

The unclear legal status of sharing economy company  
and its consequences:  
Case study on the transportation network companies<sup>\*</sup>

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**Abstract**

The past decade has seen a considerable growth of emerging platform companies, with the most notable example being Uber, an innovative transportation company which transforms how the society perceive the transportation service offered by private sector. As a consequence, consumers and Uber, or which claims itself to be ‘technology company’ seem to benefit from such alternative platform, while it appears that traditional services and the State are the one who suffer and must come up with any measure necessary to tackle this legal gap. However, this paper will explain the underlying causes of the difficulty in dealing with legal challenge of this type of company. This varies from the complex and unique nature of the service to the ambiguous terms and conditions which govern the relationship between Uber vis-à-vis its drivers and Uber vis-à-vis its customers. On the other hand, despite such difficulty, this paper also aims at proposing certain criteria which could be used to facilitate the determination of Uber’s status so that the latter can be effectively regulated in an appropriate manner which would allow not only the consumers to get the most out of the service, but also for a traditional service to not feel inflicted by the unequal treatment, and instead, be encouraged to adapt itself in a competitive market.

**Keywords:** sharing economy, technology company, platform company, Uber

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### บทคัดย่อ

ในช่วงทศวรรษที่ผ่านมา ความเจริญเติบโตของบรรดาบริษัทแพลตฟอร์ม (platform company) ทั้งหลาย โดยเฉพาะตัวอย่างที่เห็นได้อย่างชัดเจน เช่น บริษัท Uber ในฐานะผู้สร้างนวัตกรรมแห่งการขนส่งได้แปลงโฉมรูปแบบบริการขนส่งดั้งเดิมไปสู่การให้บริการโดยภาคเอกชน การให้บริการทางเลือกรูปแบบใหม่ดังกล่าวก่อให้เกิดประโยชน์ต่อทั้งผู้บริโภคและบริษัท Uber หรือบริษัทซึ่งเรียกตนเองว่าบริษัทเทคโนโลยี ในทางกลับกัน บรรดาผู้ให้บริการขนส่งในรูปแบบดั้งเดิมและรัฐตกเป็นผู้ได้รับผลกระทบจากบริการรูปแบบใหม่นี้ ช่องว่างทางกฎหมายที่เกิดขึ้นจากการให้บริการรูปแบบใหม่จึงเป็นภารกิจที่สำคัญของรัฐในการเข้ามาจัดการดูแล อย่างไรก็ตาม บทความนี้บรรยายถึงสาเหตุต่างๆ ของความท้าทายทางด้านกฎหมายของบริษัทประเภทนี้ อันได้แก่ ความซับซ้อนและลักษณะเฉพาะของบริการ รวมถึงความคลุมเครือของข้อสัญญาซึ่งใช้บังคับในความสัมพันธ์ระหว่างบริษัท Uber ต่อผู้ขับขี่ และบริษัท Uber ต่อผู้ใช้บริการ นอกจากนี้ แม้ว่าบรรดาความยากต่าง ๆ ที่ปรากฏข้างต้น บทความนี้มีวัตถุประสงค์ในการวิเคราะห์ถึงหลักเกณฑ์การวินิจฉัยสถานะทางกฎหมายของบริษัท Uber เพื่อช่วยให้เกิดการกำกับดูแลในทางกฎหมายที่เหมาะสม ซึ่งก่อให้เกิดประโยชน์สูงสุดต่อทั้งผู้บริโภค รวมถึงช่วยลดความรู้สึกว่าไม่ได้การปฏิบัติอย่างเท่าเทียมของผู้ให้บริการในรูปแบบดั้งเดิมลง และอาจนำไปสู่การปรับตัวของผู้ให้บริการในรูปแบบดั้งเดิมเข้าสู่ตลาดแข่งขันได้

## 1. Introduction

Since the development of technology, sharing economy plays a significant role in improving our living standard. These platforms allow us not only to earn additional income by becoming sellers, hosts, drivers, etc. but also to enjoy a variety of choices from whoever enter into these markets. Although it is obvious that sharing economy provides us with numerous benefits, there exists some legal problems arising from **the unclear legal status of these platform companies**. Because of the fact that these works or services can be provided by a high degree of flexibility, the platform companies mostly claim themselves as ‘**technology company**’ doing business with their independent contractors or what they called ‘business partners’ rather than entering into traditional contractual relations among normal service industries. Such peculiar relationship, which is explicitly stated in their agreements’ terms, contributes to a number of legal concerns that might have followed. In particular, transportation networks, which could be seen as one of the most successful businesses across the world, generate several legal concerns because of their specific business strategies. For example, from the consumer’s perspective, consumer protection law, insurance, data protection law of customers’ database may be left with uncertainty. Additionally, from state’s viewpoint, a number of legal issues have been established which are criminal record or tax schemes of these online services.

