

Ridesharing in the Sharing Economy: Should Regulators Impose Über Regulations on Uber?

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ABSTRACT: Society has changed dramatically in the years since the taxi industry was first regulated. Innovation and technology in fields virtually unknown or unrealized 50 years ago have shaped consumer culture today, and most consumers rely on the ease and accessibility of their smartphones to get what they need and even to go where they need to go. Uber, a ridesharing experience that allows users to request a car through a smartphone app, was developed in the midst of this new consumer culture in which access to commodities is more valuable than individual ownership and where people value social interaction and the human experience. Unsurprisingly, Uber's unforeseen growth across the country has created new competition in a taxi industry that has been largely undisrupted since it began in the early 20th century. The taxi industry and many cities and states have responded by demanding that Uber comply with already-existing taxi regulations, including entry controls and price-fixing. This Note argues that in today's sharing economy, the solution is not to force Uber to comply with outdated regulations; rather, regulators should rely on experimental regulations for safety, which will allow consumers to make their own choice of which service they would like to use while ensuring their safety. Furthermore, by relying on the use of experimental regulations, regulators will be able to evaluate the effectiveness of the regulations as more information on these services becomes available.

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I. INTRODUCTION

For over a century, consumers have engaged in “throwaway living”—relying on disposable products rather than reusable ones.¹ Consumers were more concerned with the convenience the products could provide in that moment than with any long-term consequences that might result from the products’ use.² By the mid-20th century, people were engaged in “hyper-consumerism,” focused on acquiring more and more goods, regardless of their utility,³ and focusing on the individual instead of the community.⁴

1. RACHEL BOTSMAN & ROO ROGERS, *WHAT’S MINE IS YOURS* 7–9 (2010) (discussing the invention of paper cups and plastic bags, among other products, for convenience, hygiene, and time-savings).

2. *See id.* at 9–10.

3. *Id.* at 20 (“What interests us the most is not the luxury status or elitist side of conspicuous consumption . . . but the excessive mass consumption binge kick-started in the 1920s that exploded in the mid-1950s. We refer to the endless acquisition of more stuff in ever greater amounts as ‘hyper-consumerism,’ a force so strong there are now more shopping malls than high schools in America.”).

4. *Id.* at 42 (“[B]y the 1950s, the dawn of hyper-consumerism, we started to perceive ourselves first and foremost as a society of individual consumers, and as a group of citizens second.”).

Beginning in the early 21st century, as consumers faced a recession, these trends began to change.⁵ With younger generations paving the way, “[t]oday time, experience and access trump[] possession.”⁶ The result of this change is the sharing economy, focused on innovative technologies, relieving economic pressures facing small business, and simplicity.⁷ 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.”⁸

Technology and innovation are central to the sharing economy, which focuses on finding ways to accomplish things quickly and easily.⁹ The problem is that governments do not have a strong regulatory framework with which to regulate these new technologies.¹⁰ Instead, the companies created in the sharing economy face regulatory challenges and are forced to comply with regulations that were enacted when such companies and technologies could not have been imagined.¹¹

Today, an important service in the sharing economy that has faced problems of its own is ridesharing, and more specifically, Uber. Uber is a

5. See Xavier de Lecaros Aquisé, *The Rise of Collaborative Consumption and the Experience Economy*, GUARDIAN (Jan. 3, 2014, 5:42 PM), <http://www.theguardian.com/technology/2014/jan/03/collaborative-consumption-experience-economy-startups> (explaining that with the 2008 recession, an abundance of assets, and rise of social media communities, “collaborative consumption is flourishing”).

6. *Id.*

7. 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>.

8. *Id.*

9. Raj Kapoor, *Lessons from the Sharing Economy*, TECHCRUNCH (Aug. 30, 2014), <http://techcrunch.com/2014/08/30/critical-lessons-from-the-sharing-economy> (“Technology has lowered the barriers so that anyone can provide services blurring the line between ‘personal’ and ‘professional.’ The consumer peer-to-peer rental market alone is worth \$26 billion . . . while consumers benefit from lower prices, higher quality, and unprecedented convenience.”).

10. See *id.* (explaining that regulatory laws challenge the sharing economy by slowing down or completely banning these services and that the current regulatory framework never imagined such a sharing economy ever existing); see also Sofia Ranchordás, *Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy*, 16 MINN. J.L. SCI. & TECH. 413, 440 (2015) (“In recent years, legislators and regulators have become increasingly curious as to the regulation of innovation. However, this curiosity has not always put legislators and regulators on the innovation path. Despite large annual investments in R&D, too little has been researched and is known about the most adequate and efficient mix of legal and policy instruments to promote innovation.” (footnote omitted)).

11. See Larry Downes, *Lessons from Uber: Why Innovation and Regulation Don’t Mix*, FORBES (Feb. 6, 2013, 5:00 AM), <http://www.forbes.com/sites/larrydownes/2013/02/06/lessons-from-uber-why-innovation-and-regulation-dont-mix> (“Instead of responding to a new kind of virtual competitor with better products and services, however, the highly-regulated taxi and limousine companies in every city Uber has entered have instead gone the route of trying to ban Uber’s existence. They’ve called on state and local regulators to declare the service in violation of decades-old laws outlawing unlicensed ride services, often based on technical definitions of ‘meters,’ ‘dispatch,’ and ‘taxi.’”).

mobile app that connects riders with drivers in a convenient and efficient manner.¹² It provides riders with an alternative to taxi and livery services, and providers¹³ are not subject to the regulations with which those services must comply.¹⁴ As a result, these new companies face lawsuits and cease-and-desist letters from both the taxi industry and the cities and states in which they operate, claiming unfair competition and violations of taxi regulations.¹⁵

This Note argues that forcing ridesharing companies like Uber to comply with taxi regulations that were enacted before such services were even envisioned restricts innovation and unnecessarily withholds services from consumers. In doing so, this Note also argues that the best way to protect consumers is to allow Uber to continue its operations, subject to experimental regulations directed at ensuring passenger safety. Part II surveys the history and growth of the taxi industry and taxi regulations, explores the rise of the sharing economy, and looks at Uber's business model and its function within the sharing economy. Part III presents and analyzes the challenges Uber faces and, more generally, the challenges inherent in regulating innovation and technology. Part IV argues that experimental safety regulations, including requirements for car inspections and minimum liability insurance, will encourage further innovation while allowing regulators to better understand how these services operate and the regulatory needs that arise. This Note concludes by recommending that regulators remember that any regulations should focus on consumer interests.

II. TAXIS, REGULATIONS, AND HOW THE SHARING ECONOMY HAS CHANGED THE TAXI INDUSTRY

A. REGULATION TRENDS IN THE TAXI INDUSTRY

Today, taxis are commonplace in cities across America. However, before the industry became what it is today, cities, and even the federal government, had to address safety concerns and consumer interests. Beginning in the 1920s, and persisting until today, taxi regulations respond to these consumer interests regarding price and safety. These same concerns are the driving force behind the calls for regulations for Uber.

12. See *Simplicity in Motion*, UBER, <https://www.uber.com/features> (last visited Sept. 24, 2015).

13. Providers are the companies that facilitate the service that drivers provide to passengers. Examples include Uber and taxi dispatchers.

14. Jefferson Graham, *Talking Tech: Taxi Alternatives Are on the Move*, USA TODAY (June 26, 2013, 5:53 PM), <http://www.usatoday.com/story/tech/columnist/talkingtech/2013/06/26/taxi-alternatives-uber-lyft-sidecar/2453967> (explaining that taxi drivers are upset because these services are not licensed by the city and do not pay the traditional fees associated with being a taxi driver). Livery services are licensed to provide pre-arranged rides through a dispatch service and cannot pick up riders that may hail them on the street. See MARK W. FRANKENA & PAULA. PAUTLER, FED. TRADE COMM'N, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION 10, 26 (1984), <http://www.ftc.gov/sites/default/files/documents/reports/economic-analysis-taxicab-regulation/233832.pdf>.

15. See *infra* Part II.A.

The taxicab came onto the American landscape at the turn of the 20th century, and its development “was strongly influenced by the continuing evolution of mass transit vehicles and by the massive changes that were occurring in urban life.”¹⁶ Automobiles were developed to replace the widespread use of horses, and by 1907, they were introduced to New York City as a new kind of cab.¹⁷ The taxicab “represented a new, faster, more convenient form of personal urban transportation.”¹⁸

By the 1920s, the taxicab industry had grown, was organized into taxi fleets, and was seen as a source of economic opportunity for entrepreneurs.¹⁹ “With [large taxi fleets] came a temporary stabilization of local taxi industries, as well as the implementation of technological and operational advances.”²⁰ These large fleets created the quality taxi service culture that persists today.²¹

Consumer-related concerns during the Great Depression forced cities to regulate the taxi industry.²² Before the Depression, there was little local regulation of the taxi industry, and the regulations that were in place focused on passengers: they limited fares and imposed insurance requirements.²³ The Depression realized two problems for the taxi industry: (1) there were no entry controls limiting the number of taxis; and (2) the taxi industry was a cash-based business and “encouraged inexperienced operators to neglect depreciation costs and good maintenance practices.”²⁴ With the rise of unemployment and people becoming taxi drivers to replace the gap left by their previous employment, there were more drivers but fewer people looking

16. GORMAN GILBERT & ROBERT E. SAMUELS, *THE TAXICAB: AN URBAN TRANSPORTATION SURVIVOR* 25 (1982).

17. *Id.* at 31–35. At this time, communities were facing problems because of the care and feeding that horses required and the manure that they produced. Additionally, horses were ill equipped to handle the hilly terrain. *Id.* at 28. Innovation first led to the use of streetcars and “urban rail networks.” *Id.* at 29.

