

The Disruptive Force of the Sharing Economy

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INTRODUCTION

The explosive growth of the “sharing economy” has sparked much regulatory and economic debate in recent years. In the sharing economy, companies such as Uber, Airbnb, Feastly, and Taskrabbit allow users to connect with peers to rent under-utilized assets or services. These companies and others like them are challenging the capitalist conception of ownership and demonstrating that “sharing” can be a “powerful force of market participation”.¹ The sharing economy has received mixed reactions from academics, consumers, and established industries. While some expound the virtues of the sharing economy for the movement from capitalism to communal sharing, others criticize platform businesses for evading law and regulations.² Within the literature, the sharing economy is described in two widely incongruent ways. The first description is of the sharing economy as a cooperative vision of small-scale personal exchanges, emphasizing collaboration and openness. This romantic view emphasizes the potential of the sharing economy to subvert industries ruled by monopolies.³ The second description focuses on the sharing economy as a disruptive and exploitive global force led by corporate giants that are challenging laws, competing in search of scale, and, in the case of Uber, using technology to change the nature of employment.⁴

Within both of these descriptions of the sharing economy, the common assumption is that the sharing economy is founded on two principles: (i) there are goods and services that are under-utilized and (ii) consumers will share these

¹ Rashmi Dyal-Chand, “Regulating Sharing: The Sharing Economy as an Alternative Capitalist System” (2015) 90:2 Tul L Rev 241 at 243.

² Orly Lobel, “The Law of the Platform” (2016) 101:1 Min L Rev 87 at 91 [Lobel, “Law”].

³ Orly Lobel, “The Gig Economy and the Future of Employment” (2017) 51:1 USF L Rev 51 at 52.

⁴ Tom Slee, *What’s Yours is Mine: Against the Sharing Economy* (Toronto: OR Books, 2016) at 12.

assets if the transaction cost is low.⁵ The sharing economy ushers in a new business model, based on network-enabled sharing that promotes access over ownership or employment.⁶ Academics have not reached consensus on the precise definition of the sharing economy; some call it “the gig economy,” “the platform economy,” “crowd-based capitalism,” “collaborative consumption,” the “peer economy,” or “the mesh.”⁷ Other academics are wary of the use of the word “sharing,” since activities in the sharing economy are an economic exchange not unlike commercial relationships.⁸ Given that the sharing economy is anchored firmly in free market principles, financial gain and transactions motivated by self-interest, “sharing” may be a misnomer.⁹ Definitional ambiguity demonstrates the paradox of the sharing economy, perceived as both an alternative to the capitalist system and an embodiment of it.

Regardless of the term used to define this rapidly evolving area, market actors in the sharing economy are radically transforming the international economy. Scholars have identified distinct characteristics that define the emerging sharing economy. Arun Sundararajan, an expert on digital goods and network effects, provides five key features of the sharing economy.¹⁰ First, the sharing economy is market-based and allows goods and services to be exchanged, resulting in higher economic activity. Second, the sharing economy allows assets and skills to be used at a higher capacity. Third, assets and services come from crowds of individuals rather than corporations. Fourth, sharing between peers blurs the line between the personal and professional. Fifth, the sharing economy transcends traditional dichotomies between work and leisure, independent and dependent employment, and public and private spheres. As these characteristics suggest, the sharing economy is challenging and disrupting conventional industries in every realm and regulators are faced with uncertainty on how to deal with sharing economy businesses in contrast to their commercial analogues. The story of regulatory uncertainty is not new,

⁵ Alexander B Traum, “Sharing Risk in the Sharing Economy: Insurance Regulation in the Age of Uber” (2016) 14:3 *Cardozo Public L, Policy & Ethics J* 511 at 515.

⁶ Lisa Gansky, *The Mesh: Why the Future of Business is Sharing* (New York: Penguin, 2010) at 5.

⁷ Arun Sundararajan, *The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism* (Cambridge, Mass: MIT Press, 2016) at 27–28.

⁸ See Benjamin G Edelman & Damien Geradin, “Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber” (2016) 19:2 *Stan Tech LR* 293 at 295.

⁹ Erez Aloni, “Pluralizing the Sharing Economy” (2016) 91:4 *Wash L Rev* 1397 at 1407.

¹⁰ Sundararajan, *supra* note 7 at 27.

regulators have always had to adapt and develop new laws in the face of emerging economic forces.¹¹ But, the rate at which the sharing economy is growing and changing has proven to be a regulatory challenge.

When looking at sharing businesses and the academic literature on the market effects of the sharing economy, an evolutionary pattern appears. The purpose of this article is to provide an overview of the sharing economy as a whole and demonstrate the disruptive model of specific sharing economy businesses. First, we will demonstrate how a sharing economy business has a disruptive effect. Second, we will show the initial acceptance of a sharing economy business accompanied by regulatory inertia. Third, we will demonstrate the backlash towards the sharing economy from consumers, governmental bodies, and established industries. Fourth, we will show how resolutions that seek to balance regulation with innovation are developing for disruptive sharing economy businesses. We will use filesharing as an early example that demonstrates the evolutionary framework of a sharing economy business. Uber, a new and controversial ride-sharing service, will then be explored as an example of our evolutionary framework. To conclude, we will examine Uber's recent emergence in Canada.

I. EVOLUTION

A. THE RISE OF THE SHARING ECONOMY

To recognize the disruptive effect and evolutionary story of the sharing economy, it is important to understand the forces influencing its growth. Despite popular rhetoric intimating that the sharing economy is revolutionary in nature, the practice of sharing under-utilized assets is far from novel. Sharing markets have been used for ages, through consignment stores, farmers markets, and food co-ops.¹² But, what makes today's sharing economy revolutionary is the harnessing of technology to digitally reorganize sharing practices on a large scale and in monetizable ways. Botsman and Rogers theorize that the evolution of the social web has gone through four phases. First it enabled people to share code (Linux), then lives (Facebook) and then content (Wikipedia, YouTube).¹³

¹¹ Cf. Melanie DeFiore, "Where Techs Rush In, Courts Should Fear to Tread: How Courts Should Respond to the Changing Economics of Today Notes" (2016) 38:2 Cardozo L Rev 761 at 765.

¹² Dyal-Chand, *supra* note 1 at 254.

¹³ Danielle Sacks, "The Sharing Economy" (18 April 2011), *Fast Company* (blog), online: <fastcompany.com/1747551/sharing-economy>.

The fourth phase, sharing assets offline, is explosive in growth. Price Waterhouse Coopers projects that by 2025 the sharing economy will generate revenue of approximately \$335 billion.¹⁴

1. Economic forces

Many of the firms in the sharing economy were formed shortly after the financial crisis of 2008.¹⁵ In the aftermath of the recession people were left with an accumulation of goods and a desire to make money.¹⁶ During this period, people began to look for temporary work and innovative ways to turn underutilized goods into money generating assets. As opportunities in the sharing economy arose, a shift occurred from ownership as the predominate model of using goods to temporary usage.¹⁷ Experience and access became more attractive than ownership and accumulation because the sharing economy provided a means for consumers to access goods without needing to own them.¹⁸ As Belk states, there was a movement from a “you are what you can own” mindset toward a “you are what you can access” mindset.¹⁹ The possibility of instant access gave consumers the benefits of goods and services with few of the disadvantages of cleaning, repairing, or maintaining.

In 2008 Brian Chesky founded Airbnb, an idea that arose after renting out his house as a bed and breakfast for a design conference.²⁰ Airbnb, a platform linking hosts with guests, arose as a response to the highly regulated hotel industry. Airbnb began as a grassroots response to deficiencies in corporate alternatives and an answer to the consumer desire for access in a manner not offered through traditional industries.²¹ By 2013, Airbnb had grown to a global platform with thousands of hosts renting their homes to millions of guests.²²

¹⁴ Price Waterhouse Coopers, “The Sharing Economy: How Will It Disrupt Your Business?” (August 2014), PwC UK (blog), online: < pwc.blogs.com/files/sharing-economy-final_0814.pptx >.

¹⁵ Abbey Stemler, “Betwixt and Between: Regulating the Sharing Economy” (2016) 43:1 Fordham Urb LJ 31 at 39.

¹⁶ Alex Stephany, *The Business of Sharing* (London: Palgrave MacMillan UK, 2015) at 27–28.

¹⁷ Thomas Puschmann & Rainer Alt, “Sharing Economy” (2016) 58:1 Business & Information Systems Engineering 93 at 93.

¹⁸ Jenny Kassin & Janelle Orsi, “The LEGAL Landscape of the Sharing Economy” (2012) 27:1 J Envtl L & Litig 1 at 4.

¹⁹ Russell Belk, “You are what you can access: Sharing and collaborative consumption online” (2014) 67:8 J Business Research 1595.

²⁰ Sundararajan, *supra* note 7 at 7.

²¹ Molly Cohen & Arun Sundararajan, “Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy” (2015) 82:1 U Chicago L Rev 116 at 118.

²² Sundararajan, *supra* note 7 at 7–8.

After Airbnb, a dizzying array of sharing economy businesses arose, each consisting of a platform acting as a digital conduit that facilitates the interaction between buyers and sellers. The platform decentralizes transactions and eliminates third party corporate giants. For example, Uber provides access to a driver and a car, Wag finds a willing individual to walk your dog, and Parkatmyhouse lets users rent out private parking spots to those looking to avoid parking fees. According to Sofia Ranchordás, a researcher who focuses on the sharing economy, “these are exactly the types of innovation needed in a time of economic crisis and enhanced individualism”.²³ The sharing economy tilted the familiar capitalist market model, by changing the conception that entrepreneurs need to accumulate privately owned assets to embody capitalist success.²⁴ This market change was made possible by the second factor shaping the sharing economy, technology.

2. *Technology*

The most important catalyst for the sharing economy was technological advancement. Leading intellectual Yochai Benkler argues that in the past decade and a half there has been a sweeping change in information production and technology, which has enabled “a radical transformation of how we make the information environment we occupy as autonomous individuals, citizens, and members of cultural and social groups”.²⁵ Prior to Airbnb and other similar businesses, technological developments paved the way for the sharing economy by allowing for multi-sided connectivity in the digital realm.²⁶ As technological conditions changed and the open source movement grew, the role of sharing was transformed and owners of goods could choose to engage with each other through sharing rather than market or state-based relationships.²⁷ Companies enabling digital connectivity started with Napster in 1999, Wikipedia in 2001, and Facebook in 2004.²⁸ Rapid technological innovations allowed for the platform (such as Airbnb or Uber) to act as the connector between peers, resulting in a three-sided transaction between the consumer, the provider, and the platform. The low-cost of mobile phones, open data, GPS, and social media

²³ Sofia Ranchordás, “Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy” (2015) 16:1 Minne J of L Sci & Tech 413 at 417[Ranchordás, “Sharing”].

²⁴ Dyal-Chand, *supra* note 1 at 246.

²⁵ Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven, CT: Yale University Press, 2006) at 1.

²⁶ Lobel, “Law”, *supra* note 2 at 94-95.

²⁷ Benkler, *supra* note 25 at 120.

²⁸ *Ibid* at 94.

have made it possible for the platform to connect those with excess goods or capacity they want to monetize to consumers who want to purchase those assets.²⁹ The goods or services exchanged through sharing economy platforms are not necessarily high-tech, but the manner of exchange is technology driven. In this technological environment, sharing has arisen as a better way of meeting consumer needs than states, markets, or regulated industries.

3. *Trust*

The same technological developments that facilitated the rise of the sharing economy also enabled the ability to establish trust through the medium of a digital platform. A fundamental economic problem is achieving cooperation and trust between individuals with asymmetric knowledge.³⁰ In the impersonal transactions in the sharing economy, trust is such an essential element that it has been referred to as its currency.³¹ As Ranchordás suggests, one decade ago activities in the sharing economy, such as paying for a ride in an unlicensed stranger's car, would have been unthinkable.³² The rise of the sharing economy can be attributed to dramatic improvements in the ability to get people to trust each other through the use of different systems generating reliable digital cues that together form the "digital trust infrastructure,"³³ or what others call modern trust.³⁴ As Airbnb CEO Brian Chesky states, "access is built on trust, and trust is built on transparency. When you remove anonymity, it brings out the best in people... We believe anonymity has no place in the future of Airbnb or the sharing economy."³⁵

Sundararajan proposes that trust between peers in the sharing economy comes from five cues; (1) prior interactions, (2) learning from the experience of others through reviews, (3) brand certification, (4) social capital and (5) validation from external institutions.³⁶ Modern trust in the sharing economy is

²⁹ Stemler, *supra* note 15 at 38.

³⁰ Adam Thierer et al, "How the Internet, the Sharing Economy, and Reputational Feedback Mechanisms Solve the Lemons Problem" (2016) 70:3 U Miami L Rev 830 at 841.

³¹ Rachel Botsman & Roo Rogers, *What's Mine is Yours: The Rise of Collaborative Consumption* (New York: HarperCollins, 2010) at 219.

³² *Supra* note 23 at 416.

