‘I DO NOT THINK IT MEANS WHAT YOU THINK IT MEANS’: REDEFINING AND REGULATING THE SHARING ECONOMY

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Introduction

What is the sharing economy? If you ask five people, you may get five different answers. Some will point to organizations like Zipcar and Airbnb, which use Internet platforms to facilitate arrangements for the use of underutilized goods (i.e., a car or a spare room). Others will point to Internet platforms like TaskRabbit and Uber, which match workers and underemployed individuals with those in need of services--everything from waiting in line for concert tickets to a ride home from the airport. Some may point out that exchanging goods and services for payment and profit, as these services do, seems a far cry from "sharing." These people may point to tool sharing collectives, gardening cooperatives, or other non-profit entities designed to allow for actual *sharing*, in which individuals either jointly own goods or allow others the use of their goods without seeking direct remuneration. Finally, some may bring up new government initiatives, such as bike sharing, in which governments offer pooled resources for citizens' use.

As the various parts of this so-called "sharing economy" have grown, they have attracted greater scrutiny from regulators, consumers, and an increasing number of dissenters.[1] Industry giants Uber, Lyft, and Airbnb have been the subject of labor demonstrations, regulatory proceedings, class action lawsuits, initiative campaigns, and massive subpoenas for data related to taxes and regulatory compliance.[2] Even proponents of the sharing economy concept have become wary of the broad use of the phrase.[3] Just as firms once engaged in "greenwashing," some have

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[1] 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-convenience/ (describing difficulties experienced by independent contractors cleaning homes for Homejoy, a house cleaning platform enterprise); 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 (discussing potential for platform enterprises to use on-demand workers to replace regular employees); Claire Cain Miller, *When Uber and Airbnb Meet the Real World*, N.Y. TIMES (Oct. 17, 2014), http://www.nytimes.com/2014/10/19/upshot/when-uber-lyft-and-airbnb-meet-the-real-world.html?_r=0 (describing increasing problems encountered by platform apps that have Silicon Valley approach to business, meaning that they seek to "serve as a middleman, employ as few people as possible and automate everything.")

[2] *See* Laura Lorenzetti, *Everything to Know About the Uber Class Action* Lawsuit, FORTUNE (Sept 2, 2015); *see generally* Erin Mitchell, *Uber's Loophole in the Regulatory System*, 6 Hous. L. Rev. 75 (2015) (describing variety of law suits and potential liability actions targeted at Uber by riders, drivers, and regulators); Alissa J. Rubin and Mark Scott, *Clashes Erupt Across France as Taxi Drivers Protest Uber*, N.Y. Times (Jun. 25, 2015) (describing protests by taxi drivers and associations against Uber, for what they call its "economic terrorism"); ERIC T. SCHNEIDERMAN, NYS ATTORNEY GENERAL, AIRBNB IN THE CITY, (Oct. 2014), http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf (describing results of subpoena for information related to Airbnb). For a collection of articles about lawsuits against Uber, including the class action lawsuit by Uber drivers, see *Uber Lawsuit*, HUFFINGTON POST, http://www.huffingtonpost.com/news/uber-lawsuit/, last visited January 18, 2016.

[3] Kelly Carlin, *The Problem with Sharing, Motherboard* (Jan. 15, 2014), www.motherboard.vice.com/blog/the-sharewashing-scourge (arguing that the term "sharing" is increasingly used hide business models that are neither socially nor environmentally beneficial); Stacco Troncoso, *Is Sharewashing the New Greenwashing?*, P2P Foundation (May 23, 2014), http://blog.p2pfoundation.net/is-sharewashing-the-new-greenwashing/2014/05/23

suggested that organizations now engage in "sharewashing"—i.e., claiming illusory benefits related to the sharing concept.[4]

Calls for regulation of "sharing" businesses appears on many fronts, including labor, safety, taxation, and zoning.[5] Proponents of regulation suggest a need to protect public health, workers, and incumbent businesses, and to ensure localities are made whole for the use of public services. On the other hand, opponents of regulation argue that government intervention will stifle innovation and undermine economic and community benefits.[6]

The problem with many of the calls for and against regulation is that they fail to address the wide differences between the types of practices and business entities that currently fall under the same umbrella. Arguably, Uber—with its venture capital financing and over $60 billion valuation[7]--and a local gardening cooperative present very different levels and types of risk requiring regulation. At the same time, Uber and the local tool-sharing collective offer the promise of very different social, environmental, and economic benefits.

To address this inappropriate conflation, the goal of this article is to first to create a taxonomy of sharing--identifying and categorizing the various types of business entities that have been lumped together into the concept of the sharing economy. Then, this article proposes regulatory responses that recognize the differing risks and benefits that attach to each of the categories in the taxonomy, recognizing that a crucial regulatory challenge lies in the blurring of private and commercial transactions that is a hallmark of the new "sharing" model, and in responding to key characteristics of the sharing model, including the shift away from traditional commercial relationships toward peer-to-peer ("P2P") transactions.

Finally, the article recommends the creation of a "sharing assessment" that would certify "Sharing Companies": entities that meet a threshold criteria, similar to B Corporations,[8] across categories such as labor practices, governance, environmental impact, and social collaboration.

(distinguishing sharing from renting (Airbnb), working (TaskRabbit), and surveillance (Facebook), and downside of linking non-sharing practices to the sharing economy); Sebastian Olma, *Never Mind the Sharing Economy: Here's Platform Capitalism*, Inst. of Network Cultures (Oct. 16, 2014, 8:39 PM), http://networkcultures.org/mycreativity/2014/10/16/never-mind-the-sharing-economy-heres-platform-capitalism/.

[4] See Troncoso, *supra* note 2; Carlin, *supra* note 2; Shehzad Nadeem, Juliet B. Schor, Edward T. Walker, Caroline W. Lee, Paolo Parigi, & Karen Cook, *On the Sharing Economy*, CONTEXTS: UNDERSTANDING PEOPLE IN THEIR SOCIAL WORLDS (Feb. 23, 2015, Winter 2015), http://contexts.org/articles/on-the-sharing-economy/.

[5] *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 (2014); Hannah A. Posen, *Ridesharing in the Sharing Economy: Should Regulators Impose Uber Regulation on Uber?*, 101 IOWA L. REV. 405 (2015); Catherine Lee Rassman, *Regulating Rideshare Without Stifling Innovation: Examining the Drivers, the Insurance 'Gap,' and Why Pennsylvania Should Get on Board*, 15 PGH J. TECH. L. & POL'Y 81 (2014).

[6] 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/; Sofia Ranchordas, *Does Sharing Mean Caring? Regulation Innovation in the Sharing Economy*, 16 MINN. J. L. SCI. & TECH. 413 (2015); Rassman, *supra* note 5.

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

[8] *See* About B Lab, at https://www.bcorporation.net/what-are-b-corps/about-b-lab (visited Jan. 18, 2016).

In sum, the purpose of this article is to parse out the real sharing from the sharewashing, and to create a framework for regulation that recognizes the difference.

I. What is the Sharing Economy, and Why Does It Need Regulation?

A. Common Conceptions of the Sharing Economy

As with many popular phrases, the origin of the term "sharing economy" is unclear. In a 1984 book entitled, *The Share Economy*, Martin Weitzman proposed that companies share profits with employees to mitigate the effects of so-called "stagflation."[9] In a 1978 article, authors Marcus Felson and Joe Spaeth describe a process they call "collaborative consumption," as "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."[10]

Although related, neither of these concepts capture the essence of what we now think of as the sharing economy. Many trace the origin of today's popular notion of the sharing economy the 2010 book *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*.[11] In *What's Mine is Yours*, Botsman and Rogers define collaborative consumption as an alternative to traditional market-based consumption, including "sharing, bartering, lending, renting, gifting, and swapping, redefined through technology and peer communities."[12] Collaborative consumption, they argue, allows participants to "save money, space, and time; make new friends; and become active citizens once again."[13] They explicitly link collaborative consumption to positive social change. "[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."[14]

Academic papers discussing the sharing economy typically provide very general definitions of the term that mirror the positive attributes offered by Botsman and Rogers, often with an emphasis on the personal nature of the transaction.[15] As Janelle Orsi, a prominent scholar

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[9] Stagflation is defined as a period of both low economic growth and rising inflation. Martin Weitzman, The Share Economy 2 (1984). Weitzman argues "The lasting solution to staglation requires going inside the workings of a modern capitalist economy and correcting the underlying structural flaw directly at the level of the individual firm by changing the nature of labor remuneration." *Id.* at 3.

[10] Marcus Felson and Joe L. Spaeth, *Community Structure and Collaborative Consumption*, 21 AM. BEHAVIORIAL SCIENTIST 614, 614 (1978). Felson and Spaeth's example of collaborative consumption included "drinking beer with friends" and "using a washing machine for family laundry." *Id.*

[11] https://www.ted.com/talks/rachel_botsman_the_case_for_collaborative_consumption?language=en

[12] RACHEL BOTSMAN AND ROO ROGERS, WHAT'S MIND IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION xv (2010).

[13] *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. Danielle Sacks, *The Sharing Economy*, FAST COMPANY (Apr. 18, 2011), www.fastcompany.com/1747551/sharing-economy ("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.").

[14] *Id.* at xv-xvi.

