iLINC Policy Briefs

Regulating The Sharing Economy

iLINC
ICT Law Incubators Network

The sharing economy has enormous growth potential and is a driver for innovation. Unfortunately, the current legal framework lacks clarity. Moreover, regulatory interventions of local governments usually consist of the application of existing, stringent and sometimes outdated legislation. Such intervention insufficiently takes into account the sharing economy's innovative properties. iLINC recommends policy makers to take into account the specific nature of the sharing economy before taking action.

The Sharing economy and Start-Ups

The collaborative or sharing economy refers to the transformation of the traditional market place towards distributed networks in which underutilized assets are shared or exchanged among peers. This exchange of goods and services takes place via online platforms that facilitate human connectivity.

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[1]. Moreover, the required resources are relatively low[2]. **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.**

The most well-known operators within the shared market space are San Franciscan undertakings Airbnb and Uber. Nevertheless, European start-ups, such as Peerby and Fixura, have begun developing their 'shared' alternatives as well. The iLINC survey as well, shows the presence of a great number of sharing start-ups.

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. Yet, current sharing economy projects have showcased the positive effects it may have on daily life.

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

SUSTAINABLE: Underutilized assets, such as cars, furniture or unused property in general, can be once again put to productive use. Maximum utilization of available resources may also have positive environmental effects.

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.

Why regulate the sharing economy?

Recommendation 2: First determine the potential harm of the peer-to-peer service, then regulate.

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. Moreover, if left unregulated some peer-to-peer markets may endanger public health and safety. Whereas traditional service

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. taxi and banking industry. Actors within the Sharing Economy are not subject to license as they usually provide services on a non-professional basis. Professional industry actors do not like this development.	• 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?

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 peer-to-peer service 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.

The difficulty in determining the harm and remedy in the sharing economy is a reason why insurance is especially important to the evolution of these new sharing sectors[3].

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 becomes how should it 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. Start-ups

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.

Existing Legislation

Recommendation 4: Rather than imposing existing regulation on sharing economy actors, alternatives, such as de- or self-regulation, should be considered.

Recommendation 5: In already regulated markets, long-established players and disruptive start-ups could collaborate in defining the new governing principles of that market

Practice shows that **undertakings active within the sharing economy face major regulatory roadblocks**[8]. However, the main problem lies not in regulation as such, but rather in the type of regulation 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, **overregulation 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 professionals.

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? **Although there is validity in the argument that traditional players would have a competitive disadvantage if the sharing economy alternatives would be left unregulated, this should not imply that newcomers should be subject to the same regulation.**

In these areas **deregulation** could also be considered: freeing local markets to ensure competition can provide consumers substantial benefits and increase service quality[4].

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 should be regulated, as 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. **safety and quality standards.**

Trust and reputation are Key

Recommendation 6: Increase trust in the sharing economy and online transactions in general through e.g. trust marks and peer-to-peer rating systems

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.

The implementation of peer-to-peer rating systems should be encouraged as well. Not only do peer rating have a signalling effect for the quality of the service, they also serve as ex-ante consumer protection. Trust certificates could be considered as well. However, in order for there to be trust in sharing economy alternatives, trust in online transactions must first be increased.

ILINC is the European Network of Law Incubators. Its main objective is to facilitate the provision of free legal support to start-ups while, at the same time, offering postgraduate law students the opportunity to engage in professional practice in the fast-moving and highly exciting world of technology start-ups.

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iLINC Recommends

- Consider the added value of the Sharing economy and the role of start-ups within it
- Determine the potential harm of the peer-to-peer service before regulating.
- Rather than imposing existing regulation on sharing economy actors, alternatives, such as de- or self-regulation, should be considered.
- Policy makers should provide more clarity concerning the legal principles governing the Sharing economy.
- In already regulated markets, long-established players and disruptive start-ups could collaborate in defining new governing principles
- 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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