³³ Sundararajan, *supra* note 7 at 60.

³⁴ See Stemler, *supra* note 15 at 35.

³⁵ Lobel, "Law", *supra* note 2 at 164, citing Mike McPhate, "Discrimination by Airbnb Hosts is Widespread, Report Says", *The New York Times* (11 December 2015), online: <nytimes.com/2015/12/12/business/discrimination-by-airbnb-hosts-is-widespread-report-says.html>.

³⁶ Sundararajan, *supra* note 7 at 61.

heavily reliant on a system of ratings and reviews that was first used by eBay.³⁷ eBay created a centralized feedback loop that allows buyers and sellers to review each other. This feedback loop was adopted by sharing economy businesses to serve as a trust proxy.³⁸ For example, Uber keeps a bilateral record of every transaction and drivers and passengers are able to rate each other and view ratings before accepting a ride.³⁹ If a driver's rating is too low, Uber can bar the driver from using the platform.⁴⁰ Airbnb has a similar rating and review system between hosts and guests that both can access before agreeing to a transaction. Once there is a critical mass of participants, a system of online trust may be more effective than traditional regulation in ensuring consumer safety.⁴¹ As a result of transparent interactions and remedying asymmetric information problems, users are protected against harmful and dissatisfying transactions.⁴² The platform can collect information from every single transaction rather than using random inspection mechanisms, which enables mass monitoring, transparency, and secures a greater voice for consumers in commercial interactions.⁴³ Online trust is also facilitated through social media sites such as Facebook, which have transformed our ability to trust people by easily accessing information about a potential counter-party across the world. Platforms in the sharing economy increase trust by asking users to log-in using Facebook and other social media accounts.⁴⁴ These reputation mechanisms provide transparency in the interaction and help users make good choices and protect themselves from harmful transactions.

B. DISRUPTION

Innovative sharing economy businesses are characterized by their ability to disrupt traditional industry counterparts. The sharing economy has been branded by many as a disruptive force or disruptive innovation.⁴⁵ According to Clayton Christensen, Michael Raynor and Rory McDonald, who introduced the theory of disruptive innovation to the business world:

³⁷ Stemler, *supra* note 15 at 37.

³⁸ *Ibid* at 38.

³⁹ Lobel, "Law", *supra* note 2 at 152.

⁴⁰ *Ibid*.

⁴¹ *Ibid* at 155.

⁴² Abbey Stemler, "Feedback Loop Failure: Implications for the Self-Regulation of the Sharing Economy" (2017) 18:2 Minn J L Sci & Tech 673 at 683.

⁴³ Edelman & Geradin, *supra* note 8 at 300.

⁴⁴ Stephany, *supra* note 16 at 24.

⁴⁵ See Abbey Stemler, "Regulation 2.0: The Marriage of New Governance and Lex Informatica" (2017) 19:1 Vanderbilt J Entertainment & Technology L 87 at 113.

“Disruption” describes a process whereby a smaller company with fewer resources is able to successfully challenge established incumbent businesses. Specifically, as incumbents focus on improving their products and services for their most demanding (and usually most profitable) customers, they exceed the needs of some segments and ignore the needs of others. Entrants that prove disruptive begin by successfully targeting those overlooked segments, gaining a foothold by delivering more-suitable functionality—frequently at a lower price. Incumbents, chasing higher profitability in more-demanding segments, tend not to respond vigorously. Entrants then move upmarket, delivering the performance that incumbents’ mainstream customers require, while preserving the advantages that drove their early success.⁴⁶

Throughout history, industries have been continuously shaped by disruptive innovation as competitive new technologies emerge and challenge existing paradigms.⁴⁷ But, disruptive innovation does “not apply to every company in a shifting market”.⁴⁸ Disruptive theory differentiates between disruptive innovation and sustaining innovations. Sustaining innovations make products better for the consumer by incremental or major breakthroughs and are often led by established firms. Disruptive innovations start on the fringe, slowly eroding the market share of traditional industries.⁴⁹ They either do not fit with existing regulatory frameworks or do not comply with regulatory protections. Innovators argue that the regulatory framework should not apply because of the revolutionary nature of the disruptive technology or the protections offered through the disruptive firm.⁵⁰

In analyzing the sharing economy, Christensen, Raynor and McDonald initially cautioned against labelling businesses in the sharing economy as fitting into his theory of disruptive innovation. He argued that Uber does not align with the theory of disruptive innovation because disrupters generally start by appealing to underserved consumers and then move to the mainstream market.⁵¹ Uber started in the opposite way, by building a position in the mainstream market and then moving into overlooked segments. But, Christensen has since reassessed his position. He stated that despite not emerging at the low end of the market where disruption usually begins, Uber and other sharing economy businesses can still be categorized as disruptive

⁴⁶ Clayton M Christensen, Michael E Raynor & Rory McDonald, “What is Disruptive Innovation?” (2015) 93:12 Harvard Business Rev 44.

⁴⁷ Wulf A Kaal and Erik PM Vermeulen, “How to Regulate Disruptive Innovation - From Facts to Data” (2016) 57:2 Jurimetrics 169 at 170.

⁴⁸ Christensen, Raynor & Macdonald, *supra* note 46.

⁴⁹ *Ibid.*

⁵⁰ Kaal & Vermeulen, *supra* note 47 at 183.

⁵¹ Christensen, Raynor & McDonald, *supra* note 46.

because of their ability to transform modes of dissemination and production.⁵² Stephany suggests that entrepreneurs within the sharing economy have the widespread belief that if they are not disrupting and irritating existing industries, they are not doing something with the potential to be huge.⁵³ True to Christensen's theory, sharing economy businesses have transformed products and services in their market segment by making them more accessible and affordable. They disrupt the economy through differing modes of communication and dissemination of goods facilitated through platform technology. Rather than merely competing with existing industries, sharing economy businesses change the nature of the transaction through their use of platform technology, a radically different method than that of traditional industries.⁵⁴

Barry and Pollman describe the disruption of sharing economy businesses as "regulatory entrepreneurship."⁵⁵ The business model of regulatory entrepreneurs depends on the "resolution of legal issues concerning a core aspect of their business."⁵⁶ They operate where there is a legal gray area; in other words, an "uncertainty regarding how the law will apply to a main part of its business operations."⁵⁷ Changing the law and regulations is thus part of the business plan of regulatory entrepreneurs. For sharing economy businesses, regulations are outdated and indicative of a world not ready for their innovative technologies. They call for new regulations, or a lack of regulations, that will allow them to outcompete established firms. Successful sharing economy businesses ignore regulations that hamper their business models and see them as no longer necessary in our technological age. As platforms reshape markets, regulations and protections fade and traditional counterparts are forced to adapt or die.⁵⁸

⁵² Susan Adams, "Clayton Christensen On What He Got Wrong About Disruptive Innovation" (3 October 2016), *Forbes* (blog), online: <forbes.com/sites/forbestreptalks/2016/10/03/clayton-christensen-on-what-he-got-wrong-about-disruptive-innovation/2/#54bc4cb95cdf>.

⁵³ Stephany, *supra* note 16 at 154.

⁵⁴ Lobel, "Law", *supra* note 2 at 113.

⁵⁵ Jordan M Barry & Elizabeth Pollman, "Regulatory Entrepreneurship" (2017) 90:3 S Cal L Rev 383 at 383.

⁵⁶ *Ibid* at 385.

⁵⁷ *Ibid* at 392.

⁵⁸ Benjamin Edelman & Damien Geradin, "Spontaneous Deregulation" (2016) 94:4 Harv Bus Rev 1 at 4.

C. ACCEPTANCE AND REGULATORY INERTIA

1. Acceptance

Innovators and regulatory entrepreneurs are averse to regulation. As Ranchordás asks, “who needs the state and its regulations anyway in the age of crowdfunding, democratization of information, finance, and everything else you might be able to trade, imitate, or share?”⁵⁹ In the process of disruption, sharing economy businesses generally have adopted the “act-now-and-ask-for-forgiveness-later” strategy in order to evade the regulations imposed on their industry counterparts.⁶⁰ They flout laws and take advantage of legal gray areas, attempting to reach scale before they can be banned. In the typical emergence of a sharing economy business, there is initially little pushback from governments and consumers due to the benefits and efficiencies offered by sharing economy businesses. The sharing economy has been welcomed by consumers for its greater range of products and services, attention to the goal of sustainability, focus on the social goal of sharing, and as an alternative to traditional industries.⁶¹ The sharing economy resulted in increased job creation and economic opportunities from participants utilizing already owned goods. Further, jobs are created from the platforms of sharing economy businesses themselves.⁶² Given the low barriers to entry, any individual with the appropriate technology and goods can create their own microbusiness without the assistance of venture capitalists.⁶³ This may be salient for lower income populations and those that need flexibility rather than shift-work. For example, an individual with an unused room and access to technology could easily earn extra income by using the Airbnb platform.

Though less of a priority for consumers than increased convenience, putting excess goods to use is less resource intensive.⁶⁴ The net environmental effects of the sharing economy are yet to be determined, but proponents argue that by focusing on use and access instead of ownership, the sharing economy

⁵⁹ Sofia Ranchordás, “Innovation Experimentalism in the Age of the Sharing Economy” (2015) 19:4 *Lewis & Clark L Rev* 871 at 893 [Ranchordás, “Experimentalism”].

⁶⁰ Bryant Cannon & Hanna Chung, “A Framework for Designing Co-regulation Models Well-Adapted to Technology-Facilitated Sharing Economies” (2015) 31 *Santa Clara Comp & High Tech LJ* 23 at 34.

⁶¹ Sundararajan, *supra* note 7 at 34.

⁶² Stemler, *supra* note 15 at 40.

⁶³ *Ibid* at 41.

⁶⁴ Jeremiah Owyang, “People Are Sharing in the Collaborate Economy for Convenience and Price” (24 March 2014), *Web Strategist* (blog), online: <web-strategist.com/blog/2014/03/24/>.

increases efficiency, reduces wastes, and counteracts the surplus created by over-production and consumption.⁶⁵ The use of ride-sharing apps such as Uber has been cited as an alternative to car ownership, leading to the environmentally friendly outcome of reducing the number of cars on the road and reducing CO₂ emissions.⁶⁶ The sharing economy also provides consumers with access to a greater variety of goods and unique experiences. No longer are tourists limited to hotels when travelling, but can now use Airbnb, for instance, to find a wide range of properties in a variety of locations.

Most importantly, the perceived moral illegitimacy of traditional industries, due to regulation and high prices, ultimately fueled consumer acceptance of the sharing economy. The sharing economy gives consumers an alternative to stagnant industries, such as hotels and taxicabs, that are increasingly expensive and inefficient because of regulatory protections and lack of competition.⁶⁷ A powerful factor influencing whether citizens will abide by laws and regulations is whether they perceive the law as legitimate and aligned with social values.⁶⁸ Legitimacy refers to whether a social practice, or in the case of the sharing economy a regulatory scheme, aligns with contextual values, norms, rules, and laws.⁶⁹ In the face of highly regulated structures, consumers are more likely to question the legitimacy of traditional industries and opt for alternative services. Distrust of traditional industries led consumers to opt for sharing economy businesses, with nearly half of the population of the US reporting they are considering trying new brands.⁷⁰ Whereas traditional industries are seen as driving environmental degradation, climate change, and inequality, the sharing economy is seen by consumers as promoting collaboration and decentralizing power structures. The sharing economy is

⁶⁵ Botsman & Rogers, *supra* note 31 at 127.

⁶⁶ Lobel, "Law", *supra* note 2 at 113.

⁶⁷ Christopher Koopman, Matthew Mitchell & Adam Thierer, "The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change" (2015) 8:2 J Business, Entrepreneurship & L 529 at 531-532.

⁶⁸ Tom R Tyler & John M Darley, "Building a Law-Abiding Society: Taking Public Views About Morality and the Legitimacy of Legal Authorities into Account When Formulating Substantive Law" (2000) 28:3 Hofstra L Rev 707 at 714.

⁶⁹ Attila Marton, Ioanna Constantiou & Georgios Lagoudakos "Openness and Legitimacy Building in the Sharing Economy: An Exploratory Case Study about Couchsurfing" (Paper delivered at the 50th Hawaii International Conference on Systems Sciences, Waikoloa Village, US, January 2017).