18. *Id.* at 35.

19. *Id.* at 39. Four entrepreneurs made the biggest impact on the taxi industry: John Hertz, Morris Markin, W. Lansing Rothschild, and Frank Sawyer. *See generally id.* at 40–55 (discussing the backgrounds and contributions of each of these men to the taxi industry).

20. *Id.* at 59. The advances included traffic signals and the use of dispatch phones. *Id.* The large fleets also led to the formation of the National Association of Taxicab Owners (“NATO”) in 1919, the Cab Research Bureau in 1938—which partnered with NATO—and the American Taxicab Association. These organizations formed the International Taxicab Association. *Id.*

21. *See id.* at 59–60 (explaining that this is the most significant legacy of the early taxi fleets, along with the notion of “the taxi driver as a respected professional”).

22. *Id.* at 63 (explaining that because the Depression brought great economic turmoil, it was foreseeable that government would respond with regulation).

23. *Id.* at 65–66 (explaining that “there was not much concern with the limitation of numbers of licensed taxicabs,” and that “[b]y 1932 fourteen states had passed mandatory insurance laws”); *see also* FRANKENA & PAUTLER, *supra* note 14, at 74 (discussing taxi regulations before 1929).

24. GILBERT & SAMUELS, *supra* note 16, at 67.

for rides.²⁵ The resulting market saturation drove fares down below cost and forced taxi operators to engage in poor business practices.²⁶

These problems resulted in a call for nationwide regulation.²⁷ By the mid-1930s, taxi regulation was commonplace and generally uniform across the country, focusing on (1) entry controls; (2) fixed rates; (3) financial responsibility; (4) the condition of vehicles; and (5) assurance of service.²⁸

The concerns that first arose during the Depression resurfaced in the 1960s and, as taxis became more widespread and calls for regulation from consumers grew stronger, the taxi industry continued to question the need for regulation. “[R]egulation of taxis [was] adopted widely to stop shady tactics and practices of individuals who over-populated the supply of taxis and often fought territorial wars for passengers on the public streets.”²⁹ In a 1984 report, the Federal Trade Commission (“FTC”) explained four possible motivations for taxi regulation: (1) protecting public transit and taxis from competition; (2) promoting city image; (3) the self-interest of regulators; and (4) the quality of taxi service.³⁰ The first and fourth motivations mirror the same concerns that drove the Depression-era regulations.³¹

While the federal government was largely responsible for taxi regulations during and after World War II, by the 1970s, regulating the taxi industry was largely left to municipalities.³² Common to most local regulation of the taxi industry were provisions that “define a ‘taxicab’; prescribe financial and insurance responsibilities; detail the number of taxi permits allowed and the procedure for issuing permits; prescribe driver licensing procedures; delimit services provided by taxicabs; and set the fares and method of computing fares.”³³

Often, these regulations led to entry controls and average-price fixing.³⁴ Edward Gallick and David Sisk explain that, “[i]f price is somehow set on the

25. *Id.*

26. *Id.* (“Taxi drivers were forced to rely on cheating, counterfeiting, and demanding tips in order to make any money. Legitimate taxicab operators went into bankruptcy, taking casualty insurers with them.”).

27. *Id.* at 68.

28. *Id.* at 71–72 (emphasis omitted); see also FRANKENA & PAUTLER, *supra* note 14, at 74–79 (discussing city-by-city regulations that were enacted during the 1930s).

29. JAMES COOPER ET AL., TAXI! URBAN ECONOMIES AND THE SOCIAL AND TRANSPORT IMPACTS OF THE TAXICAB 16 (2010).

30. FRANKENA & PAUTLER, *supra* note 14, at 68–72. These motivations took into account the interest of the potential riders, the taxi operators, the regulators, and the taxi drivers. *Id.*

31. See *supra* text accompanying note 24.

32. GILBERT & SAMUELS, *supra* note 16, at 142.

33. *Id.* at 143.

34. See, e.g., GILBERT & SAMUELS, *supra* note 16, at 142–55 (explaining that fare and entry controls are the two most controversial aspects of taxi regulation and discussing variances across US cities); Edward C. Gallick & David E. Sisk, *A Reconsideration of Taxi Regulation*, 3 J.L. ECON. & ORG. 117 (1987) (discussing how the average-pricing rule reduces exchange costs and promotes efficiency); Bruce Schaller, *Entry Controls in Taxi Regulation: Implications of US and Canadian*

basis of distance, so that equidistant trips are uniformly priced, then riders could cheaply estimate the price of any particular trip without searching among alternative drivers.”³⁵ These prices were generally set for trips to central areas, but could be negotiated for rides outside that area. Eventually, set prices became largely irrelevant upon the development of the mileage meter,³⁶ which “worked to provide a minimum fee for picking up a passenger plus some fee per mile.”³⁷ These average-pricing rules often led to additional regulations requiring drivers to drive all customers and setting vehicle standards.³⁸

Entry controls determine how many taxi licenses a given municipality will issue and “affect[] the availability and quality of taxicab service, company and driver incomes, license values, accountability of service providers and the scope and difficulty of administering the regulatory regime.”³⁹ There are a wide variety of entry control schemes, ranging from “‘open entry,’ in which any operator who meets basic safety requirements can obtain a license . . . [to] ‘medallion’ systems [that] set strict numerical limits so that taxi licenses can be obtained only through transfers from an existing license holder . . .”⁴⁰ All entry controls, no matter what form they take, focus on consumer interests and safety. These same concerns are a driving force behind the sharing economy and, more specifically, calls for the regulation of Uber.

Experience for Taxi Regulation and Deregulation, 14 TRANSPORT POLY 490 (2007) (discussing the effect of entry controls and why most cities have implemented such controls).

35. Gallick & Sisk, *supra* note 34, at 118. Thus, riders were able to save time by not having to search for various drivers to find the best price. Before average pricing, the cost of a 30-mile trip was dependent on destination, the ability of a driver to find a rider for the return trip, and duration, all of which changed with every ride. *Id.*

36. *Id.* at 119.

37. *Id.* at 120. Today, a meter also factors duration into its price calculation so that slower trips—caused by traffic conditions, for example—still give the driver adequate compensation. *Id.*

38. *Id.* Such regulations were instituted due to the disincentives caused by average pricing because it meant that some trips were more profitable than others, and because the pricing was set based on the costs of taxi operation—riders were no longer considering the quality of the taxi itself so drivers stopped some of their upkeep. *Id.*

39. Schaller, *supra* note 34, at 490.

40. *Id.* These entry controls have an effect on both the availability of taxis and the quality of service provided and “entry deregulation rather than fare deregulation lies at the heart of deregulation’s impact on service availability and service quality.” *Id.* at 491. There are also differences in the effect of entry controls on the different types of taxi markets: the street hail cab, cab stands, and dispatch. *Id.* In some cities, in order to operate in the taxi industry, taxi drivers must have taxicab licenses, or “medallions,” which are “[l]iterally the piece of silver metal affixed to the right hood of a yellow taxi . . . [and the] visible symbol that a taxi is licensed to be on city streets.” Katrina Miriam Wyman, *Problematic Private Property: The Case of New York Taxicab Medallions*, 30 YALE J. ON REG. 125, 131 (2013). The numbers of medallions available in a given market are limited and have become more valuable, in some occasions selling for more than a million dollars. *Id.* at 127.

B. *THE RISE OF THE SHARING ECONOMY AND CHANGING CONSUMER CULTURE*

Today, the world is experiencing “an epic reinvention of our economic system.”⁴¹ What this Note will refer to as the “sharing economy” “facilitates community ownership, localized production, sharing, cooperation, small-scale enterprise, and the regeneration of economic and natural abundance.”⁴² Shifting values, a drive for innovation, and the realization that our resources are not unlimited have motivated these changes in the economy, both in the United States and around the world.⁴³ These changes in behavior and goals are possible because of cultural and technological development that is fostered by a network that is growing and evolving every day—the internet.⁴⁴

The use of technology is an important part of this sharing economy. Technology has given rise to networks and cloud services that allow people to access resources only when they need them, connecting people to resources through the simple click of a button.⁴⁵ People are now using technology to make money off of things they own by providing them as a service to those who do not own the item themselves.⁴⁶ Part of the reason that consumers use this technology is because it functions as a social enterprise, in which customers have a personal and social experience that leads to trust.⁴⁷ In fact, “[t]echnology has lowered the barriers so that anyone can provide services blurring the line between ‘personal’ and ‘professional.’”⁴⁸

41. JANELLE ORSI, *PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES* 1 (2012). This reinvention is referred to “as the ‘sharing economy,’ the ‘relationship economy,’ the ‘cooperative economy,’ the ‘grassroots economy,’ or just the ‘new economy.’” *Id.*

42. *Id.* at 2.

43. *See id.* at 3–6 (discussing the flawed thinking that the economy would always be growing and a shift in thinking that we no longer need to own things individually in order to have access to them); Russell Belk, *You Are What You Can Access: Sharing and Collaborative Consumption Online*, 67 J. BUS. RES. 1595, 1597 (2014) (explaining that collaborative consumption “includes people coordinating acquisition and distribution of a resource for a fee” and that “[i]nstead of buying and owning things, consumers want access to goods and prefer to pay for the experience of temporarily accessing them” (quoting Fleura Bardhi & Giana M. Eckhardt, *Access-Based Consumption: The Case of Car Sharing*, 39 J. CONSUMER RES. 881, 881 (2012)); Ranchordás, *supra* note 10, at 420 (discussing the constantly changing sharing economy and the need to encourage innovation while protecting consumers)).