As a result, this can be viewed as two possibilities 1) it can be seen as an efficient or nimble approach of these platforms to reduce costs and maximise the assets, or 2) it is simply the avoidance of regulations in their markets. On account of this, the determination of legal status of these platforms company is necessary so that consumers and involving workers’ welfare will be guaranteed. This paper will focus on the legal issues arising from the operation of the ride sharing’s platforms. On this subject, there are numerous ongoing cases regarding the rights of workers who are working with the sharing economy company especially in the case of ‘Uber’ raised by its workers or Uber’s drivers. Moreover, not only could the licenses of these drivers be at stake but the clarity of personal injury liabilities arising from this transportation network is also problematic. Owing to the fact that these issues affect a large number of online users, therefore, this paper will focus on these legal issues.

In order to determine the legal status of these companies, this paper starts with the interests of determining sharing economy company legal status in section 2 and the ambiguities of sharing economy company in section 3 before exploring the criteria adopted to determine the legal status between service or technology company in section 4 which concludes that their legal status can be examined on the case-by-case basis. After that, in section 5, consequences and implications resulting from the different legal status will be analysed. Subsequently, in section 6, the future of sharing economy company and recommendations to strive for a balance of competing interests will be presented. Last but not least, section 7 will analyse two challenges for the regulators both positive impacts and numerous concerns of the sharing economy before proceeding to the conclusion in section 8.

## 2. The interests of determining the status of sharing economy company

“You can’t always see the employer but that doesn’t mean the employer’s not there – sometimes we’ve got to peel behind the curtain”<sup>1</sup>. This statement shows that the clarity of these companies’ status is at issue. It is obvious that being employees under employment contract provides a number of benefits as labour law aims to protect the vulnerable workers working for the employees who have more bargaining power. The kind of relationship between the sharing economy companies and their workers plays an important role in determining these companies’ status. Due to the fact that workers can enjoy the benefits from the flexibility of working conditions, “most of new forms of employment identified do not have a proper, specific or collectively agreed legal basis in most of the jurisdiction in which they operate”<sup>2</sup>. Currently, “no specific regulatory environment has been set for most of the new employment formats, the challenges and issues are immense”.

In light of the employment issue, competitive advantages might arise from this uncertain legal status of transportation network platforms. Because of their one step of innovation beyond traditional licensing regulations, these business platforms do not fall into traditional legal categories<sup>3</sup>, especially licensing regulations. This leads to a number of problems across several countries raised by the traditional taxi drivers who are subject to traditional governing regulations on the ground that this is an unfair competition as these platforms enjoy by far the best competitive advantages<sup>4</sup>.

Additionally, due to the fact that cars are the most obvious successful example as these “sharing sites allow individuals to act as an ad hoc taxi service when it suits them”, a higher legal risk regarding personal injuries lies on these platform users.

This could not guarantee that these sharing economy platforms will provide insurance for injuries arising from their platforms transaction. Determining the legal position of these platforms could, thus, lead to a better tort litigation of injurers.

In summary, taking into account the rising number of problems arising from the ambiguous legal status of sharing economy platform companies, it can be concluded that the challenge among lawyers is the question as to extent we should strive the balance between innovation and intervention by mean of law. If we could find the balance between promoting technology companies’ incentive and maximising consumer welfares in term of price, quality, quantity and other interests, it could then be said that legislative and executive bodies as the representatives successfully achieve their missions. The underlying logic is that, in the democratic state, the government is elected by the people in order to serve them.

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<sup>1</sup> Sarah Dobson, ‘Worker Rights in Need of Clarity in Gig Economy’, Canadian HR Reporter, September 2016.

<sup>2</sup> Stefan Nerinckx, ‘The “Uberization” of the Labour Market: Some Thoughts from an Employment Law Perspective on the Collaborative Economy’ (2016) 17 ERA Forum 245 <<http://dx.doi.org/10.1007/s12027-016-0439-y>>.