⁷⁰ Gansky, *supra* note 6 at 65.

offered as an alternative that positively affects anti-competitive forces by rejecting corporate concentration and combating socially inefficient laws.⁷¹

Crucial to the acceptance of the sharing has been the promotion of the sharing economy ethos by sharing organizations. Peers, an advocacy organization funded by businesses such as Uber and Airbnb, was formed to tout the benefits of the sharing economy. Ouisharefest, a festival in Europe, gathers entrepreneurs and leaders across the globe to promote collaborative culture. Through such organizations, the sharing economy is presented as empowering individuals, creating economic value, supporting the environment, and positively affecting employment. As Stephany states, “there is one word that gets used time and again in the rhetoric of the sharing economy: empowerment.”⁷² The sharing economy is promoted as ushering in a new economy focused on people and the environment, driven by values of liberty, democracy, and social justice.⁷³ Further, sharing economy businesses have actively endorsed themselves as operating on a moral high ground when compared to industry counterparts. Airbnb’s CEO compared his firm to Gandhi’s passive resistance movement and a tweet compared Uber to Rosa Parks.⁷⁴ Sharing economy businesses pride themselves on changing the world and have been known to foster libertarian, free-market ideologies that consumers view optimistically.⁷⁵ Based on these values, sharing economy businesses establish a reputation that signals trustworthiness and encourages consumers to engage in transactions that may have previously been considered too risky due to lack of conventional regulation.⁷⁶ In comparison to the perceived untrustworthiness and stagnancy of existing industries, sharing economy businesses are new, trendy and embraced by consumers for their ethos of innovation and empowerment. As Gansky states, people who support sharing economy businesses feel that they are “smarter and lighter, at the forefront of a new wave. They feel good.”⁷⁷

⁷¹ Lobel, “Law”, *supra* note 2 at 116.

⁷² *Supra* note 16 at 42.

⁷³ Chris J Martin, “The Sharing Economy: A pathway to sustainability or a nightmarish form of neoliberal capitalism?” (2016) 121 *Ecological Economics* 149 at 154.

⁷⁴ Frank Pasquale & Siva Vaidhyanathan, “Uber and the lawlessness of ‘sharing economy’ corporates”, *The Guardian* (28 July 2015), online: <theguardian.com/technology/2015/jul/28/uber-lawlessness-sharing-economy-corporates-airbnb-google>.

⁷⁵ Barry & Pollman, *supra* note 55 at 427–428.

⁷⁶ Thierer et al, *supra* note 30 at 845.

⁷⁷ *Supra* note 6 at 47.

2. *Government and Regulatory Inertia*

Governments are wary to step in and regulate sharing economy activity for three reasons. First, consumers have latched onto the benefits and ethos of the sharing economy, resulting in increased demand and market participation. Second, due to their disruptive nature, companies in the sharing economy operate in a legal grey area that is difficult to regulate. Third, the pace at which the sharing economy is growing pits innovation against regulation, with regulation lagging behind.

i. *Consumer Popularity*

Governments are often wary to act when an activity is popular with consumers and the risks are still unknown. As Stephany states, “though it is often in the interest of the powerful to preserve the status quo; it has, after all, served them well, innovation cannot be nipped in the bud...these days it is harder for the wealthy and the politically powerful to run roughshod over innovation and deny people what they want.”⁷⁸ Despite concerns of illegality, the insatiable market for sharing economy activities makes it difficult for the government to effectuate bans or limit access.⁷⁹ Further, banning or limiting access to highly desired services could be a politically unpopular move. Banning sharing economy businesses could signal to the public that a politician is old-fashioned, adverse to technological innovation, and catering to incumbent firms.

ii. *Legal Grey Areas*

The primary factor causing regulatory inertia is the legal grey area in which sharing economy transactions exist. Sharing economy businesses are not technically illegal, but often violate local ordinances. Additionally, their violation of ordinance is done by entering the market prior to consultation, prompting regulatory confusion. When looking at sharing economy businesses, it is unclear how they fit into regulations as compared to their traditional counterparts. Is Airbnb a hotel or a technology-based service that connects hosts with guests? Is Uber a taxi-cab service or a business model for facilitating contact between a driver and a passenger? The overarching question is: should

⁷⁸ *Ibid* at 156.

⁷⁹ Stephen R Miller, “First Principles for Regulating the Sharing Economy” (2016) 53:1 Harv J on Legis 147 at 156.

sharing economy businesses remain unregulated, conform to the regulations of equivalent commercial practices, or have less stringent regulations?⁸⁰

The scholarly consensus is that our laws were not designed to regulate the activities within the sharing economy.⁸¹ The sharing economy lacks the clear relational boundaries of the old economy, that of employee and employer, producer and consumer, or landlord and tenant. The blurring of these boundaries, especially between private and commercial activity, makes it difficult to determine which labour, property, and other regulations from traditional industries apply to the sharing economy.⁸² Further, the regulations placed on traditional industries are argued to be entirely ill-suited to fit the innovative and market changing activities of the sharing economy.⁸³ Some maintain that the sharing economy is a different form of market than the capitalist norm, and rather than breaking regulations the sharing economy is creating a new form of market, driven by technology.⁸⁴ In the traditional capitalist system, firms exploit privately held information to develop new products and services.⁸⁵ Sharing economy practices are so radically different from the capitalist model that they cannot be understood through the traditional legal lens.⁸⁶ Within these innovative practices, regulators have little information on which to base their actions. They have the challenge of balancing the risks and benefits of sharing economy businesses without a full appreciation of the practices in question.

Sharing economy businesses continue to define themselves negatively, emphasizing what they are not, in order to challenge the notion that current regulations should apply to them. Their business model depends upon exasperating the legal grey areas in the law. As Lobel states, “definitional defiance is central to the business model of the platform. At the same time, law is all about definitions.”⁸⁷ Sharing economy businesses continuously assert that they create a model that stages “people as businesses” by connecting peers to peers, thus blurring the line between commercial and personal transactions.⁸⁸

⁸⁰ Ranchordás, “Sharing”, *supra* note 23 at 423.

⁸¹ See Yanelys Crespo, “Uber v. Regulation: Ride-Sharing Creates a Legal Gray Area” (2016) 25:1 U Miami Bus L Rev 79 at 83.

⁸² Kassan & Orsi, *supra* note 18 at 14.

⁸³ Crespo, *supra* note 81 at 83.

⁸⁴ Dyal-Chand, *supra* note 1 at 245.

⁸⁵ Stemler, *supra* note 45 at 112.

⁸⁶ Kassan & Orsi, *supra* note 18 at 13.

⁸⁷ Lobel, “Law”, *supra* note 2 at 156.

⁸⁸ Kellen Zale, “Sharing Property” (2016) 87:2 U Colo L Rev 501 at 508.

They emphasize that they do not own the physical assets used for the services they facilitate, such as cars or hotels, and they are carefully consistent in their use of terminology. When sharing economy businesses do define themselves, they claim to be neutral “platforms” or “technologies” that change the way that two strangers interact by adding information, security, and by facilitating the monetary transaction.⁸⁹ This definition, or rather lack of definition, allows sharing economy businesses to justify circumventing regulations and makes it difficult to determine whether companies are deliberately violating laws.

3. *Pace of Innovation*

Governments and regulators are also slow to react to the sharing economy because of the speed of its growth. Regulation often cannot keep pace with innovation, but in the face of complex algorithms and big data, the gap between regulation and innovation has grown.⁹⁰ Since sharing practices radically change the way in which individuals transact, regulators and economists are still unaware of the social and economic impact of the sharing economy.⁹¹ Further, when faced with emerging technologies, regulators often do not have enough knowledge about the effects of the innovative services or products.⁹² Regulators do not want to stifle innovation, but at the same time need to protect consumers from the side effects of emerging technologies, a difficult task when there are significant informational gaps.⁹³ Thus, regulatory decisions are frequently postponed counterproductively to gather more information and to maintain flexibility.⁹⁴

Though the sharing economy is a relatively new phenomenon, the volume of transactions, and the exponential growth of business, has proven to be a regulatory challenge. Emerging companies in the sharing economy may have millions or billions of dollars in financing and may have thousands of employees or independent contractors.⁹⁵ While small sharing economy businesses may be easy to regulate out of existence, large businesses with clout

⁸⁹ Deepa Das Acevedo, “Regulating Employment Relationships in the Sharing Economy” (2016) 20:1 *Employee Rts & Employment Pol’y J* 1 at 10.

⁹⁰ Stemler, *supra* note 45 at 90.

⁹¹ Thierer et al, *supra* note 30 at 835.

⁹² Sofia Ranchordás, “Innovation-Friendly Regulation: The Sunset of Regulation, The Sunrise of Innovation” (2015) 55:2 *Jurimetrics JL Science & Technology* 201 at 203.

⁹³ *Ibid* at 204.

⁹⁴ Nathan Cortez, “Regulating Disruptive Innovation” (2014) 29:1 *BTLJ* 175 at 201–202.

⁹⁵ Abraham JB Cable, “Institutionalized Disruption: The Rise of the Reformer Startup” (2015) 12:1 *Hastings Business LJ* 1 at 6.

are often more difficult for regulators to face and will often win when there is resistance to their business models.⁹⁶

D. BACKLASH

Following its initial inertia, regulatory difficulties arising from governments and existing industries led consumers to question the sharing economy's regulatory evasion. As sharing economy businesses expanded, the risks involved came to the forefront, and existing industries became more resentful of increased competition. Though writing before the rise of the modern sharing economy, Benkler suggests that nonmarket production of information and culture led to a battle over the institutional ecology of the digital environment.⁹⁷ The digital environment, which led to the proliferation of the sharing economy, has challenged and pushed a wide range of industries and laws, and how we respond will have "a significant effect on how we come to know what is going on in the world we occupy."⁹⁸

1. Existing Industries

Sharing economy businesses in all industries have faced significant backlash from their traditional counterparts. Clashes between established industries and innovators drive much legislation, policy, and litigation as incumbents fight against the changing relationship between firms and individuals.⁹⁹ When disrupted by start-ups that use new technology to shake industry foundations, existing industries will fight back to preserve the regulatory environment that protects them from competition.¹⁰⁰ Traditional industries make use of the existing regulatory structure to create obstacles for disruptive firms to compete.¹⁰¹ Public interest theory suggests that given the standing relationship between regulators and industries, there may be "capture", a term suggesting that industries will be prioritized over new industry entrants and can leverage their position to drive out competition.¹⁰²

The main concern for established industries is that sharing economy businesses have an advantage through illegal operation.¹⁰³ Industries such as

⁹⁶ Stephany, *supra* note 16 at 171.

⁹⁷ Benkler, *supra* note 25 at 2.

⁹⁸ *Ibid.*

⁹⁹ *Ibid* at 126-127.

¹⁰⁰ Cable, *supra* note 95 at 8.

¹⁰¹ Kaal & Vermeulen, *supra* note 47 at 183.

¹⁰² Cable, *supra* note 95 at 8.

¹⁰³ Miller, *supra* note 79 at 161.

hotels and taxis have argued that sharing economy businesses are disrupting the market and unfairly competing by failing to comply with safety, tax, insurance, and other regulations.¹⁰⁴ Established industries generally comply with regulations, collaborate with governments, and have built themselves through established means. These industries complain that new sharing businesses are evading regulations meant to protect public safety and that their practices are deceptive, unfair, and illegal.¹⁰⁵ Often under the guise of consumer protection, existing industries lobby for licensing requirements and restrictions on quality in order “to create barriers to entry for new firms.”¹⁰⁶ However, fighting against the sharing economy is a battle not likely to be won. As Stephany states, “in the next decade, some huge public companies will experience the corporate equivalent of the Kubler-Ross model of grief... denial, anger, bargaining, depression, and ultimately acceptance.”¹⁰⁷

2. *Government*

Most governments have responded to the sharing economy with similar regulatory, consumer safety, and revenue raising concerns. Governments are concerned that sharing economy businesses are gaining traction through regulatory arbitrage rather than excellence and quality of service. However, the majority of governmental backlash to the sharing economy is fiscal in nature. Industries disrupted by the sharing economy, such as hotels and taxis, are a source of revenue for municipalities. Hotels permit cities to obtain taxes from non-residents at a rate higher than sales tax, but Airbnb evades tax regulations.¹⁰⁸ For example, in New York City, Attorney General Eric Schneiderman claimed Airbnb was violating regulations that prohibited renting an apartment for less than 30 days, stating that “being innovative is not a defence to breaking the law”.¹⁰⁹ Other concerns for governments include zoning and licensing procedures. Regulators fear that sharing economy practices will change the nature of cities through short term rentals and car hires.¹¹⁰ Finally, in the face of changing markets, much of the government

¹⁰⁴ Crespo, *supra* note 81 at 83.

¹⁰⁵ Dyal-Chand, *supra* note 1 at 244.

¹⁰⁶ Stemler, *supra* note 45 at 100.

¹⁰⁷ Stephany, *supra* note 16 at 130.

¹⁰⁸ Miller, *supra* note 79 at 173.

¹⁰⁹ Zale, *supra* note 88 at 508.

