iLINC Policy Briefs

Regulating The Sharing Economy

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ICT Law Incubators Network

The sharing economy shows enormous growth potential.[1] As sharing platforms enter existing markets, policy makers need to make important decisions on how to regulate these new market entrants. If left unregulated, sharing economy platforms may have an unfair competitive advantage over traditional players who need to uphold existing regulation. Yet, the imposition of existing regulation may also disincentive new actors of entering the market, ultimately stifling innovation.

The Sharing Economy and Start-Ups

The term 'sharing economy' refers to the transformation of the traditional market place towards distributed networks in which underutilized assets are shared or exchanged among peers on a consumer-to-consumer level. This exchange of goods and services takes place via online platforms that facilitate human connectivity. The focus hereby mainly lies on the physical assets that are being shared and not the delivery of a service. The latter would be referred to as the on-demand economy: the platform matches a customer's needs with a service provider. Sharing also means that property does not change hands, but is provided on a temporary basis, which makes the sharing economy also different from the rental market. Although the underlying principles of the sharing economy aren't revolutionary, technological developments have reduced transaction costs and have enabled 'sharing' to take place at a much larger scale.

As an economic-technological phenomenon, fuelled by ICT developments, growing consumer knowledge, increasing ethical awareness proliferation of collaborative web communities and the Sharing Economy is a veritable breeding ground for the entrepreneurial spirit.[3] Moreover, the required resources are relatively low.[4] **Start-ups benefit from the uptake of this new mega-trend as it offers them new opportunities in a wide variety of markets, covering a wide range of transactions.**

Perhaps the most well-known operator within the shared market space is San Franciscan based undertaking Airbnb. Nevertheless, European start-ups, such as Peerby and Blablacar, have begun developing their 'shared' alternatives as well. The

This policy brief does not aim to solve all 'sharing economy' conundrums, rather it will try to formulate some guiding principles that could aid governments when choosing to regulate the shared market space.

Innovative Properties

The collaborative economy is yet to reach its full potential. Proponents of the sharing economy refer to the following advantages as arguments in favour of the sharing movement:

SUSTAINABLE: Underutilized assets, such as cars, furniture or unused property in general, can be put to more productive use.

COMPETITIVE: As the market is open for anyone to enter, the consumer or business has more alternatives to consider, thus stimulating competition.

COST EFFICIENT: Online Sharing Economy platforms provide automated connection tools that instantly link peers and facilitate the access to goods and services. Transaction costs are thus lowered.

DISRUPTIVE: Ultimately, a shift towards collaborative consumption has the potential to reshape and re-imagine existing market structures and businesses.

Recommendation 1: Consider the added value of the Sharing Economy and the active role of start-ups within it.

How the Collaborative Economy Exerts Its Influence

Consumer Protection	Licenses and Certificates	Insurance	Planning Regulations
• Consumer protection is built from the idea that the weaker party should be protected from the stronger one. In the Sharing Economy, a weaker party is not necessarily present. Does consumer law then apply? And who should abide the law?	• Traditional markets may require professional actors to acquire a license or certficiate, e.g. in the taxi and banking industry. Actors within the Sharing Economy are not subject to licenses as they usually provide services on a non-professional basis. But could a recurring sharing act become a professional activity and when?	• Insurance is both a necessity and a hindrance to the sharing economy. As the harm and remedy of are hard to determine, Sharing Economy platforms depend on insurance to alleviate the risk. The availability of insurance also increases consumer trust. For start-ups however, offering insurance can be an expensive affair.	• By designating areas for certain purposes (industrial, residential), planning laws are essential in the structuring and use of land. WIthin the Sharing Economy some types of land are now used for multiple activities which do not always fit their designated purpose. Should planning permissions be revised for the Sharing Economy? How can underused land be put into more productive use?

Why regulate the sharing economy?
Recommendation 2: Determine the potential harms of a new peer-to-peer models in an effort to map the need for regulatory action.

Even though the Sharing Economy has advantages, it may also cause harm. Consumers may be more prone to scams or fraud in a peer-to-peer environment. Sharing economy platforms may also give rise to network effects and lock-in. In turn, monopolies may manifest itself. As a consequence thereof, data of users may also become concentrated into the hands of one single party, raising privacy concerns.

In addition, and if left unregulated, some peer-to-peer markets may endanger public health and safety. Whereas traditional service providers may need a license, the sharing economy has no such requirements. From an economic perspective, traditional players may regard these new, sometimes unregulated markets as anti-competitive. These are all legitimate concerns and may justify regulatory action.

However, **the harm of the sharing economy may not always be easily determinable.** Before imposing regulation, one must first determine what the potential harm of a new peer-to-peer model may be. If no harm can be detected or if regulatory action would be disproportional to the harm, regulation may not be necessary at all. Of course, business operators may provide additional services other than the offering of a platform, which may be subject to different regulation.