44. BOTSMAN & ROGERS, *supra* note 1, at 55.

45. Gardner, *supra* note 7 (“The key factor for the growth in the sharing economy is the birth of virtualization and cloud services; these two paradigm shifts within the technology sector have changed our thinking irreversibly. We now operate in an age in which previously unrealized value is found in excess and redundancy, in which efficiency of a single asset (server or otherwise) has multiplied massively. More than that, we can access these resources when we need them, and only pay for what we use. No longer do we have to make large up-front investments in assets that are underused.”).

46. *Id.*

47. *Id.*

48. Kapoor, *supra* note 9.

Central to the sharing economy is the ability of consumers to access and use commodities and services that they could not otherwise afford or do not want to own themselves, through rent-based or access-based payments.⁴⁹ Historically, consumers preferred ownership to mere access, but over the last decade this has changed, largely due to developments in technology that make access to products and services easier.⁵⁰ While taxis technically fit within the access-based focus of the sharing economy, the taxi industry has not responded to the changing consumer culture that focuses on technology and the consumer experience. “The consequence of this rise of the information and knowledge society is that value is increasingly reliant on cultural rather than tangible resources.”⁵¹ This idea is linked to the social enterprise, a field that is devoted not only to profits, but also to positive social change.⁵²

The variety of products and services that a consumer has access to because of technology and the sharing economy is virtually endless. Companies that are a part of this consumer culture include Zipcar,⁵³ Airbnb,⁵⁴ and TaskRabbit.⁵⁵ These companies “are changing the expectations of what a service should provide By building on real customer need and creating experiences that are human and personal, they are able to move in spaces that traditionally bigger companies cannot.”⁵⁶

Car sharing and ridesharing are both especially important parts of this sharing economy.⁵⁷ “Car sharing consists of a group of paying individuals who access a fleet of cars along with other paying members periodically over time.”⁵⁸ This is a popular alternative to car ownership, which shows the shift

49. Bardhi & Eckhardt, *supra* note 43, at 881.

50. *Id.* at 883; *see also* Belk, *supra* note 43, at 1595 (noting that “with the Internet we have many ways to express our identity without ownership”).

51. Bardhi & Eckhardt, *supra* note 43, at 883.

52. *See* MARC J. LANE, SOCIAL ENTERPRISE: EMPOWERING MISSION-DRIVEN ENTREPRENEURS 2 (2011).

53. ZipCar is a car-sharing service in which consumers pay a membership fee and then have access to cars that they can rent for hours or days—all members have to do is reserve the car online, go to the ZipCar lot, which are centrally located in cities across America, swipe their Zipcard to the windshield of the car, get in, and go. *How It Works*, ZIPCAR, <http://www.zipcar.com> (last visited Sept. 24, 2015).

54. Airbnb is an online platform that connects people with rooms to spare with people looking for a place to stay while traveling—“the easiest way for people to monetize their extra space. . . .” *About Us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Sept. 24, 2015).

55. TaskRabbit is a social service “based purely on human resource.” Gardner, *supra* note 7. The service allows people in need of everyday help to connect with people who have the time and are looking to do that sort of work. *How TaskRabbit Works*, TASKRABBIT, <https://www.taskrabbit.com/how-it-works> (last visited May 31, 2015).

56. Gardner, *supra* note 7.

57. *See generally* Donald N. Anderson, “Not Just a Taxi”? For-Profit Ridesharing, *Driver Strategies, and VMT*, 41 *TRANSP.* 1099 (2014) (discussing ridesharing and its derivatives in today’s economy); Bardhi & Eckhardt, *supra* note 43 (discussing the rise of car sharing as a part of access-based consumption in the last decade).

58. Bardhi & Eckhart, *supra* note 43, at 886.

in American culture from individual ownership to this new sharing economy.⁵⁹ By contrast, ridesharing does not share access to cars but rather access to a ride in a car already heading where a passenger needs to go.⁶⁰ “[R]idesharing exists when two or more trips are executed simultaneously, in a single vehicle. Its main anticipated impact is to increase car occupancy, with a consequent reduction in the number of cars traveling on urban roads.”⁶¹ Ridesharing is largely exempt from regulation.⁶²

A hybrid of car sharing and ridesharing has developed in the sharing economy. This hybrid is “for-profit ridesharing.”⁶³ Unlike traditional ridesharing, drivers make an income from driving as a part of this hybrid ridesharing and, unlike traditional taxis, those drivers and their vehicles are not licensed as commercial vehicles.⁶⁴ Most drivers are everyday individuals who converse with passengers and give passengers a pleasant rider experience, unlike the typical taxi driver. Additionally, these companies bring technology into the transportation market, allowing passengers to request rides and make payments on their phones, which is more efficient than calling or hailing a cab. Companies providing for-profit ridesharing have grown rapidly over the last few years, attracting consumers because of the ease their smartphone-app platform provides for hailing rides.⁶⁵

C. WHAT IS UBER AND WHY DO CONSUMERS WANT IT?

Uber is one of the for-profit ridesharing companies that have grown significantly over the past few years.⁶⁶ Uber is a social enterprise and the company explains that:

Uber is evolving the way the world moves. By seamlessly connecting riders to drivers through our apps, we make cities more accessible, opening up more possibilities for riders and more business for drivers. From our founding in 2009 to our launches in hundreds of cities today, Uber’s rapidly expanding global presence continues to bring people and their cities closer.⁶⁷

59. *See id.* (explaining that car ownership used to be a rite of passage and a symbol of a consumer’s identity).

60. Catherine Morency, *The Ambivalence of Ridesharing*, 34 *TRANSP.* 239, 240 (2007).

61. *Id.*

62. Anderson, *supra* note 57, at 1100.

63. *Id.*

64. *Id.*

65. Graham, *supra* note 14.

66. Bill Frezza, *The Rise of Uber Should Have Politicians, Regulators and Crony Capitalists Shaking with Fear*, *FORBES* (June 23, 2014, 6:31 AM), <http://www.forbes.com/sites/billfrezza/2014/06/23/the-rise-of-uber-should-have-politicians-regulators-and-crony-capitalists-shaking-with-fear> (discussing the consumer support of Uber and its cross-country expansion).

67. *The Company*, UBER, <http://www.uber.com/about> (last visited Sept. 24, 2015).

To use Uber, consumers simply have to download Uber's smartphone app, tap the screen to set their pickup location, and request a ride. Uber then sends the request to available drivers and, when one accepts, they will be on their way to pick up the rider.⁶⁸ Unlike standard taxis, Uber cars are hailed solely through their app, eliminating the need for a rider to hail a cab on the street or call a dispatcher.⁶⁹ Uber began in 2010 as a luxury car service and only later expanded into the ridesharing market with other cars.⁷⁰ Today, Uber offers different services, specific to each city in which it operates, ranging from UberX, billed as "the low cost Uber," to UberBLACK, "the original Uber" with a higher base fare and cost per mile, to UberT, allowing users to request a traditional taxi through the Uber app.⁷¹

Central to Uber's growth is that, "Uber has been more than willing to sit down with city fathers before launching service in a new city to craft sensible rules that will enhance consumer acceptance while addressing any safety concerns. But the company also is not afraid to face down taxi cartels' resistance."⁷² To address safety concerns, Uber requires drivers to have personal car insurance, in addition to the commercial insurance coverage that Uber maintains.⁷³ Additionally, depending on the city, the driver's car must be either 2000 or newer or 2005 or newer, and the driver must have a license, registration, and pass a background check.⁷⁴ Depending upon what city the driver is in, there may be additional requirements as well.⁷⁵ In addition to the background check and vehicle inspection, "Uber also heavily insures its drivers and uses real-time feedback to ensure quality. And feedback on customers helps protect drivers against rude and unruly passengers."⁷⁶

68. *Simplicity in Motion*, UBER, <https://www.uber.com/features> (last visited Sept. 24, 2015); see also Natasha Singer, *In the Sharing Economy, Workers Find Both Freedom and Uncertainty*, N.Y. TIMES (Aug. 16, 2014), <http://www.nytimes.com/2014/08/17/technology/in-the-sharing-economy-workers-find-both-freedom-and-uncertainty.html> (giving a firsthand account of how Uber works for an Uber driver).

69. *Safety By Design: Going the Distance to Put People First*, UBER, <http://www.uber.com/safety> (last visited Sept. 24, 2015).

70. Graham, *supra* note 14.

71. *New York City*, UBER, <http://www.uber.com/cities/new-york> (last visited Sept. 24, 2015); see generally *60 Countries: Available Locally, Expanding Globally*, UBER, <http://www.uber.com/cities> (last visited Sept. 24, 2015) (listing all of the cities in which Uber operates, with a link to specific available Uber services in each location).

72. Frezza, *supra* note 66.

73. *Driving Jobs vs Driving with Uber*, UBER, <https://www.uber.com/driver-jobs> (last visited July 5, 2015).

74. *Id.*

75. See *Requirements*, UBER, <http://www.driveubernyc.com/tlc-overview/> (last visited Sept. 24, 2015) (explaining the specific requirements for drivers in New York City, who must comply with the Taxi and Limousine Commission).