¹¹⁰ “All Eyes on the Sharing Economy”, *The Economist* (9 March 2013), online: <wpressutexas.net/cs378h/images/a/a5/All_eyes_on_the_sharing_economy.pdf>.

response is in the form of captured legislation catering to incumbents and attempts to protect outdated regulations.¹¹¹

3. *Consumers and Service Providers*

While many consumers still embrace the sharing economy, others see the risks of practices such as sharing rides, food, and living rooms with strangers.¹¹² Critics argue that sharing economy companies transfer risks to consumers, establish illegal or grey markets, and promote tax avoidance.¹¹³ The commercialization of the sharing economy has transformed the discourse from one of social utopianism to disenchantment. As sharing economy critic Tom Slee states:

[T]he Sharing Economy is extending a harsh and deregulated free market into previously protected areas of our lives. The leading companies are now corporate juggernauts themselves and are taking a more and more intrusive role in the exchanges they support to make their money and to maintain their brand.¹¹⁴

The open criticism of sharing economy businesses for acting illegally in order to grow and control markets weighs into the consumer trust equation. Alongside the growth of the sharing economy the consumer concern over whether businesses who are flouting the law can be trusted has grown. Trust is a fundamental force shaping the sharing economy, as explained above. It greases the wheels of this fast-growing economy, but is also one of the greatest concerns with the use of sharing economy businesses.¹¹⁵ Consumers look for decency in businesses and services they use, a quality that can be discerned through the many decisions a company makes about its values.¹¹⁶ The question of trust is even more vital to the sharing economy, where consumers must trust peers with risk-ridden activities such as house rentals and driving services. The exposition of the illegal nature of sharing economy businesses led to an erosion of consuming trust, a consequent backlash, and a desire for regulation. Consumers want both the efficiencies of the sharing economy coupled with the safety and assurance promised by governmental regulation. As Sundararajan

¹¹¹ Benkler, *supra* note 25 at 21.

¹¹² Ranchordás, "Sharing", *supra* note 23 at 459.

¹¹³ Martin, *supra* note 73 at 155.

¹¹⁴ Slee, *supra* note 4 at 10.

¹¹⁵ Stephen Ufford, "The Future of the Sharing Economy Depends on Trust" (10 February 2015), *Forbes* (blog), online: <forbes.com/sites/theyec/2015/02/10/the-future-of-the-sharing-economy-depends-on-trust/#7dafc60d4717>.

¹¹⁶ Deepa Prahalad, "Why Trust Matters More Than Ever for Brands" (8 December 2011), *Harvard Business Review* (blog), online: <hbr.org/2011/12/why-trust-matters-more-than-ev>.

states, “the combination of government regulatory agencies and the brands that... comply with these regulations and also invest in providing a consistently high quality and safe experience, are the foundation of trust in most Western economies today.”¹¹⁷

While initially applauded for competing with regulated sectors, the façade of the sharing economy began to collapse as consumers realized the wealthy, powerful, “nearly-all-white-and-male” cast of CEOs may not be as trustworthy as first believed. The sharing economy was criticized for “sharewashing,” analogous to the phenomena of “greenwashing,” where companies re-branded their products as green rather than making products better for the environment.¹¹⁸ Similarly, sharing economy businesses label practices as sharing to gain consumer trust despite being involved in monetary exchange and wealth acquisition. A number of consumer concerns arose, such as if whether there are sufficient safety checks on drivers for Uber or Airbnb hosts.¹¹⁹ On the occasion that a sharing economy transaction has run afoul, consumers are quick to respond and urge regulators to protect users. For example, Airbnb faced public uproar when a host had her apartment trashed and valuables stolen after a rental.¹²⁰

Consumers may also wonder if peer review systems are reliable or trustworthy given the illegal nature of the companies in question. Sharing economy businesses rely on peer-review systems as a safety mechanism, but concerns have been raised if this method is open to manipulation.¹²¹ When performing peer reviews, studies show that dissatisfied consumers are more likely to give no rating than a bad rating.¹²² The underreporting of bad experiences and the softening of negative reviews skews results, giving consumers a false sense of safety in their choices. Further, because reputation has become an asset in the sharing economy, there are market incentives to make that asset as valuable as possible. This has resulted in people writing fake reviews or paying for people to write positive reviews.¹²³ Reputation systems are skewed to the positive, with 95% of offerings on Airbnb having ratings of 95%

¹¹⁷ Sundararajan, *supra* note 7 at 145.

¹¹⁸ Anthony Kalamar, “Sharewashing is the New Greenwashing” (13 May 2013), *OpEdNews* (blog), online: <opednews.com/articles/Sharewashing-is-the-New-Gr-by-Anthony-Kalamar-130513-834.html>.

¹¹⁹ Ranchordás, “Sharing”, *supra* note 23 at 460.

¹²⁰ Ganske, *supra* note 6.

¹²¹ Ranchordás, “Sharing”, *supra* note 23 at 461.

¹²² Slee, *supra* note 4 at 103.

¹²³ Stemler, *supra* note 42 at 699.

or higher and less than 1% of rides on Uber, in San Francisco, rated below three out of five stars.¹²⁴ As Stemler states, it is highly unlikely that nearly 100% of interactions in the sharing economy are positive, but people often give skewed reviews because of fear of retaliation and reciprocity bias.¹²⁵

Public debate over the sharing economy contributing to poor working conditions also weighs into the equation of whether such businesses can be trusted by consumers. Providers, such as Uber drivers, argue that they are given insufficient protection since they are not considered employees by platform companies. Sharing economy businesses generally classify service providers that work through their platforms as micro-entrepreneurs or independent contractors. For example, Uber describes its drivers as “partners” not employees. Because of the non-traditional avenues of work in the sharing economy, these “partners” or micro-entrepreneurs have no employee benefits such as a minimum wage, pensions, or unemployment compensation.¹²⁶ Critics argue that the sharing economy model may harm workers in the long run by promoting precarious work and providing insufficient income.¹²⁷ But, proponents of the sharing economy see the future of work as one defined by innovation and flexibility and many workers in the sharing economy enjoy the benefits of being classified as independent contractors.¹²⁸ Further, the literature suggests that sharing economy platforms allow low-income individuals to earn money in innovative ways that they would be otherwise be unable to do.¹²⁹

E. INTEGRATION THROUGH REGULATION

In the face of backlash from consumers, governments, and existing industries, sharing economy businesses assert they should not be subject to regulations and that their technological innovations act as a substitute for traditional regulation.¹³⁰ The debate is between those who side with the sharing economy and are in favour of no regulation, and those who want to see strict regulations. Proponents of the sharing economy argue that current regulations are cumbersome and no longer address the market failures they were designed

¹²⁴ *Ibid* at 675.

¹²⁵ *Ibid* at 675, 689.

¹²⁶ Robert Sprague, “Worker (Mis)Classification in the Sharing Economy: Trying to Fit Square Pegs into Round Holes” (2015) 31:1 ABA J Labor & Employment L 53 at 57.

¹²⁷ DeFiore, *supra* note 11 at 776.

¹²⁸ Sundararajan, *supra* note 7 at 161.

¹²⁹ Ranchordás, “Experimentalism”, *supra* note 59 at 891.

¹³⁰ Kevin Werbach, “Lessons for Policymakers and Regulators on the (Predictable) Future of the Digital Economy” (2017) 5:1 Penn Wharton U Pennsylvania Public Policy Initiative 1 at 3.

to protect against. Because current regulations no longer protect the vulnerable, they argue that their utility has been diminished.¹³¹ The literature argues that, when faced with the innovation of the sharing economy, regulators may stifle it with obsolete regulations because they are unable to react to the changing technological environment.¹³² Law is argued to not be able to keep up with the changing nature of the sharing economy. Further, sharing economy businesses claim that their reputational feedback mechanisms are superior to traditional regulations. On the other side of the debate is the opinion that the sharing economy should be regulated out of existence, but such views are politically unpopular and unlikely to succeed across the industries disrupted by the sharing economy.¹³³ Yet, the predominate view is the emerging consensus that without regulation the sharing economy is susceptible to market failure and various risks, thus a certain amount of regulation is necessary. The powerful backlash and regulatory concern is evidence that the sharing economy that has been embraced by millions has great value and potential. Thus, governments must respond with adapted regulations that allow for the innovation of the sharing economy to continue.¹³⁴ Scholars suggest that innovation friendly law is the best way to approach regulation in the sharing economy.¹³⁵

The industry disruption effectuated by sharing economy businesses has not only changed the landscape for consumers, but has also offered an opportunity for governments to address the role of regulation. In the face of innovation, regulation is the first form of government intervention. Ranchordás states:

[T]he relationship between law and innovation...is usually described as being twofold: law regulates technology by prohibiting or imposing limitations on certain forms of potentially harmful technologies and practices...and also by providing incentives to other forms of technology that might improve.¹³⁶

Governments must determine how closely transactions in the sharing economy should be regulated in contrast to industry counterparts. Though the sharing economy is still in its infancy, the pattern suggests that after backlash from government, consumers, and existing industries, a resolution will be found that integrates sharing economy models into the market. As Lobel suggests, it is common in cycles of financial and technological leaps for markets

¹³¹ Stephany, *supra* note 16 at 172.

¹³² Ranchordás, "Experimentalism", *supra* note 59 at 882-883.

¹³³ Miller, *supra* note 79 at 156.

¹³⁴ Michael Motala, "The Taxi Cab Problem Revisited: Law and Ubernomics in the Sharing Economy" 31:3 BFLR 467 at 468.

¹³⁵ See Ranchordás, "Sharing", *supra* note 23 at 444.

¹³⁶ Ranchordás, "Experimentalism", *supra* note 59 at 890.

to readjust and adopt new forms of regulation.¹³⁷ Similar to the disruption caused by mobile services in the late 2000s and digital content distribution in the 1990s leading to new industries, history suggests that the story of the sharing economy will ultimately end with a regulatory resolution.¹³⁸ The trend is toward a light regulatory touch whereby disruptive sharing economy models find themselves mixed into existing models and embraced by incumbents.¹³⁹

1. Reasons for Regulation

Though innovation and regulation are often argued as being antithetical to each other, a certain amount of state oversight may be necessary and advantageous in the sharing economy. Several types of market failure have been addressed by scholars as a cause for concern in the sharing economy.¹⁴⁰ The largest documented concern is information asymmetry. There are potential asymmetries between platforms, consumers, and providers, but the largest asymmetry tends to be between consumers and providers.¹⁴¹ For example, an Uber passenger may not know the qualifications of the driver and an Airbnb guest may not know about the quality of accommodations.¹⁴² Sharing economy businesses have attempted to rectify these asymmetries through their reputational feedback devices. Sharing economy proponents suggest reputational systems will allow for self-regulation as participants police and protect themselves. However, these systems may be effective in giving consumers more information about the services provided, such as who their driver or host is, but may be ineffective in consumer protection in areas outside the scope of the users' ability to monitor.¹⁴³ Negative externalities, which have been exacerbated with the growth of the sharing economy, are raised as a market failure concern.¹⁴⁴ Third parties complain of losses as parties in the sharing economy interact. For example, Airbnb is changing the character of certain neighbourhoods by making them more commercial rather than residential.¹⁴⁵ Residents have complained of increased traffic, loss of

¹³⁷ Lobel, "Law", *supra* note 2 at 117.

¹³⁸ Werbach, *supra* note 130 at 2.

¹³⁹ Gansky, *supra* note 77.

¹⁴⁰ Cohen & Sundararajan, *supra* note 21 at 120.

¹⁴¹ Edelman & Geradin, *supra* note 8 at 315.

¹⁴² Cohen & Sundararajan, *supra* note 21 at 120.

¹⁴³ *Ibid* at 317.

¹⁴⁴ Cannon & Chung, *supra* note 60 at 34.

¹⁴⁵ Inara Scott & Elizabeth Brown, "Redefining and Regulating the New Sharing Economy" (2016) 19 U Pa J Business L 553 at 581.

community, and concerns with having apartment buildings populated by travellers rather than permanent residents.¹⁴⁶

Other regulatory concerns include tort liability and the similar risk concerns raised by participants in the sharing economy.¹⁴⁷ Consumers generally assume that market transactions are regulated and may not be aware of the regulatory gaps in the sharing economy.¹⁴⁸ Because sharing economy businesses establish themselves prior to ensuring adequate safeguards are in place, consumers may be exposed to greater risks.¹⁴⁹ For example, it remains unclear who is liable in the transaction of renting a home through Airbnb, driving with Uber, or providing a meal service through Feastly. In the event of an accident, a lack of regulation fails to protect consumers and providers from the inherent risks in sharing economy transactions.

2. *Modes of Regulation*

To address the above market failure and other regulatory concerns, different modes of regulation have been suggested for sharing economy businesses. The debate often focuses on either protectionist or laissez-faire approaches, while failing to recognize alternative regulatory responses.¹⁵⁰ One suggestion is to allow for self-regulation, a form of regulation used in various industries “to lower costs, avoid and resolve conflicts, and ultimately to create consumer confidence.”¹⁵¹ Self-regulatory regimes vary, with some imposing governmental oversight and others allowing the industry to make and enforce rules.¹⁵² In the sharing economy, academics propose that businesses register as self-regulatory organizations and provide data to governments so that they can oversee operations, pursue tax collection, and ensure safety and insurance rules are followed.¹⁵³ Self-regulation is proposed as a solution for the sharing economy because it prevents ill-fitted forms of regulation from stifling innovation and development.¹⁵⁴ But, others have argued that private actors should not be responsible for regulations meant to safeguard the public, but

¹⁴⁶ *Ibid* at 583.

¹⁴⁷ *Ibid* at 572.

¹⁴⁸ *Ibid* at 575.