[15] *See*, e.g., Ranchordas, *supra* note 6, at 416 ("Uber, Airbnb, Lyft, and other forms of the sharing economy are innovative forms of sharing underused facilities. The sharing economy presupposes two elements: the existence of

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 production, sharing, cooperation, [and] small scale enterprise.'"[16] Many definitions focus on the sharing economy as a way of putting underutilized personal assets to work.[17] "[T]he sharing economy refers to bringing to market goods and labor that are otherwise underutilized during certain time periods."[18]

As the notion of the sharing economy has matured, more analyses tend to focus on the P2P aspect of sharing enterprises, and the way in which Internet applications enable individuals to connect more effectively and efficiently than ever before.[19] A 2014 report by Debbie Woskow broadly defines the sharing economy as "online platforms that help people to share access to assets, resources, time and skills."[20] Arguably, the characteristic that appears most commonly in the enterprises labeled today as sharing companies is the use of electronic, Internet-based platforms to facilitate transactions. The ubiquity of this trait has prompted some to call for a renaming of the sharing economy to "platform capitalism."[21]

Whatever definition is offered, certain entities are considered prototypical examples of the sharing economy: Uber, the "ride-sharing" platform that pairs available drivers and individuals seeking a ride; Airbnb, the platform that allows individuals to rent spare rooms, apartments, or homes for short periods of time; TaskRabbit, a platform paring individuals offering work with those needing tasks to be performed; and thredUP, an online used clothing store. The most commonly identified sectors of the sharing economy include transportation, housing and workspace, food, goods, and jobs.[22]

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physical 'shareable goods that systematically have excess capacity,' and a sharing attitude or motivation."); Molly Cohen & Corey Zehngebot, *Heads Up: What's Old Becomes New: Regulating the Sharing Economy*, 58 BOSTON BAR J. 6 (Spring 2014). ("The Sharing Economy: An old concept made new through the internet-based sharing of underutilized space, skills, and stuff for monetary and non-monetary benefits."); Shuford, *supra* note 8, at 302 ("The sharing economy business model is based around the business model of using personal resources more efficiently…[S]haring economy companies act as online forums for people to advertise their available resources.");

[16] JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES 2 (2012).

[17] *See*, e.g., Rassman, *supra* note 5, 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.'"); Posen, *supra* note 5, 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.'").

[18] Bryant Cannon & Hanna Chung, *A Framework for Designing Co-regulation Models Well-Adapted to Technology-Facilitated Sharing Economies*, 31 SANTA CLARA COMP. & HIGH TECH. L.J. 23, 25 (2014-2015).

[19] *See*, e.g., Loucks, *supra* note 25, at 330 ("The sharing economy is an offspring of the peer-to-peer business model that has grown in importance in recent years."); Rassman, *supra* note 5, at 81 ("the sharing economy owes much of its success to advances in peer-to-peer technology"); Posen, *supra* note 5, at 407 ("Technology and innovation are central to the sharing economy, which focuses on ways to accomplish things quickly and easily.").

[20] DEBBIE WOSSKOW, UNLOCKING THE SHARING ECONOMY: AN INDEPENDENT REVIEW 13 (2014), *available at* www.gov.uk/bis.

[21] *See* Olma, *supra* note 3 (attributing the term "platform capitalism" to German blogger Sascha Lobo). Olma argues that what is generally thought of as the sharing economy is just one aspect of a shift to a digital economy in which every individual can be a capitalist and supply goods and services with the click of a button.

[22] *See generally* SHAREABLE & SUSTAINABLE ECONOMICS LAW CENTER, POLICIES FOR SHAREABLE CITIES: A SHARING ECONOMY PRIMER FOR URBAN LEADERS 26 (2013), *available at* http://www.shareable.net/blog/new-report-policies-for-shareable-cities, on file with author; DAMIEN DEMAILLY & ANNE-SOPHIE NOVEL, THE SHARING

B. The Need for—and Challenge of—Regulation

The need for and challenge of regulating the sharing economy are inextricably linked, and may be said to lie in the fact that 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. An additional challenge lies in developing regulations that are tailored for the unique demands of the new sharing structures, while not suppressing the benefits they offer.

The shift in the sharing economy from traditional business models in which consumers purchase goods and services from centralized commercial entities to P2P transactions, where customers deal directly with individual service providers, owners of goods, or artisan, is a key source of the growing tension. While the rules for liability may be relatively clear in traditional commercial transactions, the legal implications of activities may be much more difficult to parse out 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 be required to hold the same liability coverage as a commercial taxi driver?[23] Should homes listed on Airbnb be required to meet the same safety standards as a hotel? Food service regulations may not recognize a designation for individuals who prepare a few meals a week in their home for a fee, or backyard gardeners who sell produce or handmade preserves from their gardens.[24] Transportation regulations may be challenged to categorize drivers who accept a fee from riders a few days a week to offset the cost of gas.

Individual 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.[25] For example, are home cooks prepared for the liability that would follow if they served a meal tainted with E coli? Would an Airbnb host be prepared to cover damages if their overnight guests threw a massive party, sold alcohol to minors, and damaged nearby property?[26]

ECONOMY: MAKE IT SUSTAINABLE 7 (2014), available at http://www.iddri.org/Publications/Economie-du-partage-enjeux-et-opportunites-pour-la-transition-ecologique (discussing shareable goods); Wosskow, *supra* note 20, at 25-38 (identifying sectors as: shared space and accommodation; tasks, time and skills; transportation; and others including clothing, food, items, and logistics).

[23] 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 (November 4, 2014), at http://www.newyorker.com/business/currency/uber-lyft-liability.

[24] 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. CHRISTINA OATFIELD, SUMMARY OF COTTAGE FOOD LAWS, http://d3n8a8pro7vhmx.cloudfront.net/theselc/legacy_url/300/Summary-of-Cottage-Food-Laws-in-the-US-31.pdf?1392426351.

[25] See Talia G. Loucks, *Travelers Beware: Tort Liability in the Sharing Economy*, 10 WASH. J. L. TECH. & ARTS 329, 331-338 (2015) (describing how individuals participating in transportation or housing sharing may be at risk for individual liability); Mark Macmurdo, *Hold the Phone!: 'Peer-to-Peer' Ridesharing Services, Regulation, and Liability*, 76 LA. L. REV. 307 (2015); Brittany McNamara, *Airbnb: A Not-So-Safe Resting Place*, 13 J. ON TELECOMM & HIGH TECH L. 149 (2015).

[26] *Airbnb hosts return to find home trashed after 'drug-induced orgy'*, THE GUARDIAN (April 30, 2015), https://www.theguardian.com/technology/2015/apr/30/airbnb-calgary-home-trashed-drug-induced-orgy (describing

The buyers/renters/consumers of the P2P transaction may also not anticipate that a P2P transaction can be riskier or more dangerous than a traditional commercial transaction. They may expect that if they are paying for a ride through a large public service like Uber, their driver will have been required to undergo basic background checks. 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 recent ballot initiative in Austin, Texas illustrates this tension.[27] Platform operators Lyft and Uber did not want their drivers to be required to undergo fingerprinting before offering rides. Residents of Austin disagreed—they thought drivers should be required to have background checks on file before offering rides. After a messy and contentious initiative battle, Uber and Lyft lost, and as a result now refuse to serve Austin.[28]

Concerns for liability in small commercial transactions are not new or unique to the sharing economy—individuals have doubtless always sold small amounts of handmade food items and occasionally rented rooms in their homes, and the buyer and seller doubtless 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 "Rabbit" and offer to make a few meals a week for neighbors, or list their home garden on a land-sharing website and ask for vegetables in return for access to their yard.[29] Amateur artists can sell wares on Etsy, or share space in their car in return for gas money. Growth in sharing industry.

Consider next the way in which the sharing economy blurs the lines between private and commercial spaces and undermines zoning strategies.[30] Airbnb creates commercial housing options in residential neighborhoods, where public services, including as parking and roads, are only designed to handle the needs of a limited number of residents. If an area starts to support more commercial transactions, residents may find parking becomes limited and roads crowded. The "character" of an area may change as it opens to new users and visitors. Care.com and other websites facilitating transactions for individuals service provides facilitate the decentralization of commercial activities out of the nursing home, day care, restaurant or hospital, and into private homes. While there may be benefits to this practice for both parties in the transaction, it nonetheless can strain the infrastructure that was designed for different types of transactions.

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massive party at Airbnb rental that resulted in $50,000-$75,000 in damage to home, physical altercations, multiple noise complaints and repeated calls to police).

[27] Kevin Ready, *Uber Vs. Austin - A Public Battle To Control The Future Of Transportation*, FORBES (May 12, 2016), at http://www.forbes.com/sites/kevinready/2016/05/12/uber-vs-austin-a-public-battle-to-control-the-future-of-transportation/#6296c6d16243 (describing initiative battle).

[28] *Id.*

[29] *See* e.g., I Have a Garden, Urban Garden Share, http://www.urbangardenshare.org/seattle/gardens/about (describing how to list a garden space as available for sharing); Linda Harrison, *Garden Sharing: Growing Your Own Vegetables on Someone Else's Patch*, THE GUARDIAN (Sept. 2, 2011), http://www.theguardian.com/money/2011/sep/02/garden-sharing-growing-vegetables.