76. Frezza, *supra* note 66.

Despite the fact that Uber provides these ridesharing services and offers consumers the ability to even request a taxi, Uber's Terms and Conditions explain that:

The Services constitute a technology platform that enables users of Uber's mobile applications or websites provided as part of the Services (each, an "Application") to arrange and schedule transportation and/or logistics services with third party providers of such services, including independent third party transportation providers and third party logistics providers under agreement with Uber or certain of Uber's affiliates ("*Third Party Providers*"). Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. YOU ACKNOWLEDGE THAT UBER DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER.⁷⁷

As Uber founder, Travis Kalanick, explained, rather than being a transportation service, Uber is "in the business of delivering cars. [Uber is] delivering a car to you that you, then, can do whatever you want with. Well, the car has a driver as well."⁷⁸

The fact that Uber is making profits and has been valued at \$18.2 billion⁷⁹ does not justify a claim that Uber is not a true social enterprise within the sharing economy. Uber's business model is premised on social interaction, with the focus being on consumers.⁸⁰ The goal of the sharing economy is to "empower communities and improve access to a number of goods, services, and facilities that would otherwise be restricted to the elite."⁸¹ This is what Uber does—it connects people in order to give consumers access to cars that they would not otherwise have.

Furthermore, a social enterprise is designed for "doing good through the application of sound business principles."⁸² In addition to the transportation services that Uber provides, it also offers social services. Uber engages with

77. *Legal: Terms and Conditions*, UBER, <http://www.uber.com/legal/usa/terms> (last updated Apr. 8, 2015).

78. Jessi Hempel, *Video and Transcript: Uber CEO Travis Kalanick*, FORTUNE (July 23, 2013, 5:38 PM), <http://fortune.com/2013/07/23/video-and-transcript-uber-ceo-travis-kalanick>.

79. Evelyn M. Rusli & Douglas MacMillan, *Uber Gets an Uber-Valuation: Car Service Secures \$1.2 Billion in Funding, Valuing It at \$18.2 Billion, Among Highest Ever*, WALL STREET J. (June 6, 2014, 7:14 PM), <http://www.wsj.com/articles/uber-gets-uber-valuation-of-18-2-billion-1402073876> (noting that Uber's valuation is similar to the combined value of Hertz Global Holdings Inc. and Avis Budget Group Inc.).

80. See *The Company*, *supra* note 67.

81. Ranchordás, *supra* note 10, at 457.

82. LANE, *supra* note 52, at 7. A social enterprise is not restricted only to entities that operate as non-profits; philanthropic organizations are not new to the sharing economy. Rather, a social enterprise is any entity that operates to promote social welfare, with or without a concurrent profit motive. *Id.*

and supports the communities in which it operates, both philanthropically and just for fun.⁸³ Since Uber began, “Uber has transformed the fabric of 170 cities around the world—creating the safest way to get around cities, generating over 20,000 jobs a month, lowering DUI incidents, accidents and fatalities and improving local economies.”⁸⁴

Most importantly, Uber consumers like and want the service and experience that Uber provides. Consumers are looking for new ways to get around, cheaper fares, and, as is so common in today’s world, “the ease of an app” to make those things happen.⁸⁵ In today’s always-connected world, consumers are able to track their driver’s progress to pick them up, pay for fares, and give feedback on their experience directly through the app.⁸⁶ And consumers have been vocal about their support for Uber, tweeting support for the company when it faces challenges to their operation in cities across the country.⁸⁷ Uber provides a unique consumer “experience” that modernizes the services that traditional taxis offer; it is a technology-driven social experience that consumers can choose over owning a car.

83. See, e.g., *Because Everyone Loves Ice Cream!*, UBER (July 17, 2014), <http://newsroom.uber.com/hong-kong/2014/07/because-everyone-loves-ice-cream-3> (announcing that Uber users could request ice cream to be delivered to them and bill it to their Uber account); *Bringing House Calls Back with UberHEALTH*, UBER (Oct. 23, 2014), <http://newsroom.uber.com/boston/2014/10/bringing-house-calls-back-with-uberhealth> (announcing a new program in New York, Boston, and D.C. for users to request flu-prevention packs and giving users the option to request a flu shot for up to ten people, at no cost) *UberKITTENS Is Back!*, UBER (Oct. 29, 2014), <https://newsroom.uber.com/austin/2014/10/uberkittens-is-back> (announcing that, on National Cat Day, Uber brought kittens to offices in some of the cities where they operate to Uber users who paid \$30, the proceeds of which were matched by Uber and donated to animal shelters).

84. *A Leader for the Uber Campaign*, UBER (Aug. 19, 2014), <https://blog.uber.com/david-plouffe>. Possibly the most important impact Uber has had is in partnering with Mothers Against Drunk Driving (“MADD”). A report published by Uber and MADD shows that “monthly alcohol-related crashes decreased by 6.5% (or 59.21 per month) among drivers under 30 following the launch of uberX ridesharing in California in markets where Uber operates.” UBER & MOTHERS AGAINST DRUNK DRIVING, MORE OPTIONS. SHIFTING MINDSETS. DRIVING BETTER CHOICES. 8 (Jan. 2015), <https://newsroom.uber.com/wp-content/uploads/2015/01/UberMADD-Report.pdf>; see also *Making Our Roads Safer—For Everyone*, UBER (Jan. 27, 2015), <http://newsroom.uber.com/2015/01/making-our-roads-safer-for-everyone-2>. The report also shows that across the cities in which Uber operates, the highest demand for Uber rides is during times that, historically, have seen the worst drunk driving. MORE OPTIONS. SHIFTING MINDSETS. DRIVING BETTER CHOICES, *supra*, at 4–6.

85. See Graham, *supra* note 14.

86. *Id.*

87. See Kathryn Watson, *When It Comes to Uber, Consumers May Speak Loudest*, VIRGINIAWATCHDOG (June 30, 2014), <http://watchdog.org/156687/uber-consumers-taxi> (explaining that when Uber’s operations in Virginia were challenged, Uber consumers took to Twitter to support the company, using the hashtag “#VaneedsUber,” and quoting consumers as supporting the company because of its ease and accountability).

III. THE GROWING CHALLENGES THAT A GROWING UBER FACES

As Uber grows, it faces challenges from a number of different groups. Taxi drivers and taxi operators have challenged Uber on a number of grounds, including unfair competition, consumer fraud, and deceptive business practices.⁸⁸ Uber drivers have challenged their classification as independent contractors (rather than employees) and have claimed that Uber does not provide its drivers their full gratuity.⁸⁹ Uber riders have challenged Uber on grounds of violating the Americans with Disabilities Act and for assault and battery under the theory of *respondeat superior*.⁹⁰ In addition to these challenges, some states and municipalities have challenged Uber for violating local taxi ordinances.⁹¹ Yet other states and local governments have embraced Uber operations by passing ordinances that allow for Uber to operate as long as they comply with those ordinances.⁹² As a result of these various legal and regulatory challenges, there is a growing concern regarding how to properly regulate Uber, if at all. This Note focuses on the challenges brought by taxi drivers and operators and by state and local governments.⁹³

In addition to the challenges to Uber operations, Uber faces difficulty at a more basic level: regulating innovation and technology without stifling the field's growth. The sharing economy encourages "innovative forms of sharing underused facilities."⁹⁴ In fact, the United States government has been encouraging innovation as a way to make the economy more productive and competitive for many years.⁹⁵ The difficulty, then, is how to regulate such innovation without stifling it.⁹⁶ Regulators must determine if innovative new

88. See *infra* note 100 and accompanying text.

89. See generally *O'Connor v. Uber Techs., Inc.*, 58 F. Supp. 3d 989 (N.D. Cal. Sept. 4, 2014). In *O'Connor*, Plaintiffs alleged, among other claims, tortious interference with "prospective economic relationship[s] between drivers and Uber customers," failure by Uber to remit all gratuities to drivers, and that Uber misclassifies drivers as independent contractors. *Id.* at 994.

90. See generally *Salovitz v. Uber Techs., Inc.*, No. A-14-CV-823-LY, 2014 WL 5318031 (W.D. Tex. Oct. 16, 2014) (alleging a failure to provide reasonable accommodations to people with disabilities); First Amended Petition, *Mazaheri v. McEuin*, No. CIV-14-225-M, (W.D. Okla. May 29, 2014), 2014 WL 2861833 (alleging negligent hiring, assault and battery, and liability based on *respondeat superior*).

91. See *infra* Part III.A.2.

92. See *infra* Part IV.A.

93. For a comprehensive analysis of the places in the United States where Uber faces legal and legislative challenges, see Johana Bhuiyan, *Here Is Where Uber and Lyft Are Facing Regulation Battles in the United States*, BUZZFEED NEWS (Dec. 15, 2014, 3:29 PM), http://www.buzzfeed.com/johanabhuiyan/here-is-where-uber-and-lyft-are-facing-regulation-battles-in?utm_term=.egYDEozAox#.ujX7bnKR4. The list includes both major cities with large, established taxi markets and smaller cities, as well as challenges on a state-wide level. *Id.*

94. Ranchordás, *supra* note 10, at 416.

95. Lawrence B. Landman, *Competitiveness, Innovation Policy, and the Innovation Market Myth: A Reply to Tom and Newberg on Innovation Markets as the "Centerpiece" of "New Thinking" on Innovation*, 13 J. C.R. & ECON. DEV., 223, 226 (1998).

96. Ranchordás, *supra* note 10, at 417.

companies should be subject to the same regulations as others within a similar industry, if they should be completely unregulated, or if they should fall somewhere in the middle.⁹⁷

A. THE TAXI INDUSTRY AND CITIES AND STATES CHALLENGE UBER

1. Taxi Drivers and Operators

As explained above, the taxi industry has been regulated in some form since the Great Depression.⁹⁸ Central to those regulations are entry controls and price regulations, and, “[i]n exchange for all of this regulation, taxis have for decades held a government-backed monopoly. At the center of that bargain—and the debate over what form of transportation best serves the public—is the medallion.”⁹⁹ This forms the basis of the main contentions that taxi drivers and operators allege in their challenges against Uber.¹⁰⁰ It is not necessarily that these drivers and operators want to get rid of Uber and other rideshare providers completely; many of the parties that challenge Uber welcome the competition that it brings to the taxi industry. Rather, these parties sue because of the unfairness caused by Uber’s failure to comply with

97. *Id.* at 421.