¹⁴⁹ Cannon & Chung, *supra* note 60 at 34.

¹⁵⁰ Michele Finck & Sofia Ranchordás, “Sharing and the City” (2016) 49 *Vanderbilt J Transnational L* 1299 at 1351.

¹⁵¹ Stemler, *supra* note 45 at 104.

¹⁵² Cohen & Sundararajan, *supra* note 21 at 124.

¹⁵³ *Ibid* at 132.

¹⁵⁴ Scott & Brown, *supra* note 145 at 586.

rather they should collaborate with regulators when their interests could be impacted.¹⁵⁵

Another suggestion is to adapt the regulations for existing industries to the sharing economy. Since some level of governmental intervention may be necessary for ensuring sharing economy businesses are legally and economically viable, most governments have favoured this model for integrating sharing economy businesses into the market.¹⁵⁶ Due to the marked differences between sharing economy businesses and their counterparts, governments have proposed less stringent regulations for the sharing economy, coupled with the liberalization of existing industries. Instead of “regulating up” to achieve parity, governments can “deregulate down” to gradually allow competitors to converge on an equal playing field.¹⁵⁷ The compromise of complying by certain regulatory measures has appeared to appease some of the concerns raised in the backlash to the sharing economy. To date, regulatory approaches to the sharing economy have been done on a piecemeal basis depending on the jurisdiction. For example, in San Francisco, regulators have allowed Airbnb, but with the requirement that hosts pay hotel taxes.¹⁵⁸ In Amsterdam, residents can rent out their homes for a period of two months of the year, but can only rent to up to four people at once.¹⁵⁹ Some platforms have also started to offer benefits such as insurance and minimum wage requirements to ease concerns about the preciousness of work as an independent contractor.¹⁶⁰

Scholars suggest that experimental regulation may be one of the best ways to determine the effects on new and innovative sectors, known as a regulatory sandbox.¹⁶¹ Since sharing economy practices span various sectors and the impact is yet to be ascertained, a tentative approach would allow for regulators to learn and adapt before developing and implementing a legal framework.¹⁶² In the United States, many cities have adopted experimental regulations before recommending permanent regulation. In the European Union, the European Commission announced it would pilot innovative regulatory approaches to the sharing economy.¹⁶³ Thus, the end to the story of the sharing economy is yet to be determined, but the trend seems to be towards the adaptation of existing

¹⁵⁵ Finck & Ranchordás, *supra* note 150 at 1366.

¹⁵⁶ Cannon & Chung, *supra* note 60 at 58.

¹⁵⁷ Coopman, Mitchell & Thierer, *supra* note 67 at 544.

¹⁵⁸ Das Acevedo, *supra* note 89 at 13.

¹⁵⁹ Lobel, “Law”, *supra* note 2 at 129.

¹⁶⁰ Scott & Brown, *supra* note 145 at 578.

¹⁶¹ Finck & Ranchordás, *supra* note 150 at 1354.

¹⁶² *Ibid.*

¹⁶³ *Ibid* at 1356.

regulations. At the very least, most jurisdictions have adapted regulatory measures which have allowed consumers to continue reaping the benefits of the sharing economy while balancing the desire for consumer protection.

II. FILE-SHARING: NAPSTER AND iTUNES

Uber CEO Travis Kalanick was intimately linked with the story of Napster. Kalanick ran Scour in 1998, a file-sharing service similar to Napster that was sued by the Motion Pictures Association of America and the Recording Industry Association of America for copyright infringement.¹⁶⁴ After the lawsuit, Scour entered bankruptcy, giving Kalanick vital experience with the dangers of running a business contrary to the law. Similarly to Scour, the rise and demise of Napster illustrates the sharing economy story of disruption, acceptance, backlash, and integration. Napster's disruption of the music industry was followed by opposition from the industry, ending with iTunes as a solution to meet the consumer need for digitalized music. The main impact of Napster was to increase the likelihood consumers would pay a negotiated price for music rather than downloading it for free. It was only with the end of Napster that legitimate services like iTunes could take the forefront.¹⁶⁵

As computers became more capable, accompanied by the digital networks that could efficiently distribute files, a conflict emerged over the law of copyright.¹⁶⁶ The first pillar to fall was the music industry, in a battle led by Napster.¹⁶⁷ Napster, launched in 1999, was a hybrid peer-to-peer network, meaning that part of its operation was centralized and the company's own servers managed all search requests.¹⁶⁸ Napster created a personal music library pooling system where those who signed up to the network had access to the music libraries of other users.¹⁶⁹ In creating a network of users who could share instantiations of music with others, Napster displaced industrial distribution of music.¹⁷⁰ With low financial investment, the technology of peer-to-peer

¹⁶⁴ Benjamin Edelman, "Whither Uber?: Competitive Dynamics in Transportation Networks" (2015) 11:1 Competition Policy International 1 at 8.

¹⁶⁵ *Ibid* at 9.

¹⁶⁶ Benkler, *supra* note 25.

¹⁶⁷ Mark Helprin, *Digital Barbarism: A Writer's Manifesto* (New York: HarperCollins, 2009) at 37.

¹⁶⁸ Michael A Carrier, "Copyright and Innovation: The Untold Story" [2012] *Wis L Rev* 891 at 902.

¹⁶⁹ Philippe Aigrain, *Sharing: Culture and Economy in the Internet Age* (Amsterdam: Amsterdam University Press, 2015) at 30.

¹⁷⁰ Benkler, *supra* note 25 at 352.

networks allowed Napster to write software that allowed millions of people to cooperate in producing a robust and efficient file storage and retrieval system.¹⁷¹

Napster was initially accepted as a consequence of the consumer perception of the music industry as morally illegitimate. Big music labels, who received most of the proceeds from music sales, were an easy target for the opposition of copyright. Benkler suggests that services such as Napster were the polar opposite of the recording industry in that they decentralized the legal privilege to use information resources in pursuit of information production projects and lowered the cost of production.¹⁷² Napster was celebrated as an opponent of big business and a movement against the restrictions of copyright.

Though it was possible for Napster and other similar file sharing services, such as Scour, to have legal uses, most of the file sharing involved copyright infringement.¹⁷³ Consumers created various rationalizations and justifications for why music downloading was permissible, an attitude which arose from a history of social practices involving unauthorized copying.¹⁷⁴ As Helprin states, “the advocates of music sharing think that, because the Beatles, half of whom are dead, have hundreds of millions, or perhaps even billions of dollars....these expropriations are somehow mathematically justified”.¹⁷⁵ For many, file sharing became normatively justified when viewed as defiance of the stagnant and costly music industry. Napster was perceived as playing a Robin Hood role by taking from the rich and powerful recording companies and giving to consumers who had suffered from years of paying unreasonable prices for CDs.¹⁷⁶ It grew rapidly and within a year of its launch peers were sharing approximately three billion MP3 files a month, ushering in a transformative shift in how consumers could acquire and listen to music.¹⁷⁷

There is widespread consensus that music labels and regulators quickly to the revolution incurred by Napster and the digitization of sharing.¹⁷⁸ The inertia can be explained by two reasons. First, the digital revolution gave

¹⁷¹ *Ibid* at 85.

¹⁷² *Ibid* at 349.

¹⁷³ Lori A Morea, “The Future of Music in a Digital Age: The Ongoing Conflict Between Copyright Law and Peer-to-Peer Technology” (2006) 28:2 Campbell L Rev 195 at 198.

¹⁷⁴ Steven A Hetcher, “The Music Industry’s Failed Attempt to Influence File Sharing Norms” (2004) 7:1 Vand J Ent L & Prac 10 at 10–13.

¹⁷⁵ Helprin, *supra* note 167 at 39.

¹⁷⁶ Matthew Green, “Napster Opens Pandora’s Box: Examining How File-Sharing Services Threaten the Enforcement of Copyright on the Internet” (2002) 63:2 Ohio St LJ 799 at 807.

¹⁷⁷ Carrier, *supra* note 168 at 902.

¹⁷⁸ *Ibid* at 921.

consumers the ability to share massive amounts of information, but “during the first years of development of the Web, the media industry largely ignored it. Retrospectively, it seems that it simply did not fit their world view, precisely because of its non-market character”.¹⁷⁹ Second, the music industry was slow to react due to the threat that suing early on would result in the court finding fair use since new technology had not yet caused harm.¹⁸⁰

But, as Napster rose in popularity, the music industry fought back and the backlash akin to that targeting at a sharing economy business ensued. The music industry assumed its success depended on exclusive control over music copies and it was reluctant to relinquish its lucrative business model.¹⁸¹ As Aigrain suggests, in truth, the sharing of music files had a limited effect on the music industry as a whole, but the fear was if recognized legally, the music industry would be shattered.¹⁸²

In late 1999, eighteen record companies in the United States and artists, such as Metallica, took legal action against Napster for copyright infringement. Record companies and artists who were in favour of copyright maintained that it was the internationally accepted mechanism for protecting artists, in contrast to the *raison d’etre* of filesharing which facilitated widespread access to music without compensation to the artist.¹⁸³ In response, Napster advanced the legal theory that it was operating in a legal grey area and could be used for purposes that would not substantially infringe copyright.¹⁸⁴ It labelled its practices as “sharing” rather than stealing. Napster believed it was protected by the *Digital Millennium Copyright Act of 1998*.¹⁸⁵ But, according to the court, Napster executives possessed knowledge of, and were encouraging, the use of the server for copyright infringement. Consequently, Napster was held vicariously liable for the infringing activity of its users. In keeping with the music industry, the response of the government was that illegal filesharing should be regulated out of existence. Backlash from the music industry was coupled with consumer concern over the use of the Napster service and a desire for regulation. Napster was initially perceived as morally superior to the music industry, but Napster’s illegal business model led consumers to question whether the service could be

¹⁷⁹ Aigrain, *supra* note 169 at 34.

¹⁸⁰ Hetcher, *supra* note 174 at 15.

¹⁸¹ Benkler, *supra* note 25 at 43.

¹⁸² Aigrain, *supra* note 171 at 44

¹⁸³ *Ibid* at 21.

¹⁸⁴ Morea, *supra* note 173 at 199.

¹⁸⁵ Brad Stone, *The Upstarts: How Uber, Airbnb, and the Killer Companies of the New Silicon Valley are Changing the World* (New York: Little, Brown and Company, 2017) at 173.

trusted. Illegally downloading music opened up consumers to the potential for viruses and malware. To amplify consumer concern, the music industry attempted to change consumer behaviour and attitudes towards filesharing through publicity campaigns.¹⁸⁶ The aim of the campaigns were to persuade consumers that filesharing is tantamount to stealing and morally wrong. Known as “moral suasion,” the campaigns worked to subtly change norms towards filesharing and forge closer relationships with fans.¹⁸⁷

Following the lawsuit and consumer distrust in its service, Napster filed for bankruptcy and ceased operations in 2002.¹⁸⁸ However, Napster’s failure, accompanied with continued consumer desire for accessible music downloading, paved the way for iTunes. iTunes can be considered as the integration of a disruptive technology into the mainstream industry. Consumers wanted music; as Helprin states, “never before has a human generation been so transformed by and dependent upon such an electronic blood flow”.¹⁸⁹ Napster proved that there was strong demand for digital music if it could be accessed safely and effectively. Academics suggest that without Napster, iTunes would not exist, since there would be no incentive to pay for music.¹⁹⁰ In the aftermath of Napster, innovators created networks that did not involve a central server and could provide consumer safety features.¹⁹¹ Apple introduced the iTunes service, which responded to consumer desires by creating a pay-per-download system where users could purchase songs for 99c per download or 9.99 per album. The Apple brand provided consumers with a trustworthy way to access digital music, resulting in a balance that allowed consumers to download large amounts of music at a small cost but still enabling compensation to be given to record companies and artists.¹⁹² Despite the continuation of illegal music downloading, iTunes effectively undermined part of the appeal of filesharing. With iTunes, consumers had access to the instant gratification of music downloading. But, unlike filesharing services, iTunes consumers could abide by the law and avoid the risks inherent in illegal downloading.¹⁹³ The resistance of the music industry to technological

¹⁸⁶ Hetcher, *supra* note 174 at 11.

¹⁸⁷ Mark F Schultz, “Reconciling Social Norms and Copyright Law: Strategies for Persuading People to Pay for Recorded Music” (2009) 17:1 J Int Prop L 59 at 83.

¹⁸⁸ Carrier, *supra* note 168 at 905.

¹⁸⁹ *Supra* note 175 at 39.

¹⁹⁰ Carrier, *supra* note 168 at 917.

¹⁹¹ Yuval Feldman & Janice Nadler, “The Laws and Norms of File Sharing” (2006) 43:3 San Diego L Rev 577 at 588.

¹⁹² Morea, *supra* note 173 at 234.

¹⁹³ Schultz, *supra* note 187 at 79.

disruption and the resulting solution demonstrates that in the end consumers will usually get what they want. As we will show with Uber, resisting change will only result in the market being taken by new, innovative companies.