<sup>3</sup> V Katz, “What’s Old Becomes New: Regulating the Sharing Economy”, (April 2014) <https://bostonbarjournal.com/2014/04/01/whats-old-becomes-new-regulating-the-sharing-economy/> [Last accessed: 19 May 2017]

<sup>4</sup> Anti-Uber protests around the world in pictures, <http://www.telegraph.co.uk/technology/picture-galleries/11902080/Anti-Uber-protests-around-the-world-in-pictures.html> [Last accessed: 19 May 2017]

### 3. Ambiguities of the legal status of sharing economy company

Owing to the fact that technological improvement has improved our quality of life, the rising number of legal issues needs to be addressed. It can be said that the current legal frameworks are left behind this fast advancement of technology. This phenomenon can be described as “playing catch-up between the regulators and these innovative companies”.

In order to examine their legal status, all of the involving factors are the issues that should be taken into consideration. This paper will group the ambiguities of the legal status into three factors as follows; a) due to the contract between the sharing economy companies and their contractors, b) due to terms and conditions accepted by customers and c) due to the complexities and specific characteristics of the services.

#### a) Due to the provision of the contract between the sharing economy companies and contractors

In ride sharing platforms, the terms and conditions between Uber and drivers are not deemed as a relationship between employer and employees. Due to the clear terms of Uber which provides that this relationship is “a business relationship between Company and driver<sup>5</sup>”, Uber claims that all drivers are its business partners. These drivers are responsible on their own as they have the right to decide “when, where and for how long” they will work on Uber Application. Therefore, from this terms and conditions, it is obvious that Uber claims itself as an intermediary platform who is not responsible for any further conduct of the drivers.

#### b) Due to terms and conditions accepted by customers

Customers accept Uber’s terms and conditions on Uber’s mobile applications or websites that Uber’s services constitute “a technology platform which enables users of its services to pre-book and schedule transportation, logistics, delivery, [...] with independent third party providers of the services<sup>6</sup>”. Hence, Uber is not responsible for the relationship between customers and drivers which could be implied that Uber will not be liable to any liabilities occurring by the use of its platform.

#### c) Due to the complexities and characteristics of services

New ideas are constantly developed. Thus, defining something brand-new is always difficult to cover all of the relevant aspects. Sharing economy<sup>7</sup> is one of the obvious examples which have a complex relationship and specific characteristics varying from the nature of each

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<sup>5</sup> Uber Terms and Condition, Your Relationship with Company; You acknowledge and agree that Company’s provision to you of the Driver App and the Uber Services creates a direct business relationship between Company and you. Company does not, and shall not be deemed to, direct or control you generally or in your performance under this Agreement specifically, including in connection with your provision of Transportation Services, your acts or omissions, or your operation and maintenance of your Vehicle. <https://www.uber.com/legal/terms/gb/> [Last accessed: 18 May 2017]

<sup>6</sup> ibid 6

<sup>7</sup> R Botsman, The sharing economy lacks a shared definition <http://www.collaborativeconsumption.com/2013/11/22/the-sharing-economy-lacks-a-shared-definition/> [Last accessed: 19 May 2017]

platform. In this regard, we can recall the quote made by Bertrand Russell, a British philosopher, who states that “Everything is vague to a degree you do not realise until you have tried to make it precise”. When each sharing economy platform developed its online space, nobody had ideas as to what is going to happen. Finally, some of these developers succeed in putting their ideas into practice resulting in these useful sharing platforms we are using today.

Nevertheless, these companies reduce their costs by avoiding the relevant costs; for example, Uber cut their costs incurred by their drivers or partners’ legal status. In the context of labor law, employees’ benefits including the costs regarding protection of the worker and working conditions such as remuneration, holiday entitlement, liability and insurance should have been accorded to Uber’s driver. Moreover, not only do the costs arise from these obligations, but there are also other rights such as the right to form unions and employee’s representation which can incur burden upon Uber, had it been an employer. The non-similarity between these relationships are governed by different fields of law with different protection. Therefore, the need to investigate the legal status of sharing economy company is at stake.

