

## Introduction

That you are reading the *Cambridge Handbook of the Law of the Sharing Economy* is a testament to the rise of a global phenomenon that just a decade ago had barely begun to emerge, let alone to transform economies and regulation. It was only 2007 when Joe Gebbia and Brian Chesky created a website they called [airbedandbreakfast.com](http://airbedandbreakfast.com) in honor of the air mattresses they were planning to rent out on the floor of their living room. Today Airbnb claims more than 3,000,000 listings worldwide in more than 65,000 cities in over 191 countries. Uber did not launch until 2010 – as a black car hailing service (its ubiquitous UberX service launched two years later) – and has likewise spread worldwide, expanding significantly beyond its original business model of shared driving.

The rise of online platforms facilitating the sharing and pooling of everything from rooms to cars to food to money to clothes to people’s skills and time is not only changing markets for goods and services. These platforms, and the individuals who use them, are also interacting in often unforeseen ways with existing regulation and posing challenges for regulators. This Handbook was born of an ambition to grapple conceptually and practically with what the rise of the sharing economy means for law and how law, in turn, is shaping critical aspects of the sharing economy.

That inquiry is important in its own right, as the challenges wrought by platforms are upending significant areas of regulation in legal system after legal system. But the interaction between the sharing economy and law is also critical and timely as a case study in the many and varied legal responses to innovation and disruption. This dynamic is hardly new and one can point to any number of other examples of similarly significant shifts, but as with so much of our society, the pace of change is cycling ever more rapidly and old institutions – as the scholars collected in this volume can attest – are adapting in surprising and vital ways.

### A WORD ON NOMENCLATURE

Before we turn to details of the substance of the Handbook, we wanted to pause on the question of nomenclature – an issue that pervades the discourse. This Handbook uses the term “sharing economy” in reference to a diverse range of activities, subsets of which are variably referred to as the “peer-to-peer,” “platform,” “on demand,” “gig,” and “collaborative” economy. The phrase “sharing economy” has faced significant criticism. As numerous commentators have observed, highly visible and often controversial firms like Uber, Lyft, and Airbnb, which are often referred to as part of the sharing economy, do not, in fact, facilitate the gratuitous sharing of goods and services. Rather they facilitate commercial transactions

between two parties: sellers or providers of goods and services and buyers or users. For this reason many prefer the term peer-to-peer, which suggests that, in most cases, the parties on either side of these exchanges are not professionals and that, in many cases, their activity is simply a side gig that makes use of the spare capacity of a resource they already own. But this description proves inaccurate for a significant number of providers, as some individuals work full time as a driver for Uber or Lyft or rent out multiple apartments on Airbnb. Others prefer the term platform economy, which focuses on the digital platforms and apps through which transactions are brokered. In many instances these platforms enable users to obtain goods and services “on demand.” But this term can also be under-inclusive, as it may fail to include those components of the broader sharing economy that do in fact reflect a traditional understanding of “sharing,” such as neighborhood tool libraries, which also may not rely upon a digital platform to facilitate exchanges.

Cognizant of these limitations, this Handbook uses the term “sharing economy” because it is the most ubiquitous term for referring to a myriad of new mechanisms for facilitating the exchange of goods and services, often provided by individual, small-scale actors. The Handbook embraces a very broad conception of the “sharing economy,” including large for-profit firms like Airbnb, Uber, Lyft, Taskrabbit, and Upwork, as well as smaller, nonprofit collaborative initiatives, including lending libraries, maker spaces, and fab labs, through which individuals can obtain temporary access to a particular resource. Throughout the Handbook individual authors will, at times, specify their own, perhaps narrower definition and scope of the economic activity they are discussing.

#### AN OVERVIEW OF THE HANDBOOK

This Handbook is divided into two broad parts. The first offers an overview of the nature of the sharing economy, explores the central challenge of balancing innovation and regulatory concerns, and then examines the institutions confronting these regulatory challenges. In the second part, the book turns to a series of specific regulatory domains. Since the project began, the global regulatory environment has continued to evolve, and new regulatory concerns have emerged, but a core set of legal questions continues to dominate. With details that vary across different legal systems, the critical regulatory questions that the sharing economy raises involve protections for workers and platform providers and conversely, consumer welfare for those using sharing platforms for goods and services; tax compliance; and, of course, civil rights. With both parts, this Handbook seeks to be timely in a fast-moving regulatory environment and offer depth across a range of regulatory domains.