III. UBER

Uber is the most prominent and well-known example illustrating the evolutionary framework within the sharing economy of disruption, initial acceptance, backlash, and a gradual integration. Uber has transformed the economics of global transportation markets and shattering regulations that one scholar has called the phenomena “Ubernomics.” Ubernomics is described as “an emergent form of economic organization that facilitates peer-to-peer exchange over GPS-enabled digital platforms”.¹⁹⁴ Uber was founded in 2009 by Travis Kalanick to meet the consumer need of an alternative to the highly regulated taxicab industry. Uber started as a black car service that allowed customers to use an app to hail drivers of established limo services. Uber did not move cautiously in its disruption of the taxi industry and quickly expanded to UberX, which relies on unlicensed drivers and their personal cars to pick up passengers through the Uber app. In launching UberX, Kalanick capitalized on the public desire for new and more efficient transportation options.¹⁹⁵ To use Uber, a consumer enters a credit card number and at the tap of a finger the app links the consumer with a driver, charging the users’ credit card after the ride.¹⁹⁶ The GPS system instantly pinpoints the consumer’s location and allows the consumer to track the exact path of the driver. Thus, Uber eliminates search costs, long wait times, and uncertainty. Uber describes its system as ridesharing, but Rogers suggests that the digital peer-to-peer network is more aptly described as “capitalist acts between consenting adults”.¹⁹⁷

Uber’s business model is premised on breaking the law in order to effectuate change rather than bargaining with regulators to gain acceptance, true to the story of disruptive innovation. As a former Uber employee stated, “All told, it’s not just that Uber has adopted the business school maxim ‘Don’t ask for permission; ask for forgiveness’ – it has instituted a policy of asking for

¹⁹⁴ Motala, *supra* note 134 at 470.

¹⁹⁵ Stone, *supra* note 185 at 306.

¹⁹⁶ Crespo, *supra* note 81 at 86.

¹⁹⁷ Brishen Rogers, “The Social Costs of Uber” (2017) 82:1 U Chicago L Rev 85 at 87, citing Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974) at 163.

neither.”¹⁹⁸ At the crux of the Uber debate is that the existing taxi regulations that many have paid a great deal to join are being confronted by a technology system that acts outside of regulatory reach and eliminates taxi licensing requirements. Uber’s legal theory for evading regulation is to stress that it is a technology company that acts as an intermediary between drivers and riders, not a taxicab company.¹⁹⁹ The Partner Agreement between Uber and its drivers defines itself as a technology company and each driver as an independent contractor that provides services to third parties.²⁰⁰ The terms of Uber provide that “your ability to obtain transportation, logistics, and/or delivery services through the use of the services does not establish Uber as a provider of transportation or delivery services or as a transportation carrier.”²⁰¹ Uber states that it “does not employ drivers, own vehicles, or otherwise control the means and methods by which a driver choose to connect with riders... it merely provides a platform.”²⁰²

Uber was initially embraced by consumers. Its success was partly technological, but also derived from the ability to provide a cheap service by avoiding the costs of insurance, sales tax, and vehicle inspections.²⁰³ Uber now operates in over 615 cities worldwide and has recently begun operations in Canada. By 2014, when Uber was operating in 276 cities, only 17 of those cities expressly authorized its activity.²⁰⁴ Despite legal uncertainty, consumers, who had begun to see the taxi industry as morally illegitimate, applauded Uber for regulatory evasion. Taxi industry regulations are justified as serving public interest, but in reality, may have persisted despite no longer correcting market failures. The taxi industry has been increasingly criticized for low service standards because of regulatory barriers to competition, “leading to mediocre performance and quality”.²⁰⁵ The regulations that were initially important for safety, inadequate competition, asymmetric information, and other market failures are no longer seen as fulfilling their function. Regulations mostly persist because taxi companies have succeeded in capturing their regulators and thus are sustained by political pressure under the guise of consumer

¹⁹⁸ Ellen Cushing, “The Smartest Bro in the Room” *San Francisco Magazine* (15 December 2014), online: <modernluxury.com/san-francisco/story/the-smartest-bro-the-room-0>.

¹⁹⁹ Stone, *supra* note 185 at 181.

²⁰⁰ *Ibid.*

²⁰¹ “U.S. Terms of Use” (23 March 2017) Uber, online: <uber.com/legal/terms/us/>.

²⁰² See especially *Salovitz v Uber Technologies Inc*, 2014 WL 5318031, at para 1.

²⁰³ Slee, *supra* note 4 at 59.

²⁰⁴ Werbach, *supra* note 130 at 3.

²⁰⁵ Crespo, *supra* note 81 at 82.

protection.²⁰⁶ This has led to the taxi industry receiving the benefits of regulation, mainly insulation from competition, while consumers bear the cost of decreased quality of service. A recent Winnipeg survey provides evidence of consumer dissatisfaction with the taxi industry. In the survey, less than half of respondents reported being satisfied with the comfort and cleanliness of taxis. While only forty-one percent of respondents indicated the driver was friendly and attentive, eighty-nine percent rated these attributes as important.²⁰⁷ Many consumers believe monopolistic and overregulated taxi services should be deregulated to allow for better pricing and new technology.²⁰⁸ In response to Uber's failure to comply with bylaws, the court stated in *Edmonton (City) v Uber Canada Inc* that "it is not surprising... that legislation drafted to accommodate a more static, paper and people driven environment, sometimes lags behind the technological response to individual preferences and demands."²⁰⁹ For economists, deregulation and the consequent elimination of regulatory capture would improve efficiency by better matching drivers with customers and cutting down wait times.²¹⁰ Groups who are underserved by regulated entry markets would receive substantial benefits since increased competition leads companies to be ready to better serve the public.

In the environment of increased dissatisfaction with the taxi industry and a movement towards deregulation, Uber arose as an icon of moral superiority and innovation. As Kalanick stated, "Uber is the candidate and [its opponent] is an asshole called Taxi. I'm not totally comfortable with it but we have to bring out the truth of how evil Taxi is".²¹¹ Unlike the taxi industry, which has little incentive change and is focused on pleasing regulators, Uber's business model depends on pleasing consumers. For example, Koopman, Mitchell and Thierer explain that regulated taxis typically adopt credit card readers only as mandated by regulators whereas Uber did so by its own initiative.²¹² Uber has lower wait times and overall convenience.²¹³ Customers prefer the ease of pre-

²⁰⁶ Coopman, Mitchell & Thierer, *supra* note 67 at 534.

²⁰⁷ Manitoba, Taxicab Board & Manitoba Indigenous Relations and Municipal Relations, "Winnipeg Taxicab Services Review: Final Report" (20 December 2016) at 124 [Winnipeg Taxicab Review].

²⁰⁸ Sam Frizell, "A Historical Argument Against Uber: Taxi Regulations are There for a Reason", *Time* (19 November 2014), online: <time.com/3592035/uber-taxi-history/>.

²⁰⁹ 2015 ABQB 214, 19 Alta LR (6th) 424

²¹⁰ Slee, *supra* note 4 at 63.

²¹¹ *Ibid* at 60.

²¹² *Supra* note 67 at 539.

²¹³ Motala, *supra* note 134 at 474.

payment, which dispenses the need to carry cash or leave a gratuity. Further, Uber's technology decreases information asymmetries by showing consumers a photo of the driver, the vehicle, and the license plate number, thereby reducing the uncertainty associated with waiting for a taxi. Uber's branding impresses upon consumers the sharing economy ethos of serving the public. Uber's tagline, once "Everyone's private driver" was changed to "Get there." Kalanick explained that the new branding celebrates the cities that Uber serves and reflects the aspiration to "make transportation as reliable as running water, everywhere and for everyone."²¹⁴ In New York, Uber ran advertisements in which Uber drivers spoke about how Uber had improved their lives.²¹⁵

Regulators were slow to react to Uber, in part due to Uber's growing popularity and regulatory uncertainty. The political price for taking aggressive regulatory action was considered too high and only having the potential to fuel Uber's growth.²¹⁶ Nonetheless, Uber's initial acceptance in San Francisco was followed by backlash, first by the taxi industry, then by consumers and governments. The taxicab industry was the most disgruntled by the disruptive effect of Uber. Despite emerging trends towards regulatory reform, taxis remain to be some of the most extensively regulated transportation methods.²¹⁷ In most cities, taxi regulations effect all areas of operation, including the quantity, quality, price, insurance and availability of taxicabs. Most jurisdictions require governmental approval prior to a driver or company providing transportation services and limit the number of taxicabs registered at a given time. Uber avoids the encumbrance of regulation, including the requirements for drivers to undergo training sessions, submit fingerprint based background checks, and purchase expensive and difficult to acquire medallions or licenses.²¹⁸ To the taxi industry, Uber is an illegal service that circumvents existing regulations, resulting in an unfair competitive edge, a threat to the viability of the taxi industry, and raises safety and liability issues.²¹⁹ Many taxi drivers have spent thousands of dollars on medallions only to see Uber bypass the need for them and be subject to less onerous regulations. When Uber emerged in Europe, it was met with significant opposition from the taxi industry. Protests against

²¹⁴ Seth Fiegerman "Uber changed its logo to something pretty weird" (2 February 2016) *Mashable* (blog), online: < mashable.com/2016/02/02/uber-new-logo/#.FeXhPbUzPq >.

²¹⁵ Barry & Pollman, *supra* note 55 at 413.

²¹⁶ *Ibid* at 402.

²¹⁷ Ranchordás, "Sharing", *supra* note 23 at 463.

²¹⁸ Stone, *supra* note 185 at 13.

²¹⁹ Lisa Rayle et al, "Just a better taxi? A survey-based comparison of taxis, transit, and ridesourcing services in San Francisco" (2016) 45 *Transport Policy* 168 at 168.

Uber erupted in London, Paris, Madrid, and Berlin.²²⁰ In London, the Transport for London brought a court action against Uber, arguing that Uber should be required to comply by taxi regulations.²²¹ While taxi drivers continue to insist that Uber be subject to the same licensing and insurance requirements, Uber asserts that it is not a taxi company and need not play by the same rules.²²²

Uber continued to operate, albeit illegally in some jurisdictions, and expanded despite regulatory uncertainty. In cities where it faced bans, Uber used consumers and stakeholders to fight corporate political battles.²²³ In Virginia, when faced with a cease-and-desist order, Uber sent a notice to all Virginia users and urged them to send emails to the department.²²⁴ The department was inundated with emails and consequently allowed Uber to continue operations. As one journalist has suggested, in the face of cab companies ferociously protecting their monopoly, the public attitude has been to “make Uber a way of life before the politicians [can] take it away”.²²⁵ In the current digital revolution, consumers want a certain amount of regulation, but are more in favour of technological entrepreneurialism.

Like other businesses in the sharing economy, the clear benefits of ridesharing services were not enough to insulate Uber from consumer backlash. The risks of using Uber absent regulations and background checks became apparent with increased market participation. One incident that received significant attention from the press was in San Francisco, where an Uber car hit and killed a young girl.²²⁶ It is thought that the driver may have been distracted by the app at the time.²²⁷ Uber’s commercial coverage did not cover the losses incurred, resulting in public concern over the protections offered by Uber.²²⁸ Uber maintained the position that it was an online networking platform and was not liable for the driver since he was an independent contractor. Consumers began to question Uber’s moral legitimacy, influenced by its continual evasion of liability and questionable company practices. For

²²⁰ Stemler, *supra* note 15 at 55.

²²¹ Finck & Ranchordás, *supra* note 150 at 1350.

²²² Stephany, *supra* note 16 at 158.

²²³ See Barry & Pollman, *supra* note 55 at 404.

²²⁴ *Ibid.*

²²⁵ Chris Selley, “All Hail Uber”, *The National Post* (14 October 2014), online: <nationalpost.com/opinion/chris-selley-all-hail-uber/wcm/28ae0b64-7677-4ef2-a343-f30c07a913b8>.

²²⁶ Rogers, *supra* note 197 at 92.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

example, Uber's surge pricing system recently came under scrutiny. The surge pricing system uses an algorithm to increase prices when there is increased demand for drivers, such as on weekends, holidays, and during bad weather.²²⁹ Though economically sound, the dynamic pricing model conflicts with many regulatory schemes that prevent service providers from raising prices during times of increased demand.²³⁰ With surge pricing, the forces of the free market make it so that Uber is not always cheaper than a taxi. An Uber passenger was charged \$362 for a twenty-two-minute Uber drive on Halloween night.²³¹ Because of surge pricing, critics have stated, "Uber hides under an image of low prices and convenience and takes advantage of passengers when they need ride services most".²³² Uber was also criticized when CEO Travis Kalanick was caught on video arguing with one of his drivers about prices. In another incident, the company was charged with systematic sexism after a female engineer, formerly employed by Uber, published an expository blog post.²³³ In the blog post she described being sexually harassed by a male superior and having her complaints ignored when she brought them to the attention of Uber's human resources department.²³⁴ The public was also concerned when a report was released documenting Uber's use of a legally questionable program called Greyball. Greyball uses various technological techniques to try to find and avoid enforcement officers in cities where regulators were attempting to clamp down on Uber.²³⁵ In addition, Uber faced a law suit in Washington for allegedly denying equal access to people with disabilities, in violation of Title 3 of the *Americans with Disabilities Act* as well as the *DC Human Rights Act*.²³⁶ An important reason for regulation of the transportation industry is to allow for

²²⁹ Stone, *supra* note 185 at 251.

