REDEFINING AND REGULATING THE NEW SHARING ECONOMY

Inara Scott & Elizabeth Brown

INTRODUCTION

Consumers today rent, share, and recycle goods more than ever before.[1] As one millennial blogger recently put it:

1. *See* Fleura Bardhi & Giana M. Eckhardt, *Access-Based Consumption: The Case of Car Sharing*, 39 J. CONSUMER RES. 881, 881 (2012) [hereinafter Bardhi & Eckhardt, *Access-Based Consumption*](describing the decline in consumer desire for traditional ownership and increasing interest in shared access or resource pooling); Rudy Telles, Jr., *Digital Matching Firms: A New Definition in the "Sharing Economy" Space*, OFFICE OF THE CHIEF ECONOMIST (Econ. and Stat. Admin. U.S. Dep't of Commerce), June 3, 2016, at 7–8 (using

39083 ple_19-3 Sheet No. 22 Side A 05/11/2017 10:58:06

> I rent just about everything in my life: what I wear, what I watch, what I listen to, how I eat. I get my music through Spotify, my entertainment through Netflix, and my transportation through Uber. [. . .] I own the staples, and I rent almost all of the rest. My rental life is not unusual among people in my generation. Some call it the "sharing economy."[2]

While millennials may have embraced this new lifestyle more than any other generation, the so-called "sharing economy" cuts across all age groups and demographics.[3] Nineteen percent of the total U.S. adult population has engaged in a sharing economy transaction, while 44% report being familiar with the notion.[4] The largest percentage of providers in this new sector are split between 25 to 34 year olds and 35 to 44 year olds,[5] while a full 43% of all U.S. consumers agree that "owning today feels like a burden."[6]

But what exactly is the sharing economy? If you ask five people, you may get five different answers. Some will point to companies like Zipcar and Airbnb that use Internet platforms to enable shared access to underutilized goods and services (i.e., cars and spare rooms).[7] Others will point to Internet platforms like TaskRabbit and Uber, which match workers

data from various sharing economy surveys to estimate size of sharing economy and "digital matching firms," a term defined as a subset of the broader sharing economy), http://www.esa.gov/sites/default/files/digital-matching-firms-new-definition-sharing-economy-space.pdf [https://perma.cc/XZL9-NWY7].

2. Logan Whiteside, *Why I Rent Everything: From Clothes to Jewelry*, CNN: MILLENNIALS & THEIR MONEY, May 13, 2015, http://money.cnn.com/2015/05/13/pf/millennial-rent-economy-clothes-jewelry [https://perma.cc/BC52-M5WP].

3. Thirty-four percent of individuals aged 16 to 34 identify as either participating in a sharing service or planning to do so within the next year, as compared to thirty percent of those aged 35 to 54. *See* Deirdre Fretz, *Demographics Drive Sharing Economy as Millennials Seek More for Less*, *in* BLOOMBERG BRIEF: THE SHARING ECONOMY (June 15, 2015), http://newsletters.briefs.bloomberg.com/document/4vz1acbgfrxz8uwan9/the-users-millennials [https://perma.cc/VY3G-MPFE] (noting millennials are more likely to participate in the sharing economy).

4. *Consumer Intelligence Series: The Sharing Economy*, PRICEWATERHOUSECOOPERS 8 (2015), https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf [https://perma.cc/HD9L-YXC2].

5. *Id.* at 10.

6. *Id.* at 17.

7. *The Rise of the Sharing Economy*, TRIPLEPUNDIT, http://www.triplepundit.com/special/rise-of-the-sharing-economy [https://perma.cc/7PC6-AM44] (last visited July 17, 2016) ("The 'sharing economy' describes a type of business built on the sharing of resources . . . think Airbnb or Zipcar."); Joseph Shuford, *Hotel, Motel, Holiday Inn and Peer-to-Peer Rentals: The Sharing Economy, North Carolina, and the Constitution*, 16 N.C.J.L. & TECH. 301, 301–02 (Online ed. 2015) ("Airbnb. Uber. ThredUP False [A]ll three are participants of a rapidly growing business model called the 'sharing economy.'"); *see also* notes 33-37 and accompanying text.

and underemployed individuals with those in need of services and everything from waiting in line for concert tickets to a ride home from the airport.[8] Some may point out that exchanging goods and services for profit, as these services do, seems a far cry from "sharing."[9] Such people may point to tool-sharing collectives, gardening cooperatives, or other non-commercial entities designed to allow for actual *sharing*, in which individuals either jointly own goods or allow others to use their goods without seeking direct remuneration, as more appropriate examples.[10]

In 2010, a notion of "collaborative consumption," which focused on access to shared goods rather than individual ownership, caught hold in the popular imagination.[11] Rebranded and expanded into the much larger concept we now know as the "sharing economy,"[12] this cultural phenomenon and the unique business models it spawned pose an increasing challenge for legal scholars and regulators and, some would argue, an increasing threat to consumers and workers.[13] Industry giants Uber, Lyft,

8. *See* Noam Scheiber, *Corporate America Is Using the Sharing Economy to Turn Us Into Temps*, NEW REPUBLIC (Nov. 23, 2014), https://newrepublic.com/article/120378/wonolo-temp-worker-app-shows-scary-future-sharing-economy [https://perma.cc/4EM3-6JXM] (describing startups, including Uber and TaskRabbit, that use short-term temporary labor to perform services for individuals and businesses); John Patrick Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), http://time.com/3556741/uber [https://perma.cc/RW4B-TEUT] (providing overview of Uber, including controversial "surge" pricing); Brad Stone, *My Life as a Task Rabbit: A Short Career in the Distributed Workforce*, BLOOMBERG (Sept. 13, 2012), http://www.bloomberg.com/news/articles/2012-09-13/my-life-as-a-taskrabbit [https://perma.cc/Q6HC-C9H9] (describing the "distributed workforce" and the author's experience working as a "task rabbit").

9. *See* Russell Belk, *Sharing*, 36 J. CONSUMER RES. 715, 715–21 (2010) (providing an in-depth discussion of the concept of sharing and characteristics that distinguish it from commodity exchanges).

10. *See* Juliet B. Schor, *Getting Sharing Right*, *in On the Sharing Economy*, CONTEXTS: VIEWPOINTS, AMERICAN SOCIOLOGICAL ASS'N (Feb. 23, 2015), https://contexts.org/articles/on-the-sharing-economy/#schor [https://perma.cc/7KCV-SSGE] (describing a class of peer-to-peer internet platforms, including time banks, landsharing, and couch surfing, as true "sharing"); Stacco Troncoso, *Is Sharewashing the New Greenwashing?*, P2P FOUNDATION (May 23, 2014), http://blog.p2pfoundation.net/is-sharewashing-the-new-greenwashing/2014/05/23 [https://perma.cc/CQ49-4CVC] (defining sharing as "the non-monetary movement of goods and services between friends and within communities").

11. RACHEL BOTSMAN & ROO ROGERS, WHAT'S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION xv (2010); *see also infra* notes 22-26 and accompanying text.

12. *See infra* Part I.A.

13. *See* Sofia Ranchordás, *Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy*, 16 MINN. J.L. SCI. & TECH. 413, 420 (2015) (describing the regulatory clash between "the interest to stimulate innovation and the need to protect the public from its potential harms"); Lydia DePillis, *At the Uber for Home Cleaning, Workers Pay a Price for Convenience*, WASH. POST (Sept. 10, 2014), https://www.washingtonpost.com/news/storyline/wp/2014/09/10/at-the-uber-for-home-cleaning-workers-pay-a-price-for-

and Airbnb, have been the subject of labor demonstrations, regulatory proceedings, class action lawsuits, initiative campaigns, and expansive subpoenas for data related to taxes and regulatory compliance.[14] Calls for regulation of "sharing" businesses appear on many fronts, including those of labor, safety, taxation, and zoning.[15]

Another risk to consumers concerns the mistaken assumption that sharing economy companies always benefit society. Because members of the original sharing economy often touted a social and environmental mission, new sharing economy companies may benefit unjustly from a misperception that they are socially beneficial.[16] Just as firms once

convenience [https://perma.cc/2745-LKZL] (describing difficulties experienced by independent contractors cleaning homes for Homejoy, a web-based housecleaning enterprise); Claire Cain Miller, *When Uber and Airbnb Meet the Real World*, N.Y. TIMES: THE UPSHOT (Oct. 17, 2014), http://www.nytimes.com/2014/10/19/upshot/when-uber-lyft-and-airbnb-meet-the-real-world.html?_r=0 [https://perma.cc/L6D4-BKYG] (describing increasing problems encountered by platform apps that use Silicon Valley's approach to business: they seek to "[s]erve as a middleman, employ as few people as possible and automate everything"); Scheiber, *supra* note 8 (discussing potential for platform enterprises to use on-demand workers to replace regular employees).

14. *See, e.g.*, Laura Lorenzetti, *Everything to Know About the Uber Class Action Lawsuit*, FORTUNE (Sept 2, 2015), http://fortune.com/2015/09/02/uber-lawsuit [https://perma.cc/2EWV-QWQ8] (describing the potential consequences of a ruling against Uber); *see generally* N.Y. STATE OFFICE OF THE ATTORNEY GEN., AIRBNB IN THE CITY (2014), *available at* http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf [https://perma.cc/4GYN-DVSB] (describing results of subpoena for information related to Airbnb); Erin Mitchell, *Uber's Loophole in the Regulatory System*, 6 HOUS. L. REV.: OFF REC. 75 (2015) (comment) (describing a variety of lawsuits and potential liability actions targeted at Uber by riders, drivers, and regulators); Alissa J. Rubin & Mark Scott, *Clashes Erupt Across France As Taxi Drivers Protest Uber*, N.Y. TIMES (June 25, 2015), http://www.nytimes.com/2015/06/26/business/international/uber-protests-france.html [https://perma.cc/7PD5-76EC] (describing protests by taxi drivers and associations against Uber for what they call its "economic terrorism"). For a collection of articles about lawsuits against Uber, including the class action lawsuit by Uber drivers, *See Uber*, HUFFINGTON POST, http://www.huffingtonpost.com/news/uber [https://perma.cc/W5EF-B5YH] (newsfeed) (last visited July 17, 2016).

15. See Josh Krauss, The Sharing Economy: How State and Local Governments Are Failing and Why We Need Congress to Get Involved, 44 SW. L. REV. 365, 373–84 (2014) (offering proposals for federal regulation); Hannah A. Posen, Ridesharing in the Sharing Economy: Should Regulators Impose Über Regulations on Uber?, 101 IOWA L. REV. 405, 431 (2015) (note) (proposing experimental regulations for Uber); Catherine Lee Rassman, Regulating Rideshare Without Stifling Innovation: Examining the Drivers, the Insurance "Gap," and Why Pennsylvania Should Get on Board, 15 PITT. J. TECH. L. & POL'Y 81, 97–99 (2014) (proposing regulations for ridesharing companies in Pennsylvania).

16. *See* Kelly Carlin, *The Problems with "Sharing"*, MOTHERBOARD (Jan. 15, 2014), http://motherboard.vice.com/blog/the-sharewashing-scourge (arguing that the term "sharing" is increasingly used to hide business models that are neither socially nor environmentally beneficial); Sebastian Olma, *Never Mind the Sharing Economy: Here's Platform Capitalism*, INST. OF NETWORK CULTURES: BLOG (Oct. 16, 2014),

engaged in "greenwashing," some have suggested that organizations now engage in "sharewashing"—claiming illusory benefits related to the sharing concept.[17]

While proponents of regulating the sharing economy suggest a need to protect public health, workers, and incumbent businesses as well as to protect consumers from deception or unsafe products, opponents of regulation argue that government intervention will stifle innovation and undermine economic and community benefits.[18] The problem with both sides of this argument is that advocates and detractors alike often fail to address the wide differences among the practices and business entities that currently fall under the same umbrella. Arguably, Uber—with its aggressive international growth, venture capital financing, and over $60 billion valuation[19]—and a local gardening cooperative present very different levels and types of risks requiring regulation. At the same time, the lack of agreement as to the basic definition of what the sharing economy is can create confusion and controversy over whether to regulate sharing businesses differently from traditional commercial enterprises.

To address this inappropriate conflation and the resulting confusion among consumers and regulators alike, the goals of this article are to define the sharing economy as it now stands and to create a taxonomy that distinguishes and differentiates the various types of business entities that

---

http://networkcultures.org/mycreativity/2014/10/16/never-mind-the-sharing-economy-heres-platform-capitalism/ [https://perma.cc/95XV-H5ST] (arguing that it is necessary to redefine the so-called "sharing" economy to more accurately assess its potential risks and benefits); Troncoso, *supra* note 10 (distinguishing sharing from renting (Airbnb), working (TaskRabbit), and surveillance (Facebook), and the downside of linking non-sharing practices to the sharing economy).

17. *See* Carlin, *supra* note 16 ("Sharewashing, when done well, doesn't just evoke a warm generosity. It can conceal ugly things too."); Troncoso, *supra* note 10 (suggesting that sharewashing "disables the very promise of an economy based on sharing"); Edward T. Walker, *Beyond the Rhetoric of the Sharing Economy, in On the Sharing Economy*, CONTEXTS: VIEWPOINTS, AMERICAN SOCIOLOGICAL ASS'N (Feb. 23, 2015), https://contexts.org/articles/on-the-sharing-economy/#walker (arguing in favor of renaming the sharing economy the "crowdsourcing economy" to avoid "misleading by moralization").

18. *See* Larry Downes, *Lesson from Uber: Why Innovation and Regulation Don't Mix*, FORBES (Feb. 6, 2013), http://www.forbes.com/sites/larrydownes/2013/02/06/lessons-from-uber-why-innovation-and-regulation-dont-mix [https://perma.cc/5GD6-MEVU] (suggesting that highly-regulated industries, including taxi companies and utilities, lose an incentive to innovate, lower prices, and provide good service); Ranchordás, *supra* note 13, at 442–43 (noting that regulation can hinder innovation when it places excessive burdens on firms); Rassman, *supra* note 15, at 98 (arguing on behalf of narrowly-tailored regulations to "protect drivers *and* passengers").

19. Eric Newcomer, *Uber Raises Funding at $62.5 Billion Valuation*, BLOOMBERG (Dec. 3, 2015), http://www.bloomberg.com/news/articles/2015-12-03/uber-raises-funding-at-62-5-valuation [https://perma.cc/PK4S-NLA9].

have been lumped into it. This article then proposes regulatory responses to the differing categories in the taxonomy based on the risks they present. Among these responses is the recommended creation of a "sharing assessment" that would certify entities that meet a threshold criteria, similar to B Corporations,[20] in order to create more transparent signaling to consumers and prevent sharewashing.

Part I presents the original notion of the sharing economy and contrasts this notion with the current, expanded concept. Part II identifies the key risks presented by sharing economy companies. Based on these risks, Part III offers a taxonomy of sharing and suggests regulatory responses to each category of the taxonomy.

In sum, this article will redefine the new sharing economy, analyze its regulatory challenges, create a framework that recognizes the differences among its constituent elements, and offer regulatory recommendations to address the risks and rewards it offers.

I. WHAT IS THE SHARING ECONOMY, AND WHY DOES IT NEED REGULATION?

A. *The Shifting Definitions of the Sharing Economy*

As with many popular phrases, the origin of the term "sharing economy" is unclear.[21] Many trace the beginning of the sharing movement to a 2010 book titled, *What's Mine is Yours: the Rise of Collaborative Consumption*, by Rachel Botsman and Roo Rogers, and Botsman's influential TED Talk, *The Case for Collaborative Consumption*.[22] Botsman and Rogers defined collaborative consumption (a term the authors identified as part of a societal movement toward greater sharing and

20. *See About B Lab*, B LAB, https://www.bcorporation.net/what-are-b-corps/about-b-lab (last visited July 20, 2016) [https://perma.cc/R83Y-6XVK].

21. In a 1984 book titled *The Share Economy*, Martin Weitzman proposed that companies share profits with employees to mitigate the effects of so-called "stagflation." Stagflation is defined as a period of both low economic growth and rising inflation. MARTIN L. WEITZMAN, THE SHARE ECONOMY: CONQUERING STAGFLATION 2 (1984). Although related, this does not capture the essence of what we now think of as the sharing economy.