98. *See supra* Part II.A.

99. Emily Badger, *Taxi Medallions Have Been the Best Investment in America for Years. Now Uber May Be Changing That*, WASH. POST (June 20, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/20/taxi-medallions-have-been-the-best-investment-in-america-for-years-now-uber-may-be-changing-that>; *see also supra* note 40 and accompanying text (discussing the medallion system).

100. *See* Badger, *supra* note 99 (discussing what taxi drivers are required to do in order to operate in Chicago, the value of medallions, and how Uber and other ridesharing companies challenge this system); Olivia Becker, *Taxi Drivers Are Trying to Take Down Uber*, VICE NEWS (June 6, 2014, 3:20 PM), <https://news.vice.com/article/taxi-drivers-are-trying-to-take-down-uber> (discussing why taxi drivers and states are challenging Uber). *See generally* *Yellow Grp. LLC v. Uber Techs. Inc.*, No. 12 C 7967, 2014 WL 3396055 (N.D. Ill. July 10, 2014) (alleging unfair and deceptive acts, misrepresentation, and unfair competition by Uber); *Bos. Cab Dispatch, Inc. v. Uber Techs., Inc.*, No. 13-10769-NMG, 2014 WL 1338148 (D. Mass. Mar. 27, 2014) (same); Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *Greenwich Taxi, Inc. v. Uber Techs., Inc.*, No. 3:14-cv-733(AWT) (D. Conn. Sept. 15, 2014) (alleging that Uber “ha[s] created illegal transportation services that violate federal and state laws and regulations, and deceive[s] customers about the fares they must pay, the safety of the cars and drivers transporting them, the insurance coverage available, and the legality of their offered services”); Complaint for Injunctive Relief and Monetary Damages, *W. Wash. Taxicab Operators Ass’n v. Uber Techs., Inc.*, No. 14-2-08259-2 SEA (Wash. Super. Ct. Mar. 24, 2014) (alleging that “Uber does not comply with the applicable laws and regulations . . . [and] engages in an unlawful and deceptive business practice which harms the economic interests of taxicab drivers represented by plaintiff, and the public at-large”).

the law, harming the taxi drivers' economic interests.¹⁰¹ Taxi drivers just want these new companies to follow local regulations.¹⁰²

The parties that object to Uber's presence in certain cities generally challenge the company on a number of common grounds: (1) Uber's failure to comply with local ordinances constitutes an unfair and deceptive business practice and unfair competition;¹⁰³ (2) Uber's advertising constitutes false or misleading representations in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B);¹⁰⁴ (3) Uber misrepresents its services in violation of the

101. Taylor Soper, *Taxi Drivers Defend Suit Against Uber in Seattle, Say They Want Level Playing Field*, GEEKWIRE (Mar. 25, 2014, 7:44 AM), <http://www.geekwire.com/2014/heres-taxi-drivers-suing-uber-seattle>.

102. Anna Gallegos, *The Four Biggest Legal Problems Facing Uber, Lyft and Other Ridesharing Services*, LXBN (June 4, 2014), <http://www.lxbn.com/2014/06/04/top-legal-problems-facing-uber-lyft-ridesharing-services>.

103. See Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 35 ("The Defendants' unfair and deceptive acts and practices have caused substantial injury to consumers and lawfully operating taxicab and livery companies, including but not limited to the Plaintiffs and their drivers."); Amended Complaint at 31, *Bos. Cab Dispatch, Inc. v. Uber Techs., Inc.*, No. 13-cv-10769-NMG (D. Mass. July 8, 2014), 2014 WL 5359400 ("By unlawfully operating its taxi, black car, SUV and UberX transportation services without incurring the expense of compliance with Massachusetts and Boston laws . . . Uber unfairly competes with plaintiffs, in violation of M.G.L. c. 93A, § 11."); First Amended Complaint at 26, *Yellow Grp. LLC v. Uber Techs., Inc.*, No. 12-cv-7967 (N.D. Ill. Dec. 20, 2012), 2012 WL 7654283 ("Uber's business practices violate numerous laws and regulations of the State of Illinois and the City of Chicago. By violating one or more laws and regulations, Uber has gained an unfair competitive advantage.").

104. See Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 33 ("By representing to consumers in its commercial advertising and promotion that the Defendants' vehicles are operating lawfully in Connecticut . . . the Defendants falsely describe facts and falsely represent facts, thereby misrepresenting the nature, characteristics and qualities of its services, in violation of 15 U.S.C. § 1125(a)(1)(B)."); First Amended Complaint, *supra* note 103, at 23 ("In connection with the marketing and advertising of its services, Uber uses false or misleading descriptions of fact, or false or misleading representations of fact In Uber's commercial advertising or promotion of Uber's services, Uber misrepresents the nature, characteristics, or qualities of its services or commercial activities.").

Lanham Act, 15 U.S.C. § 1125(a)(1)(A);¹⁰⁵ and (4) Uber tortiously interferes with their contractual relations.¹⁰⁶

Parties that challenge Uber's failure to comply with local and state ordinances on the grounds that it constitutes an unfair and deceptive business practice and unfair competition do so under state laws in their respective states. Despite the diverse state-law origins of these challenges, they allege the same problems. The parties claim that Uber does not comply with consumer protection and public safety regulations.¹⁰⁷ These claims also allege that by not purchasing and owning medallions and not complying with the safety and licensing regulations that are imposed upon taxi and livery services, Uber skirts compliance costs, dilutes the market, and, thus, unfairly competes with the taxi and livery markets.¹⁰⁸

Not only do these parties allege that Uber fails to comply with local tax requirements, they also allege that Uber fails to comply with federal statutory requirements. These parties challenge Uber under the Lanham Act,¹⁰⁹ claiming that Uber uses false or misleading advertisements of its services or, more specifically, that Uber deceptively represents that Uber cars charge

105. See Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 33 ("By fabricating a nonexistent 'partnership' with legally owned and operated taxicab and livery companies in Connecticut and by misrepresenting its legal authority to operate a dispatch service . . . the Defendants have used false descriptions and representations of fact to cause confusion and mistake in consumers, who are likely to believe that the Defendants are affiliated with, connected with, associated with, sponsored by and approved by legally owned and operated taxicab and livery companies including the Plaintiffs, in violation of 15 U.S.C. § 1125(a)(1)(A)."); First Amended Complaint, *supra* note 103, at 24 ("Uber's representations and business practices are likely to cause confusion, mistake, or deception as to the source, affiliation, connection, or association of Uber's services with Plaintiffs, or as to the approval, sponsorship, or endorsement of Uber's services by Plaintiffs, all to Plaintiffs' irreparable injury and Uber's unjust enrichment.").

106. See Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 35 (alleging that Uber intentionally interfered with Plaintiffs' contracts by encouraging Connecticut taxi drivers to violate state laws and the terms of their leases and by requiring drivers to receive payment through Uber's credit-card processor rather than the processor Plaintiffs contracted with); First Amended Complaint, *supra* note 103, at 21-23 (alleging that Uber has caused drivers to breach their agreement with Plaintiffs by requiring drivers to use phones to arrange pick-up and provide for payment and by associating the Plaintiffs' trade dress and trademarks with Uber).

107. Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 13-21; Amended Complaint, *supra* note 103, at 17-22; First Amended Complaint, *supra* note 103, at 14-16.

108. Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 34; Amended Complaint, *supra* note 103, at 23-24; First Amended Complaint, *supra* note 103, at 14.

109. 15 U.S.C. § 1125(a)(1)(B) (2012). This section of the Lanham Act prohibits "false or misleading description of fact, or false or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities." *Id.*

standard rates, that they are licensed by the cities in which they operate, and that they have safer drivers than other service providers.¹¹⁰

The representations at issue in the cases filed against Uber include deceptive representations on Uber's website that Uber cars charge standard taxi rates when, in fact, riders are charged the standard rate plus a built-in 20% gratuity.¹¹¹ The problem is not the lack of transparency on Uber's part; but rather, it is that the failure to accurately represent their rates hurts the taxi industry's reputation and its profits.

In addition to Uber's alleged failures to comply with statutory requirements as to advertising, the taxi industry alleges that Uber also fails to comply with a section of the Lanham Act prohibiting false representations that are "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person . . . or approval of his or her goods, services, or commercial activities by another person"¹¹² The parties that challenge Uber assert that Uber falsely claims to be affiliated with the plaintiffs' taxi or livery services.¹¹³ These claims allege that when a taxi or livery driver responds to an Uber request, Uber riders are likely to be confused about whether the taxi or livery operators are associated with Uber.¹¹⁴ Riders may be confused about this because taxi and livery drivers can, and do, sign up to drive with Uber and respond to rider requests in their taxicabs or livery cars.¹¹⁵ Furthermore, taxi operators claim that Uber advertises these companies as "fleet partners" when they are, in fact, not partners or even affiliated in anyway.¹¹⁶ Finally, some of these parties claim that the confusion grows when Uber riders see taxi operators' trademarks and trade dress on the vehicle that picks up the rider.¹¹⁷

Finally, aside from the statutory compliance challenges, parties challenging Uber claim that Uber's operations intentionally interfere with contractual relations between the taxi and livery services and their drivers. These claims allege that Uber interferes by: (1) encouraging drivers to violate state laws and regulations, such as prohibitions against using cell phones while driving, which the drivers are required to follow under their contractual agreements with the taxi and livery services; and (2) requiring drivers to

110. Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 31; First Amended Complaint, *supra* note 103, at 7-11.

