting out a room that s/he rents from a landlord
- **Landlord**: the person who owns the accommodation
- **Tenant**: the person who rents the accommodation from the landlord
- **Accommodation**: the property that is rented from the landlord

**The Netherlands**

In the Netherlands the law allows subletting of an accommodation, but usually subletting is prohibited in the lease contract with the landlord.

However, the tenant can still sublet the accommodation if the tenant discusses the situation with the landlord, and if the landlord then gives permission for subletting.

**In sum: permission from landlord should be asked, and then subletting is allowed**

**France**

In the law in France it is allowed to sublet the accommodation. The tenant is not allowed to sublet the apartment if the lease contract states that subletting is not allowed (article 1717 Code Civil). If the tenant discusses the case with the landlord and the landlord gives permission, then subletting is allowed.

**In sum: permission from landlord should be asked, and then subletting is allowed.**

**Italy**

In the law in Italy it is allowed to sublet an apartment.

In case the tenant wants to sublet the total accommodation, permission is required from the landlord (article 2 subs. 1 L. 392/1978). If the tenant only wants to rent out a part of the accommodation (for example, only 1 room), then the tenant only needs to give a written notification, informing about the name of the subtenant and the period of the subtenant’s lease contract. However, in the case the lease contract between the landlord and the tenant says that subletting is not allowed, then it is not allowed, unless permission is given by the landlord (article 2 subs. 2 L. 392/1978).

There is no Italian law that obligates Universities to guarantee the legality of the housing offers.

No written contract

In Italy it happens that landlords do not make contracts. By law it is enforced that contracts should be made on paper (article 1 sub. 4 L. 392/1978), but a verbal contract is valid as well (article 13, sub. 5 L. 431/1998). In this case subletting is allowed if the landlords give permission.

**In sum: permission from the landlord should be asked only when the whole accommodation is going to be rented out. If only a part of the accommodation will be sublet, only a notification to the landlord is required. In case there is no lease contract between landlord and tenant, the permission from the landlord is needed to sublet the accommodation.**
Background information:

HousingAnywhere.com is a start-up founded in Rotterdam in 2009, and has a goal to help solving the housing problems for International students. Universities that decide to join HousingAnywhere.com, offer the possibility to outgoing exchange students to post an advertisement on the platform: as a consequence, the supply of rooms in the city will increase, outgoing exchange students can find a short term solution offering the room to incoming exchange students and, in the same way, the incoming exchange students can use the service to find a room.

The platform guarantees transparency since the access to the platform is limited to the students only through the use of their student e-mail address: advertisements on the platform are then authorized and detectable. More, the website is dedicated to this particular focus and it is preferred over the “traditional” communication channels (forum, Facebook pages, walls) that often includes scams and advertisement of non-relevant issues (parties, tours, pictures, etc.). Furthermore, on request of the university a monthly database output can be made with the rooms offered in the city.

Disclaimer

On www.housinganywhere.com you can find a “disclaimer”. Students that post a room, or reject to a room, need to accept this disclaimer. The disclaimer is revised by the Legal Department of Queens University in Canada.

The disclaimer says among others: “HousingAnywhere.com and its partner institutions only act as a medium to facilitate exchanges between you and a third party. Hence, HousingAnywhere.com and its partner institutions can never be held liable for any disputes arising from these transactions, nor for the correctness of information which is provided by others. Any such disputes should be solved by the users themselves. HousingAnywhere and its partner institutions do not accept any responsibility for any type of direct or indirect damage caused by the use of its website and the information contained in it or by the use of websites connected or associated with HousingAnywhere and its partner institutions” (Disclaimer, HousingAnywhere.com website).

Furthermore, the platform includes a sample lease contract that can be used among users. This fact will discourage illegal practices (black market) and protect all the parties, included the incoming exchange student, that will utilize a safe service.