22. *Rachel Botsman: The Case for Collaborative Consumption*, TEDX (May 2010), https://www.ted.com/talks/rachel_botsman_the_case_for_collaborative_consumption?language=en [https://perma.cc/6L6A-F43X]. In a 1978 article, authors Marcus Felson and Joe Spaeth described "acts of collaborative consumption" as "those events in which one or more persons consume economic goods or services in the process of engaging in joint activities with one or more others." Marcus Felson & Joe L. Spaeth, *Community Structure and Collaborative Consumption*, 21 AM. BEHAV. SCIENTIST 614, 614 (1978). Felson and Spaeth's examples of collaborative consumption included "drinking beer with friends" and "using a washing machine for family laundry." *Id*.

collaboration) as an alternative to traditional market-based consumption and a culture of consumerism.[23] They saw collaborative consumption as a means of redefining the way people use and own, including "sharing, bartering, lending, renting, gifting, and swapping."[24]

The purpose of participating in this form of consumption was to "save money, space, and time; make new friends; and become active citizens once again."[25] Botsman and Rogers explicitly linked collaborative consumption to positive social change. The authors note that, "[collaborative] systems provide significant environmental benefits by increasing use efficiency, reducing waste, encouraging the development of better products, and mopping up the surplus created by over-production and consumption."[26]

Academic papers discussing the sharing economy typically provide general definitions of the term that mirror the attributes offered by Botsman and Rogers, often with an emphasis on the personal nature of the transaction.[27] As Janelle Orsi, a prominent scholar and attorney in the sharing field, puts it: "Although it is hard to encapsulate the qualities of this new economy, it generally facilitates community ownership, localized

23. BOTSMAN & ROGERS, *supra* note 11, at xv.

24. *Id*.

25. *Id*. at xv–xvi. In 2011, Danielle Sacks, writing for popular technology and business magazine *Fast Company*, similarly emphasized the potential of the sharing industry to disrupt traditional consumption patterns and consequently retail enterprises. *See* Danielle Sacks, *The Sharing Economy*, FAST COMPANY (Apr. 18, 2011), www.fastcompany.com/1747551/sharing-economy [https://perma.cc/2L27-9RQ6] ("Now that the sharing economy is gaining the backing of the financial community, corporations from car manufacturers to big-box retailers better start paying attention.").

26. BOTSMAN & ROGERS, *supra* note 11, at xv–xvi.

27. *See, e.g.*, Ranchordás, *supra* note 13, at 416 ("The sharing economy presupposes two elements: the existence of physical 'shareable goods that systematically have excess capacity' and a sharing attitude or motivation.") (quoting Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing As A Modality of Economic Production*, 114 YALE L.J. 273, 276 (2004)); Molly Cohen & Corey Zehngebot, *What's Old Becomes New: Regulating the Sharing Economy*, 58 BOSTON B.J. Spring 2014 at 6, 6 (defining the sharing economy as "the internet-based sharing of underutilized space, skills, and stuff for monetary and non-monetary benefits"); SHUFORD, *supra* note 7, at 302 ("The sharing economy business model is based around the principle of using personal resources more efficiently. . . . [S]haring economy companies act as online forums for people to advertise their available resources."); Chris J. Martin, Paul Upham & Leslie Budd, *Commercial Orientation in Grassroots Social Innovation: Insights from the Sharing Economy*, 118 ECOLOGICAL ECON. 240, 240 (2015) (noting that "[i]n practice the terms sharing economy and collaborative consumption tend to be used interchangeably"); *see also* Bronwen Morgan & Declan Kuch, *Radical Transactionalism: Legal Consciousness, Diverse Economies, and the Sharing Economy*, 42 J.L. SOC'Y 556, 557 (2015) (arguing that the definition of the sharing economy must include initiatives and innovations that "mix elements of activism and enterprise").

production, sharing, cooperation, [and] small-scale enterprise."[28] Other definitions focus on the sharing economy as a means of putting underutilized personal assets to work.[29] As Cannon and Chang note, "the sharing economy refers to bringing to market goods and labor that are otherwise unutilized during certain time periods."[30]

Another key component of the sharing economy identified by many commentators is the peer-to-peer (P2P) aspect of sharing enterprises and the way in which web-based applications enable individuals to communicate and collaborate more effectively and efficiently than ever before.[31] A 2014 report by Debbie Wosskow, for example, broadly "defin[es] the sharing economy as online platforms that help people share access to assets, resources, time and skills."[32]

28. Janelle Orsi, Practicing Law in the Sharing Economy: Helping People Build Cooperatives, Social Enterprise, and Local Sustainable Economies 2 (2012).

29. *See, e.g.*, Rassman, *supra* note 15, at 81 (describing the sharing economy as "rooted in the allocation of underutilized space, skills, and goods by 'matching providers who have specific assets or skills with the people who need them'") (quoting Arun Sundararajan, *Why the Government Doesn't Need to Regulate the Sharing Economy*, WIRED (Oct. 21, 2012, 1:45 PM), http://www.wired.com/2012/10/from-airbnb-to-coursera-why-the-government-shouldnt-regulate-the-sharing-economy [https://perma.cc/QYM2-NUWM]); POSEN, *supra* note 15, at 407 ("Essential to this new sharing economy is the idea that the consumer does not need everything; rather, 'we can access these resources when we need them, and only pay for what we use.'") (quoting James Gardner, *What Is the New Sharing Economy?*, FORBES (July 30, 2013, 11:59 AM), http://www.forbes.com/sites/emc/2013/07/30/what-is-the-new-sharing-economy [https://perma.cc/5YH4-76G7]).

30. Bryant Cannon & Hanna Chung, A Framework for Designing Co-Regulation Models Well-Adapted to Technology-Facilitated Sharing Economies, 31 SANTA CLARA HIGH TECH. L.J. 23, 25 (2015).

31. *See, e.g.*, Talia G. Loucks, *Travelers Beware: Tort Liability in the Sharing Economy*, 10 WASH. J.L. TECH. & ARTS 329, 330 (2015) ("The sharing economy is an offspring of the peer-to-peer business model that has grown in importance in recent years."); RASSMAN, *supra* note 15, at 81 (noting that "the sharing economy owes much of its success to advances in peer-to-peer technology"); POSEN, *supra* note 15, at 407 ("Technology and innovation are central to the sharing economy, which focuses on finding ways to accomplish things quickly and easily.").

32. Debbie Wosskow, *Unlocking the Sharing Economy: An Independent Review*, GOV.UK 13 (2014), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378291/bis-14-1227-unlocking-the-sharing-economy-an-independent-review.pdf [https://perma.cc/JQ3Y-T22P].

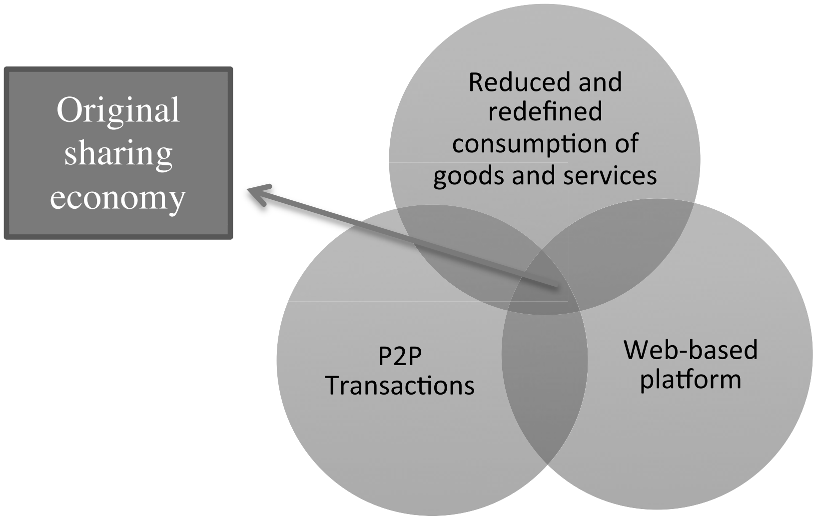

FIGURE 1

Figure 1 depicts the essential characteristics of the original sharing economy as proposed by Botsman and Rogers and as seen in much of the academic literature: reduced and redefined consumption of goods and services, P2P transactions, and a web-based platform. The reduced and redefined consumption component is explicitly tied to a societal benefit, which is generally environmental protection, community-building, or both.

Popular definitions of the sharing economy often focus on its shift away from traditional notions of private, individual ownership and toward a more fluid recirculation of goods and services.[33] Whereas previous generations bought their own music, cars, and clothes, consumers today are more likely to turn to the sharing economy to get temporary access to the same things. For example, one blogger describes her clothing expenditures this way: "For $54 a month, Le Tote sends me three articles of clothing and two pieces of jewelry. I wear them as long as I want. Then whenever I'm ready for a change, I send them back in a pre-addressed envelope, and wait

33. *See* Sacks, *supra* note 25 (proposing that the basic characteristic of sharing economy businesses "is that they extract value out of the stuff we already have"); Giana M. Eckhardt & Fleura Bardhi, *The Sharing Economy Isn't About Sharing at All*, HARV. BUS. REV. (Jan. 28, 2015), https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all [https://perma.cc/G3YK-384G] [hereinafter Eckhardt & Bardhi, *The Sharing Economy*] ("[C]onsumers are paying to access someone else's goods or services for a particular period of time.").

for my next batch."[34]

Instead of buying a car, consumers today may gain short-term access to a car through a car-sharing service like Zipcar or simply get a ride from Uber. Rather than owning music, consumers can gain access through streaming services like Spotify and Pandora.[35] The popularity of the sharing economy is evident from the rapid growth of these companies and the astronomical valuation of many of them, exemplified by Uber's more than $60 billion valuation.[36]

Whatever definition is offered, certain entities now considered prototypical examples of the sharing economy include Uber, Airbnb, and TaskRabbit. The most commonly identified sectors of the sharing economy include transportation, housing, workspaces, food, goods, and jobs.[37] Examples of companies that are touted as, or tout themselves as, members of the sharing economy include:

- Uber and Lyft, "ridesharing" platforms that pair drivers with their own vehicles with individuals seeking a ride and facilitate online payments;[38]
- Zipcar, a car-sharing service that allows members to book cars for shorter periods and in more convenient locations than traditional car rental companies;[39]
- Bike-sharing platforms that allow individuals to use shared bicycles under different pricing schedules in several cities,

34. Whiteside, *supra* note 2.

35. *See* PRICEWATERHOUSECOOPERS, *supra* note 4, at 5, 14–15; *About Pandora*, PANDORA, http://www.pandora.com/about [https://perma.cc/TA29-TDPG] (last visited July 18, 2016) (describing Pandora's music-streaming service); *About Us*, SPOTIFY, https://www.spotify.com/us/about-us/contact [https://perma.cc/TUF3-5KLT] (last visited July 18, 2016) (describing Spotify's music-streaming service).

36. *See* Newcomer, *supra* note 19 (noting Uber's $62.5 billion valuation).

37. *See generally* SHAREABLE & SUSTAINABLE ECONOMIES LAW CTR., POLICIES FOR SHAREABLE CITIES: A SHARING ECONOMY POLICY PRIMER FOR URBAN LEADERS (2013), http://www.shareable.net/download-your-copy-of-policies-for-shareable-cities [https://perma.cc/PS47-P8Y3] [hereinafter SHAREABLE] (breaking down recommendations by transportation, housing, food, and job creation); DAMIEN DEMAILLY & ANNE-SOPHIE NOVEL, THE SHARING ECONOMY: MAKE IT SUSTAINABLE 7 (2014), *available at* http://www.iddri.org/Publications/Economie-du-partage-enjeux-et-opportunites-pour-la-transition-ecologique [https://perma.cc/BW9A-3VCW] (discussing shareable goods); Wosskow, *supra* note 32, at 25–38 (identifying sectors as: shared space and accommodation; tasks, time, and skills; transportation; and others including clothing, food, items, and logistics).

38. UBER, https://www.uber.com [https://perma.cc/2WKG-7PBR] (last visited July 18, 2016); LYFT, https://www.lyft.com [https://perma.cc/SP9C-8DM8] (last visited July 18, 2016).

39. ZIPCAR, http://www.zipcar.com [https://perma.cc/P75F-87QN] (last visited July 18, 2016).

such as New York City's Citi Bike and Washington, D.C.'s Capital Bikeshare;[40]

- Airbnb, HomeAway, and Vacation Rentals by Owner (VRBO), platforms that allow individuals to rent spare rooms, apartments, houses, or vacation homes for short periods of time;[41]
- TaskRabbit and UpWork, platforms that pair individuals available to work with those needing tasks performed;[42]
- Tradesy, thredUP, Poshmark, The RealReal, and Vestiaire Collective, online clothing stores that purchase and resell certain types of used clothes and accessories from individuals who can "cash out" or use their balance to purchase other items on the site;[43]
- Le Tote, a company that rents out totes filled with clothing and accessories, customized for each customer, for a monthly fee;[44]
- Rent the Runway, a company that rents high-end clothing to its customers;[45]
- Rocksbox, a company that curates a personalized selection of

40. CITI BIKE, https://www.citibikenyc.com [https://perma.cc/L752-SXXZ] (last visited July 18, 2016); CAPITAL BIKESHARE, https://www.capitalbikeshare.com [https://perma.cc/UT4S-X2UC] (last visited July 18, 2016).

41. AIRBNB, https://www.airbnb.com [https://perma.cc/8T7A-7R99] (last visited July 18, 2016); HOMEAWAY, https://www.homeaway.com [https://perma.cc/3L2R-4LZU] (last visited July 18, 2016); VRBO, https://www.vrbo.com [https://perma.cc/QEW9-WCPE] (last visited July 18, 2016).

42. TASKRABBIT, https://www.taskrabbit.com [https://perma.cc/RWD3-FD23] (last visited July 18, 2016); UPWORK, https://www.upwork.com [https://perma.cc/AZY9-XVPE] (last visited July 18, 2016).

43. THREDUP, https://www.thredup.com [https://perma.cc/7L7Y-UAA9] (last visited July 18, 2016) (marketing its business as an online consignment and thrift store); TRADESY, https://www.tradesy.com [https://perma.cc/X7RW-A5DZ] (last visited July 18, 2016) (promoting its clothing business as part of the "collaborative economy"); POSHMARK, https://poshmark.com [https://perma.cc/WS2R-TRP5] (last visited July 18, 2016) (pledging to focus on "offering a one-of-a-kind unique experience in connecting people and their closets"); THE REALREAL, https://www.therealreal.com [https://perma.cc/97J6-45R2] (last visited July 18, 2016) (operating an online luxury consignment shop); VESTIAIRE COLLECTIVE, http://www.vestiairecollective.com [https://perma.cc/E94T-DA2S] (last visited July 18, 2016) (offering customers the opportunity to access and sell items in its "community of fashion lovers").

44. LE TOTE, https://letote.com [https://perma.cc/6PWJ-662E] (last visited July 18, 2016) (promoting its business as one that allows women to borrow and wear top brands).

45. RENT THE RUNWAY, https://www.renttherunway.com [https://perma.cc/7G86-3FJF] (last visited July 18, 2016) (allowing subscribers to rent designer clothing for special events).

rental jewelry and charges customers on a monthly basis;[46]

- Netflix, Amazon Prime Video, and Hulu, online streaming services for television and movies;[47]
- Spotify, Amazon Prime Music, Apple Music, and Pandora, online streaming services for music;[48]
- ToysTrunk and Pley, toy rental companies offering their selections online;[49]
- Booksfree, a subscription-based rental service for books and audiobooks;[50]
- Parking Panda, an app that allows users to compare and reserve parking spaces in more than forty cities;[51]
- Care.com, a platform facilitating access to care providers for children, seniors, and pets, and well as for housekeepers;[52]
- WeWork, a company offering short-term access to commercial office space;[53]
- Handy, a web-based platform allowing customers to hire home cleaners and handymen that are background-checked

46. ROCKSBOX, https://www.rocksbox.com [https://perma.cc/Y7ZC-U2FQ] (last visited July 18, 2016) (promising customers access to "the ultimate jewelry collection").