One of the sharing economy’s most noteworthy features is that it has spread across the globe irrespective of geographical borders. To account for that reach, the Handbook adopts a comparative perspective. Our authors document the impact the sharing economy has had across jurisdictions, particularly in the United States and in the European Union, but also beyond. This rich range of perspectives reveals that while the impact and consequences of the sharing economy are often deeply linked to place, many of the benefits and challenges encountered are similar irrespective of place.

Just as digital platforms themselves operate across borders, the sharing economy’s disruptive effects cannot be pinned down to a specific jurisdiction. With this in mind, the Handbook unites authors from a wide range of backgrounds to document the regulatory responses that have been adopted as a consequence of the sharing economy’s emergence. The hope is to create a cross-jurisdictional debate on these aspects, and enable regulators to learn from

experiences elsewhere. The comparative perspective is one of the Handbook's distinguishing features and we encourage readers to not limit themselves to the chapters specifically related to their own jurisdiction as experiences elsewhere might provide just as much insight as those at home.

With these goals in mind, what follows provides an overview of how the Handbook progresses.

#### SECTION 1

The Handbook's first section examines the nature of the sharing economy and its growing importance. Aurélien Acquier argues that peer-to-peer digital platforms like Uber and Airbnb – the most visible and controversial parts of the sharing economy – are not a radically new phenomenon. While they depart from the traditional model of the hierarchical and integrated firm, Acquier invokes organizational theory and business history to contend that these platforms represent “a digital reincarnation of the ‘putting-out system.’” Akin to that pre-industrial form of business organization, peer-to-peer platforms outsource work to individuals who own their own means of production. Yet even as they depart from a managerial understanding of the firm, these platforms accord with a financial vision that casts the firm as a nexus of contractual relationships.

Such relationships depend, to a significant degree, on trust. Mareike Möhlmann and Andrea Geissinger provide a sociological account of the historical evolution and transformation of trust. They examine how platforms build trust between strangers in a cumulative fashion, relying on a variety of digital cues, such as peer reviews, which foster both interpersonal and institutional trust. These platform-mediated trust cues, which might, they propose, one day be accumulated into a form of digital social capital, have important regulatory implications.

While, on the one hand, the sharing economy might be understood in terms of small-scale, peer-to-peer transactions reliant on digital trust, the significant volume of such small transactions can produce negative cumulative effects. Kellen Zale argues that scale is a defining feature of the sharing economy and one that must be better understood in order to craft more effective regulatory responses. Traditional justifications for the regulatory leniency afforded to small-scale activities are less convincing when applied to the large number of such activities facilitated by third-party platforms functioning as network orchestrators.

Section 1 concludes with a more granular examination of peer-to-peer platforms in relation to a typology of business models. Relying on field research into 30 sharing initiatives in Europe, Aurélien Acquier and Valentina Carbone situate a range of sharing economy initiatives in relation to their mechanisms of value creation, scaling potential, and social innovation impacts. They conclude that the sharing economy's potential for promoting social innovation depends, in significant part, on the decisions and efforts of governments, academic institutions, and social actors.

#### SECTION 2

The sharing economy has engendered a range of innovations, transforming transportation, lodging, lending, and other sectors. Section 2 examines how to balance the desire to encourage beneficial innovations with the demand for appropriate and effective regulation. Orly Lobel begins the section by examining how platforms serve to lower transactions costs and improve deal-making. She argues that regulators must consider how platform innovations might make certain traditional regulations redundant.

Matthew D. Mitchell and Christopher Koopman examine the emergence of the sharing economy in the transportation sector and how public and private models of regulation have been deployed to create order in a context of disruptive innovation. On the basis of this analysis they establish a typology of four distinct types of regulation that have been adopted to date.

In spite of their young age, sharing economy platforms have accumulated significant market power. Niamh Dunne considers the implications of that state of affairs from the European perspective, drawing attention to the limits of competition law in addressing negative social and economic consequences.