111. *Yellow Grp. LLC v. Uber Techs., Inc.*, No. 12 C 7967, 2014 WL 3396055, at *2 (N.D. Ill. July 10, 2014).

112. 15 U.S.C. § 1125(a)(1)(A).

113. Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 31; First Amended Complaint, *supra* note 103, at 11-13.

114. Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 31; First Amended Complaint, *supra* note 103, at 11-13.

115. *See* Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 9-10.

116. First Amended Complaint, *supra* note 103, at 11-12.

117. *Id.*

process payments through Uber's credit-card processor instead of the taxi or livery service processor.¹¹⁸ Some parties also allege interference in contractual relations when Uber induces individual drivers to associate the taxi service trademarks and trade dress with Uber, in violation of their contracts, which provide for only limited terms of use of those trademarks.¹¹⁹

2. Cities Challenge Uber

While taxi fleets challenge Uber on grounds of competition, the cities and states that have challenged Uber's operations have done so largely out of concern for compliance with local regulations. These challenges take the shape of lawsuits, cease-and-desist letters, and proposed regulations that would ban Uber and similar services. These cities and states include Ann Arbor, Michigan; Pittsburgh, Pennsylvania; Columbus, Ohio; Cambridge, Massachusetts; and Virginia, among many others. The governments behind these challenges almost universally claim that they do not object to the services that Uber provides; rather, they are concerned with driver and rider safety—the same concerns that led to the initial regulation of the taxi industry.

Because municipalities regulate the taxi industry, they each have their own ideas as to how Uber fits into their regulatory frameworks. Problems arise regarding the definition of a taxi and how Uber defines itself as compared to how a municipality might define Uber and the services Uber provides.¹²⁰ In other cities, the problems are not with all of Uber's operations but only with specific services Uber provides.¹²¹ Finally, some states and cities have challenged Uber's operations by proposing regulations that would prohibit Uber from operating there.¹²² These proposed regulations would require Uber to acquire dispatch licenses, charge minimum fees for some of their

118. Amended Complaint and Application for TRO, Preliminary Injunction and Permanent Injunction, *supra* note 100, at 35; First Amended Complaint, *supra* note 103, at 19–21.

119. First Amended Complaint, *supra* note 103, at 21.

120. In the cease-and-desist letter that the City of Ann Arbor, Michigan sent to Uber, it claims that Uber vehicles “meet the [Michigan Limousine Transportation] Act’s definition of ‘limousine,’ [and] cannot lawfully be operated on Ann Arbor streets without the vehicles and their drivers being in full compliance with the Act.” Letter from Kristen D. Larcom, Senior Assistant City Attorney, Ann Arbor, Mich., to Michael J. White, Gen. Manager, Uber Techs., Inc. (May 14, 2014), <http://annarborchronicle.com/wp-content/uploads/2014/05/uber.pdf>.

121. In Columbus, Ohio, the City filed suit against Uber, claiming that Uber’s peer-to-peer ridesharing service violates local regulations addressing Vehicles for Hire by “operating vehicles for the purpose of carrying the public generally as passengers for hire without the necessary Vehicle for Hire licenses for both the drivers and the vehicles.” *City of Columbus v. Uber Techs.*, No. 2014 EVH 060125, 2014 Ohio Misc. LEXIS 11, at *5 (Ohio Mun. Ct. Apr. 30, 2014).

122. See *Regulations for Smartphone Technology for Taxicabs and Limousines*, CAMBRIDGE, MASS. MUN. CODE § 5.20 (2014), http://www.cambridgema.gov/license/Calendar/~/_/media/55B6A848D40C434B8299A95F80E91FD6.ashx.

services, and have their smartphone technology be licensed by the city, among other things.¹²³

The difficulty facing cities is how to respond to Uber's expansion across the country and find a way for Uber to operate legally under their regulatory framework. Uber has cooperated with cities and, while Uber does not claim to be above the law, it also recognizes that Uber cars are not taxis and should not be regulated as such. The challenges and proposed regulations have been met with both outspoken support and condemnation.¹²⁴ Despite criticism that the goal of the legal challenges and proposed regulations is to stifle innovation and competition, municipalities insist that their main concern is for public safety.¹²⁵

B. REGULATORY CHALLENGES TO INNOVATION AND TECHNOLOGY

Challenges from the taxi industry and government bodies are not the only hurdles that Uber faces. There is a challenge inherent in the regulatory process itself: "[T]hat innovation and regulation simply don't work together. Regulated industries . . . operate outside market-based systems. Competition is prohibited, even criminalized. Since innovative technologies are a particularly ruthless kind of competitor, they are directly or indirectly banned."¹²⁶

A full understanding of why innovation and regulation do not mix requires a better understanding of the regulatory process. Professor George Stigler explains that industries seek out governmental regulation for their own benefit, and normally that benefit is protection from competition.¹²⁷ Industries go to the state for control over the entry of rivals into their industry and, often, the regulations slow the growth of new entities within the industry.¹²⁸ The other important policy for which industries look to the state is price-fixing because "price control is essential to achieve more than competitive rates of return."¹²⁹ This idea that industries control regulation is antithetical to most Americans' belief that governments impose regulations for the protection of their citizens.¹³⁰

123. See generally *id.*

124. Press Release, Cambridge License Commission (June 27, 2014), <http://www.cambridgema.gov/~media/Files/licensecommission/Press%20Release%2000n%20Draft%20Proposed%20Smartphone%20Tech%20Regs.ashx> (describing a public hearing on the benefits and drawbacks of ridesharing-app regulations); see also Watson, *supra* note 86.

125. Press release, *supra* note 124.

126. See Downes, *supra* note 11.

127. George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 3-4 (1971) (explaining that a state's power can selectively help or hurt an industry and an industry can use a state to increase its profitability).

128. See *id.* at 5 (providing examples of how regulations can erect barriers to entry).

129. *Id.* at 6.

130. Holman W. Jenkins, Jr., *Let's Restart the Green Revolution*, WALL STREET J. (Feb. 2, 2011, 12:01 AM), <http://online.wsj.com/articles/SB10001424052748703445904576118020915591658>

It follows that because industries go to the state for regulation, a relationship between regulators and those industries develops. As Judge Richard Posner explains:

Because regulatory commissions are of necessity intimately involved in the affairs of a particular industry, the regulators and their staffs are exposed to strong interest-group pressures. Their susceptibility to pressures that may distort economically sound judgments is enhanced by the tradition of regarding regulatory commissions as ‘arms of the legislature,’ where interest-group pressures naturally play a vitally important role. To the extent that regulation is bent by these pressures to confer private benefits that a free market would withhold . . . it gives rise to vested economic interests that will oppose the removal of regulatory controls regardless of broader welfare considerations.¹³¹

In such a regulatory environment, regulations that once protected consumers now protect the status quo.¹³² The logical conclusion, then, is that, in the interest of “protecting the status quo,” industries will urge regulators to impose old regulations on new companies that try to innovate within those industries.¹³³

Regulators must separate themselves from the industries to which they are so closely tied because technological advances are an integral part of society. These advances create new products and reduce costs, which are necessary for society’s continued economic growth.¹³⁴ The challenge is regulating innovation without, at the same time, stifling that very innovation. The problem can be summarized in the following way: “[I]t is unclear whether these practices fit within existing legal frameworks that apply to equivalent commercial practices and should play by the same rules, whether these practices should remain to a great extent unregulated, or whether these practices should benefit from less demanding regulations.”¹³⁵

Surely, forcing innovative technologies to comply with existing regulations, created before anyone imagined such innovation, is not the solution. The difficulty is that regulators have little knowledge of many of these innovations and, thus, do not understand the landscape of growing

(“When some hear the word ‘regulation,’ they imagine government rushing to the defense of consumers. In the real world, government serves up regulation to those who ask for it, which usually means organized interests seeking to block a competitive threat.”)

131. Richard A. Posner, *Natural Monopoly and Its Regulation*, 21 STAN. L. REV. 548, 624 (1969).

132. Downes, *supra* note 11 (“The regulator becomes the industry’s cheerleader, and regulations shift subtly from protecting the public interest to protecting the status quo.”).

133. *Id.*

134. See Posner, *supra* note 131, at 584 (explaining ways in which monopolists respond to consumer demands).

135. Ranchordás, *supra* note 10, at 422–23.

industries enough to impose practical regulations.¹³⁶ At the same time, leaving these innovations unregulated poses risks to the public's safety and welfare, as shown by the fears underlying the challenges to Uber.¹³⁷

The problem we are left with is: if innovation like Uber should not be subject to existing regulations and should not be left wholly unregulated, how do we strike a balance between regulating innovation and still preserving its novel contribution to society?

IV. UBER BRINGS INNOVATION AND TECHNOLOGY TO THE TRANSPORTATION INDUSTRY

In the new sharing economy, in which the focus is on consumers, innovation no longer focuses on creating new things; rather, it focuses on fostering participation and improving the consumer experience.¹³⁸ The challenges that Uber has faced, both from taxi drivers and from government bodies, miss the point of this new sharing economy. As explained above, the sharing economy focuses on consumer wants and needs¹³⁹—instead of making Uber and other, similar ridesharing services comply with old and outdated taxi regulations, cities and states should create new regulations to respond to these new, consumer-focused companies.¹⁴⁰

These new regulations should not try to stifle innovation or competition. In fact, economists have shown support for the ridesharing service and its effect on the market.¹⁴¹ The competition that Uber brings to the

136. See *id.* at 437 (“Regulating social and technological innovation with little information on the novelties in question and their effects and side effects, poses significant challenges to regulators.”).