47. HULU, http://www.hulu.com [https://perma.cc/8LBW-4J6S] (last visited July 18, 2016) (offering free one-month trial for television and movie streaming service); NETFLIX, https://www.netflix.com [https://perma.cc/S3FY-3GL8] (last visited July 18, 2016) (offering the opportunity to watch anywhere); *Prime Instant Video*, AMAZON, https://www.amazon.com/Prime-Instant-Video/b/ref=primedp_piv?ie=UTF8&node=2676882011 [https://perma.cc/FS7P-4W8W] (last visited July 18, 2016) (offering Amazon Prime subscribers a wide selection of movies as part of their membership).

48. APPLE MUSIC, http://www.apple.com/music [https://perma.cc/LBW7-J4M8] (last visited July 18, 2016) (offering monthly membership to listeners); PANDORA, http://www.pandora.com [https://perma.cc/KA7A-6R8P] (last visited July 18, 2016) (offering an internet radio service); *Prime Instant Music*, AMAZON, https://www.amazon.com/gp/feature.html?ie=UTF8&docId=1002557791 [https://perma.cc/Q3M8-XP98] (last visited July 18, 2016) (including music streaming as part of a Prime membership); SPOTIFY, https://www.spotify.com [https://perma.cc/UR63-HX6F] (last visited July 18, 2016) (streaming "music for everyone").

49. PLEY, https://www.pley.com [https://perma.cc/7VV4-F9ST] (last visited July 18, 2016) (touting itself as a monthly toy club); TOYSTRUNK, http://www.toystrunk.com [https://perma.cc/7VRY-ET7E] (last visited July 18, 2016) (offering a toy rental service).

50. BOOKSFREE, http://www.booksfree.com [https://perma.cc/ZJ9K-SZYM] (last visited July 18, 2016) (providing members with access to unlimited books or audiobooks).

51. PARKING PANDA, https://www.parkingpanda.com [https://perma.cc/9MVS-F45Q] (last visited July 18, 2016) (guaranteeing parking for members in select cities).

52. CARE.COM, https://www.care.com [https://perma.cc/8ADP-ALY7] (last visited July 18, 2016) (offering caregiving services).

53. WEWORK, https://www.wework.com [https://perma.cc/A8J6-QRJ9] (last visited July 18, 2016) (offering services to help grow businesses).

and insured;[54]

- Rinse, a laundry and dry-cleaning service that allows users to schedule pick-ups and deliveries online within a selected timeframe;[55]
- Craigslist, an online community that facilitates peer-to-peer transactions of all kinds, from employment to housing to sales of personal items, on a regional basis;[56]
- Etsy, an online marketplace for artists, crafters, designers, and sellers of vintage items;[57]
- 1stdibs, an online antiques market that allows customers to shop by item type, style, and dealer location;[58]
- FarmersWeb, a platform that puts local food buyers in touch with small farmers;[59]
- Flickr, a platform that allows people to upload and share photographs,[60] including photos under a Creative Commons license, which allows for greater sharing and collaboration;[61] and
- Tool-sharing collectives that act as local tool-lending libraries in several cities.[62]

---

54. HANDY, https://www.handy.com/about [https://perma.cc/K33K-8JNK] (last visited July 18, 2016) (explaining that "Handy is the leading platform for connecting individuals looking for household services with top-quality, pre-screened independent service professionals. From home cleaning to handyman services, Handy instantly matches thousands of customers every week with trusted professionals in cities all around the world").

55. RINSE, https://www.rinse.com/ [https://perma.cc/T6DZ-VV2F] (last visited Jan. 23, 2017) (providing valet service in San Francisco, Los Angeles, and Washington D.C.).

56. CRAIGSLIST, http://www.craigslist.org [https://perma.cc/DY9Z-K5PX] (last visited July 18, 2016) (listing posts for housing, sales, jobs, services, gigs, and resumes, as well as discussion forums, personal ads, and community-related topics).

57. ETSY, https://www.etsy.com/about [https://perma.cc/CGX4-CWHZ] (last visited July 18, 2016) (describing the business as "a marketplace where people around the world connect, both online and offline, to make, sell and buy unique goods").

58. 1STDIBS, https://www.1stdibs.com [https://perma.cc/FGW2-TM7W] (last visited July 18, 2016) (describing an offering one-of-a-kind and made-to-order pieces).

59. FARMERSWEB, https://www.farmersweb.com [https://perma.cc/WQJ9-F3AJ] (last visited July 18, 2016) (describing an offering software to farmers).

60. FLICKR, https://www.flickr.com [https://perma.cc/W2TW-P8RE] (last visited July 18, 2016) (showcasing the touting of its community of 120 million people and collection of 13 billion photos).

61. *What We Do: What Is Creative Commons?*, CREATIVE COMMONS, https://creativecommons.org/about [https://perma.cc/H9HV-GLL5] (last visited July 18, 2016) (describing the provision of "free, easy-to-use copyright licenses to make a simple and standardized way to give the public permission to share and use your creative work–on conditions of your choice").

62. *See, e.g.*, NE SEATTLE TOOL LIBRARY, *About Us*, http://neseattletoollibrary.org/

As will be discussed in the next part, the range of business models that ostensibly belong to the new sharing economy is far broader than the range first described by Botsman and Rogers and echoed by their academic peers. It encompasses goods and services, housing and media, large and small businesses, and local and international operations. One consequence of this expansive range is the need to ensure that these new businesses are regulated appropriately.

B. *Redefining the New Sharing Economy for Better Regulation*

In order to categorize the components of the sharing economy, and therefore facilitate its effective regulation, we must examine how the sharing economy has evolved from its earlier characterizations. This section focuses on how the term "sharing economy" has expanded to cover a broader range of business types than first imagined.

Botsman and Rogers's description of collaborative consumption encapsulates the original sharing economy. Botsman and Rogers saw collaborative consumption as a reaction to a growing culture of overconsumption, which had led to environmental degradation and increasing levels of individual disassociation and loss of communities.[63] They argued that the world had reached a collective "tipping point" and that people were "starting to recognize that the collective quest for material things [had] come at the expense of impoverishing relationships with friends, family, neighbors, and the planet."[64] The twin goals of building relationships and reducing consumption were aided and mirrored by the growth of online and Internet-based communities, which created systems for building trust and collaboration in the absence of face-to-face contact and relationships.[65]

Collaborative consumption focused on access instead of ownership as a means for increasing the use of underutilized goods.[66] Systems of bartering, exchanges of goods and services, and genuine sharing of resources—like garden space—were intended to allow for more efficient

aboutus/ [https://perma.cc/HFL2-F7NC] (last visited July 18, 2016) (providing community access to a wide variety of tools, training, and sustainable resources).

63. BOTSMAN & ROGERS, *supra* note 11, at 43–44, 54–55.

64. *Id*. at 44.

65. *Id*. at xx ("Indeed, we believe people will look back and recognize that Collaborative Consumption started online—by posting comments and sharing files, codes, photos, videos, and knowledge. And we have not reached a powerful inflection point, where we are starting to apply the same collaborative principles and sharing behaviors to other physical areas of our everyday lives.").

66. *Id*. at 71-73 (describing a "'usage mind-set' whereby they pay for the benefit of a product—what it does for them—without needing to own the product outright").

use of resources.[67] Another key aspect of this new form of consumption was the decentralized nature of the transactions.[68] Internet-based platforms helped individuals to communicate directly with other individuals to sell used items that would otherwise end up in a landfill or offer services that would otherwise only be available through a formal employment contract.

Notions of the "sharing economy" today, however, often look quite different from this idealistic paradigm. Uber, the prototypical sharing enterprise, resembles a multinational taxi service more than a community-based car-sharing collective. Airbnb, once billed as a way to share unused rooms in a private residence, now includes many homes and apartments dedicated to commercial use.[69] Conversations about the sharing economy may now also include Netflix (a video-streaming service), Rent the Runway (rentals of designer clothing from a commercial enterprise), WeWork (short-term rentals of commercial office space), and Zipcar (the Avis company that provides short-term car rentals).[70] None of these

67. *Id.* at 73.

68. *Id.* at 92 ("Collaborative Consumption eliminates the need for. . . .middlemen. With an infinite marketplace for direct peer-to-peer exchanges, the role of the middleman is no longer to police the trade False Just as Rob Kalin recognized with Etsy and the founders of Airbnb envisioned, the role of their companies is to act as curators and ambassadors, creating platforms that facilitate self-managed exchanges and contributions.").

69. *See* Heather Scheiwe Kulp & Amanda L. Kool, *You Help Me, He Helps You: Dispute Systems Design in the Sharing Economy*, 48 WASH. U.J.L. & POL'Y 179, 197 (2015) (noting that "38 percent of Airbnb's revenue for 2013 came from units that were rented out without the host present for a total of six or more months during the year").

70. Today's sharing economy has also been linked to a social trend toward the development of collaboration and sharing across multiple areas of society. Many commentators, including Botsman and Rogers, link the growth of collaborative consumption to sharing in non-commercial and non-consumptive areas of people's lives, including social media and social networking websites and applications like Facebook, Instagram, and Pipo. BOTSMAN & ROGERS, *supra* note 11 at xx. Some include collaborative open-source software projects, like Linux, and collaborative information-sharing sites, like Wikipedia and Quora, as part of the sharing economy. *See, e.g.*, Lucille A. Jewel, *The Indie Lawyer of the Future: How New Technology, Cultural Trends, and Market Forces Can Transform the Solo Practice of Law*, 17 SMU SCI. & TECH. L. REV. 325, 338–39 (2014) ("Sharing and collaborating are the hallmarks of participatory culture. New technology has created a marked 'increase in our ability to share, to cooperate with one another, and to take collective action, all outside the framework of traditional institutions and organizations.' False Clay Shirky offers Wikipedia and Linux as examples of successful projects that have capitalized on people's desire to collectively participate and contribute to reach an end goal.") (quoting CLAY SHIRKY, HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS 20–21 (2008)). A movement toward "sharing cities" seeks to encourage trust and collaboration within cities to build community, increase efficiency, and improve the environment. Sharing cities could even unite to form a "Sharing World" to improve the lives of people around the globe; Lawrence Lessig, REMIX: MAKING ART AND COMMERCE THRIVE IN THE HYBRID ECONOMY 177 (2008) (describing a "hybrid economy" as "either a commercial entity that aims to leverage value from a sharing economy, or False a sharing

enterprises looks precisely like Botsman and Rogers's antidote to consumer culture.

First, transactions in the new sharing economy are not necessarily, or even primarily, P2P. Rent the Runway, for example, relies on an Internet-based platform to increase the consumption of underutilized assets (i.e., formal dresses), but the customer rents the dress directly from a large commercial enterprise with over five hundred employees and "the largest dry cleaning operation in the U.S."[71]

Second, while many of the new sharing economy companies are based on non-traditional forms of consumption, including shared access rather than private ownership, this focus does not necessarily grow out of a social mission. Instead, the value proposition of the new enterprises is just as likely to be efficiency, time-saving, or an opportunity to earn money outside of traditional employment settings, either through selling access to assets or offering services.[72] For example, the stated goal of the founders of Handy.com is to be "the easiest, most convenient way to book home services."[73]

Even when new companies offer redefined methods of consumption, their business models may not further the original sharing economy mission. In direct opposition to the original goal of *reducing* consumption, some of the new sharing economy companies facilitate *increased*

economy that builds upon a commercial entity to better supports its sharing aims"). *See* Adam Parsons, *The Sharing Economy: A Short Introduction to its Political Evolution*, SHARE THE WORLD'S RESOURCES (Jan. 21, 2014), http://www.sharing.org/information-centre/articles/sharing-economy-short-introduction-its-political-evolution [https://perma.cc/LK76-MKZH]. The expansion of the concept of collaborative consumption into non-commercial, social contexts suggests that what was once seen as an effort to provide alternatives to private ownership is now a cultural trend with much broader social implications. The overlap between redefined methods of consumption and reordering of social relationships and methods of interaction in both commercial and social realms may explain why it is so challenging to define the sharing economy. In this paper, we focus on one aspect of this varied notion of sharing—sharing enterprises devoted to consumption of goods and services, including food, housing, media, and transportation—rather than trying to incorporate or define other cultural and social expressions of sharing.

71. *About*, RENT THE RUNWAY, https://www.renttherunway.com/pages/about [https://perma.cc/3ZQE-W4X3] (last visited July 18, 2016).

72. Professors Eckhardt and Bardhi argue that consumers are not interested in the original sharing economy mission: "It is an economic exchange, and consumers are after utilitarian, rather than social, value." Eckhardt & Bardhi, *The Sharing Economy*, *supra* note 33. Other recent analyses of sharing as a business model agree: "[R]esearch suggests that the major consumer motivation is self-oriented. Specifically, consumers prefer the lower costs that the leading companies in the sharing economy tend to provide." Matzler, Kurt, Veider, Viktoria & Kathan, Wolfgang, *Adapting to the Sharing Economy*, 56 MIT SLOAN MGMT. REV. 71, 72 (Winter 2015).

73. HANDY, *supra* note 54.

consumption by reducing the cost of goods and allowing consumers a continual supply of new items.[74] Rent the Runway, for example, promises customers a way to "Stay Chic, Effortlessly" with its clothing rental subscription.[75] Or, as Pley, a toy rental company puts it: "With Pley, your children are never bored. It's like Christmas every week."[76] Many of these rental companies offer subscribers the option of buying the pieces they rent. Rocksbox, a jewelry rental business, allows customers to keep any of the items they rent and the company bills them accordingly if they do.[77]

Finally, it is worth noting that many of the enterprises that are commonly characterized as part of the "sharing economy" do not actually include sharing, and their business model involves nothing more than short-term rentals. When Zipcar launched in Boston and Cambridge in June of 2000, the company was touted as an example of the new sharing economy's focus on access over ownership.[78] Today, Zipcar has over 11,000 cars, is operated as a subsidiary of the Avis Budget Group, and is distinguishable from Avis's traditional rental car service only by the decentralized locations of the cars, the rental units (hours versus days), and the exclusive use of an Internet platform for reservations.[79] Etsy, which is also included in many sharing economy discussions,[80] provides a platform

74. Ucilia Wang, *How the Netflix Model Impacts the Environment, Economy and Society*, GUARDIAN (Feb. 6, 2014), http://www.theguardian.com/sustainable-business/2014/feb/06/how-the-netflix-model-impacts-the-environment-economy-and-society [https://perma.cc/LT38-UWR9] (discussing the mixed environmental impacts of collective consumption and "sharing" models, including Netflix); *see* DEMAILLY & NOVEL, *supra* note 37, at 11–22 (seeking to quantify benefits and environmental impacts of sharing).

75. *Unlimited*, RENT THE RUNWAY, https://www.renttherunway.com/unlimited [https://perma.cc/F5R7-CCAM] (last visited July 18, 2016).

76. *What is Pley?*, PLEY, https://www.pley.com/toy-rental [https://perma.cc/M59L-38SR] (last visited July 18, 2016).

77. *FAQs*, ROCKSBOX, https://www.rocksbox.com/faq [https://perma.cc/3ASC-LRSM] (last visited July 18, 2016).

78. *See* Kellen Zale, *Sharing Property*, 87 U. COLO. L. REV. 501, 579 (2016) (noting "that an expansive view of the sharing economy might include business-to-consumer transactions, as well as peer-to-peer ones, as long as the transactions involve the provision of access as opposed to ownership. For example, a business-to-consumer company like Zipcar may be considered by some to be part of the sharing economy; however, traditional business-to-consumer car rental companies like Hertz and Avis are usually not."); *see also* Arun Sundararajan, *From Zipcar to the Sharing Economy*, HARV. BUS. REV. (Jan. 3, 2013) (stating that while companies like Zipcar "pioneered the creative use of technology to open up flexible new ways of renting a car," such companies are distinguishable from companies like RelayRides and Getaround which are "genuine peer-to-peer car rental marketplaces.").

79. Tim Worstall, *Explaining the Avis Takeover of Zipcar*, FORBES (Jan. 2, 2013), http://www.forbes.com/sites/timworstall/2013/01/02/explaining-the-avis-takeover-of-zipcar/#5135f35d35b0 [https://perma.cc/NS3Y-RK79].

80. *See, e.g.*, Wosskow, *supra* note 32, at 13 (including Etsy as a business that fits the definition of sharing economy). Rachel Botsman suggests calling TaskRabbit and Etsy part

to connect individual artists and craftspeople with buyers, but the transactions are for ownership, not shared, rented, or bartered access to goods. WeWork, the latest darling of venture capitalists commonly labeled as a form of sharing enterprise, furnishes and rents individual or group office spaces in month-long intervals.[81] Put simply, there is no "sharing" in the millions of transactions that take place on these and many other so-called "sharing" platforms.