[30] "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 other [sic]…" SHAREABLE, *supra* note 22, at 6. *See also* Jenny Kassan & Janelle Orsi, *The Legal Landscape of the Sharing Economy*, 27 J. ENVTL. L. & LITIG. 1 (2012); Molly Cohen & Corey Zehngebot, *Heads Up: What's Old Becomes New: Regulating the Sharing Economy*, 58 BOSTON BAR J. 6 (Spring 2014).

The difficulty in categorizing the blurred nature of the transactions in the P2P context also 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.[31] However, as they grow in scale and in financial resources many are calling for these businesses, and others that might be similarly situated, to accept responsibility for the transactions they are facilitating. Changes have already come to the largest of the sharing platforms, in the form of insurance for drivers,[32] providing technical support to ensure taxes are paid by housing hosts,[33] or creating minimum wage requirements for workers.[34] Yet the essential legal question—how to characterize these entities—remains unanswered.

Platform sites that offer users an opportunity to earn income (like Uber or TaskRabbit) typically categorize workers as independent contractors. While this is by no means a new practice, with so many workers using sharing platforms as a significant, or even sole, method of livelihood, this practice has lately raised new concerns. 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.[35] 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")[36] has received widespread criticism.

An additional liability issue that has arisen is whether a platform can be held 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.[37] Some have suggested that even if workers acting

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[31] Uber's policies, for example, require users to agree to the following disclosure: "YOU ACKNOWLEDGE THAT UBER DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER." Legal, UBER, https://www.uber.com/legal/usa/terms.

[32] Uber now offers insurance.

[33] Airbnb complying with subpoena for data, also creating systems to collect taxes on lodging fees.

[34] Taskrabbit requires rabbits are paid minimum wages.

[35] Scheiber, *supra* note 1 (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 1 (describing how Homejoy workers struggle to make a living). Interestingly, Homejoy, which featured prominently in Depillis' 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. *See* Ellen Hunt, *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/ (explaining that a key flaw in the Homejoy business model was a failure to ensure quality services, due to a lack of training for its workers).

[36] Arun Sundararajan, *The Gig Economy is Coming: What Will it Mean for Work?*, THE GUARDIAN (July 25, 2015), http://www.theguardian.com/commentisfree/2015/jul/26/will-we-get-by-gig-economy. Proponents of the gig economy argue that it creates flexible work that allows individuals to avoid the "dreary office environment." 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/.

[37] In one of the most chilling cases, in February 2016 an Uber driver went on a killing spree, targeting people at random in between picking up fares for the company. Mark Guarino, William Wan & Missy Ryan, *Uber driver who killed six in Kalamazoo shooting spree chose victims 'at random,' authorities say*, WASH. POST (February 21, 2016), at https://www.washingtonpost.com/news/post-nation/wp/2016/02/21/six-killed-in-kalamazoo-shooting-spree-were-chosen-at-random-authorities-say/.

under the auspices of a platform are independent contractors, the platforms should nonetheless be held responsible under agency law for their actions.[38] 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.[39]

A final, slightly different type of challenge in 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. Others argue that new sharing enterprises represent an important technological innovation and disruptive new business model. These cycles of innovation and disruption, some would argue, can be beneficial or even necessary for economic development. 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.

II. Redefining the So-Called Sharing Economy

In order to address these significant concerns and develop thoughtful regulation where necessary to protect workers and the public, a new definition of so-called "sharing" enterprises must be developed. This section focuses on identifying contradictions in the entities typically lumped together under the term "sharing economy" and then offering a new taxonomy of sharing enterprises.

A. When "Sharing" No Longer Applies: 'I do not think it means what you think it means.'

In the 1987 movie The Princess Bride, character Inigo Montoya questions his boss Vizzini's use of the term "inconceivable," after supposedly "inconceivable" events repeatedly occur. "You keep using that word," Montoya points out. "I do not think it means what you think it means." The same might be said about the business model of many of the enterprises that are commonly characterized as part of the "sharing economy." Put simply, there is no "sharing" in the millions of transactions that take place on platforms such as Uber, Lyft, Airbnb, Zipcar, or Esty.[40] In the Uber example, the passenger pays a fee for the ride, Uber management doles out a portion to the driver and keeps the rest. On Etsy, individual artisans sell handmade goods to prospective buyers, transferring ownership from seller to buyer through an arrangement that is hardly new or innovative.[41] In the Airbnb example, the owner of a home rents a space to a guest for a fee. Hardly sharing.

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[38] *See* Macmurdo, *supra* note 25, at 326-330.
[39] Molly McHugh, *Uber and Lyft Drivers Work Dangerous Jobs—But They're On Their Own*, Wired (March 10, 2016), http://www.wired.com/2016/03/uber-lyft-can-much-keep-drivers-safe/ (describing the dangers faced by drivers for ridesharing companies, and the limited efforts made by Uber to increase safety for drivers).
[40] *See* Troncoso, *supra* note 3 (pointing out the many ways in which the "sharing" economy has nothing to do with the traditional definition of the term "sharing"); Carlin, *supra* note 2 (describing the way the overuse of the term "sharing" has obscured the real practices of sharing firms).
[41] WOSSKOW, *supra* note 20, at 13.

The lack of any actual sharing is not the only misnomer in the businesses commonly considered part of the sharing economy. While Botsman and Rogers' concept of collective consumption focused on backyard gardens and tool collectives, today's massive "sharing economy" enterprises may have more in common with Walmart than with the original sharing companies. Airbnb is an enormous international company valued at $25 billion.[42] 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. [43] While Airbnb has sought to maintain positive relationships with the jurisdictions in which it operates, it has nonetheless been linked with a 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.[44]

Besides its massive scale, Uber's social position in the transportation market is a far cry from the friendly neighborhood tool collective. 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. 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 pricing. There can be no doubt that Uber has achieved significant market power and is not shy about using that power for commercial gain.

The contradictions continue 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. The easy availability of Uber transportation may also provide a *dis*incentive for people to walk or ride a bus. 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 of new goods.

While many early images of the sharing economy emphasized the P2P nature of transactions and the benefit of "eliminating the middleman" in business transactions, some

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[42] Uptin Aiidi, *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; Mark Oswald, *Report: City missing out on Airbnb taxes as web bookings soar*, http://www.abqjournal.com/692998/north/report-city-missing-out-on-airbnb-taxes-as-web-bookings-soar.html (Dec 18, 2015)

[43] Emily Alpert Reyes, *L.A. Officials want to keep Airbnb-type rentals from being 'rogue hotels',* L.A. TIMES (Aug, 15, 2015), http://www.latimes.com/local/lanow/la-me-ln-airbnb-rental-regulations-20150825-story.html; Jay Cassano, *What the Data Says About Airbnb in New York City*, FASTCOMPANY, http://www.fastcoexist.com/3042719/what-the-data-says-about-airbnb-in-new-york-city (visited Jan 18, 2016); Carolyn Said, *Window into Airbnb's Hidden Impact on S.F.,* SAN FRANCISCO CHRONICLE (Jun. 2014), http://www.sfchronicle.com/business/item/Window-into-Airbnb-s-hidden-impact-on-S-F-30110.php.

[44] *See* Mark Oswald, *Report: City Missing Out on Airbnb Taxes as Web Bookings Soar*, Albuquerque Journal Online (Dec. 18, 2015), http://www.abqjournal.com/692998/north/report-city-missing-out-on-airbnb-taxes-as-web-bookings-soar.html (citing report that concludes city is missing out on collecting up to $2.1 million in lodging taxes from short term rentals).

platforms that started out as P2P enterprises have transitioned to more traditional business arrangements, while others make no claim to be P2P. For example, the used clothing platform thredUP began as a sort of Internet-based consignment store, with sellers maintaining ownership of their clothing. To ensure greater quality control and smoother transactions, thredUP recently shifted its business model to a more traditional online used clothing store that purchases items from sellers and then resells them to buyers. Handy.com, a platform that offers services such as house cleaning, moving, and furniture assembly, is not truly P2P; the platform allows for easy scheduling of a number of independent contractors, but it picks the service provider and links them to the customer.

It bears noting that the concept of *access*, which remains a central aspect of the sharing economy narrative, does not mean joint ownership. In many cases, it simply means "short-term rental."[45] The company Zipcar, often described as part of the original sharing economy, began as a local start-up conceived of by two women whose children were in the same kindergarten.[46] When it 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."[47] Today, Zipcar has over 11,000 cars, is operated as a subsidiary of the Avis Budget Group, and is distinguishable from a traditional rental car service only by the decentralized nature of the locations of the cars, the rental units (hours versus days), and the use of an Internet platform for reservations.[48]

As one millennial blogger recently put it,

> 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. But the rental that surprises everyone the most is my wardrobe. 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 for my next batch.[49]

How is "access" different from "renting"? While there is no clear technical or legal answer to this question, the answer may be that the term rental implies a long-term arrangement that includes regular payments, as in renting an apartment. Access suggests a short-term, limited use transaction. The term access also captures the revolutionary nature of the sharing economy, which was to allow individuals short-term use of goods for which there was otherwise not a market, like power drills, gardens, or a lawn mower. In addition, access contemplated by the original sharing

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[45] Some academic articles have recognized this distinction. *See* Rauch & Schleicher, *supra* note 12, 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 connective providers and users for short-term exchanges of goods or services.").