137. See *supra* Part III.A.2.

138. BOTSMAN & ROGERS, *supra* note 1, at 188 (“[T]he design becomes more focused on facilitation than object creation, on transitioning from consumption to participation When design is conceived this way, the designer’s role is to think about human experiences first, rather than just the thing itself.”).

139. *Supra* Part II.B.

140. See Ranchordás, *supra* note 10, at 443 (“Regulators should think outside of this box, by trying to understand the challenges of innovation to traditional regulatory instruments and institutions—including how to marry the fast-changing character of innovation with the need for predictability and legal certainty, bridge innovation with regulatory procedure and requirements, understand how charity and philanthropy are permeating the legal sphere, and convince legislators and regulators to accommodate and incentivize social innovation.”).

141. See Dylan Matthews, *Economists Explain Why They Love Uber So Much*, VOX (Sept. 30, 2014, 1:40 PM), <http://www.vox.com/xpress/2014/9/30/6873389/uber-economists-poll-consumer-welfare-efficiency> (explaining that the current taxi regulations cause deadweight loss, which economists hate, but that ridesharing services “effectively expand[] the supply of taxi-like services to fit market demand, solv[ing] that particular problem”); Rob Wile, *Uber Isn’t Just Good for Consumers. Economists Say Drivers Win, Too*, FUSION (Oct. 3, 2014, 11:57 AM), <http://fusion.net/story/19657/uber-isnt-just-good-for-consumers-economists-say-drivers-win-too> (explaining that, on the surface, these ridesharing services might not appear beneficial to drivers because the wages rideshare drivers receive are rather low but that economists feel that the services are, nonetheless, “beneficial to drivers who own their cars and are looking to supplement their income”).

transportation industry is what consumers want.¹⁴² While the average trips per taxi may decline in the wake of these new services,¹⁴³ the decline is due to consumer choices, not the fact that Uber does not comply with taxi regulations.¹⁴⁴ Because consumers desire the experience of Uber over the experience of taxis, any regulations should secure and protect the consumer experience by promoting safety. After safety concerns are properly addressed by regulation, free-market competition will be able to regulate any other lingering issues. In taking the first steps towards implementing safety-oriented regulations, legislators should look to, and improve upon, existing statutory schemes in cities that successfully regulate Uber or other ridesharing companies.

A. REGULATORY SUPPORT FOR UBER

While Uber has faced challenges in many cities, as of October 2014 there are 14 cities and states that have passed pro-ridesharing legislation, welcoming Uber into their cities.¹⁴⁵ Uber welcomes these regulations, as they represent both an acceptance of the service as wanted and needed by consumers and an eye towards innovation.¹⁴⁶ These regulations do not force Uber to comply with taxi regulations, such as entry controls and price fixing. Rather, these regulations focus on public-safety concerns, such as requiring

142. See Graham, *supra* note 14 (discussing consumer support for ridesharing services because of their dependability, the choice it gives them, and the availability of cars); Watson, *supra* note 86 and accompanying text.

143. S.F. MUN. TRANSP. AGENCY, TAXIS AND ACCESSIBLE SERVICES DIVISION: STATUS OF TAXI INDUSTRY 12 (Sept. 16, 2014), <http://www.sfmta.com/sites/default/files/agendaitems/9-16-14%20Item%2011%20Presentation%20-%20Taxicab%20Industry.pdf> (showing that the average trips per car declined from nearly 1,400 rides per month in January 2012 to roughly 500 rides per car in July 2014); see also Emily Badger, *This Chart Bodes Very Badly for the Taxi Industry in Its Battle Against Uber*, WASH. POST (Sept. 17, 2014), <http://www.washingtonpost.com/blogs/wonk-blog/wp/2014/09/17/this-chart-bodes-very-badly-for-the-taxi-industry-in-its-battle-against-uber> (commenting on the findings by the SFMTA and explaining that the notion that the taxi industry and ridesharing services serve different consumer groups may not be accurate).

144. See Badger, *supra* note 143 (explaining that these findings “imply, however, that a lot of people, in San Francisco at least, have abandoned cabs for these alternatives”).

145. *A Shift Towards a Modern Day Transportation Ecosystem*, UBER (Oct. 29, 2014), <http://newsroom.uber.com/2014/10/a-shift-towards-a-modern-day-transportation-ecosystem>. The cities and states with a regulatory framework for ridesharing include Colorado; Chicago, Illinois; Baton Rouge, Louisiana; Seattle, Washington; Minneapolis, Minnesota; Columbus, Ohio; Milwaukee, Wisconsin; Tulsa, Oklahoma; Houston, Texas; California; Austin, Texas; Oklahoma City, Oklahoma; Washington, D.C.; and Cincinnati, Ohio. *Id.*

146. See *id.* (“With more and more jurisdictions taking up the torch of sensible regulations that keep pace with new technology, our communities will be safer, more efficient and more livable.”); Janelle Nanos, *While in Boston Today, Uber Celebrates a Big Win in D.C.*, BOS. GLOBE (Oct. 29, 2014), <http://betaboston.com/news/2014/10/29/while-in-boston-today-uber-celebrates-a-big-win-in-d-c> (“David Plouffe hailed the legislation as ‘groundbreaking’ on a call with reporters, saying that ultimately he believes that Uber is ‘going to play a role in making cities smarter.’”).

driver background checks and having minimum liability insurance requirements.¹⁴⁷

On October 28, 2014, the Washington, D.C. City Council approved a bill legalizing Uber and other rideshare-service operations. The Vehicle-for-hire Innovation Amendment Act of 2014 (“VIAA”),¹⁴⁸ hailed by Uber as a “watershed moment” toward progressive regulation,¹⁴⁹ does not require ridesharing services to comply with the licensing requirements to which taxis are subject.¹⁵⁰ Instead, the VIAA sets a minimum insurance requirement,¹⁵¹ mandates federal, state, and local background checks on drivers,¹⁵² and requires vehicle inspections,¹⁵³ in addition to other registration and operating requirements. As a result, while taxi operators and drivers are upset by the VIAA,¹⁵⁴ Uber and other ridesharing services are rejoicing.¹⁵⁵

The VIAA also recognizes digital dispatch—the use of a mobile application, like the Uber app, to request a ride.¹⁵⁶ Additionally, the VIAA creates a new class of transportation, “private vehicle-for-hire,” services by which riders are connected to operators through digital dispatch.¹⁵⁷ Finally, the VIAA prohibits discriminatory conduct by drivers and establishes disciplinary procedures for situations when drivers violate that

147. See generally SEATTLE, WASH., CITY ORDINANCE No. 124524 (2014), http://clerk.seattle.gov/~archives/Ordinances/Ord_124524.pdf; S. Res. 14-125, 69th Gen. Assemb., 2d Reg. Sess. (Co. 2014); VEHICLE-FOR-HIRE INNOVATION AMENDMENT ACT OF 2014, D.C. B. 20-753 (2014); CAL. PUB. UTIL. COMM’N, DECISION ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY, No. 12-12-011 (Dec. 20, 2012), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/Mo77/K112/77112285.PDF>.

148. VEHICLE-FOR-HIRE INNOVATION AMENDMENT ACT OF 2014, D.C. B. 20-753.

149. *A Shift Towards a Modern Day Transportation Ecosystem*, *supra* note 144.

150. See *id.*; see also Lori Aratani, *D.C. Council Okays Bill to Legalize Lyft, Sidecar, UberX-type Services in the District*, WASH. POST (Oct. 28, 2014), <http://www.washingtonpost.com/blogs/d-gridlock/wp/2014/10/28/d-c-council-okays-bill-to-legalize-lyft-sidecar-uberx-type-services-in-the-district/> (“The companies have largely supported the legislation, which has been criticized by D.C. taxi drivers and companies as unfair because individuals who drive for uberX, Lyft and Sidecar don’t have to meet the same licensing requirements as regular cab drivers.”).

151. VEHICLE-FOR-HIRE INNOVATION AMENDMENT ACT OF 2014, D.C. B. 20-753, § 27 (2014).

152. *Id.* § 26(b).

153. *Id.* § 25(4).

154. See Aratani, *supra* note 150 (“Hundreds of drivers staged a protest in front of the Wilson Building Tuesday morning to protest the council’s action. Ron Linton, chairman of the D.C. Taxicab Commission also opposed the legislation raising concerns about whether it did enough to ensure passenger safety.”).

155. See Jacob Fischler, *DC Just Passed a Law that Uber Says Could Serve as a “Model for the Rest of the Country,”* BUZZFEED (Oct. 28, 2014, 12:28 PM), <http://www.buzzfeed.com/jacobfischler/dc-just-passed-a-law-that-uber-says-could-serve-as-a-model-f> (explaining that the bill has been “praised by Uber for codifying safety standards they say have already been in place. The legislation ‘could be a model for the rest of the country and maybe the world,’ said David Plouffe, Uber’s chief strategist and former aide to President Barack Obama . . .”).

156. VEHICLE-FOR-HIRE INNOVATION AMENDMENT ACT OF 2014, D.C. B. 20-753, § 2(a)(9) (2014).

157. *Id.* § 2(a)(19).

requirement.¹⁵⁸ Successful ridesharing regulations, such as the VIAA, can serve as the starting point for future government bodies that seek to regulate Uber as it enters their jurisdiction.

B. EXPERIMENTAL REGULATIONS FOR SAFETY

The VIAA is just one regulatory success for Uber. There needs to be a regulatory framework for states across the country to follow as Uber continues to expand. Governments should not make Uber comply with already-existing regulations. Instead, regulations for Uber and other ridesharing services should focus on passenger safety and experience, exactly what regulators focused on when they began regulating the taxi industry. When writing these regulations, lawmakers must consider all of the factors that influence the growth of a company like Uber: technology, innovation, transportation, consumer interests, and the rise of the sharing economy. While the VIAA provides an excellent framework for cities and states looking to embrace Uber, there is another option that will similarly strike a balance between Uber's unique business model and the need for some regulation—experimental regulation.