If the old labels no longer apply, what do today's sharing economy companies have in common? First, we find that sharing economy companies use an Internet platform to *centralize and facilitate access* to goods and services more directly and more flexibly than more traditional forms of business. Where consumers could have found ways to share assets or work directly with independent tradespeople in the past, these would have been time consuming and risky pursuits. Today's Internet platforms reduce consumers' expenditures of time and/or money, making it quicker and easier for individuals to gain access to the goods and services they want without becoming mired in unnecessary analysis or long-term ownership.[82]

Second, we find that the companies commonly considered a part of the sharing economy operate in one of three distinct areas, each with a particular twist on the traditional commercial business model: 1) reduced and/or redefined consumption of goods, with a focus on access over ownership; 2) on-demand and short-term services using a P2P model; and 3) access to, rather than ownership of, shared space, including housing, commercial space, and land.[83]

---

of the "collaborative economy," defining this as "[a]n economic system of decentralized networks and marketplaces that unlocks the value of underused assets by matching needs and haves, in ways that bypass traditional middlemen." Rachel Botsman, *Defining The Sharing Economy: What Is Collaborative Consumption—And What Isn't?*, FAST COMPANY (May 27, 2015), http://www.fastcoexist.com/3046119/defining-the-sharing-economy-what-is-collaborative-consumption-and-what-isnt [https://perma.cc/KF3V-RTLK].

81. *See* Sramana Mitra, *How WeWork Is Riding the Sharing Economy Wave*, INC. (Jun. 10, 2016), http://www.inc.com/linkedin/sramana-mitra/billion-dollar-unicorn-wework-riding-sharing-economy-wave-mitra.html [https://perma.cc/354Z-YZST] (providing an overview of WeWork's offerings and financials).

82. Some analysts have suggested it is the lower transaction costs and smaller units of consumption in the rental and service industries that characterizes the sharing economy. *See* Daniel E. Rauch & David Schleicher, *Like Uber, But for Local Government Law: The Future of Local Regulation of the Sharing Economy*, 76 OHIO ST. L.J. 901, 912 (2015) (stating that the sharing economy "relies on a single dynamic: *a stark reduction in transaction costs that allows for radically disaggregated consumption*").

83. These three categories are explored in further detail *infra* in Part III.A. Some academics have reduced the categories of the sharing economy to two. *See* Rauch & Schleicher, *supra* note 82, at 903 ("In general, sharing firms either (1) own goods or services that they rent to customers on a short-term basis or (2) create peer-to-peer platforms

Third, we find that sharing economy companies create some avenue for individually-tailored experiences that allow users/consumers to feel more engaged in their transactions yet at the same time provide curation of goods and services to meet a need for convenience and efficiency. Curation may be achieved through algorithms that allow for "customized" platform transactions, as in the case of Le Tote, which allows users to create a "Style Profile" that leads to customized recommendations for each new shipment of rental clothing.[84] In the on-demand services category, platforms may screen and select service providers, as is the case with Handy.com or may provide tools for users to perform these tasks.[85] At Care.com, users can easily order a background check, check references, and read reviews of service providers before making their own selections.[86]

Curation and efficiency may be particularly attractive to harried consumers who want access to P2P networks and services but also want to have streamlined decision-making and some assurance of quality and reliability. Etsy allows customers to connect directly with artisans, crafters, and dealers of vintage goods, but Etsy sellers must meet certain criteria to be listed on the site.[87] Similarly, before dealers can list their wares on 1stdibs, one of the Internet's most prominent marketplaces for antiques, they must be qualified by 1stdibs, and each item they list must be photographed in accordance with certain specifications.[88] 1stdibs warns prospective applicants that it "select[s] only prestigious dealers and galleries" to sell on its site.[89]

Some platforms like TaskRabbit rely on a mix of curation and customer reviews to ensure quality and satisfaction of users.[90] At the other end of the spectrum, sites like Craigslist provide only minimal curation, allowing anyone who agrees to its Terms of Service to buy or sell items,

connecting providers and users for short-term exchanges of goods or services.").

84. *My Closet vs. Style Profile*, LE TOTE, https://letote.zendesk.com/hc/en-us/articles/204180230-My-Closet-vs-Style-Profile [https://perma.cc/K634-2ZMY] (last visited July 18, 2016) ("When you complete your Style Profile you give us the skinny on your look and tell us what type of clothing and accessories to send your way.").

85. *Services*, HANDY, https://www.handy.com/services [https://perma.cc/WXN2-SFYE] (last visited July 18, 2016).

86. CARE, *supra* note 52.

87. *Seller Policy*, ETSY, https://www.etsy.com/legal/sellers [https://perma.cc/ZRW2-9U4W] (last visited July 18, 2016).

88. *We Invite You to Join Us*, 1STDIBS, https://www.1stdibs.com/dealer/application-form/ [https://perma.cc/F24E-QSKP] (last visited July 18, 2016).

89. *Id*.

90. *How It Works*, TASKRABBIT, https://www.taskrabbit.com/how-it-works [https://perma.cc/53WZ-UCKE] (last visited July 18, 2016) ("Our Taskers undergo an extensive background check and in-person onboarding before joining the TaskRabbit community. They're professional, highly rated, and always ready to lend a hand.").

39083 ple_19-3 Sheet No. 31 Side A 05/11/2017 10:58:06

look for an employer or employee, find a roommate, and make other kinds of connections through its site.[91]

Given the distance that the original sharing economy has traveled and the diverse nature of entities now included under its umbrella, many have argued for a renaming of the sharing economy to something broader, such as the platform economy, gig-economy, or access economy.[92] While we agree that these terms capture aspects of the new sharing economy companies, we also believe the term "sharing economy" remains relevant as a means of distinguishing between commercial enterprises that simply utilize an Internet platform to enable transactions or provide temporary services and those entities that maintain some connection to the original sharing impulse, either through redefined methods of consumption or a democratization and decentralization of commerce through P2P transactions. Rather than eliminating the term, we believe it is useful to capture the current understanding of the term through redefinition and refinement.

II. THE CHALLENGES OF REGULATING THE SHARING ECONOMY

As the number of sharing economy companies grows, so do the risks to workers and the public. There are risks, for example, to the public from unskilled or unsafe labor. This risk is exacerbated when the public presumes service providers have a certain level of training and/or qualifications based on the imprimatur of the platform through which their services are offered. This has proven to be a significant issue with car-sharing companies Uber and Lyft.[93]

Other risks are attendant to the classification of service providers as independent contractors. These risks include no guarantee of minimum wages, protection from discrimination, and access to employment benefits.[94] A third set of risks concerns the impact of sharing economy companies on local communities, as illustrated by the effect of hundreds of new "innkeepers" enabled by Airbnb on formerly residential communities.[95] There is also the risk that consumers will assume that sharing economy companies share the social mission that was at the root of many early sharing company entities but is no longer a common

91. *Terms of Use*, CRAIGSLIST, https://www.craigslist.org/about/terms.of.use [https://perma.cc/26XY-APLQ] (last visited July 18, 2016).

92. *See, e.g.*, Eckhardt & Bardhi, *The Sharing Economy*, *supra* note 33 (arguing the sharing economy is more properly considered an "access economy").

93. *See infra* notes 101-103.

94. *See infra* notes 112-123.

95. *See infra* notes 133-143.

denominator.[96]

The need for and challenge of regulating the sharing economy are inextricably linked in that many of these risks relate to the way sharing entities blur the lines between public and private spaces and commercial and private transactions, requiring new regulation to ensure predictability, transparency, and coverage for liability.[97] An additional challenge lies in developing regulations that are tailored to the unique demands of the new sharing structures, while not suppressing the benefits they offer. In this section, we explore the regulatory risks and challenges created by the new economy. These risks and responses, in turn, will help shape the new taxonomy of sharing companies we recommend in Part III.

A. *Tort Liability in Peer-to-Peer Transactions*

One set of regulatory challenges concerns the shift in some sharing companies away from traditional business models in which consumers purchase goods and services from centralized commercial entities and to models in which consumers work directly with individual service providers. In the new P2P model, Internet platforms facilitate these transactions, in many cases providing some initial level of curation.[98]

While the rules for tort liability may be relatively clear in traditional commercial transactions, the legal implications of activities may be much more difficult to parse when private individuals offer commercial goods and services or Internet platforms facilitate P2P transactions. Should an individual who occasionally accepts a passenger for gas money via Uber be required to hold the same liability coverage as a commercial taxi driver?[99] Should homes listed on Airbnb be required to meet the same safety standards as hotels? Food service regulations may not recognize a designation for individuals who prepare a few meals a week in their home for a fee, as one might through TaskRabbit.[100] Transportation regulations

96. *See infra* notes 145-150.

97. *See, e.g.*, Morgan & Kuch, *supra* note 27, at 557–59 (discussing the "blurred line between gift and contract" in the sharing economy).

98. *See supra* notes 84-86 and accompanying text.

99. In response to criticism and concern over a high-profile accident, Uber now provides liability insurance for drivers. It also requires them to pass certain background checks prior to driving for the company. Vauhini Vara, *Uber, Lyft, and Liability*, THE NEW YORKER (Nov. 4, 2014), http://www.newyorker.com/business/currency/uber-lyft-liability [https://perma.cc/ZM33-75VQ].

100. More than half of U.S. states currently have some form of "cottage food laws," which allow home production of a small amount of non-hazardous food items. *See* Christina Oatfield, *Summary of Cottage Food Laws*, SUSTAINABLE ECONOMIES LAW CENTER, http://d3n8a8pro7vhmx.cloudfront.net/theselc/legacy_url/300/Summary-of-Cottage-Food-

may be challenged to categorize drivers who accept a fee from riders a few days a week to offset the cost of gas.

A related liability issue has arisen as to whether a platform is responsible for the acts of workers using its website, even if they are independent contractors. High-profile cases involving Uber drivers sexually assaulting, injuring, or even killing passengers and pedestrians have highlighted these concerns.[101] Some have suggested that even if workers acting under the auspices of a platform are independent contractors, the platforms nonetheless should be held responsible under agency law for the workers' actions.[102] Of course, passengers are not the only ones who may be injured. Drivers are at risk as well, and some are demanding more protection from the companies that make money from the services they offer.[103]

Occasional sellers or those offering services may be unprepared for the potential tort liability that can arise from being a driver for hire, a chef, or even the host of a short-term rental.[104] For example, are home cooks prepared for the liability that would follow if they served a meal tainted with E. coli?[105] Would Airbnb hosts be prepared to cover damages if their

Laws-in-the-US-31.pdf?1392426351 [https://perma.cc/HUW7-M6X7] (listing cottage food laws by state).

101. In February 2016, in one of the most chilling cases, an Uber driver went on a killing spree, targeting people at random in between picking up fares for the company. *See* Mark Guarino, William Wan & Missy Ryan, *Uber Driver Who Killed Six in Kalamazoo Shooting Spree Chose Victims 'At Random,' Authorities Say*, WASH. POST (Feb. 21, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/02/21/six-killed-in-kalamazoo-shooting-spree-were-chosen-at-random-authorities-say [https://perma.cc/X74G-L95Z] (describing the murder committed by Uber driver Jason Brian Dalton).

102. *See* Mark Macmurdo, *Hold the Phone!: "Peer-to-Peer" Ridesharing Services, Regulation, and Liability*, 76 LA. L. REV. 307, 326–30 (2015) (arguing drivers' apparent agency may lead to liability for ridesharing companies).

103. *See* Molly McHugh, *Uber and Lyft Drivers Work Dangerous Jobs—But They're on Their Own*, WIRED (Mar. 10, 2016), http://www.wired.com/2016/03/uber-lyft-can-much-keep-drivers-safe [https://perma.cc/3JDJ-JZWL] (describing the dangers faced by drivers of ridesharing companies and the limited efforts made by Uber to increase safety for its drivers).

104. *See* Loucks, *supra* note 31, at 331–38 (describing how individuals participating in transportation or housing sharing may be at risk for individual liability); Macmurdo, *supra* note 102 (describing the potential liability drivers face); Brittany McNamara, *Airbnb: A Not-So-Safe Resting Place*, 13 COLO. TECH. L.J. 149 (2015) (noting that individual users of Airbnb may be subject to liability).

105. *See* Kate Williams, *Food Startup Josephine Pauses East Bay Operations*, NOSH (May 11, 2016), http://www.berkeleyside.com/2016/05/11/food-startup-josephine-pauses-east-bay-operations [https://perma.cc/GET4-4ZHM] (reporting how cooks working for Josephine, a "company that connects enterprising home cooks with hungry neighbors via an online platform," were "served with cease-and-desist orders for illegal food sales by environmental health regulators").

overnight guests threw a massive party, sold alcohol to minors, or damaged nearby property?[106]

While consumers generally expect businesses to be regulated, those expectations may not align with the current legal requirements of new sharing economy ventures. Consumers, like providers, may therefore face some unpleasant surprises as a result of regulatory gaps in the new sharing economy. These surprises underscore the need for regulatory attention in this area. The buyers, renters, or consumers of a P2P transaction may not anticipate that these transactions can be riskier or more dangerous than a traditional commercial transaction. An Airbnb guest may expect that the home they rent through Airbnb will have an adequate electrical panel to prevent a house fire and smoke alarms if a fire does occur. A customer of a meal preparation service may expect the cook to adhere to food safety standards utilized in commercial kitchens.

A striking example of the tension between consumer expectations and regulation of providers took place recently in Austin, Texas.[107] Rideshare customers in Austin wanted drivers for services like Uber and Lyft to undergo basic background checks, while platform operators Uber and Lyft did not want their drivers to be required to undergo fingerprinting before offering rides.[108] After a messy and contentious battle over a ballot measure "paid for and pushed by Uber and Lyft" as to whether or not to require a fingerprint background check for rideshare drivers, Uber and Lyft lost and as a result now refuse to serve Austin.[109]

Concerns for liability in small commercial transactions are not new or unique to the sharing economy. Individuals have undoubtedly always sold

106. *See* Alan Yuhas, *Airbnb Hosts Return to Find Home Trashed After "Drug-Induced Orgy"*, GUARDIAN (Apr. 30, 2015), https://www.theguardian.com/technology/2015/apr/30/airbnb-calgary-home-trashed-drug-induced-orgy [https://perma.cc/EQ32-DXQ8] (describing a massive party at an Airbnb rental that resulted in $50,000 to $75,000 in damage to the home, as well as physical altercations, multiple noise complaints, and repeated calls to police).

107. Kevin Ready, *Uber vs. Austin—A Public Battle to Control the Future of Transportation*, FORBES (May 12, 2016), http://www.forbes.com/sites/kevinready/2016/05/12/uber-vs-austin-a-public-battle-to-control-the-future-of-transportation/#6296c6d16243 [https://perma.cc/73QW-VTL2] (describing "a May 8th [2016] ballot initiative in which the voting public soundly rejected Uber and Lyft's demands for city hall to remain 'hands off' and allow them to operate with less oversight").

108. *See id.* ("The official issue on the ballot was whether or not to require a fingerprint background check for ride-share drivers . . . Uber and Lyft fought hard and lost.").

109. *See id.* (noting suspension of service by Uber and Lyft in Austin); *see also* Jared Meyer, *By Losing Uber, Austin Is No Longer a Tech Capital*, FORBES (May 11, 2016), http://www.forbes.com/sites/jaredmeyer/2016/05/11/by-losing-uber-austin-is-no-longer-a-tech-capital/#50eb9f7249ab [https://perma.cc/3NVS-TKLZ] (noting the number of days that passed since Uber and Lyft have left Austin).

small amounts of handmade food items and occasionally rented rooms in their homes, and the buyer and seller likely had little appreciation for the legal risks of those practices. The difference now is the scale and ease with which these transactions take place. As the notion of platform capitalism suggests, anyone can become a TaskRabbit "tasker" and offer to make a few meals a week for neighbors, or become an Uber driver.[110] Anyone with an overflowing closet can sell his or her unwanted clothes on thredUP or offload their goods on Craigslist.[111] As the scale of these enterprises grow, the need to ensure safety for those involved in these transactions also increases.