[46] Zipcar Timeline: From Business Idea to IPO to $500 Million Buyout, http://www.entrepreneur.com/article/225399 (Jan 2, 2013).

[47] Posen, *supra* note 5, 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.'");

[48] Angelo Young, *Avis Buys Zipcar To Compete Better Against Hertz And Enterprise: Has Car Sharing Finally Come Of Age?*, International Business Times (Jan 7, 2013), http://www.ibtimes.com/avis-buys-zipcar-compete-better-against-hertz-enterprise-has-car-sharing-finally-come-995762

[49] Logan Whiteside, *Why I rent everything: From clothes to jewelry*, CNN Money (May 13, 2015), http://money.cnn.com/2015/05/13/pf/millennial-rent-economy-clothes-jewelry/.

economy was a P2P transaction, as in the original car-sharing company RelayRides,[50] which allowed individuals to "share" their cars with other individuals for a fee. Today, many companies engaging in "access" transactions, like Zipcar, are commercial enterprises.

Of course, many enterprises considered part of the sharing economy, like Etsy or thredUp, are built around traditional ownership, not access. The shift in sharing economy enterprises from collective ownership or access to renting or outright buying has prompted some to argue that the original notion of the sharing economy proved a failure. Indeed, from tool-sharing to neighborhood parking spaces, numerous platforms that once focused on "shared" goods have either closed down or transitioned to a more traditional notion of ownership.[51]

In many cases, what is now referred to as part of the sharing economy may not have any of the characteristics of a sharing enterprise discussed above other than roots as a creative Internet platform that allows short-term access (i.e., rental) to resources that at one time were only available for outright ownership, such as formal dresses, parking spaces, and surfboards.[52]

Given the distance that the original sharing economy has traveled and the diverse nature of entities now included under its umbrella, it may be time for another transition to occur—eliminating the term "sharing" and replacing it with something far more precise.

B. A New Taxonomy of Sharing

As noted above, there are two primary challenges to regulating the sharing economy. The first lies in creating regulations that are adaptable to the new, blurred lines between public and private transactions and residential and commercial spaces. The second lies in pressures not to regulate sharing enterprises based on a fear that the benefits of these enterprises, which may be environmental, economic, or social, will be muted. Addressing these challenges requires a multi-stage process: *first*, determining how to categorize entities, and *second*, determining the nature of regulations within each category. In this section, I offer a taxonomy to address the first of these two steps. In Part III, I use a risk-based analysis to address the second.

To develop the taxonomy, I begin with the original concept of collaborative consumption that has remained a core of the current understanding of the sharing economy. Then, I create new categories to account for the inconsistencies that have developed as the concept of the sharing economy has broadened.

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[50] RelayRides changed to Turo.

[51] Sarah Kessler, *The 'Sharing Economy' is Dead, And We Killed It*, Fast Company (Sept. 14, 2015) http://www.fastcompany.com/3050775/the-sharing-economy-is-dead-and-we-killed-it.

[52] *See* renttherunway.com (formal dresses); parkingpanda.com (renting parking spaces); spinlister.com (renting bikes, surfboards, and snowboards).

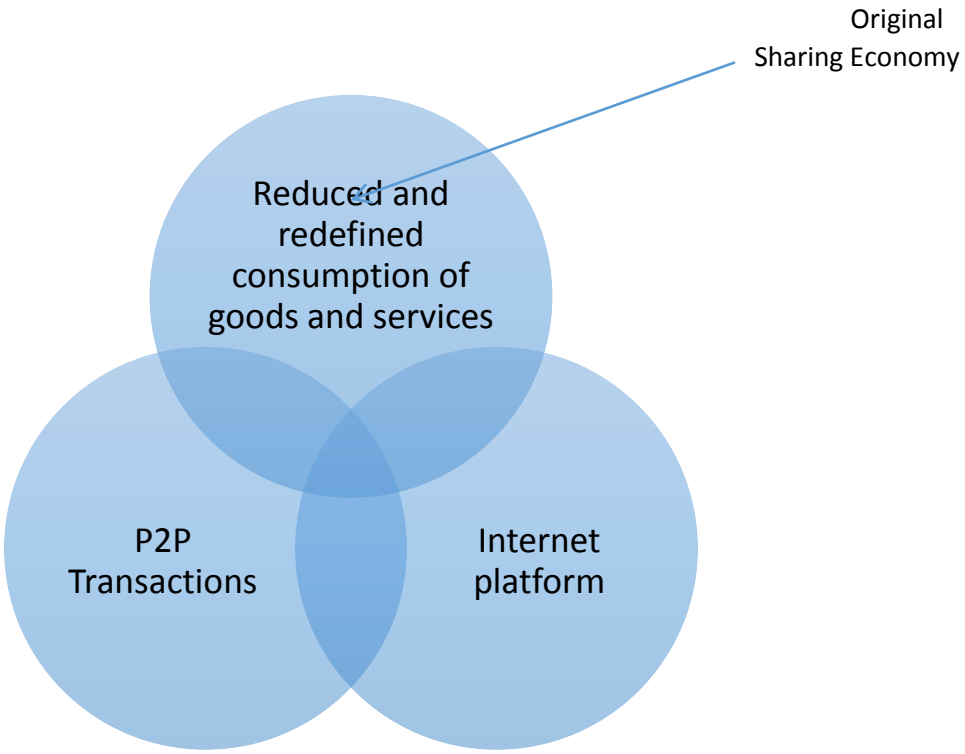

Figure 1

Figure 1 depicts the essential characteristics of the original sharing economy: reduced and redefined consumption of goods and services, P2P transactions, and an Internet-enabled platform. The reduced and redefined consumption was explicitly tied a social benefit, which was generally environmental protection, community-building, or both.

Botsman and Rogers' description of *collaborative consumption*—their term for what they identified as a trend toward "sharing" and collaboration[53]--encapsulates this original sharing economy. Botsman and Rogers saw collaborative consumption as a reaction to a growing culture of overconsumption, which had lead to environmental degradation and increasing levels of individual disassociation and loss of communities.[54] The notion of redefined consumption encapsulated a variety of practices. First and foremost, it included access instead of ownership and a means for increasing the use of underutilized goods. It also included systems of bartering, exchanges of goods and services, and genuine sharing of resources—like garden space—that would otherwise be left fallow. Another key aspect of this new form of consumption was the decentralized nature of the transactions. Aided by Internet platforms, individuals could directly

[53] Botsman & Rogers, page xv.
[54] Botsman & Rogers, page 43-44, 54-55.

communicate with other individuals to sell them used items that would otherwise end up in a landfill, or offer services that would otherwise only be available through a formal employment contract.

Botsman and Rogers argued that the world had reached a collective "tipping point," and that collectively, 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 plant."[55] 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.[56] Sharing today, however, looks quite different from this idealistic paradigm. Conversations about the sharing economy typically include Uber, Lyft, and Airbnb. But they may also include Deskbeers (a service provider that will bring beer to your office party) and WeWork (offering short-term access to commercial office space), not to mention Zipcar, the Avis company that provides short-term car rentals.

There two key differences between the original sharing economy and companies included in the expanded notion of sharing. First, transactions in the new sharing economy are not necessarily or even primarily P2P. Rent the Runway, for example, relies on an Internet platform to increase the consumption of underutilized assets (in this case, formal dresses), but the customer rents the dress directly from a large commercial enterprise with over 500 employees and "the largest dry cleaning operation in the U.S."[57]

Second, the new sharing economy companies may focus on redefined consumption, but this focus does not necessarily grow out of a social mission.[58] Instead, the value proposition of the new enterprises is more likely to be efficiency, time-saving, and an opportunity to earn money outside of traditional commercial settings, either through selling access to assets or offering services. For example, the stated goal of the founders of Handy.com is to become to "the easiest, most convenient way for busy people everywhere to book household services."[59]

Even when the new companies offer redefined consumption, it may not further the original sharing economy mission. In direct opposition to the original goal of *reducing* consumption, some of the new platform economy companies seek to reduce the cost of goods in order to allow consumers to afford a continual supply of *new goods*, facilitating increased consumption. Rent the Runway, for example, promises customers a way to, "stay chic, effortlessly" with its clothing

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[55] Botsman & Rogers, page 44.

[56] "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." Botsman and Rogers, *supra* note 12, at xvi.

[57] About, Renttherunway.com, https://www.renttherunway.com/pages/about (visited May 14, 2016).