#### 4. Criteria adopted to determine the legal status: service or technology company

##### a) Partners’ rights and obligations

Currently, there are the ongoing cases regarding the rights of workers who are working with the sharing economy company providing transportation network called ‘Uber’. These cases are raised by its workers or Uber’s drivers. One of which is *O’Connor & Yucesoy v. Uber Technologies, Inc.*<sup>8</sup> in the United States and another case is *Aslam & Ors v. Uber Technologies, Inc.*<sup>9</sup> in the United Kingdom. Initially, as both cases are still not finalized, it can be seen that both courts recognize Uber’s workers as the employees who are serving transportation service of Uber’s business, the employer. From these ongoing decisions which create a rebuttable presumption of employment status, this paper aims to find which approach, taking into account the ambiguous nature of these sharing economy companies, should be taken in determining their legal status. This is because the fact that they are solely the technology company will have significant different legal effects compared to the service company which are subject to the compliance of several regulations (in this case, labour law).

It is obvious that the criteria of employment relationship are set out explicitly. In this case, the transportation network company also has exactly identical criteria. Despite the fact that Uber’s terms of service state that the driver agrees to enter into a direct business relationship and acknowledges that Uber does not control driver performance, the court in *O’Connor & Yucesoy v. Uber Technologies, Inc.* explicitly states that there is a rebuttable presumption that Uber is an employer.

“From this case, the court applied California’s two-step process for determining whether a worker is an employee or independent contractor. The first step is to ask whether there exists a kind of service here. For this issue, the court held that, although Uber is a technologically

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<sup>8</sup> *O’Connor & Yucesoy v. Uber Technologies, Inc.*, C.A. No. 13-03826-EMC (N.D. Cal.)

<sup>9</sup> *Aslam & Other v. Uber Technologies, Inc.*, case number 2202550/2015

sophisticated company, Uber is a transportation company which has Uber's drivers serving its service or a ride to customer. This has become a rebuttable presumption that Uber has an employer status. The second step is to ask whether or not Uber has a right to control the work of the driver. For this issue, the court concluded that the ultimate determination of employment status has to be decided by a jury because there were disputes over material questions such as whether Uber has the right to significantly control the manner and means of drivers' transportation services. However, no jury trial is currently scheduled<sup>10</sup>”.

In light of *O'Connor & Yucesoy v. Uber Technologies, Inc.*, “*Aslam & Ors v. Uber Technologies, Inc.*”, the UK employment tribunal found that Uber does not simply sell the software; it sells rides. Thus, the company business is private hire, and not simply the application. From the claim of Uber's drivers, the tribunal made three findings; firstly, Uber is an employer according to the Employment Rights Act 1996, the Working Time Regulations 1998 and the National Minimum Wage Act 1998. Secondly, its drivers' working time is regulated by the Working Time Regulations 1998. Lastly, its drivers are regulated as ‘unmeasured workers; under the National Minimum Wage Regulations 2015. This finding results in a number of Uber's drivers benefits derived from these labour law. Nevertheless, Uber appeals this case to the employment appeals tribunal<sup>11</sup>”.

According to these two cases, it is clear that Uber provides a service or sell a ride, not selling a software as it claims to be a technology company. From my point of view, I agree with the logic from the case of *Aslam & Ors v. Uber Technologies, Inc.* that compares the allocation of customer via Uber's application to its drivers with the use of radios to dispatch taxi cabs by Yellow Cab. From this fact, I believe that Uber is a service company rather than a technology company which is subject to labour law. However, there exists the difficulty to apply labour laws to all sharing economy companies as they have an ambiguous relationship depending on the purpose of founding their platform. In this regard, Steven Green House suggests that we need to distinguish between “crowd-work” and “work-on-demand via apps,” which has the main difference in the way of accomplishing the performance<sup>12</sup>.

After having separated work-on-demand via apps out of other crowd-work on sharing economy companies, it is crystal clear that only work-on-demand via apps, in this case within the scope of transportation market; Uber and other transportation network companies have the different degree of control power comparing to traditional crowd-work sharing platforms. For instance, it can be clearly seen that ‘Bla Bla Car’ which the online users or the crowd-workers use this online platform to share their remaining spaces in their car to their destination according to the place and time that they have set. This type of relationship, Bla Bla car as a platform and customers have no control power over the driver who have decided to share their rides in order to

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<sup>10</sup> A Murray, ‘The Emergent Legal Issues of the Sharing Economy’, Information Technology and the law lecture slides, January 2017

<sup>11</sup> *ibid* 5

<sup>12</sup> S Greenhouse, ‘Uber: On the Road to Nowhere’, American Prospect December 2015, <http://prospect.org/article/road-nowhere-3>

gain the on-top income. From my perspective, this type of sharing economy company does not fall within the employer's status because it has no power to control the manner and means of drivers' transportation services at all. Hence, in order to determine their real legal status, these companies need to be analyzed from the fact, not from their terms in the agreements which mostly exclude the employment relationship, on the case by case basis depending on each relationship<sup>13</sup>.