B. *Independent Contractors and Platform Liability*

The difficulty in categorizing the blurred nature of the transactions in the P2P context extends to the characterization of the enterprise *operating* the platforms through which goods and services are offered. Large platform entities, including Uber and Airbnb, take pains to emphasize that they do not provide services—they merely facilitate transactions between private parties.[112] However, as they grow in scale and in financial resources, many

110. *See* Biz Carson, *Why There's a Good Chance Your Uber Driver is New*, BUS. INSIDER (Oct. 24, 2015), http://www.businessinsider.com/uber-doubles-its-drivers-in-2015-2015-10 [https://perma.cc/FU3V-UFNB] ("In 2015, Uber doubled the number of active drivers on its platform in the U.S. as it's grown."); Emily Badger, *Now We Know How Many Drivers Uber Has—And Have a Better Idea of What They're Making*, WASH. POST: WONKBLOG (Jan. 22, 2015), https://www.washingtonpost.com/news/wonk/wp/2016/01/20/now-we-know-how-many-drivers-uber-has-and-have-a-better-idea-of-what-theyre-making/?utm_term=.e7e507902aa5 [https://perma.cc/R65M-LVAC] (describing "the breakneck pace at which drivers are joining [Uber's] ranks" and reporting that, as of December 2014, Uber had over 160,000 drivers and "[t]he number of new drivers signing up has doubled every six months for the past two years").

111. Sarah Halzack, *ThredUp: Reinventing the Resale Business 20 Years After eBay*, WASH. POST (Sept. 21, 2015), https://www.washingtonpost.com/news/business/wp/2015/09/21/thredup-reinventing-the-resale-business-20-years-after-ebay [https://perma.cc/78KK-WAED] ("ThredUp received 3.8 million items from sellers last year and $81 million in fresh funding earlier this month."); Ruth Reader, *thredUP Raises $81M to Help More People Sell Their Old Clothes*, VENTUREBEAT (Sept. 10, 2015), http://venturebeat.com/2015/09/10/thredup-raises-81m-to-help-more-people-sell-their-old-clothes [https://perma.cc/X4BB-DWFL] ("The company said it had 1.8 million visitors to its site in August 2015 (more than double the number that visited during the same time last year) and has 4 million registered users.").

112. Uber's policies, for example, require users to agree to the following disclosure: "YOU ACKNOWLEDGE 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, LOGISTICS OR DELIVERY SERVICES OR AS A TRANSPORTATION CARRIER." *Legal*, UBER, https://www.uber.com/legal/usa/terms

are calling for these businesses, and others that might be similarly situated, to accept responsibility for the transactions they are facilitating.[113]

Platform sites that offer users an opportunity to earn income (like Uber or TaskRabbit) typically categorize service providers as independent contractors.[114] With so many workers using sharing platforms as a significant, or even sole, method of livelihood, this practice has raised significant concerns.[115] Independent contractors generally lack protection under basic employment laws and do not have access to benefits or basic labor protections, including minimum wages and health care.[116] The growth of this class of under-protected workers as a result of the sharing economy (in this context often referred to as the "gig-economy")[117] has received

---

[https://perma.cc/SU7C-ANTZ] (last visited July 19, 2016); *see also Terms of Service*, AIRBNB, https://www.airbnb.com/terms [https://perma.cc/TD3A-EFWB] (last visited July 19, 2016) (explaining "Airbnb makes available an online platform or marketplace with related technology for Guests and Hosts to meet online and arrange for bookings of Accommodations directly with each other. Airbnb is not an owner or operator of properties False Airbnb's responsibilities are limited to: (i) facilitating the availability of the Site, Application and Services" and (ii) serving as the limited payment collection agent of each Host for the purpose of accepting payments from Guests on behalf of the Host.).

113. *See infra* notes 128-132 and accompanying text.

114. *See Am I a TaskRabbit Employee?*, TASKRABBIT, https://support.taskrabbit.com/hc/en-us/articles/207555983-Am-I-a-TaskRabbit-employee- [https://perma.cc/LLV7-9DYS] (last visited July 19, 2016) ("Taskers on the platform are not employees of TaskRabbit; rather, they are independent contractors."); *see also* McHugh, *supra* note 103 ("Because [Uber] drivers operate as independent contractors instead of employees, the companies can't offer true safety training. Under federal law, training is a signifier that someone is an employee, and both Uber and Lyft have fought bitterly against re-classifying drivers as employees.").

115. *See infra* notes 166-167 and accompanying text.

116. *See* Ellen Huet, *What Really Killed Homejoy? It Couldn't Hold on to Its Customers*, FORBES (July 23, 2015), http://www.forbes.com/sites/ellenhuet/2015/07/23/ what-really-killed-homejoy-it-couldnt-hold-onto-its-customers/ [https://perma.cc/3FA2-9BWK] (explaining that a key flaw in the Homejoy business model was a failure to ensure quality service due to a lack of training for its workers); Scheiber, *supra* note 8 (arguing that electronic platforms "make it frighteningly easy for companies to outsource work" to low-paid, independent contractors, and that this trend is likely to grow); DePillis, *supra* note 13 (describing how Homejoy workers struggle to make a living by cleaning homes). Interestingly, Homejoy, which featured prominently in DePillis's article, closed down in July 2015 due, at least in part, to lawsuits over the question of whether it had inappropriately classified its workers as independent contractors.

117. Sara Horowitz, *The Freelance Surge Is the Industrial Revolution of Our Time*, THE ATLANTIC (Sept. 1, 2011), http://www.theatlantic.com/business/archive/2011/09/the-freelance-surge-is-the-industrial-revolution-of-our-time/244229 [https://perma.cc/55ER-K6C7]; Arun Sundararajan, *The "Gig Economy" Is Coming. What Will it Mean for Work?*, GUARDIAN (July 25, 2015), http://www.theguardian.com/commentisfree/2015/jul/26/will-we-get-by-gig-economy [https://perma.cc/WN3C-6AQM] (discussing how proponents of the gig economy argue that it creates flexible work that allows individuals to avoid the dreary office environment).

widespread criticism.[118]

The concern related to the use of independent contractors is two-fold. On one level, regulators must consider carefully whether Uber, TaskRabbit, and other platforms are properly applying the relevant legal classifications when determining that their workers are independent contractors. On a broader, societal level, regulators and legislators must determine if the existing classification scheme and the definition of independent contractors are robust enough to account for sharing economy workers and the increasing trend toward the use of non-employees in the commercial sphere.[119]

Perhaps in an attempt to head off such criticism and to meet expectations from customers and workers alike, some platforms have offered a number of new benefits, including insurance for drivers, workers, and customers,[120] technical support to ensure taxes are paid by housing hosts,[121] and minimum wage requirements for workers.[122] However, on the central issue of whether workers for sites like TaskRabbit and Uber are

118. *See infra* notes 166-167 and accompanying text.

119. *See* Vanessa Katz, *Regulating the Sharing Economy*, 30 BERKELEY TECH. L.J. 1067, 1103–04 (2015) ("Whether platforms are truly neutral intermediaries is not always clear. In some cases, platforms have no formal contractual relationship with providersFalse In other cases, platforms hire providers as independent contractors, and therefore are not liable for a contractor's torts. . . . Commentators have questioned whether sharing platforms misclassify employees as independent contractors.").

120. *See* Ellen Huet, *New Laws Push Uber and Lyft to Bump Up Insurance Coverage, But a Collision Gap Remains*, FORBES (July 1, 2015), http://www.forbes.com/sites/ellenhuet/2015/07/01/new-laws-push-uber-and-lyft-to-bump-up-insurance-coverage-but-a-collision-gap-remains/#1856b03e107c [https://perma.cc/39P5-Z7E4] [hereinafter Huet, *New Laws Push Uber*] ("In response to new laws going into effect in 19 states . . . , Uber and Lyft both recently bumped up their liability insurance coverage to primary—meaning it steps in first, before other policies—for that on-duty-but-unmatched period, a no-man's-land they had resisted covering for years."); Adrienne Raphel, *TaskRabbit Redux*, NEW YORKER (July 22, 2014), http://www.newyorker.com/business/currency/taskrabbit-redux [https://perma.cc/33WZ-A7YB] (describing TaskRabbit's addition of "an insurance policy, guaranteeing a million dollars of coverage for each task").

121. Roberta A. Kaplan & Michael L. Nadler, *Airbnb: A Case Study in Occupancy Regulation and Taxation*, 82 U. CHI. L. REV. DIALOGUE 103, 109, 113–14 (2015), *available at* https://lawreview.uchicago.edu/page/airbnb-case-study-occupancy-regulation-and-taxation [https://perma.cc/QDH6-6QNC] (describing Airbnb's cooperation with New York State Attorney General's subpoena for information about "illegal hoteliers" and pointing out that Airbnb "provides guidance regarding responsible hosting and, for certain key cities, directs hosts to relevant laws and regulations").

122. *See* Raphel, *supra* note 120 ("The [TaskRabbit] model has built-in protections for workers. In the old auction model, a TaskRabbit could set a price with no bottom limit; now Taskers set hourly rates . . . , and a Tasker's rate can never be lower than the highest minimum wage in the cities in which TaskRabbit is active.").

independent contractors, platforms have not budged.[123]

C. *Discrimination by Service Providers*

Growing evidence suggests that sharing economy service providers may discriminate against consumers based on their race, ethnicity, sex, or sexual orientation.[124] While such discrimination is generally barred under workplace employment statutes,[125] these laws may not apply to independent contractors.[126] Thus, if a limousine driver refused to provide service to a black passenger, the passenger could successfully allege that the limousine company violated the laws against discrimination in public accommodations because the driver is an employee, and therefore an agent of that limousine company. By contrast, a black passenger snubbed by an Uber driver would not succeed on the same allegation if the driver is considered an independent contractor rather than an Uber employee.[127]

Consumers have accused Airbnb of racial discrimination, alleging that individual hosts have refused to accept requests from minorities.[128] In May

123. *See* McHugh, *supra* note 103 ("[B]oth Uber and Lyft have fought bitterly against re-classifying drivers as employees.").

124. *See infra* notes 128-132 and accompanying text.

125. *See, e.g.*, Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2012) ("It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.").

126. *See, e.g.*, Adcock v. Chrysler Corp., 166 F.3d 1290, 1292 (9th Cir. 1999) ("Title VII provides, in pertinent part, that '[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire . . . any individual . . . because of such individual's race, color, religion, sex, or national origin.' . . . Title VII protects employees, but does not protect independent contractors." (citations omitted)).

127. Uber drivers have been shown to be less likely to stop in predominantly black neighborhoods of Washington, D.C., than in predominantly white neighborhoods, although taxi drivers may be no less discriminatory in their practices. *See* Jennifer Stark & Nicholas Diakopoulos, *Uber Seems To Offer Better Service In Areas With More White People. That Raises Some Tough Questions*, WASH. POST: WONKBLOG (Mar. 10, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/03/10/uber-seems-to-offer-better-service-in-areas-with-more-white-people-that-raises-some-tough-questions [https://perma.cc/F53K-YMT4] (discussing race-related differences in Uber services); *see also* Brishen Rogers, *The Social Costs of Uber*, 82 U. CHI. L. REV. DIALOGUE 85, 95–98 (2015), *available at* https://lawreview.uchicago.edu/page/social-costs-uber [https://perma.cc/R328-C8BA] ("Passengers may give bad reviews to racial-minority drivers, whether out of implicit or explicit bias. Drivers in turn may be less likely to pick up riders if they learn that they are racial minorities and may generally prefer to pick up or drop off clients in wealthier, whiter neighborhoods.").

128. *See* Rachel Paula Abrahamson, *Airbnb Host Rejects Black Woman Who Tried to Book a Room, Sends Hateful Messages*, US WEEKLY (June 6, 2016),

2016, for example, an African-American man filed a class action lawsuit against the company after a host refused his request for accommodations under his own profile, which included a photo, but accepted his request when he used a fake profile with a photo of a white man.[129] In addition, a recent Harvard Business School study found that Airbnb hosts were less likely to rent to customers with stereotypically black-sounding names than those with typical white names.[130] As the study's authors point out, the Internet platform of Airbnb may facilitate discrimination because it reveals more information about the putative guests' race in advance of the transaction than traditional hotel reservation systems.[131] The authors say

http://www.usmagazine.com/celebrity-news/news/racist-airbnb-host-cancels-black-womans-reservation-w208934 [https://perma.cc/L2S4-JWSJ] (recounting discriminatory messages received by Airbnb guest); Kenya Downs, *Airbnb Enlists Eric Holder to Address Racial Discrimination*, PBS NEWSHOUR (July 22, 2016), http://www.pbs.org/newshour/rundown/complaints-racial-discrimination-airbnb-hires-eric-holder [https://perma.cc/6QE5-PXH7] (describing "criticism over Airbnb's approach to allegations of racial discrimination"); Taryn Finley, *AirBnB Host Gets (Rightfully) Banned For Racist Messages*, HUFFINGTON POST (June 2, 2016), http://www.huffingtonpost.com/entry/airbnb-banned-racist-messages_us_57504534e4b0c3752dcc9f24 [https://perma.cc/27TV-WMVY]; Caitlin Huston, *Airbnb Hosts Discriminate Against Black People, Study Finds*, MARKETWATCH (Dec. 11, 2015), http://www.marketwatch.com/story/airbnb-hosts-discriminate-against-black-people-study-finds-2015-12-10 [https://perma.cc/JB7B-QAJ6]; Shankar Vedantam, *#AirbnbWhileBlack: How Hidden Bias Shapes the Sharing Economy*, NPR: HIDDEN BRAIN (Apr. 26, 2016 12:10 AM), http://www.npr.org/2016/04/26/475623339/-airbnbwhileblack-how-hidden-bias-shapes-the-sharing-economy [https://perma.cc/22ST-S8S9]. Interestingly, in response to such allegations, several Airbnb-type services, including Innclusive and Noirbnb, have been established by racial minorities for racial minorities. *See* Gaby Bissett, *Two Rival Websites Launch as Airbnb Alternatives for Black People after Guests Experience Racial Discrimination When Trying to Book Accommodation*, DAILY MAIL (June 10, 2016), http://www.dailymail.co.uk/news/article-3634803/Two-rival-websites-launch-Airbnb-alternatives-black-people-guests-experience-racial-discrimination-trying-book-accommodation.html [https://perma.cc/7JPV-TJ6R] (". . . new websites have been set up as an alternative to Airbnb by people who feel the billion-dollar company does not do enough to combat discrimination."); Taryn Finley, *These Airbnb Alternatives Want to Make Travel More Welcoming for Black People*, HUFFINGTON POST (June 21, 2016), http://www.huffingtonpost.com/entry/innclusive-noirbnb-airbnb-alternatives_us_5768462ae4b0853f8bf1c675 [https://perma.cc/K8YB-76XS]; Ijeoma Oluo, *An Airbnb Service for Black People? I Wish it Weren't Necessary*, GUARDIAN (June 8, 2016), https://www.theguardian.com/commentisfree/2016/jun/08/airbnb-service-black-people-noirbnb-noirebnb [https://perma.cc/3KB9-GBFE].

129. Hope King, *Airbnb Sued for Discrimination*, CNN: MONEY (May 18, 2016 4:56 PM), http://money.cnn.com/2016/05/18/technology/airbnb-lawsuit-discrimination. [https://perma.cc/EDT8-Y38A].

130. BENJAMIN EDELMAN, MICHAEL LUCA & DAN SVIRSKY, RACIAL DISCRIMINATION IN THE SHARING ECONOMY: EVIDENCE FROM A FIELD EXPERIMENT (2016), *available at* http://www.benedelman.org/publications/airbnb-guest-discrimination-2016-01-06.pdf [https://perma.cc/R7BY-WPAG].

131. *Id*. at 19.

that their study "contribute[s] to a small but growing body of literature suggesting that discrimination persists—and we argue may even be exacerbated—in online platforms."[132] Airbnb's potential liability for discrimination in public accommodation, at both the state and federal levels, underscores the need for greater regulatory attention to this aspect of the sharing economy.