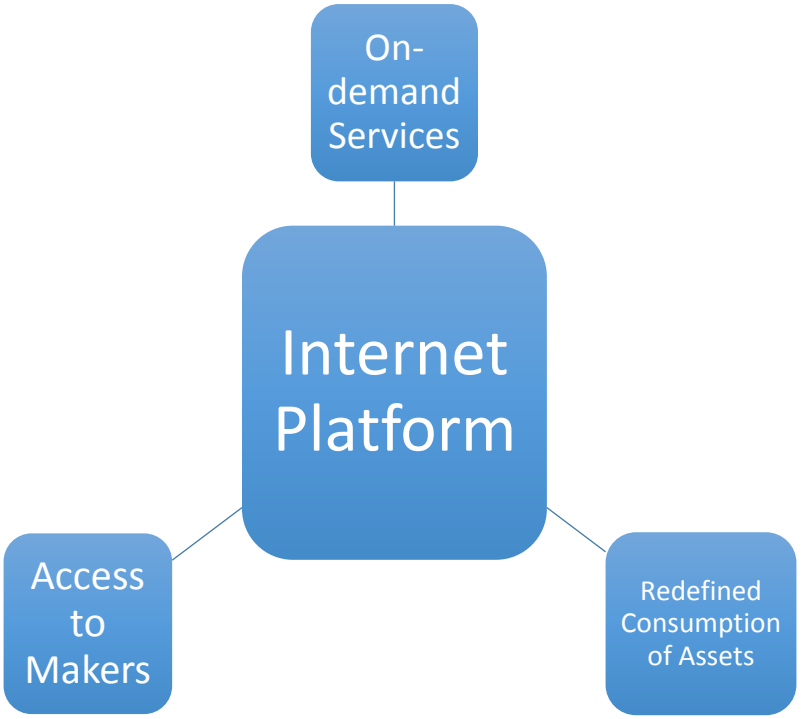
[58] Botsman & Rogers, *supra* note 12, at xvi.

[59] About Handy, Handy, https://www.handy.com/about (visited May 15, 2016).

rental subscription.[60] Or as Pley, a toy rental company puts it, "With Pley, your children are never bored. It's like Christmas every month."[61]

While sharing economy businesses may no longer be P2P, and may no longer have a social mission or commitment to facilitating communities and relationships, not every Internet platform can be lumped into this group. For example, the website Connected Artisans offers Fair Trade certified goods that have been produced by artisans outside of large factories.[62] Yet this commercial enterprise generally would not be considered part of the sharing economy.

So what *is* included in today's common notion of sharing? This diverse group of businesses appears to have two common characteristics: first, they are based on an Internet-enabled platform that facilitates the delivery of goods and services transactions on an individualized basis. Second, they operate in one of the following categories: 1) transactions for on-demand services; 2) the redefined consumption of assets away from traditional notions of ownership (renting, swapping, sharing); and 3) transactions with local or independent makers of goods. Figure 2 depicts the much broader range of entities now discussed and included in the expanded notion of the sharing economy.



[60]https://www.renttherunway.com/unlimited?nav_location=submenu&action=click_about_unlimited&object_type=top_nav
[61] https://www.pley.com/toy-rental
[62] http://connectedgoods.com/pages/about-us (May 26, 2016).

Figure 2

The types of categories included in this new notion of sharing are critical to distinguishing between platform enterprises and generic Internet-enabled storefronts. Consider, for example, the example provided above, of the company Connected Artisans. This enterprise provides customers with access to a curated collection of goods made by artisans in the United States and abroad. Connected Goods promises to offer customers "a different type of consumer experience."[63] The goal of the company is to "enhance the act of consumption by creating an interactive, meaningful experience between you and the artisan."

Compare the San Francisco company Betabrand, which sells clothing to customers through an Internet website. Betabrand clothing is not tailored or personalized to the user other than standard men's and women's sizing options, and the transactions on the Betabrand website are not P2P. Yet we would include Betabrand in the new sharing economy, but would not include Connected Artisans. Why?

The answer is that, besides selling clothing, Betabrand markets itself as an "online clothing community," in which local designers offer new clothing concepts, and customers can either crowdfund new designs (and receive a discount) or shop online for existing designs.[64] Besides its quirky offerings (like the Suitsy: "a business suit onesie"), Betabrand offers users the opportunity to upload photos of themselves wearing Betabrand fashions, vote for their favorite products (influencing what gets made next), submit their own designs, and chat with designers about their products.[65]

Betabrand sells new clothing, not access to or resale of used clothing, so it does not fit the model of redefined consumption. However, it does provide direct access to makers and designers, and consciously creates a community with personal connections between people and between people and the items that that purchase. In this way, Betabrand moves beyond being a traditional ecommerce website and becomes a platform enterprise.

Despite what its mission may suggest, Connected Artisans does not redefine current methods of consumption—goods are purchased outright, not shared. It also does not permit direct connections between consumers and designers or artisans. When I buy a basket from Connected Artisans, I select which basket I want and the company ships me an item in that style. I do not interact with the product, its designers, or the company on an individualized basis. The Internet platforms that enable Betabrand, thredUp and Rent the Runway fit into the new conception of sharing by 1) redefining consumption away from traditional ownership; 2) giving the consumer direct access to the artisans who make the goods, 3) offering some on-demand service.[66]

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[63] http://connectedgoods.com/pages/about-us (May 26, 2016).
[64] Betabrand, About, https://www.betabrand.com/about (visited May 17, 2016).
[65] These features can be found in the Betabrand ThinkTank, the Model Citizen page, and on individual product pages. *See* Betabrand, https://www.betabrand.com (visited May 17, 2016).
[66] It is worth noting, however, that new Internet applications allow large businesses to offer increasing levels of personalization. For example, the application Stylewhile, which is marketed to businesses with Internet storefronts,

Based on the above analysis my taxonomy of sharing starts by designating entities that fall within the new, more expansive model as *platform enterprises*. Each of these enterprises uses an Internet platform to connect producers and consumers in one of three categories: *on-demand services*, *redefined consumption*, and *access to makers*. Entities like Uber, TaskRabbit, Handy,[67] or DeskBeers[68] fall into the first sub-category. They use platforms to facilitate individual transactions with service providers outside the traditional commercial setting. Entities like Airbnb, Zipcar, and thredUP fall into the second category. They provide redefined methods of consumption of assets that move away from traditional notions of buying new products and throwing them away when they are no longer wanted.[69] This may mean sharing, swapping, renting, or the purchase of used goods. The third category, *maker platforms*,[70] includes platforms that facilitate access to individual makers and producers of goods. For example, industry giant Etsy provides a platform for individual craftspeople to operate in a virtual artisan market. Farmersweb is a platform that puts local food buyers in touch with small farmers.[71] Flickr provides a platform for people to upload and share photographs,[72] including a section of the website dedicated to photos licensed under a Creative Commons license to allow for greater sharing and collaboration.[73]

Within each of these three categories, some platform entities, such as Airbnb or Care.com may facilitate P2P transactions. Others, like Rent the Runway or Handy.com, may use a more traditional business model (business to customer (B2C)), or increasingly, a business to business (B2B) model[74] in which the Internet platform facilitates a transaction for access to goods or on-demand services between commercial entities. Platform entities can be operated by local governments or municipalities,[75] or as a cooperative.[76]

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creates an individualized customer avatar that can be used in a virtual fitting room, so customers can "try on" clothes before they buy them. Stylewhile, Features, http://www.stylewhile.com/#features (visited May 17, 2016).

[67] "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." https://www.handy.com/about.

[68] Yes, there really is a delivery service just to bring craft brews to businesses and offices. https://www.deskbeers.com.

[69] Rachel Botsman calls this the "reinvention of traditional market behaviors." 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.

[70] Here I draw intentionally on the "maker movement." *See* Tim Bargarin, *Why the Maker Movement is Important to America's Future*, TIME, http://time.com/104210/maker-faire-maker-movement/ (May 19, 2014).

[71] https://www.farmersweb.com

[72] About, Creative Commons, https://creativecommons.org/about/ (May 28, 2016); About, Flickr, https://www.flickr.com/about (May 28, 2016).

[73] About Creative Commons, Flickr, https://www.flickr.com/creativecommons/ (May 28, 2016).

[74] Dan Slagen, *From P2P to B2B: The next phase of the sharing economy*, Venture Beat, http://venturebeat.com/2014/09/08/from-p2p-to-b2b-the-next-phase-of-the-sharing-economy/ (September 8, 2014).

[75] A number of cities have begun offering bike sharing as a new type of public transportation. For example, Indego, which is owned by the City of Philadelphia, offers short-term rentals on a self-serve basis for bikes located at various places around Philadelphia. *See* Indego, How it Works, https://www.rideindego.com/how-it-works/ (visited May 27, 2016).

[76] Cat Johnson, *11 Platform Cooperatives Creating a Real Sharing Economy*, Shareable, http://www.shareable.net/blog/11-platform-cooperatives-creating-a-real-sharing-economy (May 18, 2016).

Within the expansive concept of platform enterprise, I define a smaller group of companies as *sharing enterprises*. These companies are directly related to the original notion of collaborative consumption. Under this definition sharing enterprises, like platform enterprises: 1) offer a reduced or redefined notion of consumption; and 2) use an Internet platform to facilitate individualized transactions. However, unlike platform enterprises, sharing enterprises also operate primarily or exclusively on a P2P basis, and maintain some connection to the original social mission of the sharing economy. [77] This may be through their notion of redefined consumption, or through deliberate relationship and community building.

An example of *sharing enterprise* would be Etsy, which uses an Internet platform to link customers with individual artisans on a P2P basis, with the ultimate mission of "building a human, authentic and community-centric global and local marketplace [and] using the power of business to create a better world through our platform, our members, our employees and the communities we serve."[78] Another example would be Shared Earth, a non-profit platform that facilitates connections between people with that have land they are willing to share with gardeners, and gardeners looking for land.[79]

The website Ebay is an interesting case study. Ebay began as a platform that enabled P2P transactions through an online auction model, primarily for used or resale goods. Inititally, Ebay was very much a sharing enterprise. It focused on the redefined consumption of goods and building personal connections between buyers and sellers, with the Internet platform facilitating P2P transactions. A key aspect of Ebay's success was the use of reviews of buyers and sellers to build trust and reputation, creating a unique, community-based experience for users of the website.