To accommodate the multidisciplinary approach that Uber takes to transportation, the regulations should take on a flexible, experimental nature until the contours of the market are more fully developed. Municipalities enact experimental regulations for a specific period of time, at the end of which the regulations are evaluated and can be adapted to accommodate the insight gained from the experimental regulations.¹⁵⁹ There can be little question that there is some uncertainty surrounding Uber as it grows, in terms of what new services and experiences Uber will endeavor to provide to consumers and in terms of just how big Uber will become. Experimental regulations will allow lawmakers to evaluate the effect of regulations on Uber and innovation and, at the same time, the regulations' effectiveness at protecting the public. These experimental regulations will lead to "optimal policy solutions."¹⁶⁰

As a testament to the effectiveness of experimental regulation, the Dutch Ministry of Transport, Public Works, and Water Management used experimental regulations from 2009–2012 to test speed limits in response to

158. *Id.* § 25(10).

159. Ranchordás, *supra* note 10, at 440–42; see Sofia Ranchordás, *The Whys and Woes of Experimental Legislation*, 1 THEORY & PRAC. LEGIS. 415, 417 (2013) (explaining that experimental regulations serve as a "learning device" because they are tested before being definitively enacted); *id.* at 419–20 ("[E]xperimental legislation aims to be an informed step towards better lasting legislation since it allows legislators to test new laws on a small-scale basis, tackle the uncertainty and difficulty in making prognostics inherent to new rules, and to gather evidence to support (or reject) the legislators' legislative hypothesis.") These regulations are temporary, have goals that are defined before they are enacted, and face evaluation at the end of the time period.

160. Ranchordás, *supra* note 10, at 450 ("[A]dapted laws and regulations to the changing times and to new information can actually contribute to finding optimal policy solutions.")

its belief that dynamic speed limits would improve road safety and traffic, among other things.¹⁶¹ The Ministry imposed these speed limits on a limited number of roads to see their effect and, after understanding the effect that the speed limits had on their safety goals, it revoked the experimental regulation and revised the existing legislation to reflect the success of the experimental regulation.¹⁶² Experimental regulations work because they allow governments to test hypotheses and understand the effects of potential regulations and make adjustments as necessary before cementing the regulations.¹⁶³

Before discussing what experimental regulations for Uber should look like, it is important to fully consider the reason the taxi industry is regulated in the first place—consumer safety and market stability. Medallions, for example, were created when “the industry was marked by a vast oversupply of vehicles, reckless driving in competition for passengers and wildly fluctuating fares. Cab drivers were broadly synonymous with criminals, known in Chicago and New York to steer passengers to prostitutes and illegal liquor.”¹⁶⁴ Medallions initially helped to regulate the taxi industry, but eventually turned into a financial asset that government officials never envisioned.¹⁶⁵ Today, medallions are valuable assets to those who own them, but no longer serve the purpose they were intended to serve and instead are being sold by governments as a way to raise revenue.¹⁶⁶

Experimental regulation solves the problem created when regulations are created for one reason, but later cease to serve their intended purpose, like medallions. Experimental regulations would have allowed a city to reevaluate the role of medallions and their importance and effectiveness before getting to the point where they are virtually meaningless.

Furthermore, society evolves and regulations that were necessary and useful when enacted no longer protect the public. In fact, “[t]he high value of medallions is supposed to deter license-holders from violating the law—punishment for which would mean losing a \$350,000 asset. But since 2006, according to city records, Chicago has revoked only five of them.”¹⁶⁷ Medallions no longer protect the public or serve their original purpose of

161. Ranchordás, *The Whys and Woes of Experimental Legislation*, *supra* note 159, at 418.

162. *Id.*

163. *See id.* at 418–19 (“Nevertheless, this experiment provided an insight and additional and valuable evidence as to the effectiveness of this regulation which could not have been obtained in another way.”).

164. Badger, *supra* note 99; *see supra* note 40 and accompanying text (explaining medallions and the medallion system).

165. Badger, *supra* note 99 (“In many cases, the limits they set stayed in place for decades—further driving up the value of each license as populations and demand grew and prompting a question that would frustrate consumers for decades: How is a bureaucrat supposed to know the right number of cabs for a city?”).

166. *Id.*

167. *Id.*

stabilizing the market.¹⁶⁸ This is the very reason services like Uber were created—to provide consumers with reliable, available rides and a positive transportation experience. Regulations must evolve with the industry and respond to changes in how the industry functions and regulators must be able to evaluate the changing industry and consumer needs.

Our changing, mobile, technological society demands that Uber, and companies like it, exist. Until now, there was no competition in the taxi industry because “cities and states long-ago determined that the benefits of eliminating competition outweighed the costs.”¹⁶⁹ That is no longer the case—the benefits of competition in the taxi industry that companies like Uber create are immeasurable and eliminating them would come at the expense of the consumer. Instead, cities and states should embrace the competition and recognize that we are living in a sharing economy. Uber provides a ridesharing experience on a national level and, as a result, must respond to social pressures in a unique way that taxis do not have to. Regulators must take this into account.

As a result, Uber should not be subject to entry controls or price regulation. Instead, cities and states should focus on creating experimental regulation out of concern for consumer safety. Much like the VIAA, lawmakers should regulate to ensure that drivers are trustworthy, cars are safe, and that ridesharing companies meet minimum insurance requirements. These regulations will allow Uber to continue to innovate and grow while still protecting the consumer from avoidable risks. Creating these regulations in an experimental manner will allow lawmakers to monitor the innovation and growth and better tailor the regulations to any safety problems that may arise in the process.

Such regulations should include outlined maintenance requirements for cars, such as requiring biannual inspections and checking for any recalls that might apply to a given car. In addition, Uber should be required to provide a minimum insurance coverage of \$1 million per occurrence for accidents involving Uber cars while driving an Uber passenger.¹⁷⁰ Furthermore, Uber should pursue driver background checks yearly, not only when drivers sign up to drive.¹⁷¹ This will allow Uber to suspend any drivers who are charged with any tortious or criminal acts after they become an Uber driver while the charges are being resolved, protecting riders from potentially dangerous

168. See *id.* (“About 12,000 complaints about taxi service are filed with [Chicago] every year. Between Jan. 1, 2012, and mid-April of [2014], city data show that 1,688 of those complaints were about cabdrivers who refused a pickup because the trip was too short, or too long, or going to the wrong part of town.”).

169. Downes, *supra* note 11.

170. This number is taken from the VEHICLE-FOR-HIRE INNOVATION AMENDMENT ACT OF 2014, D.C. B. 20-753, § 27(a) (2014).

171. See *Details on Safety*, UBER (July 15, 2015), <http://newsroom.uber.com/2015/07/details-on-safety>.

drivers. To ensure driver safety on the road and to ensure that drivers are familiar with traffic laws, drivers should also be required to pass a road safety test similar to the one required for a driver to get his license. Finally, Uber should review drivers annually to go over driver ratings and feedback they may have received from riders to ensure that everything surrounding the rider experience is consistent with Uber's expectations.

This model of real-time evaluation and corresponding change already exists within the peer-review function of the company. Uber regularly reviews the ratings and feedback users give to drivers to ensure quality and safety.¹⁷² Peer-review serves an important role in the sharing economy—it is “a control mechanism.”¹⁷³ In fact, “[t]he tracking and peer-review systems provided by Uber offer an additional protection—even if it is just a psychological one—to most riders.”¹⁷⁴ The fact that Uber regulates itself in the interest of consumers supports the belief that regulators should not force Uber to comply with taxi regulations. The Uber app itself holds drivers accountable because if, for some reason, there is a problem, Uber is able to look through its records and find all of the information about a particular trip.¹⁷⁵

Ultimately, regulators must remember that it is important to protect consumers without infringing on consumer choice and access. The country wants Uber and services like it and there is no indication that the shift towards a sharing economy, one that values access over ownership, is going to end any time soon. Experimental regulations for safety will allow regulators, consumers, and Uber to grow and innovate in our ever-changing society.

V. CONCLUSION

When the taxi industry was first regulated, no one could have imagined that technology and innovation would create ridesharing services like Uber. Uber gives consumers a choice of transportation based on convenience and, through their vocal support, it is clear that consumers want the services and experience that Uber provides. As a result, regulators should allow Uber and similar companies to innovate and grow within the sharing economy and should follow the path that Washington, D.C. has taken—regulating for safety and not setting entry controls or price-fixing. Experimental regulations of that nature will allow regulators to protect consumers and will allow consumers to

172. *Safe Rides, Safer Cities: Putting People First*, UBER, <https://www.uber.com/safety> (last visited Sept 24, 2015).

173. Ranchordás, *supra* note 10, at 466–67.

174. *Id.* at 464–65.

175. Emily Badger, *Uber's Data Could Be a Treasure Trove for Cities. But They're Wasting the Chance to Get It.*, WASH. POST (Oct. 30, 2014), http://www.washingtonpost.com/blogs/wonkblog/wp/2014/10/30/ubers-data-could-be-a-treasure-trove-for-cities-but-theyre-wasting-the-chance-to-get-it (“If that person had been in a taxicab, and paid with cash, and had no receipt,’ Plouffe says, ‘there would have been a citywide manhunt for cab drivers described by physical characteristics of that driver.’ Because Uber keeps a data trail of every trip, it could immediately identify the driver.”).

have access to the services they want. Society is forever evolving and it is in the best interest of the country, consumers, businesses, and the government to allow these new companies to innovate and to see where it can take us.