²³⁰ Lobel, "Law", *supra* note 2 at 123.

²³¹ Caroline Moss, "26-year-old successfully crowd funds to pay for her \$362 Halloween Uber ride" *Business Insider* (2 November 2014), online: <businessinsider.com/women-raises-362-to-pay-for-uber-ride-2014-11>.

²³² Erin Mitchell, "Uber's Loophole in the Regulatory System" (2015) 6:1 HLR: Off the Record 75 at 82 <houstonlawreview.org/wp-content/uploads/2015/09/Mitchell-Ubers-Loophole-in-the-Regulatory-System_FINAL1.pdf>.

²³³ Susan J Fowler, "Reflecting on One Very, Very Strange Year At Uber" (19 February 2017) *Susan Fowler* (blog), online: <susanjowler.com/blog/2017/2/19/reflecting-on-one-very-strange-year-at-uber>.

²³⁴ *Ibid.*

²³⁵ Mike Isaac, "How Uber Deceives the Authorities Worldwide" *New York Times* (3 March 2017), online: <nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html?_r=0>.

²³⁶ *Equal Rights Center v Uber Technologies, Inc et al*, 1:17-cv-01272 (D DC 2017).

universal access by covering all areas of the city and not discriminating against passengers, including those with disabilities.²³⁷ When faced with the discrimination claims, Uber responded to the law suit by claiming that it is a technology company and not a transport company, and consequently is not required to abide by accessibility legislation.²³⁸ As Slee states, Uber's abdication of responsibility in every lawsuit further proves to consumers that its principles and values are clearly aligned with financial interests.²³⁹

Bad press about Uber slowly began to erode Uber's morally superior position and spurred consumers to question the company's values. All of the company's practices, including the previously trusted peer review systems, came under scrutiny. If Uber was potentially morally illegitimate and exploitative, could the reviews be trusted? Peer review systems are easily manipulated, undermining the promise of increased consumer safety through the Uber platform. A journalist reported that if a rider promised to give an Uber driver a 5-star review, the driver would give a 5-star review in return.²⁴⁰ Amidst the controversy surrounding Uber, investors pushed Kalanick to resign in hopes that a new CEO could salvage the company's reputation. Uber hired Dara Khosrowshahi, former chief executive of the travel company Expedia in hopes he would reform the company's morally questionable image.²⁴¹ Khosrowshahi helped mediate a deal for SoftBank, a Japanese tech conglomerate, to invest approximately \$1 billion in Uber.²⁴²

Backlash also came from a select group of Uber drivers, who sued Uber on the basis that being classified as independent contractors denied them employee benefits and subjected them to long hours, low pay, precarious work, and no opportunity for an appeal process.²⁴³ The drivers contended that the Uber platform was receiving the benefits of working with contractors but

²³⁷ Slee, *supra* note 4 at 68–69.

²³⁸ *Ibid.*

²³⁹ *Ibid* at 70.

²⁴⁰ Maureen Dowd, "Driving Uber Mad" *New York Times* (23 May 2015), online: <nytimes.com/2015/05/24/opinion/sunday/maureen-dowd-driving-uber-mad.html>.

²⁴¹ Julia Kollewe & Dominic Rushe, "Uber chooses Expedia boss Dara Khosrowshahi as new CEO" *The Guardian* (27 August 2017), online: <theguardian.com/technology/2017/aug/27/former-general-electric-boss-jeffrey-immelt-rules-himself-out-of-uber-role>.

²⁴² Heather Somerville & Greg Roumeliotis, "Uber's board strikes peace deal to enable multi-billion dollar investment by SoftBank to go ahead" *Independent* (13 November 2017), online: <independent.co.uk/news/business/news/uber-softbank-investment-board-members-travis-kalanick-japan-benchmark-a8051751.html>.

²⁴³ Rogers, *supra* note 197 at 99.

maintained the control of working with employees.²⁴⁴ Uber claimed that drivers were making \$90, 000 annually, but studies show that the number is a misrepresentation.²⁴⁵ In November 2017, a London Court upheld a previous tribunal's decision that found Uber drivers to be classified as workers and given the corresponding rights under UK law.²⁴⁶

In the United States, Uber has been relying on the Communications Decency Act to argue that it is not responsible for the activities of its drivers.²⁴⁷ Though challenging Uber on this front has been difficult, the UK Labour party's Shadow Secretary of State for Business, Energy, and Industrial Strategy Rebecca Long-Bailey argued that Uber should be boycotted because of the business practice of promoting insecure employment.²⁴⁸ By challenging conventional notions of employment, what some have called an "anti-Uber crusade" was sparked, with even more protests erupting around the world.²⁴⁹ But, throughout these protests, a majority of Uber drivers maintained that they enjoy the flexibility of being independent contractors.²⁵⁰

Despite the significant opposition, litany of lawsuits, and bad press, Uber showed astonishing political resilience. David Plouffe, who ran President Obama's 2008 campaign, was hired to run Uber's communication efforts in a manner "much like a political race".²⁵¹ His tactics have worked, evidenced by Uber's growing valuation to sixty-eight billion dollars in 2016.²⁵² In the midst of the taxi industry pushing the government to put Uber out of business, increased consumer demand was hard to quell. Despite mounting safety concerns, many believe that taking an Uber is still safer than a traditional taxicab and, absent surge pricing, more cost effective. Feedback mechanisms

²⁴⁴ Cohen & Sundararajan, *supra* note 21 at 159.

²⁴⁵ Slee, *supra* note 4 at 63-64.

²⁴⁶ Josie Cox, "What Uber's defeat in court means for drivers and customers in the long-run" *Independent* (10 November 2017), online: <independent.co.uk/news/business/analysis-and-features/uber-court-defeat-prices-customers-surge-drivers-full-rights-employees-ride-sharing-app-a8048051.html>.

²⁴⁷ Slee, *supra* note 4 at 73.

²⁴⁸ Kevin Rawlinson, "Uber is not morally acceptable, says shadow business secretary" *The Guardian* (11 July 2017), online: <theguardian.com/politics/2017/jul/11/uber-is-not-morally-acceptable-says-shadow-business-secretary>.

²⁴⁹ Stone, *supra* note 185 at 354.

²⁵⁰ Sundararajan, *supra* note 7 at 182.

²⁵¹ Mike Isaac, "Uber Picks David Plouffe to Wage Regulatory Fight" *The New York Times* (19 August 2014), online: <nytimes.com/2014/08/20/technology/uber-picks-a-political-insider-to-wage-its-regulatory-battles.html>.

²⁵² *Ibid.*

used by sharing economy businesses to ensure consumer safety are generally reliable and worst-case scenarios are rare.²⁵³ Research shows that Uber can also increase access to resources and fill gaps in public transportation for low-income communities that could benefit from ridesharing services.²⁵⁴ In the words of Adam Lashinsky, “Uber knows few demographic boundaries... It appeals to single women who can get a safe, trackable ride home. Senior citizens can use the service as easily as teenagers. UberPool, a carpooling service, makes Uber affordable to anyone with a little more cash than bus fare.”²⁵⁵

Faced with significant disruption of the transportation industry, governments have reacted with attempts to balance the innovations offered by Uber, consumer demand, and the need for regulation. Innovative transportation means, and other disruptions within the industry, have met similar regulatory hurdles when the existing regulation is ill-suited for the new technology.²⁵⁶ The development of new regulations for ridesharing companies demonstrates Uber’s challenge to the existing industry and the pattern of regulatory adaptation to make room for innovation. Some cities and countries decided to ban Uber completely, including Texas, Denmark, Italy, and Oregon (except Portland). Vermont announced they were investigating Uber to determine whether drivers were employees or independent contractors, and concurrently issued a consumer alert to “be aware before you share.”²⁵⁷ But, even when faced with cease and desist letters, Uber’s response has been to continue operations. Michael Swindler, prosecutor at Pennsylvania Public Utility Commission, states that he has never seen the level of blatant defiance exhibited by Uber in continuing operations in contradiction of a cease and desist order.²⁵⁸ Uber has recently been stripped of its licence in London, England. The Regulator of Transport for London states that Uber’s conduct demonstrates a lack of corporate responsibility and raises potential public safety and security concerns.²⁵⁹ However, consumers have responded by signing an

²⁵³ Thierer et al, *supra* note 30 at 870.

²⁵⁴ Ryan Calo & Alex Rosenblat, “The Taking Economy: Uber, Information, and Power” (2017) 117:6 *Colum L Rev* 1623 at 1644.

²⁵⁵ Adam Lashinsky, *Wild Ride: Inside Uber’s Quest for World Domination* (New York: Portfolio/Penguin, 2017).

²⁵⁶ Ranchordás, “Experimentalism”, *supra* note 59 at 895.

²⁵⁷ Vermont, Department of Financial Regulation, “Be Aware Before You Share” (accessed 1 August 2018), online: <dfr.vermont.gov/insurance/insurance-consumer/be-aware-you-share>.

²⁵⁸ Edelman, *supra* note 164 at 5.

²⁵⁹ Costas Pitas, “Unfit Uber stripped of London license” *Yahoo News* (22 September 2017), online: <sg.news.yahoo.com/uber-loses-license-operate-london-101006510-finance.html>.

online petition to allow Uber to continue to operate, which gathered a record-breaking 600,000 signatures.²⁶⁰

Other governments pushed Uber to comply with the regulations created for the taxi industry. The most common response has been to adopt laws and regulations for ridesharing companies that ensure safety and market failure concerns are addressed without stifling the innovative nature of ridesharing companies like Uber. Most regulatory frameworks create a separate class for ridesharing companies that include similar safety and consumer protections as taxi regulations. Such frameworks are an attempt to find a middle ground between the option of adopting the ill-fitting regulations of the taxi industry and that of legalizing ridesharing without regulation.²⁶¹ For example, New York City requires Uber drivers to obtain special licenses.²⁶² In California, the California Public Utility Commission developed new regulations for ridesharing services and worked closely with companies such as Uber to develop safety and quality control mechanisms.²⁶³ Uber has worked towards quelling consumer concerns, such as implementing pilot programs for wheelchair accessible vehicles and using wireless braille systems to assist riders with hearing and vision impairments.²⁶⁴ True to the evolutionary trajectory of a sharing economy business, the integration of Uber, coupled with regulation, has slowly begun.

IV. UBER IN CANADA

Uber's controversial reputation followed it to Canada, though the provincial and federal governments were fortunate to have watched Uber's emergence and regulatory challenges in other countries. Analogous to Uber's emergence in cities worldwide, Uber initially operated in select Canadian cities outside of existing regulations. As Uber began operations in Canada, backlash ensued from the taxi industry. The taxi and limousine service industry, which had a revenue of \$2.7 billion in 2015, was angry that the competition from

²⁶⁰ Mark Molloy, "Record-breaking Uber petition to reverse ban in London hits 600,000 signatures as backlash grows" *The Telegraph* (24 September 2017), online: <telegraph.co.uk/news/2017/09/23/uber-petition-reverse-ban-london-hits-500000-signatures-backlash/>.

²⁶¹ Werbach, *supra* note 138 at 4.

²⁶² Stemler, *supra* note 15 at 55.

²⁶³ *Ibid* at 64.

²⁶⁴ Winnipeg Taxicab Review, *supra* note 207 at 75.

Uber drivers significantly cut in to their profits.²⁶⁵ While the taxi industry is unlikely to outcompete the efficiencies offered by Uber, it hoped that invoking regulatory capture would compel city authorities would put Uber out of business. Montreal has seized 200 vehicles since 2015 for engaging in illegal ridesharing.²⁶⁶ Toronto laid 208 charges against Uber drivers between 2012 and 2015. But, due to the consumer demand for Uber, courts have been reluctant to ban access to the ridesharing service. In *City of Toronto v Uber Canada et al*, the Ontario Superior Court of Justice denied the City of Toronto's application for an injunction restraining Uber from operating an unlicensed taxicab broker.²⁶⁷ Similarly, in *Edmonton (City) v Uber Canada Inc*, the Court of Queen's Bench of Alberta denied the city's claim that Uber was operating a taxi brokerage business in contravention of city bylaws.²⁶⁸

The fact that Canada has witnessed the debate surrounding Uber in other countries may have led to greater ease in regulation. In the United States, Uber emerged as a grassroots response to the highly regulated taxi industry. Consumers in Canada have seen and experienced the perceived problems with Uber, such as surge pricing, the potential for exploiting drivers, the morally questionable actions of Uber's CEO, and the continual flaunting of regulations. Thus, Canadians have responded to Uber with a degree of caution and the demand for Uber has been tempered by a desire for consumer protection regulations.²⁶⁹ A recent Canadian survey found that ride-sharing services were cited by 51% of respondents as one of the top technologies requiring regulatory review by the government.²⁷⁰ However, consumers are still eager to have Uber as an alternative to what is perceived as failure in the taxi industry. For example, in Manitoba, the Manitoba Taxicab Board often receives

²⁶⁵ *Ibid* at 16.