#### **b) Liability of platform provider owing to the fault of partners and customers**

According to Uber's terms and condition, Uber is not responsible for any liability resulting from the use of its platforms. Therefore, all Uber's drivers will be liable for the tort that they have committed. In this regard, insurance is the measure to alleviate their risks. Normally, the vehicle used in the course of business is considered to be a commercial vehicle and thus requires a specific type of insurance. This policy covers liability resulting from the damage caused by such vehicle during the commercial mission<sup>14</sup>. Therefore, if the state authorities do not consider Uber driver as an employee but as an independent driver just as Uber claims, this means that Uber drivers who usually do not hold taxi license have to rely on their personal insurance policy. However, after having considered the Court's opinion from *Aslam & Ors v. Uber Technologies, Inc* that Uber is a service company, we can contend that if a driver is driving on behalf of Uber, the drivers accomplish a ride with the commercial purposes. In this regard, in the absence of the commercial insurance coverage from the part of Uber, an action can be taken against Uber according to the theory of vicarious liability.

Moreover, the guest statute does not apply to the passengers, excluding them from the personal insurance coverage of the Uber driver<sup>15</sup>. Even though Uber requires the drivers to acquire a proper insurance policies, this does not provide sufficient protection for passengers up to the standard of commercial automobile insurance required by the State for traditional commercial vehicles like taxis<sup>16</sup>. As a consequence, there has been an effort from the legislatures to enact laws successfully obliging Uber to bear the responsibility in providing insurance coverage for its drivers<sup>17</sup>.

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<sup>13</sup> A Aloisi, 'Commoditized Workers : Case Study Research on Labor Law Issues Arising From a Set of " on -Demand / Gig Economy Platforms "' (2016) 37 Comp. Labor Law & Pol'y Journal 653

[https://papers.ssrn.com/sol3/papers2.cfm?abstract\\_id=2637485&download=yes](https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2637485&download=yes)

<sup>14</sup> Talia G Loucks, 'Travellers Beware: Tort Liability in the Sharing Economy' (2015) 10 washington journal of law, technology & arts. page 337

<sup>15</sup> RJ Leeman, 'Blurred lines: Insurance challenges in the ride-sharing market' (2014)R Street Policy Study NO.28 page 6, [https://www.ftc.gov/system/files/documents/public\\_comments/2015/05/01717-96147.pdf](https://www.ftc.gov/system/files/documents/public_comments/2015/05/01717-96147.pdf) [Last accessed: 20 May 2017]

<sup>16</sup> A Westney, Uber, Lyft Sideswiped By Conn. Cabbies' Suit, LAW360 (May 22, 2014),

<https://www.law360.com/articles/540330/uber-lyft-sideswiped-by-conn-cabbies-suit> [Last accessed: 20 May 2017]

<sup>17</sup> Insurance for Ridesharing with Uber, <https://www.uber.com/es-PR/blog/insurance-for-uberx-with-ridesharing/> [Last accessed: 20 May 2017]



### c) Licensing

Almost every country regulates vehicles under certain minimum safety standards in order to ensure that all passengers will be safe. These regulators impose all of the safety concerns such as vehicle standards, minimum insurance coverage, or by means of licensing. Due to the fact that car accident is a fatal incident i.e. resulting in death and personal injury, it is legitimate and proportionate<sup>18</sup> for states to require all of the drivers especially taxi drivers to obtain licenses. Hence, this leads to problem as Uber's drivers are set by Uber in a different position as a partner. Their flexibility is one of the key factors in classifying whether or not Uber's drivers have the obligation to obtain taxi license. Moreover, it can be contended that, in order to meet safety objective, other means such as other special verification offered by authority or agents is one of the ways to address this concern. In such scenario, it can be seen that this special checking could maximise profit for the sharing economy users as it offers an extra-earning for drivers and more convenient journey for customers.

However, Uber is still illegal in certain countries such as France<sup>19</sup>, Belgium<sup>20</sup>, etc. In response to this, Uber licenced drivers into markets<sup>21</sup>. This leads to the more explicit evidences that Uber has the aim in operating transportation service rather than being only an intermediary like it claims itself in the labour litigation.