In light of the lack of solid data, speculation often surrounds the sharing economy's impact on a given sector or space. Peter Coles, Michael Egesdal, Ingrid Gould Ellen, Xiaodi Li, and Arun Sundararajan offer new empirical evidence regarding actual Airbnb usage patterns across New York City. Combining a rich mix of data from various sources, including from the platform itself, they illustrate how Airbnb's effect on the city's housing market has changed over time.

Katrina Wyman looks at sharing in the mobility sector and the emergence of the category of transportation network companies (TNCs) in the United States as a novel form of regulation. Comparing TNC regulation to traditional taxi regulation, she highlights that TNCs are able to address long-standing concerns while also reinforcing established problems of industry capture.

### SECTION 3

Section 3 examines various regulatory strategies that have been adopted as a response to the sharing economy's emergence. The contributions examine different aspects of the regulatory challenges triggered by the emergence of the sharing economy but agree that regulatory responses must fit the sharing economy's specific characteristics.

The sharing economy encompasses a wide range of phenomena. Its actors are equally diverse and include peers or nonprofessional providers, who offer a surplus of time, skills, or goods, as well as highly professionalized actors who harness the platform economy model. Erez Aloni illustrates how such pluralism burdens any regulatory response and argues that the state should establish a series of valuable alternative regulatory regimes that can protect individuals from related risks.

Raymond Brescia illustrates that the very features that make the sharing economy attractive as a business model, including decentralization, the reliance on trust as an engine for economic exchange, and new technological possibilities, also make it difficult to regulate. Relying on new governance approaches, he suggests that regulation must be matched to the sharing economy's uniqueness in order to balance innovation and consumer protection.

Licenses are often at the center of controversies surrounding the sharing economy. Derek McKee illustrates, drawing on the Canadian example, that despite claims to the contrary platform-based business models have not rendered established licensing regimes obsolete. Industry self-regulation is shown to be unable to do away with known licensing problems as it raises the same concerns of inefficiency and political arbitrariness so that alternative regulatory models should be considered.

Bryant Cannon and Hanna Chung posit that regulation ought to echo the sharing economy's inherent attributes. With this in mind they put forward a proposal for a co-regulatory model able to account for specific market behaviors.

Stephen R. Miller draws attention to the data collected by platforms and underlines the potential of data for urban governance from a historical perspective. Taking the example of

sharing economy platforms as collectors of data, he explores the legal and political implications of urban data-based decision-making.

#### SECTION 4

The sharing economy has spread irrespective of geographical boundaries and affects regulators at various scales of public authority. Considering the large variety of potential regulators, this section attempts to determine which levels of public authority are best placed to address the sharing economy.

The sharing economy is a predominantly urban phenomenon. Nestor Davidson and John Infranca explore the implications of the place of the sharing economy, highlighting that sharing platforms are often able to address urban challenges and leverage features of urban life. Exploring the role of local governments as early sharing economy regulators, they argue that even as other levels are now also stepping in, a degree of local autonomy ought to be preserved.

While the local level was the first to be immediately affected by the rise of sharing platforms, other actors have gradually become involved in their regulation. Sarah Light examines the federalism implications of the sharing economy in the United States, highlighting the regulatory role of the federal government.

Janice Griffith, on the other hand, explores the role of state governments in the United States. Considering that the sharing economy can affect statewide and local interests, her contribution presents guidelines for the delineation of the governance level best suited to regulate sharing economy activities.

The sharing economy is thus a phenomenon that affects numerous levels of public authority. Daniel Rauch explores why, considering its multilevel nature, local governments have become such important actors in the regulation of the sharing economy, and raises the question of whether they can and should play such a prominent role.

Questions regarding the most adequate scale of regulation have also emerged in the European Union. Michèle Finck explores whether there is a place for the EU to regulate aspects of the sharing economy. Answering this question affirmatively, she then attempts to determine which regulatory model is best suited for digital data-driven platforms.

Bronwen Morgan examines the question of the most adequate scale of regulation from the Australian perspective. She draws attention to the fact that definitions of the sharing economy are disputed and adopts the framework of “platform cooperativism” to present a distinctive vision of multi-scalar relationships between the local, national, and international dimensions of platform regulation.