²⁶⁶ Government of Canada, Competition Bureau, "Modernizing Regulation in the Canadian Taxi Industry" (26 November 2015), online: <competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04007.html>.

²⁶⁷ 2015 ONSC 3572, 126 OR (3d) 401 (CanLII), online: <canlii.ca/t/gjwlk>.

²⁶⁸ 2015 ABQB 214, 19 Alta LR (6th) 424 (CanLII), online: <canlii.ca/t/gh1bt>.

²⁶⁹ Alex Wilks, "Poll shows Canadians want Uber, but not without regulation" *Global News* (12 February 2016), online: <globalnews.ca/news/2515956/poll-shows-canadians-want-uber-but-not-without-regulation/>.

²⁷⁰ Accenture, "Canadians want more regulatory review of emerging technologies, Accenture study finds" *NewsWire* (24 May 2017), online: <newswire.ca/news-releases/canadians-want-more-regulatory-review-of-emerging-technologies-accenture-study-finds-624034963.html>.

complaints concerning driver misconduct, consumer safety, and frustrations in hailing a cab.²⁷¹

Edmonton was the first city in Canada to establish a regulatory framework for ridesharing services under the classification of “Personal Transportation Provider” (PTP).²⁷² The PTP classification requires ridesharing companies to pay annual fees and drivers must provide proof of insurance and undergo criminal record checks and vehicle inspections. When Uber entered Vancouver in 2012, the government enacted a moratorium barring Uber and announced they would be launching government checks on the industry to enforce regulatory compliance.²⁷³ In March 2017, the province of British Columbia announced it would introduce Uber by December 2017, but with the safety requirements that Uber drivers have a Class 5 driver’s licence, be at least 19 years of age, pass a safe driving record check, have regular vehicle inspections, and pass a criminal record check. The province is concurrently working to deregulate the taxi industry to lessen unfair competition, but the taxi industry is still concerned that deregulating will threaten the livelihood of taxi drivers.²⁷⁴

Uber started in Calgary with a trial period that ended in a market exit after Uber was found to be operating illegally by having unlicensed drivers.²⁷⁵ The Alberta government claimed to not be opposed to Uber, but that Uber would have to adhere to safety and labour standards.²⁷⁶ In 2016, Calgary amended bylaws to allow Uber to operate, implementing a fee structure that charges ridesharing companies a fee of \$5, 000 to \$20, 000 depending on company size and a fee of \$15 per driver and 20 cents per trip.²⁷⁷ The Alberta government adopted the first ridesharing insurance policy that provides coverage to all

²⁷¹ “Taxi Industry Slow to Learn Lessons”, *Winnipeg Free Press* (20 May 2017), online: <winnipegfreepress.com/opinion/editorials/taxi-industry-slow-to-learn-lessons-423280893.html>.

²⁷² Manitoba, Taxicab Board, “Summary Overview of the Taxicab Industry in Winnipeg” (2016), online: <gov.mb.ca/mr/taxicab/pubs/summary_overview-of-the-taxicab-industry2016.pdf>.

²⁷³ Rosemary Cooper & Vanessa Timmer, “Local Governments and the Sharing Economy” (October 2015) *One Earth* s 3(a) at 88, online: <localgovsharingecon.com/uploads/2/1/3/3/21333498/localgovsharingecon_report_full_oct_2015.pdf>.

²⁷⁴ Rhianna Schmunk, “Uber is coming to B.C., province announces” *CBC News* (7 March 2012), online: <cbc.ca/news/canada/british-columbia/bc-taxi-1.4013315>.

²⁷⁵ Cooper & Timmer, *supra* note 273 at 88.

²⁷⁶ *Ibid.*

²⁷⁷ Sarah Lawrynuik, “Uber to resume operations in Calgary under newly amended bylaw” *CBC News* (6 December 2016), online: <cbc.ca/news/canada/calgary/uber-calgary-resume-announcement-live-1.3883348>.

drivers and passengers participating in ridesharing.²⁷⁸ In Quebec, Uber has been in negotiations with the government regarding mandatory training for drivers. The government wants to impose a 35-hour training requirement, to which Uber is opposed.²⁷⁹

In Winnipeg, a public survey indicates that sixty-four percent of respondents would support a ride sharing service. Respondents who support a ride sharing service such as Uber claim it would bring more choice and options to the market, increase competition, increase convenience, reduce wait times, and reduce prices. Respondents who did not support the service had concerns for safety, background checks, lack of licensing, insurance, and regulation.²⁸⁰ Critics claim that allowing Uber in Manitoba contributes to work precarity and inequality.²⁸¹ By focusing on ridesharing instead of public transport, critics claim that there are adverse environmental and social equity impacts.²⁸² However, a study at Berkeley, though not yet conclusive, hypothesizes that Uber may have positive environmental effects.²⁸³ Further, Uber results in increased job creation and may be a more affordable option for lower income families who require a private transport service over public transport. Critics may point out downfalls of Uber, but survey respondents who wished for change in regulation of the taxi industry in Manitoba cited “allowing Uber” as the top priority.²⁸⁴

²⁷⁸ Intact Financial Corporation, “Intact Financial to insure Uber as ridesharing insurance receives green light in Alberta” *NewsWire* (29 June 2016), online: <newswire.ca/news-releases/intact-financial-to-insure-uber-as-ridesharing-insurance-receives-green-light-in-alberta-584827231.html>.

²⁷⁹ Jason Magder & Philip Authier, “Quebec won’t back down despite Uber’s threats to leave province: minister”, *Montreal Gazette* (26 September 2017), online: <montrealgazette.com/news/local-news/fed-up-with-new-regulations-uber-poised-to-leave-quebec-report>.

²⁸⁰ Winnipeg Taxicab Review, *supra* note 207 at 72.

²⁸¹ Paul Moist, “Uber No Solution for Winnipeg: Analysis of taxi and transport” (10 April 2017) Canadian Centre for Policy Alternatives Manitoba Office (*blog*), online: <policyfix.ca/2017/04/04/uber-no-solution-for-winnipeg-analysis-of-taxi-and-transport/>.

²⁸² *Ibid.*

²⁸³ Amanda Eaken, “NRDC Urban Solutions to Lead First Climate Analysis of Uber and Lyft” (13 November 2015) *NRDC* (*blog*), online: <nrdc.org/experts/amanda-eaken/nrdc-urban-solutions-lead-first-climate-analysis-uber-and-lyft>.

²⁸⁴ Winnipeg Taxicab Review, *supra* note 207 at 73.

To balance the desire for Uber with consumer concern, Manitoba recently enacted Bill 30, the *Local Vehicles for Hire Act*.²⁸⁵ The bill removes regulatory power from the Manitoba Taxicab Board and tasks municipalities with regulating ride sharing and vehicles for hire.²⁸⁶ But, the movement to bring Uber to Winnipeg has been slow. City hall is preparing for the law that will dissolve the taxi board by conducting reviews on Uber's operation in other countries.²⁸⁷ In preparation for Uber, Manitoba Public Insurance plans to implement "a fair and equitable insurance premium rate for vehicle-for-hire drivers" by February 2018.²⁸⁸ Taxi drivers argue that with the inevitable consequence of Uber coming to Winnipeg, drivers should be compensated for their investment in taxi licenses.²⁸⁹ Though the consensus on taxi driver compensation is not clear, Mayor Brian Bowman is pushing to develop ride-sharing regulations for when Uber enters the Manitoba market.²⁹⁰ As of December 2017, the City of Winnipeg plans to allow companies such as Uber to operate alongside taxis starting March 1, 2018.²⁹¹ The by-laws for ridesharing companies only allow for pre-payment of rides through a ridesharing app but do not require vehicles to have the same safety protection mechanism as taxis.²⁹² But, despite these developments, Uber has stated that the insurance developed by MPI deviates from other structures in North America.²⁹³ Due to

²⁸⁵ For more information on the introduction of ride-sharing in Manitoba, and Bill 30, the *Local Vehicles for Hire Act*, see Kasia Kieloch, "Bill 30: *The Local Vehicles for Hire Act*: Manitoba's Controversial Approach to Ride Sharing Services", 42 *Man LJ* [forthcoming in 2019].

²⁸⁶ Bill 30, *The Local Vehicles for Hire Act*, 2nd Sess, 41st Leg, Manitoba, 2016.

²⁸⁷ Dan Lett, "Moving slow on Uber benefits Winnipeg", *Winnipeg Free Press* (23 September 2017), online: <winnipegfreepress.com/opinion/analysis/moving-slow-on-uber-benefits-winnipeg-447025253.html>.

²⁸⁸ Nick Martin, "MPI plans to have rates in place for Uber drivers by end of February" *Winnipeg Free Press* (26 September 2017), online: <winnipegfreepress.com/local/mpi-plans-to-have-rates-in-place-for-uber-drivers-by-end-of-february-448059073.html>.

²⁸⁹ "Cab drivers want cash if Uber moves in", *CBC News* (5 October 2017), online: <cbc.ca/news/canada/manitoba/cab-driver-rally-1.4342681>.

²⁹⁰ *Ibid.*

²⁹¹ Bartley Kives, "Winnipeg reveals plan to allow Uber, Lyft to operate alongside taxis as early as March", *CBC News* (1 December 2017), online: <cbc.ca/news/canada/manitoba/winnipeg-uber-taxi-regulation-1.4428748>.

²⁹² Jeff Keele, "New bylaw gives green light for ride-sharing to roll into Winnipeg", *CTV News* (13 December 2017) online: <winnipeg.ctvnews.ca/new-bylaw-gives-green-light-for-ride-sharing-to-roll-into-winnipeg-1.3719931>.

²⁹³ Brittany Greenslad, "Uber Threatens to Avoid Winnipeg Because of MPI Regulations" *Global News* (10 January 2018), online: <globalnews.ca/news/3957727/uber-threatens-to-avoid-winnipeg-because-of-mpi-regulations/>.

the MPI regulations, Uber has threatened against commencing operations in Manitoba.

It is apparent that the story of Uber has come full circle, from disruption and initial acceptance stemming from the taxi industry's perceived moral illegitimacy, to backlash and questioning of Uber's moral legitimacy, and finally to a regulatory solution. The brand name has become a verb, "I'll Uber there", which is evidence of its ubiquity. Uber is investing in driverless cars, evidence its business model has greater ambitions than just connecting drivers with consumers.²⁹⁴ Nonetheless, it remains to be seen if Uber will continue to thrive under the adapted regulations imposed on it in Canada and worldwide. In the first quarter of 2017, Uber Technologies confirmed a \$708 million loss.²⁹⁵ Much of the loss has been from entering markets where taxis hold a monopoly. But, losing money is common in Silicon Valley and can still draw investors. Uber received \$8 billion in investments in hopes that it will be the next Amazon and turn a profit.²⁹⁶

CONCLUSION

As we have demonstrated through the examples of filesharing and Uber, there is a familiar pattern in the evolution of a sharing economy business. Using new and revolutionary technologies, the sharing economy continues to disrupt industries across all sectors. In doing so, the sharing economy has forced regulators to question and adapt entrenched and outdated regulatory regimes. Despite the controversy surrounding sharing economy businesses, firms such as Uber have precipitated a widespread economic shift. By understanding the pattern that sharing economy businesses follow, we are better apt to respond and adapt as the world embraces the model of sharing. It will require research, debate, and lobbying before a regulatory balance is found for every sector affected by the sharing economy. More regulatory changes are apt to occur, such as creating a third category of worker that will give platform workers some

²⁹⁴ Danielle Muoio, "Uber is winning the driverless race, even though it isn't using its own cars", *Business Insider* (14 September 2016), online: <businessinsider.com/how-uber-is-winning-when-it-comes-to-driverless-cars-2016-9>.

²⁹⁵ Jesse Ferreras, "Why it's 'good' that Uber has lost \$708M this year", *Global News* (2 June 2017), online: <globalnews.ca/news/3497110/uber-financial-losses/>.

²⁹⁶ Maya Kosoff, "Uber is losing an absolutely insane amount of money" (14 April 2017), *Vanity Fair* (blog), online: <vanityfair.com/news/2017/04/uber-is-losing-an-insane-amount-of-money>.

of the benefits given to employees.²⁹⁷ As Benkler stated when considering the impacts of the information age, “we are in the midst of a technological, economic, and organizational transformation that allows us to renegotiate the terms of freedom, justice, and productivity...how we shall live in this new environment will in some significant measure depend on policy choices that we will make over the next decade or so.”²⁹⁸ How we choose to respond to the sharing economy will undoubtedly shape the way we live within our changing technological and economic environment.

²⁹⁷ Sundararajan, *supra* note 7 at 184.

²⁹⁸ Ranchordás, “Sharing”, *supra* note 23 at 28.