D. *Zoning Impact of Shared Space and On-Demand Services*

Consider next the way in which the sharing economy's blurring of the lines between private and commercial spaces undermines zoning strategies.[133] Airbnb creates commercial housing options in residential neighborhoods, where public services, including parking and roads, are designed to handle only the needs of a limited number of residents.[134] Care.com and other websites facilitating transactions for individual service providers similarly facilitate the decentralization of commercial activities out of the nursing home, daycare center, restaurant, or hospital, and into private homes. While there may be benefits to this practice for both parties in these types of transactions, they nonetheless can strain infrastructure that was designed for different types of uses.

Perhaps the best illustration of this problem is shown by the growth of Airbnb, an international powerhouse valued at $25 billion.[135] While it started as a way for individuals to rent out unused guest rooms and make a little extra money on the side, it has become an increasingly commercial

132. *Id.* at 12.

133. *See* Jamila Jefferson-Jones, Airbnb and the Housing Segment of the Modern "Sharing Economy": Are Short-Term Rental Restrictions an Unconstitutional Taking?, 42 HASTINGS CONST. L.Q. 557, 561–62 (2015) (noting that housing exchanges straddle a line between commercial and private transactions); SHAREABLE, *supra* note 37, at 6 ("The sharing economy challenges core assumptions made in 20th century planning and regulatory frameworks—namely, that residential, commercial, industrial, and agricultural activities should be physically separated from one [an]other . . . ."); *see also* Jenny Kassan & Janelle Orsi, The Legal Landscape of the Sharing Economy, 27 J. ENVTL. L. & LITIG. 1 (2012) (noting the difficulty in characterizing many activities within the sharing economy as solely personal or commercial); Cohen & Zehngebot, supra note 27, at 15–16 (discussing how short term rental platforms violate zoning ordinances in many states).

134. *See* Rauch and Schleicher, *supra* note 82, at 920–22 (discussing conflicts over "use intensiveness" with various sharing entities, particularly in the shared housing arena).

135. Uptin Saiidi, *As NYC Rents Rise, Some Ask if Airbnb Is to Blame*, CNBC (Dec. 30, 2015), http://www.cnbc.com/2015/12/30/nyc-rents-rise-airbnb-to-blame.html [https://perma.cc/H766-VXTA]; Mark Oswald, *Report: City Missing Out on Airbnb Taxes as Web Bookings Soar*, ALBUQUERQUE J. (Dec. 18, 2015), http://www.abqjournal.com/692998/north/report-city-missing-out-on-airbnb-taxes-as-web-bookings-soar.html [https://perma.cc/HY4Z-PNAB].

enterprise with entire homes dedicated to short-term rentals.[136] Some neighborhoods in San Francisco, New York, and Los Angeles are fighting to maintain community cohesion under pressure from large numbers of short-term rentals,[137] hotels are complaining that Airbnb has an unfair advantage because its listings are not required to meet the same commercial standards,[138] and municipalities are looking at millions of dollars in lost revenue from unpaid taxes.[139]

While Airbnb has sought to maintain positive relationships with the jurisdictions in which it operates,[140] it has nonetheless been linked to a

136. JOHN W. O'NEILL & YUXIA OUYANG, AM. HOTEL & LODGING ASS'N, FROM AIR MATTRESSES TO UNREGULATED BUSINESS: AN ANALYSIS OF THE OTHER SIDE OF AIRBNB 3 (2016), *available at* https://fortunedotcom.files.wordpress.com/2016/01/pennstate_airbnbreport_.pdf [https://perma.cc/5KB2-DAKP] (finding that 30% of Airbnb's total revenue from twelve cities, amounting to $378 million, was derived from "full-time operators"); Carolyn Said, *The Airbnb Effect*, S.F. CHRON. (July 12, 2015), http://www.sfchronicle.com/airbnb-impact-san-francisco-2015/#1 [https://perma.cc/8UHW-MVJK] [hereinafter Said, *The Airbnb Effect*].

137. Emily Alpert Reyes, *L.A. Officials Want to Keep Airbnb-Type Rentals from Being 'Rogue Hotels*, L.A. TIMES (Aug. 25, 2015), http://www.latimes.com/local/lanow/la-me-ln-airbnb-rental-regulations-20150825-story.html [https://perma.cc/3ZPY-KZ2S]; Jay Cassano, *What the Data Says About Airbnb in New York City*, FAST COMPANY (visited Mar. 2, 2015), http://www.fastcoexist.com/3042719/what-the-data-says-about-airbnb-in-new-york-city [https://perma.cc/Z6UR-YRCY]; Carolyn Said, *Window into Airbnb's Hidden Impact on S.F.*, S.F. CHRON. (June 2014) [hereinafter Said, *Window*], http://www.sfchronicle.com/business/item/Window-into-Airbnb-s-hidden-impact-on-S-F-30110.php [https://perma.cc/4HSF-BNGL].

138. *See* O'NEILL & OUYANG, *supra* note 136, at 2 ("A growing number of hosts are using the Airbnb platform to operate an unregulated, full-time business."); *see also* Adam Thomson, *Airbnb Hit by Unfair Competition Complaint from French Hotels*, FIN. TIMES (June 23, 2016), http://www.ft.com/cms/s/0/6ff2b192-3951-11e6-9a05-82a9b15a8ee7.html#axzz4FN6FXE6l [https://perma.cc/EX2B-CD5U] ("A leading French hoteliers' association has lodged a formal complaint against Airbnb and other online accommodation-rental services, arguing that they compete unfairly in the country.").

139. *See, e.g.*, Chabeli Herrera, *Airbnb and Hoteliers Battle Over Role, Regulations for Home-Sharing in Miami*, MIAMI HERALD (May 25, 2016), http://www.miamiherald.com/news/business/tourism-cruises/article79673612.html [https://perma.cc/8SQL-JAX3] ("Hoteliers argue Airbnb has gone unregulated too long, allowing it to circumvent the rules and taxes enforced on traditional lodging accommodations . . ."); Tom Bergeron, *The Money Municipalities Don't Know They Have Coming: How Airbnb Could Impact the New Jersey Economy*, NJBIZ (Feb. 8, 2016), http://www.njbiz.com/article/20160208/NJBIZ01/160209806/the-money-municipalities-dont-know-they-have-coming-how-airbnb-could-impact-the-new-jersey-economy [https://perma.cc/FSW7-S7MZ]; Oswald, *supra* note 135.

140. Carolyn Said, *Airbnb Will Pay Taxes, Play Nice With Cities—On Its Terms*, S.F. CHRON. (Nov. 11, 2015), http://www.sfchronicle.com/business/article/Airbnb-will-pay-taxes-play-nice-with-cities-6626099.php [https://perma.cc/84PH-5REY] [hereinafter Said, *Airbnb*) (reporting that Airbnb "would play ball with civic leaders worldwide in several ways: by collecting hotel taxes, sharing anonymized information about local short-term

variety of negative consequences for the neighborhoods and areas it serves, from an undue burden on public services without compensation, to rising rents, to a loss of community and neighborhood cohesion.[141] Residents in popular Airbnb neighborhoods may find parking limited and roads crowded.[142] For this reason, cities have responded to Airbnb in differing ways, some seeking to ban it altogether, and others trying to limit its spread.[143] Cities may have to devise new regulatory systems to address more than simply the short-term threat of Airbnb and to account for the new, blended public-private spaces favored by the sharing economy.

E. *Sharewashing: Gauging the Truth of Social Mission Claims*

Another risk of sharing economy ventures is that consumers can be misled as to the social or environmental benefits of so-called "sharing" enterprises. While the early proponents of the sharing economy emphasized the social good of reducing consumption and strengthening communities, many companies in today's sharing economy are far from socially beneficial.[144] These companies may unfairly profit from a lingering false positive association with prototypical sharing ventures, misleading consumers in the process, or may deliberately use the positive associations of the sharing economy to shift risks to workers and reduce liability.[145]

---

rentals, and by asking hosts in cities where housing is scarce to verify that they are renting their permanent residence.").

141. *See* Oswald, *supra* note 135 (citing report concluding Santa Fe is missing out on up to $2.1 million in lodging taxes from short-term rentals).

142. *See* Said, *Window*, *supra* note 137; Said, *The Airbnb Effect*, *supra* note 136.

143. *See* Marie Mawad, Helene Fouquet & Henry Goldman, *City Mayors Worldwide Forge Alliance in Response to Airbnb, Uber*, BLOOMBERG: TECH. (June 20, 2016), http://www.bloomberg.com/news/articles/2016-06-20/city-mayors-worldwide-forge-alliance-in-response-to-airbnb-uber [https://perma.cc/A83N-KGY9] (noting how cities are banding together to promote clearer ground rules for companies like Airbnb and Ubeer); Brad Tuttle, *7 Cities Where the Sharing Economy Is Freshly Under Attack*, MONEY (June 9, 2014), http://time.com/money/2800742/uber-lyft-airbnb-sharing-economy-city-regulation [https://perma.cc/85ZB-DAZ7].

144. *See supra* notes 146-150 and accompanying text.

145. Some have suggested that on-demand service providers may portray themselves as part of the sharing economy to avoid traditional dispute resolution processes. *See* Kulp & Kool, *supra* note 69, at 195 ("For instance, in framing itself as a sharing economy business that merely provides an online platform for car owners to use their existing possessions to earn revenue, Uber claims it . . . should not be encumbered by the city regulations False Similarly, . . . [the co-founder] of Airbnb, claims that the company simply wants to help people 'share' their homes with others and thus should not be subject to some of cities' housing authority regulations."); *see also* JULIET SCHOR, GREAT TRANSITION INITIATIVE, DEBATING THE SHARING ECONOMY 8–10 (2014), available at http://www.greattransition.org/images/GTI_publications/Schor_Debating_the_Sharing_Eco

Uber presents a sobering example. Among other controversies, Uber has been accused of monopolistic behavior, threatening public officials and journalists, trying to run competitors out of business, not paying drivers adequately, and operating illegally.[146] During peak times, Uber institutes "surge pricing," in which it raises the cost of rides, reportedly as much as nine times the cost of off-peak rides.[147] There can be no doubt that Uber has achieved significant market power and is not shy about using that power for commercial gain.

The potential for consumers to be misled continues when one considers the promised benefits of the sharing economy. While early proponents of the sharing economy talked about maximizing the use of underutilized assets, platform enterprises may actually increase or encourage consumption. If Uber represents a way for individuals to earn an income from a vehicle, they may be *more* likely to own a car, while the easy availability of Uber transportation may also provide a *disincentive* for people to walk or ride a bus.[148] Platforms that enable "sharing" of toys (ToysTrunk), clothes (Le Tote), and books (Booksfree) through monthly subscription services may represent an improvement on the problem of underutilized assets, or may simply encourage greater consumption of resources by making it cheaper and easier to get access to a continual flow

nomy.pdf [https://perma.cc/RR82-6NR6] (discussing claims that platforms use the sharing economy moniker to exploit labor).

146. *See* Kulp & Kool, *supra* note 69, at 195–96; Mitchell, *supra* note 14, at 78–93 (assessing variety of legal complaints against Uber); Posen, *supra* note 15, at 418 (describing complaints about Uber from taxi drivers and operators, Uber riders, and Uber drivers).

147. *See* Mitchell, *supra* note 14, at 80–82 (describing surge pricing); Nicholas Diakopoulos, *How Uber Surge Pricing Really Works*, WASH. POST: WONKBLOG (Apr. 17, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/04/17/how-uber-surge-pricing-really-works/ [https://perma.cc/SHC7-Y77G] (analyzing data to determine if, as Uber claims, surge pricing works to get more drivers on the road).

148. *See* SCHOR, *supra* note 145, at 6 (citing study concluding that for the majority of users, carsharing provided greater access to cars); Michael Cabanatuan, *S.F. Traffic: Numbers Don't Show Why It Really Is Bad*, S.F. GATE (May 16, 2015) http://www.sfgate.com/bayarea/article/S-F-traffic-Numbers-don-t-show-why-it-really-6268436.php [https://perma.cc/F6M8-ZHAK] (noting that ridesharing services have increased traffic in San Francisco because "[t]he transportation revolution that brought ride services like Uber and Lyft has added thousands of vehicles to the streets—estimates range as high as 15,000"); Catherine Rampell, *Who Will Win the Ridesharing War? Probably Not Consumers*, WASH. POST OP. (Oct. 2, 2014), https://www.washingtonpost.com/opinions/catherine-rampell-consumers-likely-to-lose-the-uber-lyft-ride-share-war/2014/10/02/f4810f74-4a6c-11e4-a046-120a8a855cca_story.html [https://perma.cc/M54L-EBXR] (citing studies that conclude ridesharing services discourage more environmentally-friendly forms of transportation, including bicycling and walking).

of new goods.[149]

The fact that a company may reduce the private ownership of goods by using a rental or access model does not necessarily mean that it is reducing consumption. Indeed, the environmental impacts of transporting all of those rental boxes on a monthly basis may offset whatever benefits lie in reducing acquisition in the first place.[150] These examples illustrate the difficulty consumers face in analyzing and verifying companies' claims of having a social mission.

F. *Resistance to Regulation of the Sharing Economy*

A final, slightly different type of challenge to regulating the sharing economy is the pressure *against* regulation from industry champions. Some proponents of the sharing economy argue that it offers unique environmental, economic, and/or community-building benefits, and that sharing enterprises therefore deserve to be exempted from some regulations—or at least to have regulations adapted to their particular characteristics.[151] Others argue that new sharing enterprises represent an important technological innovation and disruptive new business model.[152]

---

149. *See* Steven Hill, *Is the Sharing Economy Truly Green?*, SIERRA (Mar. 14, 2016), http://www.sierraclub.org/sierra/2016-2-march-april/green-life/sharing-economy-truly-green [https://perma.cc/W88Q-Q4XM] ("The 'sharing' platforms are creating new markets that appear to be expanding the volume of commerce."); *see also supra* notes 74-77 and accompanying text.

150. Unfortunately, evidence regarding the total resource impact of subscription services versus traditional methods of consumption is primarily anecdotal. *See supra* notes 148-149 and accompanying text.

151. *See* SHAREABLE, *supra* note 37, at 4 ("Resource sharing, peer production, and the free market can empower people to self-provision locally much of what they need to thrive. Yet we've learned that current U.S. policies often block resource sharing and peer production False Even when legacy institutions are failing to serve, which is increasingly the case, citizens are not free to share with or produce for each other. New policies are needed to unlock the 21st Century power of cities as engines of freedom, innovation and shared prosperity."); Lonnie Shekhtman, *Is Sharing Illegal? In Many Cases, Yes*, TRIPLE PUNDIT (Feb. 15, 2013), http://www.triplepundit.com/special/rise-of-the-sharing-economy/regulating-sharing [https://perma.cc/8X8P-34GN] (suggesting that regulations may impede sharing economy businesses and unfairly protect incumbent businesses).

152. *See* Boyd Cohen & Jan Kietzmann, *Ride On! Mobility Business Models for the Sharing Economy*, 27 ORG. & ENV'T 279, 279–80 (2014) (suggesting the sharing economy creates potential for new economic models that should be further explored); Molly Cohen & Arun Sundararajan, *Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy*, 82 U. CHI. L. REV. DIALOGUE 116, 116 (2015), https://lawreview.uchicago.edu/page/self-regulation-and-innovation-peer-peer-sharing-economy [https://perma.cc/C2QW-2MSL] (noting traditional regulation may interfere with innovative new sharing economy and peer-to-peer business models); Downes, *supra* note 18 (arguing that sharing economy businesses are disrupting "long-mature supply chains").

These cycles of innovation and disruption, some argue, can be beneficial or even necessary for economic development.[153] In this case, regulation could stifle innovation and disruption, cementing old ways of doing business and preventing industry growth and change that ultimately could be more beneficial to society.

It bears noting that the sharing economy, as currently defined, relies heavily on reputation to build trust and enable P2P transactions.[154] Many believe that this level of transparency and information sharing imposes a form of self-regulation that can substitute for government intervention.[155]

III. REDEFINING, CATEGORIZING, AND REGULATING THE NEW SHARING ECONOMY

To address the risks and challenges identified in Part II, we propose a two-stage process: first, we offer a taxonomy of sharing that creates meaningful categories for regulation based on the types of risks identified above; and second, we offer regulatory recommendations targeted to each of the categories in the taxonomy.