## 5. Consequences and implications resulting from the different legal status

### a) Partners' rights and obligations

No matter what the ruling on Uber case will be, there is no clear standard that could apply in determining legal status of all sharing economy companies as previously mentioned that there exists the degree on different factors that need to be analysed on case by case basis. However, what can be predicted from the company perspective is "the compliance of labour law will raise the costs of this type of on-demand services via apps<sup>22</sup>" resulting in the higher riding fees for customers. In the same way, if Uber's drivers could have employee status under labour law, the important problem would be whether they will be able to enjoy this flexibility. However, the classification of each sharing economy company is still unavoidable as we cannot leave these companies who aim to enjoy the regulatory loophole to gain the benefit from the society.

In conclusion, even though, at the time being, there are the ongoing judgements and a number of academic articles raising awareness of protecting the vulnerable workers in this digital era (both employees and independent contractors), from my point of view, this is a complicated issue as the purpose of founding these platforms is the flexibility of the worker. In addition, it is even more complex as there exists the fact that some Uber's drivers complete a fake journey with

<sup>18</sup> Nayeem Syed, 'Regulating Uberification' [2016] Computer and Telecommunications Law Review 14.

<sup>19</sup> Uber fined in France over Uberpop <http://www.bbc.co.uk/news/business-36491926> [Last accessed; 18 May 2017]

<sup>20</sup> Brussels court bans Uber, imposes 10,000 euro fine for every violation of its ridiculous order <http://tech.eu/news/brussels-court-bans-uber/> [Last accessed; 18 May 2017]

<sup>21</sup> Uber Launches Licensed Driver Service in Germany

<https://blogs.wsj.com/digits/2015/05/19/uber-launches-licensed-driver-service-in-germany/> [Last accessed; 18 May 2017]

<sup>22</sup> Ibid 2

the conspiracy from their friends or relatives in order to reach the miles. Should we balance the protecting of the vulnerable employees and also support the business as if the regulators aim to promote only the workers' welfare, it would result in less incentive for the creators who wish to enter into the digital market. This is a difficult problem that regulators need to carefully consider.

#### **b) Liability of platform provider owing to the fault of partners and customers**

Travellers using Uber around the world agree on the fact that, compared to traditional taxi, Uber services is cheaper, more convenient. Moreover, they mention other positive reasons as to the conduct of the driver and the sanitary of the vehicles. Nevertheless, this satisfaction cannot rule out the possibility of accident during the ride. When this occurs, deficiencies in law, in particular the insurance coverage, have manifested themselves<sup>23</sup>.

As mentioned in the previous section that, as Uber denies its employment relationship with Uber drivers, it does not adopt the insurance plan, which normal business operators usually do, to cover its liability resulting from its employed drivers causing damage to the passengers or a third party. This signifies that the drivers have to rely on their personal insurance policy<sup>24</sup>. On the other hand, from the passenger's position, Uber passengers do not benefit from a guest statute and therefore cannot hold Uber drivers liable from the injury caused during the ride<sup>25</sup>.

#### **c) Licensing**

In general, taxi services are subject to the taxi licensing rules of the state in which the taxi driver exercise his/her profession as such. Each state has its own procedures and justifications of public interest for taxi licensing policy. The most common justification is that imposing licensing obligation to the taxi sector allows the state to ensure the public of the safety and accessibility of taxi services as well as to promote environmentally friendly vehicles. This can be done by setting minimum safety standards of the vehicles, verifying the criminal records of the drivers or determining a fair and transparent fees calculator as requirements for obtaining a taxi license. As a consequence, the state will strive a balance between the guarantee of such public interests and the interests and incentives of the taxi driver<sup>26</sup>.

In this regard, Uber characterised itself as a "technology company" whose software facilitate independent drivers and therefore, the traditional taxi licensing rules cannot be incurred upon it. This is logic if the Uber's assertion is valid. However, this is arguable since the question remains as to whether or not Uber truly makes money from the function of its application. The answer is negative, as it appears that Ubers earn money only when the ride is matched. Moreover, if Uber serves only as a neutral intermediary, it is controversial as to why Uber, and not so-called

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<sup>23</sup> USA TODAY Uber Sued for Wrongful Death of 6-Year-Old Girl, <http://www.usatoday.com/story/tech/2014/01/28/uber-wrongful-death-lawsuit/4959127>. [Last accessed: 21 May 2017]

<sup>24</sup> DMV.ORG Who Needs Commercial Auto Insurance, <http://www.dmv.org/insurance/who-needs-commercial-auto-insurance.php> [Last accessed: 21 May 2017]

<sup>25</sup> ibid 15

<sup>26</sup> Driving licences for taxis and private hire vehicles <https://www.gov.uk/taxi-driver-licence> [Last accessed: 21 May 2017]

independent driver, has a monopoly in setting prices<sup>27</sup>.