Today, Ebay has moved away from redefined consumption and P2P transactions to become a global ecommerce giant, focused on the sale of new goods by commercial sellers in a B2C model. As the 2015 Annual Report states, "While eBay was once an auction site selling vintage items, today 80% of the items sold on eBay are new, and at any given time we have over 800 million live listings. . . 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."[80] Today, Ebay would no longer be classified as a sharing enterprise. Although it continues to offer some P2P transactions, the site focuses on increased

[77] Recently, Rachel Botsman proposed redefining sharing companies as those companies that met five criteria: 1) a core business of "unlocking the value of unused or underutilized assets,"; a company mission built on value-driven principles such as transparency; a commitment to improve the lives of providers on the supply-side; a commitment to providing goods and services in a more efficient way to buyers; distributed or decentralized networks that create "a sense of belonging." Bostman, *Defining the Sharing Economy: What is Collaborative Consumption—and What Isn't?*, FAST CO. (May 27, 2015), at http://www.fastcoexist.com/3046119/defining-the-sharing-economy-what-is-collaborative-consumption-and-what-isnt.
[78] Etsy, Mission and Values, https://www.etsy.com/mission?ref=hp (visited May 24, 2016).
[79] How It Works, Shared Earth, https://sharedearth.com/ (visited May 26, 2016).
[80] Ebay, 2015 Annual Report Form 10-K at 6, http://files.shareholder.com/downloads/ebay/2133737221x0x882672/742AC716-B4DB-40F8-83B0-793F0D6BDA5C/EBAY_2015_Annual_Report.pdf (Feb 1, 2016).

consumption and a B2C transactions, in a product-first marketplace that utilizes a traditional notion of consumption, and does not seek to create community or relationships among sellers and buyers.

The Ebay case study illustrates an important trend in the evolution of the sharing economy: as entities age and grow in scope and scale, they tend to become more commercial and move away from the original sharing economy model. This transformation appears to take place in a predictable pattern. The entity begins as a sharing enterprise, with a strong social mission and community focus. Yet within the first few years of life, the company bumps against commercial realities—it must find a way to successfully monetize the product or service it offers or the enterprise will fail.[81] Research suggests that consumers prefer lower prices to social benefits, so a company targeting growth may shift its strategy to meet this need.[82]

During this stage of development, the mission of the organization changes from one focused on environmental and community-based social benefits to one focused on efficiency and commercial value. Ultimately, this shift may be necessary to remain competitive in a crowded industry. Along these lines, Professors Eckhardt and Bardhi argue that Uber is more successful than Lyft because Uber focuses on efficiency and cost saving in its marketing and branding, whereas Lyft continues to sell a "sharing" mission.[83]

At the same time that the mission evolves, the enterprise may find a need to reduce costs or increase efficiency to remain successful. At this point the individualized customer experience or two-way communication between producers and consumers may begin to break down. In many cases, the P2P relationship is eroded or replaced with a more traditional business arrangement (thredUp, Ebay). Gradually, the system becomes indistinguishable from a commercial Internet storefront, or what is labeled in Figure 3 as a commercial enterprise.

Figure 3

III. Assessing Risks and Benefits

[81] Giana M. Eckhardt and Fleura Bardhi, *The Sharing Economy Isn't About Sharing at All*, Harvard Business Rev. (January 28, 2015), https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all.
[82] Kurt Matzler, Viktoria Veider, Wolfgang Kathan, *Adapting to the Sharing Economy*, 56 MIT SLOAN MANAGEMENT REVIEW 71, 72 (2015).
[83] *Id.*

In order to determine an appropriate regulatory framework for the enterprises that have been identified, it is necessary to identify both the risks posed by the enterprises that suggest a *need* for regulation, and the benefits that may be *inhibited* by greater regulation.

A. Risks and Benefits Common to Sharing and Platform Enterprises

Sharing and platform enterprises present certain common risks and benefits, though the magnitude of each differs sharply based on the characteristics and the scale of the enterprise. For all enterprises, the blurring of the lines between personal and professional creates the risk that those offering services will be unprepared for the potential liability of serving the public. The blurred lines also call into question a variety of regulations dividing public from private and commercial from residential, including zoning regulations, and health and safety regulations meant to protect consumers in a commercial marketplace.

Sharing and platform enterprise transactions that take place on a P2P basis raise the concern that novice providers of goods and services will fail to account for taxes and follow established regulatory requirements, or will be unprepared for commercial liability. P2P business models that decentralize activities out of commercial storefronts can also put an unexpected burden on public utilities and services designed for non-commercial purposes. As sharing enterprises grow in scale, they may threaten the cohesion of the very communities that they seek to serve.

As the number of platforms providing on-demand services grows, so do the risks to workers and the public. Many of these risks are attendant to the classification of service providers as independent contractors. These risks include no guarantee of minimum wages, protection from discrimination, or access to employment benefits. There are also risks, however, 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 been demonstrated to be a significant issue with car-sharing companies Uber and Lyft.

A new type of risk that has developed as platform enterprises have grown is the risk of market power and monopoly behavior. As Uber has shown, platform enterprises can establish significant market power, allowing them to engage in behavior such as surge pricing, ultimately threatening consumer welfare. In addition, as platform enterprises collect significant information about users, there are growing concerns about how that data will be used, how customer privacy will be maintained, and the information asymmetry between the platform operator and the other parties in the transaction, both sellers and buyers.

While sharing and platform enterprises create risks, they also offer significant benefits. Entities offering services, either as sharing enterprises or as on-demand service platforms, create flexible working opportunities for individuals who may be unwilling or unable to find full-time employment. The foundation of the original concept of collaborative consumption--reduced consumption of resources and increased community cohesion--remain real potential benefits of

many sharing and platform enterprises. Also, the innovative nature of sharing and platform enterprises creates the possibility of economic growth and positive social change.[84]

Risks	**Benefits**
Liability	Economic growth
Stress on public services	Access to flexible work
Unpaid taxes	Innovation in services and products
Market power and monopoly behavior	Community cohesion
Data, privacy, information asymmetry	Environmental (reduced/more efficient use of goods and underutilized assets)
Independent contractor designation (lack of benefits, protection from discrimination, minimum wage)	Social change
Loss of community	

Table 1

B. Assessing Risks and Benefits by Key Characteristics

Some platform enterprises are also sharing enterprises, making it difficult to assess risks and benefits based on that level of categorization. The key characteristics that differ between sharing enterprises and platform enterprises, however, present a more useful level of analysis.

Figure 4 considers whether each characteristic has a significant effect on the magnitude of the risks described above. Recommendations for mitigation of these risks will be discussed in Part III.C.

Risks	**P2P**	**Scale**	**Mission**
Liability	P2P model heightens risk that producer will be unprepared for commercial liability.	Large-scale enterprises may create consumer expectation that transaction will meet commercial standards.	
Stress on public services	P2P model heightens risk that blurred lines between public and private will result in strain on services not intended for commercial use.	Large-scale enterprise heightens the risk of stress on public services not intended for commercial use.	
Unpaid taxes	P2P model heightens risk that producer will fail to pay taxes.	Large-scale enterprise increases burden on governments.	

[84] See Downes, *supra* note 6; *see also* Ranchordas, *supra* note 6.

Market power and monopoly behavior		Large-scale enterprise heightens risk of market power and monopoly power.	
Data, privacy, information asymmetry		Data and privacy concerns become prominent when one large-scale entity holds significant data on individual users.	Profit-driven entities may be more likely to sell customer data or abuse privacy.
Independent contractor designation (lack of benefits, protection from discrimination, minimum wage)	P2P models create independent contractor problem.	Large-scale enterprises heighten risks to individual workers who are dependent on platform for work; large-scale enterprise with market control reduces worker bargaining power.	Profit-driven entities in competitive markets have incentive pay workers minimal amounts.
Loss of community	Not limited to P2P model; any business model pushing more commercial transactions into residential areas creates risk.	Small entities do not present this threat; problem created by scale of the enterprise.	Mission-driven enterprises less likely to present a threat if they have conscious focus on community building.

Table 2

Table 2 leads to some interesting conclusions. First, the scale of the enterprise heightens all of the risks presented by sharing and platform enterprises. Airbnb and other home-sharing enterprises do not threaten community cohesion until rentals reach significant proportions in neighborhoods. TaskRabbit and other on-demand service platforms did not present significant employment-related risks until they grew large enough to present an alternative to full time employment. Concerns about privacy and access to customer data become pressing when companies amass significant amounts of data.

Ironically, however, in order to succeed, enterprises need to develop scale. Botsman and Rogers identified this characteristic as "critical mass," noting that without sufficient scale to allow customers choice and options, sharing enterprises are unlikely to be successful.[85] For example, car-sharing does not become a viable option until there is a sufficient number and geographic spread of cars to makes sharing as convenient as ownership. Internet-based second-hand shops like

[85] Botsman & Rogers, *supra* note 12, at 75 (defining critical mass as "the existence of enough momentum in a system to make it become self-sustaining").

thredUP require a significant amount of inventory, at a relatively high quality, to appeal to users. Thus it may be that the risks poised by sharing and platform enterprises are inseparable from their success, and the more successful the enterprise, the greater the risks presented.