#### SECTION 5

Section 5 of the Handbook shifts focus from understanding the sharing economy and its regulatory landscape at a macroscopic level to the first of a series of explorations of specific regulatory domains, namely the critical arena of labor and employment. To begin, Elizabeth Tippet offers a cogent overview of the legal standards that govern whether the law classifies workers as independent contractors or employees. She then homes in on ways that existing doctrine can facilitate employer noncompliance with and avoidance of employee protections and ways the legal system might address those challenges.

Brishen Rogers next turns to ways that the sharing economy is particularly impacting low-wage workers. Rogers usefully disaggregates two aspects of organization in low-wage labor

markets: statutory entitlements for those firms' workers and the firms' technological and regulatory sophistication as well as market impact. From this typology, Rogers suggests some avenues of reform of the disadvantages of informality and low quality of work in the sharing economy.

Miriam Cherry and Antonio Aloisi offer a different set of reform proposals, centered around the idea of a hybrid classification between employee and independent contractor. Bringing a keen comparative perspective, Cherry and Aloisi explore the use of a third category to cover non-standard workers in Canada, Italy, Spain, Germany, and South Korea, concluding that there are significant limitations to this model and instead advocating for a default rule in the sharing economy that workers should be classified as employees or something resembling that classification.

Finally, turning to other parts of the globe, Mark Graham and Mohammad Amir Anwar focus on the role of digital labor, and its developmental impacts, in low- and middle-income countries in Africa and Asia. They examine how, through models of cooperative work, labor practices in the sharing economy might be made fairer for workers throughout the world.

## SECTION 6

How sharing economy firms classify workers – whether as independent contractors or employees – has significant tax consequences. Section 6 explores the range of tax issues raised by the sharing economy, from the perspective of individual sharing economy workers, the platforms themselves, and taxing authorities. Shu-Yi Oei and Diane Ring examine the myriad of tax issues – including classification, documentation, and compliance challenges – sharing economy workers in the United States must confront. They highlight the complexities of existing requirements for workers and outline a range of proposed reforms. As they note, how the tax system responds to work in the sharing economy will affect the sector's growth and development.

Manoj Viswanathan shifts the focus to examine tax compliance issues and potential changes to better balance the interests of sharing economy workers and federal, state, and local taxing authorities. In addition to income tax compliance, the sharing economy raises a range of issues for the assessment and collection of wage, sales, occupancy, and property taxes. Viswanathan suggests that, to be successful, tax compliance efforts must enlist sharing economy companies, who have access to the information and resources necessary to improve reporting and compliance.

A lack of uniformity and the absence of regulation at the EU level makes it inherently difficult to discuss taxation of the sharing economy in the European Union. Katerina Pantazatou provides an overview of taxation in the EU generally and the taxation of the sharing economy in particular. She then presents some of the specific initiatives different EU Member States have taken with regard to taxation of the sharing economy and identifies the tensions these can create in relation to EU law in other areas. Pantazatou argues that the EU should take comprehensive action in relation to the sharing economy, at a minimum establishing general guidelines for Member States.

Finally, Jordan Barry concludes the tax law section by turning back to the question of how to balance regulation and innovation. He uses the sharing economy as a focal point for analyzing the relationship between the federal income tax system in the United States and innovation. Barry questions whether tax law acts as an effective tool for encouraging technological or transactional innovation. Instead, he suggests, the innovations that mark the sharing economy, by

exacerbating gray areas in the tax code, might spur regulators to clarify these areas, advancing the tax system itself.

## SECTION 7

The sharing economy, of course, involves not only producers but equally importantly consumers matched through platforms. This next section explores a variety of issues involving consumer protection and privacy. Rebecca Tushnet examines a set of related challenges arising from the collapse of distinctions between speech and commerce, between public and private, and between work and voluntary “sharing,” which once marked regulatory domains. This has placed stress on false advertising protections, online conflicts of interest in testimonials, and in creative uses of agency law to hold platforms liable. In the online world of the sharing economy, Tushnet argues, consumer welfare law can adapt through other means of linking responsibility for an entity’s acts to another entity.