Therefore, many states reject Uber's assertion so as to bring Uber under regulation and licensing procedures. This may take a specific form which is different from the traditional taxi licensing rules. For example, the California Public Utilities Commission (CPUC) put Uber under the category of service called "transportation network company", obliging it to obtain a permit from CPUC, and follow other policies aiming at ensuring the public safety<sup>28</sup>.

## 6. The future of sharing economy

### a) Towards more regulated innovation platforms

As it can be concluded that, even though these sharing economy company platforms like Uber places itself to be merely technology provider, legal enforcement authority which are courts and tribunals classify them in the opposite way. From the recent Advocate General's Opinion in Case C-434/15<sup>29</sup> in which Asociación Profesional Elite Taxi seeks to challenge the utilisation of Uber's application as illegal because neither drivers nor Uber hold taxi licence, the Advocate General points out that Uber offers transportation service. In the opinion, it can be seen that Uber exercises control over drivers in terms of 1) drivers' entrance conditions set by Uber, 2) financial rewards for drivers who could reach a high number of trips, 3) drivers' work quality assessed by passengers posting on its platform and 4) the price set by Uber's application. The Advocate General concluded that from all of these factors, Uber cannot be seen as an intermediary between those two users. It is no doubt that Uber offers a transportation service by organising and managing "a comprehensive system for on-demand urban transport". Therefore, Uber is subject to local license laws. This leads to the confirmation in employment case that Uber has to be determined as an employer providing transportation service. Moreover, Uber is responsible to all injuries caused by the use of its services as it is an employer.

### b) Recommendation: striving for a balance of competing interests

Although the self-regulate strategies of these platforms might serve as effective soft measures in encouraging the partners (drivers in the case of Uber) to comply with the local laws, such internal rules or guidance do not have a binding legal force but merely measures governing the conduct or Uber's relationship with the partners within the company. This is the reason why, after several years of increasing frustration among traditional service providers, national authorities start the initiative to develop the law or measures to regulate the sharing economy companies and no longer let them enjoy privileges of being outside legal control of the states.

However, the regulation of innovation in the sharing economy is particularly complex because it is unclear whether these practices fit within existing legal frameworks that apply to equivalent commercial practices and should play by the same rules, whether these practices should remain, to a great extent, unregulated, or whether these practices should benefit from less

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<sup>27</sup> *ibid* 3

<sup>28</sup> *ibid* 3

<sup>29</sup> Advocate General's Opinion in Case C-434/15 Asociación Profesional Elite Taxi v Uber Systems Spain, SL

demanding regulations<sup>30</sup>. This is because, on the one hand, sharing economy companies have developed such an innovative platform like no others traditional companies have ever imagined of. This requires not only creative ideas from the inventors but also time, lobbies, distinctive human resources as an investment<sup>31</sup>. Thus, it is not fair to only look at its success at present and ignore its underlying cost of research and development which is necessary for the advancement of the modern society in the context of information era we are living in. On the other hand, over the course of the last decade, we have witnessed the ongoing demonstration and frustration of the traditional service companies against these sharing economies platforms. From their point of view, it is unjust to have certain economic sectors in which the operators do not play according to the same rule and do not bear the same duties and obligations. Moreover, the public who become involved with these sharing economy companies might face risks of finding themselves unprotected such as the reduced possibility of seeking reparation from the damage to personal or property injury as illustrated in the previous sections.

Therefore, these competing interests are imminent and state authorities must strive a balance so that the innovation can be promoted and at the same time state can still ensure public interests.

## 7. Two challenges for the regulators

### a) Positive impacts of the sharing economy

Since the growth of the sharing economies platforms, studies have shown that these platforms have a significant impact of the market as they expand the size of the market overall. In addition, the fact that they use innovative ideas and technology which underline their success, the traditional service companies feel the need to also employ an innovative approach to improve their service in order to survive in the market. This results in the increase in competition and would then benefit the customers who now have more choices and alternative in terms of price, convenience, and accessibility. Moreover, one of the most innovative aspects of the sharing economy companies is that it changes the way human resource is managed. Partners of Uber enjoy a great length of flexibility while, at the same time, adhere to the common platform provided by the companies. Moreover, concerning the asset, as opposed to the traditional service companies, the sharing economy companies do not own an asset itself; i.e. Uber do not own cars to offer a ride but still has un-comparable business value on the market. Instead, they rely on the asset of its partners to make profit for each ride without having to bear the cost of maintenance or other related cost.