Another key takeaway is that the P2P model is not the only risk factor, but it is implicated in four of seven key risk areas. This logically follows from the challenge of incorporating non-professional, non-commercial entities into a commercial marketplace. When paired with a large-scale enterprise, these risks are magnified significantly.

Finally, it is worthwhile to consider that the original sharing mission—which was tied to community and relationship building—may help mitigate risks to community cohesion. At the same time, commercial platforms that lack a social mission, whether operated on a P2P or B2C basis, will have obvious incentives to lower prices and reduce costs. As a result, platform enterprises that have no social mission *and* utilize a P2P structure present the highest risks to communities, workers, and consumers.

Benefits	**P2P**	**Scale**	**Mission**
Economic growth; access to employment for underemployed or individuals who need flexible working hours	P2P model provides opportunities for flexible work; creates access to new labor pool for consumers and businesses.	Greater scale may equate to more growth and greater opportunities for producers and consumers.	
Innovation in services and products			
Environmental (reduced/more efficient use of goods and underutilized assets)			Sharing enterprises mission may drive environmental benefits; new platform entities may negatively impact environment by facilitating, rather than discouraging, consumption.
Positive social change (community cohesion, trust)			Mission driven organizations focus on pro-social impacts.

Table 3

On the benefit side, there does not appear to be a direct connection between the characteristics of the enterprise and its benefits. However, if companies tend to become more

commercial and less mission driven as they grow and mature, it may be that economic benefits are maximized as social benefits decline.

C. Regulatory Recommendations

To date, regulation has proceeded on an industry-by-industry basis, focusing primarily on ride sharing services (notably Uber), and housing (Airbnb). In this section, I propose regulations that follow from the characteristics and categorization of sharing and platform enterprises, rather than the specific industry or firm.

1. Small-Scale Sharing and Platform Enterprises: Focus on Enabling

As illustrated in Table 2, the scale of the enterprise, whether it is platform or sharing, drives in large part the extent of the risks faced by workers, consumers, and communities. However, the mission-driven nature of sharing enterprises offers unique benefits to communities and cities, while the commercial nature of a platform enterprise may bring the potential for faster scaling and greater economic growth. Because of their limited risks and potential for social benefits, I propose that regulations targeted at these enterprises be focused on *enabling*, rather than *limiting*.

In order to enable small-scale sharing and platform enterprises, states can provide special exemptions to zoning rules and regulations that specifically recognize the scale of the enterprise. San Francisco has used this approach in creating a land use category called "neighborhood agriculture," for gardens of less than one acre in size, which allows the operator to grow, share, and sell the products of that garden.[86] Cottage food laws may similarly exempt small enterprises that share, sell, or swap food from complying with the entirety of food safety codes and regulations.[87]

In the area of housing, exemptions to regulations might target small-scale sharing enterprises that facilitate housing swaps and limited rentals of space by owners and residents. At the same time, new regulations should be designed to distinguish between sharing enterprises and platform enterprises. Short-term rentals listed on Airbnb, a large-scale enterprise, should be expected to comply with all codes and regulations because of the risks posed by this enterprise. On the other hand, short-term rentals in a small independent "eco-village," where community members participate in a sharing lifestyle that includes community gardens and shared access to renewable energy, may be exempted from such regulations.[88] Co-housing communities can 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

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[86] SAN FRANCISCO URBAN AGRICULTURE ALLIANCE, OVERVIEW OF SAN FRANCISCO'S URBAN AGRICULTURE ZONING ORDINANCE, http://www.sfuaa.org/uploads/4/8/9/3/4893022/overview_of_sf_urban_ag_zoning_changes_final.pdf. "For more information, see San Francisco Ordinance 66-11, File No. 101537, approved by the Board of Supervisors on April 20, 2011, and effective May 20, 2011. See also: San Francisco Planning Code Section 102.35 for the core text of the new rules."

[87] *See* note 8, *supra*.

[88] Eco-Village Ithaca is a co-housing community with shared access to gardens and community spaces. *See* http://ecovillageithaca.org/live/. Residents of Eco-Village occasionally share or rent rooms to the public. *See* http://ecovillageithaca.org/live/rentals-sales/for-rent-in-song/.

land.[89] A sharing enterprise in which individuals swap meals could be exempted from commercial kitchen requirements.

2. Large-Scale P2P Enterprises

The scale of an enterprise magnifies, or even creates, risks. In particular, the P2P business model creates and magnifies many of the risks posed by platform and sharing enterprises. As a result, I propose that large-scale P2P enterprises generally receive higher scrutiny than small-scale enterprises, whether they are platform or sharing. However, in recognition of the potential benefits of both models, I propose that regulatory schemes be *narrowly tailored to minimize individual risks and maximize potential benefits*. In addition, new regulations must recognize that categories that separate public and private spaces with black and white lines must adapt to the blurred lines of the new enterprises.

A summary of suggested mitigation measures is found in Table 4.

Risks	**P2P implication**	**Mitigation**
Liability	P2P model heightens risk that producer will be unprepared for commercial liability.	Require large enterprises to take active role in helping providers of goods/services obtain liability insurance and provide training and education for contractors.
Stress on public services	P2P model heightens risk that blurred lines between public and private will result in strain on services not intended for commercial use.	New regulations must ensure occasional service providers pay for the impact of their operations on public services.
Unpaid taxes	P2P model heightens risk that producer will fail to pay taxes.	Require large platform enterprises to assist government agencies by collecting tax information.
Market power and monopoly behavior		Existing antitrust regulations allow regulators to address market power and monopoly behavior.
Data, privacy, information asymmetry		Use existing models of platform liability to require large-scale platform to control the privacy and access to data.
Independent contractor designation (lack of benefits, protection from	P2P models create independent contractor problem.	Specific regulations can target industries with high concentration of misclassified employees; (Other literature proposals?); new regulations targeting large-scale enterprises require minimum wage and anti-discrimination and create reporting requirements to allow regulators to monitor the

[89] CommunityEnterpriseLaw.org, Zoning and Housing, http://communityenterpriselaw.org/zoning-and-housing/#Zoning_for_Sharing.

discrimination, minimum wage)		numbers of workers in an industry and closely scrutinize independent contractor status.
Loss of community	Not limited to P2P model; any business model pushing more commercial transactions into residential areas creates risk.	Regulations can narrowly target large-scale enterprises that push commercial transactions (particularly housing) into residential areas.

To respond to the potential liability risks presented by large-scale P2P enterprises, I propose that platform enterprises be regulated directly in order to recognize their new role in aggregating and facilitating P2P transactions. For example, because platform enterprises enable relevant transactions for goods and services, they should be required to provide basic training and education for their users about legal requirements and health and safety regulations. This is not an impossible task for platform enterprises. Airbnb currently provides basic information about tax collection to its hosts on its website.[90] It 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.[91] 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 Uber and Airbnb currently offer to their drivers and hosts.[92]

Several examples of narrowly tailored regulations can be found in the transportation sector. In California, the Public Utility Commission (CPUC) recently considered the risks attendant to ride-sharing enterprises and created a new designation (Transportation Network Company, or TNC), that includes entities that use internet applications to connect drivers and riders.[93] In concluding that TNCs required regulation, the CPUC emphasized that its overriding interest was to ensure public safety, and that concern overrode any concerns about the rapidly evolving or

[90] Airbnb, *How do Taxes Work for Hosts*?, https://www.airbnb.com/help/article/481/how-do-taxes-work-for-hosts (visited Jan. 18, 2016).

[91] Airbnb, *I'm a Host, Am I required to have a smoke detector of CO detector installed?*, https://www.airbnb.com/help/article/515/i-m-a-host--am-i-required-to-have-a-smoke-and-co-detector-installed?topic=359 (visited Jan 18, 2016).

[92] *See* Ellen Hunt, New Laws Push Uber and Lyft to Bump Up Insurance Coverage, but a Collision Gap Remains, FORTUNE (July 1, 2015) (describing gap in primary coverage provided by Uber); Airbnb, *Host Protection Insurance*, https://www.airbnb.com/host-protection-insurance (visited Jan 18,2016) (describing primary coverage of up to $1 million provided to hosts).

[93] Transportation Network Companies are defined as "an organization 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." 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. Util. Comm. Sept. 19, 2013) [hereinafter Decision 12-12-011], *available at* http://www.taxi-library.org/cpuc-2013/cpuc-decision-sept-2013.pdf. The TNC designation does not override existing exemptions for non-profit entities, or for ride-sharing that might be actual "sharing"—i.e., where the ridesharing is "incidental to another purpose of the driver." *Id.* at 2-3, fn. 3.

nascent nature of the industry.[94] The requirements for 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. [95]

Regulations should recognize the benefits of sharing enterprises focused on redefined notions of consumption by ensuring regulations do not block innovative business models. In San Francisco, under current regulations, residents may be guilty of operating an illegal hotel for any short term rentals under 32 days.[96] Narrowly targeted regulations would allow for some amount of short-term rentals, while limiting the number of rentals for any given unit. In Amsterdam, regulators have taken this path, allowing for limited private home rentals, rather than barring the practice completely

When it comes to on-demand service platforms, new regulations may be necessary to protect workers and ensure that the platform enterprise form is not used to avoid creating employer/employee relationships. The avoidance of this legal status is not new; misclassification of employees as independent contractors has long been a problem in many industries, including the construction industry and the taxi cab and transportation services industry.[97] In some cases, legislation has been used to clarify employee status or to provide an assumption that employees in a certain industry are employees.[98] However, the focus again should be on targeting regulations to minimize risks, but not outlawing practices with significant benefits.