A. *Taxonomy of Sharing*

The purpose of creating a taxonomy is to provide clarity in the definition of the sharing economy and create a system of categorization for the multitude of sharing economy business models that will facilitate

153. For a thorough discussion of innovation and the potential benefits of innovation, see Ranchordás, *supra* note 13, at 425–36; *see also* MARK KNICKREHM, BRUNO BERTHON & PAUL DAUGHERTY, ACCENTURE STRATEGY, DIGITAL DISRUPTION: THE GROWTH MULTIPLIER 2 (2016), available at https://www.accenture.com/_acnmedia/PDF-4/Accenture-Strategy-Digital-Disruption-Growth-Multiplier.pdf [https://perma.cc/RC5J-8XS6] (concluding that technology and digital disruption are necessary to unlock significant value in the world economy).

154. *See* BÉNÉDICTE DAMBRINE, JOSEPH JEROME & BEN AMBROSE, USER REPUTATION: BUILDING TRUST AND ADDRESSING PRIVACY ISSUES IN THE SHARING ECONOMY 2 (2015), *available at* https://fpf.org/wp-content/uploads/FPF_SharingEconomySurvey_06_08_15.pdf [https://perma.cc/CM79-ULTN] ("For a basic peer-to-peer exchange, a positive outcome can often be tied to each peer's reputation; buyers and sellers have to be able to trust in the benefit of an exchange."); Cohen & Sundararajan, *supra* note 152, at 128–29; Jedidiah Bracy, *In the Sharing Economy, Could Reputation Replace Regulation?*, INT'L ASS'N PRIVACY PROF'LS: PRIVACY ADVISOR (June 10, 2015), https://iapp.org/news/a/in-the-sharing-economy-could-reputation-replace-regulation [https://perma.cc/KR87-STMP] (describing importance of reputation in sharing economy and discussing Federal Trade Commission proceedings on the question of whether new regulation is needed to protect consumers).

155. *See* Cohen & Sundararajan, *supra* note 152, at 129–32 (proposing judicious use of self-regulation to monitor sharing economy businesses).

regulation. As described in Part I.B, popular understandings of the new sharing economy companies appear to have three common characteristics. First, they are based on an Internet-enabled platform that facilitates transactions for goods and services. Second, they operate in one of three areas, each of which has an identifying characteristic that distinguishes it from traditional commercial enterprises. Third, through an algorithm, platform curation, and/or user selection, they offer some form of individual or personalized transaction experience. In this part, we use these common characteristics to create a taxonomy and model for defining and classifying sharing economy businesses.

Figure 2 provides a schematic representation of the taxonomy:

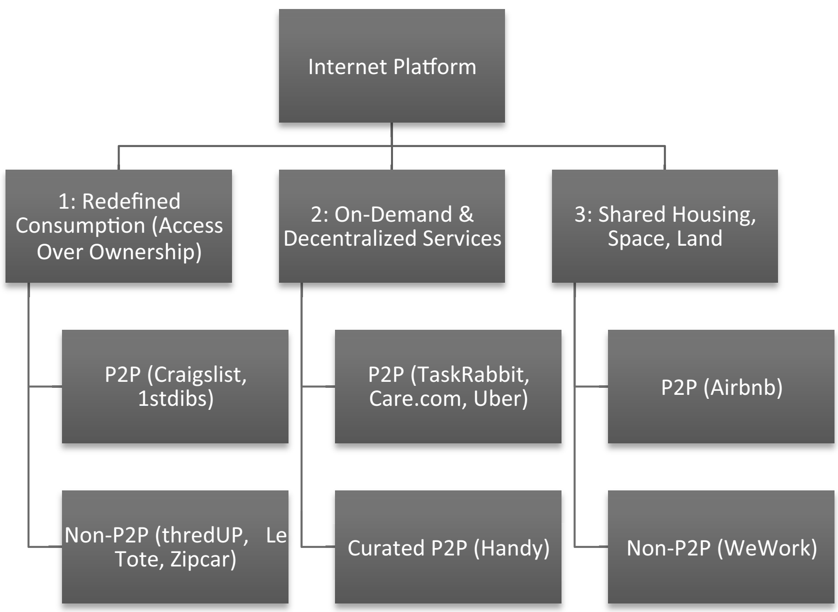

FIGURE 2

Under our taxonomy, the first step toward categorizing an entity as part of the new sharing economy is to identify an Internet platform that facilitates transactions. This step eliminates from the taxonomy small-scale cooperatives, collectives, or community groups that rely primarily on a physical presence or in-person network. While such groups or entities may engage in sharing, we would not categorize them as part of the new sharing economy because their rarity and relatively small reach give them minimal, if any, impact on the larger economy.

The second step requires identifying the types of transactions that the entity engages in, each of which can be distinguished from traditional

39083 ple_19-3 Sheet No. 39 Side A 05/11/2017 10:58:06

commercial consumerism in a particular way. We have identified three categories for our taxonomy:

Reduced and/or redefined consumption of goods. Entities in this category facilitate transactions for access over new product ownership,[156] including renting, bartering, and selling used goods.[157] Many of these entities allow consumers to gain access to goods that at one time were only available for outright ownership, such as surfboards or formal dresses.[158] Some of the goods may be intangible, such as music and media, to which companies like Netflix and Spotify provide access. These companies are distinguishable from traditional commercial enterprises by the redefined notion of consumption through reuse or access rather than ownership. Some of these enterprises operate on a P2P basis, but many do not.

On-demand and short-term services. Companies in this sector match short-term workers, generally independent contractors, with jobs ranging from driving to assembling IKEA furniture. Many offer consumers the opportunity to outsource peripheral tasks, such as running errands (TaskRabbit), fixing the kitchen sink (Handy), or doing laundry (Washio). Importantly, these companies offer more flexible forms of employment to the errand runners, housecleaners, and handymen than traditional forms of employment, a development often referred to as the "gig economy."[159] A key aspect of this category that distinguishes it from traditional temporary employment is that all of the transactions involve some kind of P2P connection, either on a direct or curated basis.[160] This category also includes platforms that facilitate access to individual makers and producers of goods. For example, Etsy would fall into this category,[161] as would

156. *See* Bardhi & Eckhardt, *supra* note 1, at 881 ("[A]ccess-based consumption, defined as transactions that can be market mediated but where no transfer of ownership takes place. . . The consumer is acquiring consumption time with the item, and, in market-mediated cases of access, is willing to pay a price premium for use of that object."). *Id*. at 883 (breaking access further into a variety of access systems, including memberships in clubs and organizations, redistribution markets, and collaborative lifestyles).

157. *See* Botsman, *supra* note 80 (calling such facilitation the reinvention of traditional market behaviors).

158. *See Rent the Runway*, *supra* note 45 (allowing consumers to rent formal dresses); SPINLISTER, https://www.spinlister.com [https://perma.cc/DE79-TN6W] (last visited July 21, 2016) (renting bikes, surfboards, and snowboards to public).

159. Sundararajan, *supra* note 117.

160. Daiane Scaraboto, *Selling, Sharing, and Everything in Between: The Hybrid Economies of Collaborative Networks*, 42 J. CONSUMER RES. 152, 153 (2015) (describing collaborative platforms, like Etsy, as part of a hybrid economy "characterized by complex interactions between social and commercial interests").

161. *See, e.g.*, Botsman, *supra* note 80 (considering Etsy as part of the "collaborative economy," which "unlocks the value of underused assets by matching needs and haves."). *But see* Raz Godelnik, *Is the Public Etsy Still Part of the Sharing Economy?*, TRIPLE PUNDIT (Apr. 24, 2015), http://www.triplepundit.com/2015/04/public-etsy-still-part-real-sharing-

FarmersWeb, a platform that puts local food buyers in touch with small farmers.[162]

Shared space. Some of the largest sharing economy companies operate in the areas of housing, commercial office space, and land use. Unlike traditional commercial entities, these sharing economy companies use their Internet platforms to facilitate access (not ownership) to underused privately-owned spaces. They may also provide access to shared commercial spaces. Category 3 includes Airbnb, WeWork, and Shared Earth (a non-profit platform that facilitates connections between people who have land they are willing to share with gardeners, and gardeners looking for land). These entities may operate on a P2P or non-P2P basis.

This second level of categorization also screens out some businesses. The platform eBay provides is an instructive example. eBay began as a sharing enterprise that enabled P2P transactions through an online auction model, primarily for used or resale goods, and was therefore very much a Category 1 enterprise. Today, however, eBay has moved away from redefined consumption to focus on the sale of new goods by commercial sellers. As its 2015 Annual Report states:

> While eBay was once an auction site selling vintage items, today 80% of the items sold on eBay are new. . . To deliver a more robust commerce platform, in 2015 we embarked on a significant, long-term effort to evolve our core eBay marketplace, moving away from a listings-based format toward a product-based format.[163]

Based on this shift in eBay's business model, we would no longer include it in the sharing economy. Although it continues to offer some P2P transactions for used goods, the site focuses on increasing sales and commercial transactions in a product-first marketplace. In other words, it now focuses on a traditional notion of consumption and therefore does not

economy [https://perma.cc/L4CS-3432] (positing that whether Etsy should be considered part of the new sharing economy at all is a matter of debate. Some have expressed concern that Etsy, now a publicly-traded company, no longer shares the values of collaborative consumption that made it part of the original sharing economy); *see also* Grace Dobush, *How Etsy Alienated Its Crafters and Lost Its Soul*, WIRED (Feb. 19, 2015), http://www.wired.com/2015/02/etsy-not-good-for-crafters [https://perma.cc/68JS-GPVK] (stating that we include Etsy in our taxonomy because it facilitates consumers' interactions with artisans and other makers, while acknowledging that Etsy permits mass manufacturers to sell on its site as well, to many artisans' dismay).

162. FARMERSWEB, *supra* note 59.

163. EBAY, *Annual Report*, 6 (2015), *available at* http://files.shareholder.com/downloads/ebay/2049302125x0x882672/742AC716-B4DB-40F8-83B0-793F0D6BDA5C/EBAY_2015_Annual_Report.pdf [https://perma.cc/LA65-Z7BJ].

fall within the taxonomy.

The third unique characteristic of sharing economy companies is the way the platform creates an individualized or personalized connection to the transaction. In the early days of the sharing economy, this occurred primarily through P2P transactions in which the user purchased goods or services directly from providers.[164] While we do not believe that entities must use a P2P model to be part of the sharing economy, we note that many of the entities that no longer use this model still provide an individualized service experience, either by curating transactions between sellers and buyers or by using user preferences to select a particular service provider from a group of independent contractors.

Following from this consideration of individualized transactions and the P2P nature of many sharing economy companies, the third step of our taxonomy categorizes entities based on whether or not they operate on a P2P basis. This is important because many of the risks identified in Part II are based on the P2P service model. Accordingly, this level of the taxonomy facilitates regulatory recommendations. Within the on-demand services category, all transactions are offered on a P2P basis, but the platform provides varying levels of curation. In Part III.B, we tie our regulatory recommendations to the level of curation provided by these businesses.

B. *Regulatory Recommendations*

As the sharing economy has grown and new, more significant risks have surfaced, many have called for increased regulation. Proposals for regulation often focus on the sector in which the entity operates (i.e., transportation).[165] In this section, we offer regulatory recommendations that follow from the taxonomy described above, rather than the sector that the entity serves. This approach more closely links regulatory recommendations to regulatory risks and therefore can be more narrowly tailored to addressing those risks, without stifling economic or social benefits.

1. Category 1 (Sharing Goods): Focus on Transparency

Category 1 of the taxonomy includes sharing economy companies that

164. *See* Loucks, *supra* note 31; Rassman, *supra* note 15; Posen, *supra* note 15, at 407.

165. *See generally* Shuford, *supra* note 7 (discussing regulating the shared accommodations sector of sharing economy); Rassman, *supra* note 15 (proposing regulations for ridesharing); SHAREABLE, *supra* note 37 (proposing regulations based on sharing sectors of transportation, food, and housing).

focus on redefined consumption of goods, either on a P2P or non-P2P basis. Two central risks flow from these types of businesses. First, consumers purchasing goods from a P2P business may not understand that they are not working with commercial entities and therefore should not have the same expectations for product safety, reliability, and adherence to regulations that they might in traditional commercial transactions. Second, consumers may be misled as to the environmental benefits of the access model of ownership.

Notably, the first concern does not apply to commercial platforms operating on a non-P2P basis, such as Zipcar or Pley. These platform entities can and should be expected to comply with existing regulations for consumer products. To narrowly address this risk, we suggest that regulations be targeted to entities utilizing the P2P model and that any new regulations focus on transparency and notification to consumers, rather than limiting options available in the marketplace.

The second risk is addressed below in Part III.B.4 because it cuts across all three categories of the sharing economy taxonomy.

2. Category 2 (On-Demand Services): Focus on P2P Services and Curation

Within Category 2, a number of risks have emerged, all of which relate to the use of P2P or curated P2P services and the misclassification of, or reliance upon, independent contractors. These risks include the lack of legal protection and benefits for workers, discrimination by independent contractors, and consumer expectations that contractors have undergone some level of screening for some level of safety qualification.

In this category, new regulations may be necessary to protect workers and ensure that the platform enterprise is not used to avoid creating employer/employee relationships. We propose first that states create enhanced transparency and reporting requirements for workers associated with P2P on-demand service platforms so that states can monitor "hot spots," where certain platforms are becoming associated with negative labor practices. Enterprises should be required to publicly disclose their requirements for association with the platform (i.e., arbitration agreements, covenants not to compete with other platforms, publicity agreements, etc.) and to provide annual reports to regulators that would include information such as the numbers of hours worked by any individuals for whom the platform was required to file a Federal 1099 form.

By proactively starting with transparency, states will be in a position to monitor when workers of a given platform enterprise are committing the majority of their time to that enterprise, whether they are being asked to agree to onerous conditions, and whether conditions suggest that an employer/employee relationship has been created. This information may allow the state to further investigate whether workers are being misclassified based on either federal or state standards and whether the state should create special designations to avoid allowing the platform to take advantage of the independent contractor status.

The misclassification of employees as independent contractors has long been a problem in many industries, including the construction industry and both the taxicab and transportation services industries.[166] In some cases, legislation has been used to clarify the status of employees or to provide a presumption that employees in a certain industry are, in fact, employees.[167] If reporting reveals hot spots with large numbers of potentially misclassified employees, new legislation along these lines may be required to protect workers.

To protect and inform consumers, regulations should focus on the platform entity and the level of curation it provides. For a platform like craigslist, which provides virtually no curation, consumers are unlikely to assume that workers have gone through any kind of screening or training. For these platforms, a "buyer beware" approach may be appropriate. However, when a platform provides significantly more curation—for example, when Handy.com chooses a service provider for customers—the platform must be expected to take on a significantly higher burden of liability. Similarly, if the platform creates a reasonable expectation by customers that it is responsible for providing some level of safety or quality, it should not then be permitted to disavow liability for the acts of its contractors.[168]

Regulations aimed at protecting the safety of the public should be narrowly tailored to the risks of the enterprise. In California, the Public Utilities Commission (CPUC) considered the risks attendant to ridesharing enterprises in 2013 and created a new designation—Transportation

166. *See* David Bauer, *The Misclassification of Independent Contractors: The Fifty-Four Billion Dollar Problem*, 12 RUTGERS J.L. & PUB. POL'Y 138, 141–44, 171–72 (2015) (discussing why employers misclassify employees as independent contractors, including taxi cab drivers, for tax and employment purposes).

167. In Maryland, the Workplace Fraud Act of 2009 created a presumption that individuals in the construction or landscaping fields were employees, rather than independent contractors. *Id.* at 171 (citing MD. CODE ANN., LAB. & EMPL. §§ 3-901–3-920 (West 2012)).

168. Uber has denied liability for accidents caused by its drivers. *See, e.g.*, Family of Six Year Old Girl Killed By Uber Driver Settles Lawsuit, ABC7 NEWS (July 14, 2015), http://abc7news.com/business/family-of-6-year-old-girl-killed-by-uber-driver-settles-lawsuit/852108/ [https://perma.cc/9B8S-U2H3] (noting Uber's denial of liability in court proceedings).