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<sup>30</sup> Sofia Ranchordás, 'Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy' (2015) 16 Minnesota Journal of Law, Science & Technology 413  
<<http://ssrn.com/abstract=2492798%5Cnhttp://conservancy.umn.edu/bitstream/handle/11299/172061/Ranchordás.pdf?sequence=1&isAllowed=y>>.

<sup>31</sup> Benjamin G Edelman and Damien Geradin, 'Efficiencies and Regulatory Shortcuts: How Should We Regulate Companies Like Airbnb and Uber?' [2015] Stanford Technology Law Review 1.

**b) Numerous concerns**

Despite the aforementioned plus sides, it is clear that the sharing economy companies poses societal challenges resulting in regulatory challenges concerning tax, labour law, insurance, consumer protection issues etc. This is why they can be considered as a “disruptive innovation”. It can be concluded that their clauses stating that they are not obliged in any arising liability have an objective to benefit from legal loopholes and deficiencies so as to avoid being subject to legal obligations.

This is not how our economic sectors should operate. In fact, in a democratic state, a law is the reflection of the social norm as it is enacted by the legislatures who have been elected by the people. Therefore, there exist a chain of democratic legitimization of law which signifies that each and every law should have the aim to serve the society as a whole. It can be seen that in this period, the concept of human dignity and human rights is significantly prominent. Therefore, we passed from the period of pure liberalism where the role of state is limited in the economic domain to the period of neo-liberalism where other considerations serve as justifications for the limitation of the freedom to do business. Such other interests which might prevails over commercial interests included, among others, the need to protect consumer welfare and to ensure public safety.

For innovative companies, problems might arise from their partners’ taking some advantages of the system. For example, there are cases in which Uber’s driver makes a fake journey in order to reach a certain mile. The most abused situation, however, is when the drivers use the sharing economy platforms to avoid the state regulation and taxation. For instance, we might find Uber drivers providing a ride all day and night just like a fulltime taxi driver. The only difference is that they do not have to bear the cost of obtaining state taxi license and comply with other regulations governing vehicle with commercial purposes.

Therefore, there is a need to strive the balance between the firm’s incentives and consumer protection. The question remains as to what extent the right to consumer protection which is a public interest overrides the right to do business. Such question cannot be simply answered at the moment, taking into account the complex nature of the sharing economy companies as explained in the previous sections. One important thing to bear in mind is that when the society evolves in such a great rapidity during the digital age, there will be a lot more innovations created in the future which touch every sector ranging from economic, social to cultural domain. For instance, old museums now offer a 3D interactive map instead of a printed map to visitors. As a consequence, it is important that the laws need to be adaptive so as to not be left behind the changing society.

Thus, the sharing economy phenomenon is a good exercise which poses challenges to the state and requires an immediate answer as to how the states would regulate these innovative platforms. Only when the states can strike a balance and give the legal policy which can satisfy all stakeholders from sharing economy companies to traditional service providers and society as a whole as service users, the society can truly benefit from the innovative progress by not having to undermine its welfare.

## 8. Conclusion

It can be concluded that sharing economy platforms believe in the “Self-Regulation” idea of Cyberlibertarianists<sup>32</sup>. However, state authorities believe in the opposite idea or it can be seen that they are “Cyberpaternalists” who believe that these online company can and should be regulated. Firstly, the determination of their legal status is assessed on the case by case basis. Although the terms and conditions of these companies mostly exempt them from relevant legal burdens, law will be applicable according to the fact. Nevertheless, the more regulation the state imposes, the less innovation will be developed. From my point of view, I believe that the idea of “Network Communitarianists” who contend that there exists “a networked community or matrix dots which share ideas, beliefs and opinions<sup>33</sup>” can provide us with the response as to what extent these companies should be regulated. Implicitly, in the near future, a community will discuss and decide the proper balance of regulating this sharing economy platforms.

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<sup>32</sup> A Murray, Information Technology Law: The Law and Society, 3<sup>rd</sup> edition (2016)

<sup>33</sup> *ibid* 33

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