The difficulty in determining the harm and remedy in the sharing economy is a reason why insurance is crucial to the evolution of these new sharing sectors. For instance, end-users may want additional security before sharing certain goods. Insurance may not prevent harm, but can remedy it. The current uncertainty accompanying the sharing economy may deter insurance companies to provide secutiries.[5] Nevertheless, the presence of insurance could already mitigate certain harms.

How to Regulate the Sharing Economy
Recommendation 3: Policy makers should provide more clarity concerning the legal principles governing the sharing economy.

Once it has been established that peer-to-peer services may cause harm, the question then becomes how should these new business models be regulated? In general, digital technologies have made it increasingly difficult to determine which legislation should be applied where and when. **There's lack of clarity concerning existing legislation and how it should be adapted to the sharing economy.** Therefore, many sharing start-ups currently operate in what they consider to be a legal grey area. Clarity is needed concerning the fundamental principles governing the sharing economy.

Consumer protection for instance has been developed to protect the consumer, i.e. the weaker party, from the professional trader. However, as the sharing economy connects peers, it may not always be clear for consumers to whom they should direct their complaints and exert their consumer rights.

Imposing existing legislation?
Recommendation 4: Rather than imposing existing regulation on sharing economy actors, policy makers may have to re-assess the current regulatory framework. Smart regulation may require the rethinking of existing regulation: in light of new technological developments does the current regulatory framework still fit its initial purpose?

The main problem lies not in regulating the sharing economy as such. Indeed, regulation ensures safety and quality. Rather, the problem lies in the type of regulation that is being chosen to deal with sharing economy.

A logical first step of many local governments has been to impose existing regulatory regimes on these new service models (oftentimes resulting in bans or penalties for non-compliance). Both horizontal (e.g. consumer protection) and sectoral (e.g. taxi regulation) rules have been applied.

However, **the imposition of existing regulation could discourage people from participating in the sharing economy.**

- Start-ups - even if they act only as a 'sharing facilitator' - realise that they are the most visible counter-party and are likely to be subject to legal intervention.

- Sharers may fear that they will be considered as professional actors.

This could ultimately have a chilling effect and without these actors, the sharing economy seizes to exist, disabling the advantages of the sharing economy.

The imposition of sectoral regulation can be linked to the sharing economy's disruptive effect in markets that traditionally belonged to long-established and regulated market players: in areas that were usually the terrain of professionals, anyone can enter the fray. As these actors are regulated, why shouldn't newcomers be? **There is**

validity in the argument that traditional players would have a competitive disadvantage if the sharing economy alternatives would be left unregulated. However, choosing to impose existing regulation on alternative service providers may inhibit the market's innovative properties. Sectoral regulation can be stringent and complex and start-ups may not have the means to ensure legal compliance. Therefore **policy makers should choose for smart regulation, taking into account the dynamic technological environment. Regulators should rethink existing (sector specific) regulation in the light of new developments. In particular, the question should be asked whether the current regulatory framework still fits its intended purpose.**

Of course, certain regulatory frameworks will have to be upheld by new actors regardless of the active sector. For instance, if data is being collected, there is no reason to allow exemptions to the regulatory requirements resulting from current data protection legislation.

The European Level

Considering the importance of growth and in order to ensure competitiveness on a global scale, there should be some coherence on how the sharing economy is regulated: a local approach could lead to divergence, denying start-ups the possibility to scale-up fast.

Although the sharing economy is a horizontal concept that influences many sectors, common elements are present. These common issues could be dealt with on an EU-wide level, for instance through the formulation of a set of recommendations, e.g. **minimum safety and quality standards.** Minimum safety and quality standards could be considered as an alternative for regulatory frameworks that have been developed from traditional business paradigms, such as consumer protection. A 'strong versus weak party' approach does not easily translate to a 'sharing' environment where the participating actors are peers. In these instances, minimum safety and quality requirements could provide guidance and ensure adequate protection to those involved.

Trust

Recommendation 5: Increase trust in the sharing economy and online transactions in general.

Trust is a key element in determining the future success of the sharing economy. Studies have shown that it is a decisive factor in both the decision of an individual to opt for a sharing alternative and the likelihood to choose for this alternative again.[4] Having minimum safety and quality standards is likely to increase trust. Granting trust certificates to those undertakings that have shown to respect these standards could be considered too.[4]

End-users could also be empowered in determining trust among platforms. The implementation of peer-to-peer rating systems should be encouraged. Peer ratings have a signalling effect for the quality of the service and they also serve as ex-ante consumer protection.

iLINC Recommends

- Consider the added value of the sharing economy and the role of start-ups within it.
- Determine the potential harms of a new peer-to-peer models in an effort to map the need for regulatory action.
- Policy makers should provide more clarity concerning the legal principles governing the Sharing Economy.
- Rather than imposing existing regulation on sharing economy actors, policy makers may have to re-assess the current regulatory framework. Smart regulation may require the rethinking of existing regulation: in light of new technological developments does the current regulatory framework still fit its initial purpose?
- Increase trust in the sharing economy and online transactions in general through e.g. trust marks and peer-to-peer rating systems

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