For on-demand platform enterprises, I propose that states create enhanced transparency and reporting requirements for workers associated with these platforms so that states can monitor "hot spots" where certain platforms are becoming associated with negative labor practices. Enterprises should be required to publically disclose requirements for association with the platform (i.e., arbitration agreements, covenants not to compete with other platforms, publicity agreements, etc.) and 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 should be in a position to monitor when workers at a given platform enterprise are committing the majority of their time to that enterprise and if they are being asked to agree to onerous conditions, or conditions that look like an employer/employee relationship has been created. This information may allow the state to investigate further if it feels that workers are being misclassified based on either federal or state standards, or if it appears necessary to create special designations to avoid allowing the platform to take advance of independent contractor status.

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[94] Id. at 3.
[95] *Id*. at 3.
[96] SHAREABLE & SUSTAINABLE ECONOMICS LAW CENTER, POLICIES FOR SHAREABLE CITIES: A SHARING ECONOMY PRIMER FOR URBAN LEADERS 26 (2013), *available at* http://www.shareable.net/blog/new-report-policies-for-shareable-cities, on file with author.
[97] *See* David Bauer, The Misclassification of Independent Contractors: the Fifty-Four Billion Dollar Problem, 12 RUTGERS J. L. & PUB. POL'Y 138, 141-144, 171-172 (2015).
[98] In Maryland, the Workplace Fraud Act of 2009 created the presumption that individuals in construction or landscaping fields were employees, rather than independent contractors. *Id.* at 171.

IV. Voluntary Certification

Government regulation is not the only means for reducing the risks posed by sharing and platform enterprises, or to better assess the benefits they offer. Another option is for companies to create their own voluntary certification program.

In 2010, Maryland passed the first statute creating an entity called a benefit corporation.[99] Today, 32 states have similar legislation, which recognizes a specialized form of business entity designed to both earn a profit and serve a public purpose.[100] Even in states that do not recognize a legal business entity form for similar companies, the non-profit entity B Labs offers a voluntary certification process for entities that want to call themselves a "B Corp", even though that certification does not bring any form of legal recognition.[101] Other entities have used a variety of collaborative practices, including self-certification, to identify their commitment to beneficial environmental or labor practices.[102]

The taxonomy proposed here recognizes a difference between sharing enterprises and platform enterprises. However, there may be some platform enterprises that result in social and environmental benefits, and some sharing enterprises that fail to live out their goals of reducing consumption or building community cohesion. Therefore, much like B Labs currently certifies B Corps, or Fair Trade certification signifies adherence to voluntary labor and trade practices, I 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

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[99] Anne Field, *First-Ever Study of Maryland Benefit Corps Released*, FORBES (Jan 25, 2015) (discussing study of Maryland benefit corporations); MD Corp & Assn Code sec. 5-6C-01 (2013).

[100] *See* Social Enterprise Law Tracker, http://www.socentlawtracker.org/#/bcorps (providing map with links to states enacting laws permitting social enterprise business forms); 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); Brett H. McDonnell, *Committing to Doing Good and Doing Well: Fiduciary Duty in Benefit Corporations*, 20 Fordham J. Corp. & Fin. L. 19 (2014); Kyle Westaway and Dirk Sampselle, *The Benefit Corporation: An Economic Analysis with Recommendations to Courts, Boards,a nd Legislatures*, 62 Emory L.J. 999 (2013);

[101] *See* B Labs, Become a B Corp, https://www.bcorporation.net/become-a-b-corp.

[102] One example is the Fair Factories Clearinghouse, a non-profit organization that helps businesses utilizing common factories to share audits and other information, and implement corrective action. *The FFC Mission*, FAIR FACTORIES CLEARINGHOUSE, http://www.fairfactories.org/what-we-do/Mission.aspx (last visited July 18, 2015); *Major Apparel Brands and Manufacturers Aim to Advance Global Factory Conditions Using New Collaborative Approach to Compliance Audits*, BUS. WIRE (Jun. 19, 2012, 09:17 AM), http://www.businesswire.com/news/home/20120619006040/en/Major-Apparel-Brands-Manufacturers-Aim-Advance-Global. Another approach is for businesses to seek certification under common standards such as the SA-8000 or the ISO 14000, or to adopt voluntary industry standards. *See* MARC J. EPSTEIN, MAKING SUSTAINABILITY WORK: BEST PRACTICES IN MANAGING AND MEASURING CORPORATE SOCIAL, ENVIRONMENTAL, AND ECONOMIC IMPACTS, 72–78 (2008). *See also* Mark Anner, *Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains*, 40 POL. & SOC'Y 609, 609 (2012) (arguing that corporate governance programs influenced by corporations are more likely to consider wage and hour violations, and less likely to emphasize workers' rights to organize); Adelle Blackett, *Global Governance, Legal Pluralism and the Decentered State*, 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 Social Accountability International's SA-8000 code).

certification would also consider include 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, whether a platform or sharing enterprise, that scores above a certain level on the assessment would be certified as a "Sharing Company."

Sharing entities are not inevitably beneficial to the environment or to communities and individuals. 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.[103] Creating a certification system would force platform and sharing enterprises to assess their practices and determine if they are, in fact, creating the benefits they proclaim.

A self-regulatory sharing certification system would increase the legitimacy of the sharing economy, reduce concerns about sharewashing, and 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, it may be exempted from certain regulations, or may be provided special status for regulatory purposes. An on-demand service enterprise that was certified as a Sharing Company may be exempted from certain record keeping requirements. A maker platform that is certified as a Sharing Company may have access to certain tax benefits. A collaborative consumption platform Sharing Company may be exempt from specified zoning regulations.

It bears noting that the sharing economy as currently defined relies heavily on reputation to build trust and enable P2P transactions.[104] Creating a designation for Sharing Companies would build on this existing concept to create a meta-reputation for the entity itself, with external validation from an outside or third-party.

Short of a full-fledged assessment and certification programs, publicity and reputation may drive companies to engage in self-regulation. After being widely criticized for facilitating a system that resulted in workers getting paid less than minimum wage, TaskRabbit changed its business

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[103] Ucilia Wang, *How the Netflix Model Impacts the Environment, Economy and Society*, THE GUARDIAN (Feb. 6, 2014), http://www.theguardian.com/sustainable-business/2014/feb/06/how-the-netflix-model-impacts-the-environment-economy-and-society (discussing the mixed environmental impacts of collective consumption and "sharing" models, including Netflix); DAMIEN DEMAILLY & ANNE-SOPHIE NOVEL, THE SHARING ECONOMY: MAKE IT SUSTAINABLE (2014), available at http://www.iddri.org/Publications/Economie-du-partage-enjeux-et-opportunites-pour-la-transition-ecologique.

[104] BENEDICTE DAMBRINE, JOSEPH JEROME & BEN AMBROSE, USER REPUTATION: BUILDING TRUST AND ADDRESSING PRIVACY ISSUES IN THE SHARING ECONOMY (2015), available at https://fpf.org/wp-content/uploads/FPF_SharingEconomySurvey_06_08_15.pdf; Molly Cohen & Arun Sundararajan, *Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy*, 82 U. CHI. L. REV. DIALOG 116 (2015), https://iapp.org/news/a/in-the-sharing-economy-could-reputation-replace-regulation/; Jedidiah Bracy, *In the Sharing Economy, Could Reputation Replace Regulation?*, THE PRIVACY ADVISOR (Jun. 10, 2015), https://iapp.org/news/a/in-the-sharing-economy-could-reputation-replace-regulation/ (describing importance of reputation in sharing economy and discussing FTC hearings on the question of whether new regulation is needed to protect consumers).

model. First, it did away with the "bidding" system, in which Rabbits (the name the site gives to workers) bid for jobs, which often resulted in a race to the lowest possible wage.[105] The site then set a minimum floor for wages at a level that is higher than the federal minimum wage.[106]

V. Conclusion

Whether you call it the sharing economy, platform economy, gig economy, or platform capitalism, a new form of business, characterized by internet platforms selling themselves as alternatives to traditional notions of work and ownership, continues to grow and evolve. Regulation of this new form of business 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 innovations 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 of risks posed by different types of entities. By eliminating or minimizing regulation for small-scale platform and sharing enterprises, regulators can avoid over-compensating and quashing benefits. By categorizing the different types of platforms and creating regulations targeted to large-scale enterprises with P2P business models, regulators can narrowly target regulation to the risks that the platforms create.

In a field in which reputation plays an essential role, the potential of self-regulation and self-certification is significant. A self-certification process, not unlike what currently exists for B corps, could create a "race to the top" among competitive platform entities. This article hopes to begin a conversation around this concept, and move forward a system for thoughtful regulation.

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[105] Harrison Weber, *TaskRabbit Users Revolt as the Company Shuts Down Its Bidding System* (July 10, 2014), http://venturebeat.com/2014/07/10/taskrabbit-users-revolt-as-the-company-shuts-down-its-bidding-system/.
[106] 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