Turning to another important legal regime implicated in the sharing economy, Sonia Katyal and Leah Chan Grinvald argue that trademark is determinative for the success or failure of platform companies. This centrality plays out across a spectrum of trademark interactivity, and Katyal and Grinvald offer an insightful typology of how trademark interacts with platform entrepreneurship. The chapter then explains the ways that design and architectural form challenge – but create opportunities for – the modernization of trademark law.

Rosalie Koolhoven shifts focus to European private law, canvassing contract law across European Member States as a complement to European law on the question of the liability of platforms for harms caused by providers. Koolhoven unpacks the different ways Member States address sharing economy matching services, arguing that the core contracts that define the relationship between platforms and providers obligate platforms to pursue third-party interests, which is to say consumer interests. As Koolhoven argues, consumer protection law varies across the EU, but has surprising strength grounded in private law.

Finally, Guido Smorto challenges claims for lighter regulation in light of arguments for new paradigms of choice. Instead, Smorto argues, platforms use boilerplate, technological architecture, and algorithms to assert power over providers and consumers. In light of a detailed analysis of the terms and conditions of these techniques, Smorto concludes that law must protect what he describes as weaker parties in the sharing economy.

## SECTION 8

The sharing economy has sadly proven that the pathologies of the physical world all too often carry over to the platform, raising significant concerns for anti-discrimination law. Charlotte Garden and Nancy Leong begin the Handbook’s exploration of these dynamics by excavating the landscape of responsibility for platform companies. Such firms, Garden and Leong argue, are suffering from an “identity crisis,” both embracing and distancing themselves from the commercial relationships they foster. Law has accordingly struggled with whether platforms genuinely neutrally enable dyadic relationships between others or instead actively participate in a triadic relationship. Surfacing this key tension can help shape legal responses across discrimination law and public accommodations, but more broadly for the general responsibility of platforms.

Naomi Schoenbaum next turns to the ways in which the sharing economy augurs a shift in the place of intimacy and its relationship to equality. Sharing-economy transactions, Schoenbaum

notes, tend to involve personal space, with platforms highlighting personal relationships to foster trust. This economic intimacy, however, has raised concerns with race and sex discrimination, and major platforms have moved to depersonalize transactions. As Schoenbaum concludes, there are costs to this rebalancing between equality and intimacy.

Jamila Jefferson-Jones takes an empirical turn, given evidence of pervasive discrimination in the sharing economy, particularly with short-term rentals. Jefferson-Jones provides an exegesis of the ways anti-discrimination laws in the United States apply to new models of short-term rentals, with particular focus on the question whether individual hosts or platform firms should be liable for discrimination. As Jefferson-Jones argues, in the context of race and disability, there are serious impediments to applying traditional anti-discrimination paradigms to the sharing economy, and she offers reform proposals.

The Handbook's exploration of the challenges of discrimination concludes with an analysis by Nicola Countouris and Luca Ratti of EU anti-discrimination responses. Countouris and Ratti argue that there is important potential in EU equality law to combat discrimination, given the law's broad scope and dual nature as both an economic and a fundamental social right. However, Countouris and Ratti caution that this potential may not be realized, given some structural doctrinal deficiencies in EU equality law as interpreted and applied by the Court of Justice of the EU (CJEU).

#### CONCLUSION

The sharing economy's rapid growth has disrupted existing business models and displaced incumbent industries. It has created challenges for all levels of governments as they struggle to enforce existing regulations or create new regulations amid a climate of innovation and uncertainty. And for individuals it has, in some cases, rendered work more precarious, tax compliance more challenging, and discrimination even more pernicious.

The rapid growth and change that mark the sharing economy also make it difficult for scholars who seek to understand and evaluate it. As such, the contributions in this Handbook try to take a step back at a moment in time when the sharing economy, while not entirely new, is still in its adolescence, and to offer perspective on where this new economy came from, how it is developing, and how it is being shaped by, but also transforming, existing areas of law. We hope that, by establishing a deep, multi-disciplinary, and comparative understanding of the law of the sharing economy as it stands today, in 2018, the Handbook will frame for discussion going forward the issues, questions, and challenges that regulators, individual citizens, and scholars must continue to grapple with in the decades ahead.