Network Company or TNC—that includes entities that use Internet applications to connect drivers with riders.[169] In concluding that TNCs required regulation, the CPUC emphasized that its primary interest was to ensure public safety, which overrode any concerns about the rapidly evolving or nascent nature of the industry.[170] The regulations governing TNCs are directly related to the risk of injury to the public: required background checks, driver training programs, drug and alcohol policies, and insurance coverage.[171]

Maker platforms that operate on a P2P basis raise the concern that novice providers of goods and services will fail to follow established regulatory requirements or will be unprepared for commercial liability. Etsy, the preeminent artisan platform, attempts to protect itself from liability for these risks by explicitly providing in its "House Rules" that individual sellers are solely responsible for any defects, damage, or other potential liability arising from their sales on the Etsy website.[172] However, this notice does little to protect consumers. Again, we argue that regulatory requirements should be guided by the level of curation of platforms and the attendant potential for confusion on the part of customers as to the commercial quality and safety of their goods. Where the platform creates the reasonable expectation by consumers that their purchases are overseen by the platform, it must assume some liability for legal concerns that arise in platform-facilitated transactions.[173] In addition, platforms should be

169. DECISION ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY, Rulemaking 12-12-011, Decision 13-09-045, at 2 (Cal. Pub. Utils. Comm'n Sept. 19, 2013), *available at* http://www.taxi-library.org/cpuc-2013/cpuc-decision-sept-2013.pdf [https://perma.cc/R6B3-LY6J] [hereinafter Decision 12-12-011] (defining a Transportation Network Company "as an organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles"); *id*. at 2–3 n.3 (explaining that the TNC designation does not override existing exemptions for non-profit entities or for ridesharing that might be actual "sharing," i.e., where the ridesharing is "incidental to another purpose of the driver").

170. *Id*. at 3 ("[T]he Commission is aware that TNCs are a nascent industry. Innovation does not, however, alter the Commission's obligation to protect public safety, especially where, as here, the core service being provided—passenger transportation on public roadways—has safety impacts for third parties and property.").

171. *Id*. at 35–58.

172. *Our House Rules: Terms of Use*, ETSY, https://www.etsy.com/legal/terms-of-use [https://perma.cc/NHU6-7ECC] (last visited July 20, 2016) (including provisions such as "[y]ou release Etsy from any claims related to items sold through our Services, including for defective items, misrepresentations by sellers or items that caused physical injury (like product liability claims)").

173. ETSY, *supra* note 57 (reassuring customers that "Etsy handles and protects every transaction, so shop with confidence.").

required to provide basic information to their workers about liability insurance, taxes, and relevant health and safety regulations.[174]

3. Category 3 (Shared Spaces): Focus on Zoning

With respect to Category 3 entities, we find that the primary risks relate to the blurred lines between public and private spaces and the way these blurred lines challenge traditional zoning provisions. The nature of these entities suggests that rigid rules barring or allowing sharing enterprises risk either blocking innovative business models or failing to address reasonable risks to communities and municipalities. Instead, regulations focused on zoning should take a moderate approach, allowing communities to benefit from the innovative business models offered by these sharing enterprises, while still protecting communities and municipalities from harm.

A number of cities struggling with the challenges posed by Airbnb are taking this approach by limiting the number of days a unit can be rented on Airbnb and/or by requiring the host to live in the unit for a significant portion of the year.[175] In Amsterdam, regulators have also taken this path, allowing for limited private home rentals rather than barring the practice completely.[176] The New York State Legislature, however, recently passed a bill prohibiting the rental of entire apartments for fewer than thirty days in New York City if the residents are not present.[177]

In the zoning context, the scale of the enterprise should also be considered in drafting new regulations, as it is the scale of the enterprise

174. *See How Do Taxes Work for Hosts?*, AIRBNB, https://www.airbnb.com/help/article/481/how-do-taxes-work-for-hosts [https://perma.cc/9LGB-HV4M] (last visited July 20, 2016) [hereinafter *How Do Taxes Work*] (outlining how taxes work for host properties).

175. Heather Kelly, *Why Everyone Is Cracking Down on Airbnb*, CNN: MONEY (June 23, 2016), http://money.cnn.com/2016/06/22/technology/airbnb-regulations [https://perma.cc/7PVF-KVTN].

176. *See After Amsterdam, Other Dutch Cities Consider Rules to Deal with Airbnb Housing*, DUTCHNEW.NL (May 3, 2016), http://www.dutchnews.nl/news/archives/2016/05/after-amsterdam-other-dutch-cities-consider-rules-to-deal-with-airbnb [https://perma.cc/YN5K-X56R] (discussing the agreements between Dutch cities and Airbnb regarding occupancy and number of properties).

177. *See New York Bill Would Ban Airbnb Listings for Some Short-Term Rentals*, NBC NEWS (June 21, 2016), http://www.nbcnews.com/tech/tech-news/new-york-bill-would-ban-airbnb-listings-some-short-term-n596111 [https://perma.cc/G5DV-Q92S]; Mike Vilensky, *Albany Approves Airbnb Penalties*, WALL STREET J. (June 17, 2016), http://www.wsj.com/articles/albany-approves-airbnb-penalties-1466206171 [https://perma.cc/F456-HE3K] (discussing New York legislation that would ban Airbnb users from listing some short-term rentals).

that creates the biggest risks for changing the quality of neighborhoods, putting pressure on infrastructure, and overwhelming public services. Cities might consider exempting small-scale enterprises,[178] such as an independent "eco-village" where community members participate in a sharing lifestyle that includes community gardens and shared access to renewable energy.[179] Co-housing communities could also be exempted from other zoning requirements aimed at single-family residences, including setbacks, density, number of parking spaces, and restrictions on the number of dwelling units on a parcel of land.[180] This same approach can be used when zoning for land uses. For example, San Francisco created a land use category called "neighborhood agriculture" for gardens that are less than one acre in size, which allows the operator to grow, share, and sell the products of that garden.[181]

A number of risks in this category also center on the P2P business model. Because a failure to pay lodging taxes has been shown to be a significant problem in some cities,[182] platforms operating on a P2P basis should be required to provide basic information about tax collection to hosts, as Airbnb does.[183] Airbnb also encourages hosts to have smoke alarms and carbon monoxide detectors in the home and notes that local regulations may require hosts to have smoke alarms in every room.[184]

178. A number of regulatory schemes exempts small businesses, including securities laws and some parts of the Sarbanes-Oxley Act. *See* Deniz Anginer et al., *Should Size Matter When Regulating Firms? Implications from Backdating of Executive Options*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 5–8 (2012) (describing variety of exemptions for small businesses).

179. EcoVillage at Ithaca is a co-housing community with shared access to gardens and community spaces. *See Live*, ECOVILLAGE ITHACA, http://ecovillageithaca.org/live [https://perma.cc/SGX2-3HY9] (last visited July 22, 2016). Residents of the EcoVillage occasionally share or rent rooms to the public. *Room(s) For Rent in Song*, ECOVILLAGE ITHACA, http://ecovillageithaca.org/live/rentals-sales/for-rent-in-song [https://perma.cc/U5EX-TUG7] (last visited July 22, 2016).

180. Julie Pennington, *Zoning for Sharing*, COMMUNITYENTERPRISELAW.COM, http://communityenterpriselaw.org/zoning-and-housing/#Zoning_for_Sharing [https://perma.cc/DDA5-RKDX] (last visited July 22, 2016).

181. SAN FRANCISCO URBAN AGRICULTURE ALLIANCE, OVERVIEW OF SAN FRANCISCO'S URBAN AGRICULTURE ZONING ORDINANCE (2011), *available at* http://www.sfuaa.org/uploads/4/8/9/3/4893022/overview_of_sf_urban_ag_zoning_changes_final.pdf [https://perma.cc/SQ7D-4J4P] (citing San Francisco Ordinance 66-11, File No. 101537, approved by the Board of Supervisors on April 20, 2011, and effective May 20, 2011; San Francisco Planning Code Section 102.35).

182. *See supra* note 139 and accompanying text.

183. *How Do Taxes Work*, *supra* note 174.

184. *I'm a Host. Am I Required to Have a Smoke and CO Detector Installed?*, AIRBNB, https://www.airbnb.com/help/article/515/i-m-a-host—am-i-required-to-have-a-smoke-and-co-detector-installed?topic=359 [https://perma.cc/Z2AA-3JLU] (last visited July 22, 2016).

These educational efforts should be encouraged by regulators or required if they are not enacted voluntarily. Large-scale enterprises should also be required to hold a minimum amount of liability insurance that would be extended to providers on the website, such as Airbnb currently offers to its hosts.[185] Finally, because guests may not understand that non-commercial shared spaces are not required to meet the same regulations as commercial entities, the platform should be required to provide disclosures to guests that would make these regulatory differences and their potential consequences clear.

4. Mission-Driven Enterprises: Focus on Verifying Benefits

A final regulatory concern, the potential deception of consumers into believing that a company provides a social or environmental benefit when it does not, cuts across all three of our operational categories. One potential solution to this problem is the creation of a designation for Sharing Companies. Such a designation would create a meta-reputation for the entity itself, with external validation from an outside or third-party.

Precedent for such a designation exists in the form of so-called "benefit corporations." In 2010, Maryland passed the first statute creating an entity called a benefit corporation,[186] and today, thirty-two states have similar legislation that recognizes a specialized form of business entity designed to both earn a profit and serve a public purpose.[187] Even in states that do not recognize such an entity, the non-profit entity B Labs offers a voluntary certification process for entities that want to call themselves a "B

185. *See* Huet, *New Laws Push Uber*, *supra* note 120 (describing gap in primary coverage provided by Uber); *Host Protection Insurance*, AIRBNB, https://www.airbnb.com/host-protection-insurance [https://perma.cc/K943-EEJ2] (last visited July 22, 2016) (describing primary coverage of up to $1 million provided to hosts).

186. Anne Field, *First-Ever Study of Maryland Benefit Corps Released,* FORBES (Jan. 25, 2013) (discussing study of Maryland benefit corporations); *see* MD. CODE ANN., CORPS. & ASS'NS. §§ 5-6C (West 2012) (defining a benefit corporation and explaining its purpose and structure).

187. *See Status Tool*, SOCIAL ENTERPRISE LAW TRACKER, http://www.socentlawtracker.org/#/bcorps [https://perma.cc/94Y3-6N3E] (last visited July 22, 2016) (providing a "status tool" with links to states enacting laws permitting social enterprise business forms, including Benefit Corps.); *see also* Brett H. McDonnell, *Committing to Doing Good and Doing Well: Fiduciary Duty in Benefit Corporations*, 20 FORDHAM J. CORP. & FIN. L. 19 (2014) (examining the fiduciary duty provisions of benefit corporation statutes); Kyle Westaway & Dirk Sampselle, *The Benefit Corporation: An Economic Analysis with Recommendations to Courts, Boards, and Legislatures*, 62 EMORY L.J. 999 (2013) (looking at the usefulness of social enterprise statutes and areas of improvement for those statutes); J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications, and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1 (2012) (discussing benefit corporation governance).

Corp."[188] Other entities have used a variety of practices to signal social or environmental commitments to customers, including certification standards like Fair Trade[189] and third-party audit and reporting standards like the International Organization for Standardization's (ISO) 14000 code covering "environmental management" and Social Accountability International's (SA) 8000 code.[190]

Just as B Labs currently certifies B Corps and a Fair Trade certification signifies adherence to voluntary labor and trade practices, we propose a certification process for entities that claim to provide the benefits of the sharing economy. This certification process would assess the entity across several categories, including: market power, labor practices, governance, environmental impact, and collaborative impact. The certification would also consider the manner in which the entity increases the efficient use of underutilized assets and resources, facilitates open access to shared data, creates privacy controls, allows for access to knowledge and education, and develops shared products, services, or open source technology. An entity that scores above a certain level on the assessment would then be certified as a "Sharing Company."

The companies included in the new sharing economy, however, are not inevitably beneficial to the environment or to communities and individuals.[191] A number of studies have recently turned attention to the question of whether collective consumption platforms actually result in environmental benefits and concluded that enterprises that do not deliberately assess their practices are unlikely to provide significant benefits and may in fact increase consumption.[192] Creating a certification

188. *Become a B Corp*, B LAB, https://www.bcorporation.net/become-a-b-corp [https://perma.cc/WSV3-K83W] (last visited July 22, 2016).

189. *See, e.g.*, *Certification & Your Business*, FAIR TRADE USA, http://fairtradeusa.org/certification [https://perma.cc/ACD7-ULAG] (last visited July 22, 2016) (outlining the Fair Trade certification model and certification standards).

190. Businesses can seek certification under common standards such as the SA-8000 or the ISO 14000. *ISO 14000–Environmental management*, INT'L ORG. FOR STANDARDIZATION, http://www.iso.org/iso/iso14000 [https://perma.cc/MZD4-KGTE] (last visited July 22, 2016); *SA8000® Standard*, SOC. ACCOUNTABILITY INT'L, http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1689 [https://perma.cc/PM3T-L2VJ] (last visited July 22, 2016); *see also* MARC J. EPSTEIN, MAKING SUSTAINABILITY WORK: BEST PRACTICES IN MANAGING AND MEASURING CORPORATE SOCIAL, ENVIRONMENTAL AND ECONOMIC IMPACTS 72–78 (2008) (detailing Toyota's implementation of corporate standards that take into account sustainability strategies); Adelle Blackett, *Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct*, 8 IND. J. GLOBAL LEGAL STUD. 401, 413–17 & nn.38–39 (2001) (describing coordinated efforts by multinational enterprises to monitor and enforce minimum labor standards, including SA-8000).

191. *See supra* notes 16-17 and accompanying text.

192. *See supra* notes 148-149 and accompanying text.

system would force sharing economy enterprises to assess their practices and determine if they are indeed creating the benefits they proclaim.

A self-regulatory sharing certification system would increase the legitimacy of the sharing economy and reduce concerns about sharewashing. It could also assist regulators engaging in the risk assessment process that lies at the heart of the regulatory structure contemplated herein. If the entity is able to achieve a sharing certification, municipalities may be encouraged to exempt it from certain regulations. For instance, an on-demand service enterprise certified as a Sharing Company may be exempted from certain recordkeeping requirements, a maker platform certified as a Sharing Company may have access to certain tax benefits, and a shared housing Sharing Company may be exempt from specified zoning regulations.

As a potential complement to assessment and certification programs, we note that publicity and reputation may also drive companies to engage in self-regulation. TaskRabbit provides an example. After being widely criticized for facilitating a system that resulted in workers getting paid less than minimum wage, TaskRabbit changed its business model. First, it did away with the "bidding" system, in which Taskers bid for jobs, which often resulted in a race to the lowest possible wage.[193] The site then set a minimum floor for wages at a level that is higher than the federal minimum wage.[194]

CONCLUSION

The sharing economy, as popularly understood, plays an increasingly central role in the economy as a whole. While it has evolved in several ways from its original form, its impact on both workers and consumers raises the question of how best to regulate this new form of business. Regulating the new sharing economy presents a growing challenge, as new entities create gray zones in areas that were once legally black and white.

In the push and pull between protecting the public and fostering innovation and social change, perhaps the clumsiest response would be to create one-size-fits-all regulations built around a concept of sharing that no longer applies. Instead, regulators should create more illustrative categories for regulation that are built around identification and mitigation

193. Harrison Weber, *TaskRabbit Users Revolt as the Company Shuts Down Its Bidding System*, VENTURE BEAT (July 10, 2014), http://venturebeat.com/2014/07/10/taskrabbit-users-revolt-as-the-company-shuts-down-its-bidding-system/ [https://perma.cc/S5D4-N2SG].

194. Jeremy Quittner, *How Peer to Peer Worker Services Are Changing the Debate on Wages*, INC. (Aug. 14, 2014), http://www.inc.com/jeremy-quittner/freelance-sites-add-worker-protections-like-higher-minimum-wage.html [https://perma.cc/4R4Z-EZLW].

of risks posed by different types of entities. We propose a taxonomy of the new sharing economy that includes entities that focus on reducing consumption, entities that facilitate on-demand services, and those concerned with sharing housing and space. We believe that delineating the differences among these sectors is an important first step toward improving the quality of regulation for the sharing economy as a whole.

This article begins a conversation about an appropriate regulatory taxonomy to move toward a system for thoughtful regulation of the new sharing economy. By understanding the different types of players in this new sharing economy and the specific concerns each type presents, regulators can create more narrowly-tailored and efficient regulation without quashing beneficial economic growth.