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Meaghan Murphy

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MEAGHAN MURPHY∗

Cities as the Original Sharing Platform: Regulation of the New “Sharing” Economy

Third-party platform providers in the “sharing economy,” such as Uber and Airbnb, pose a unique quandary to policy makers in determining how to, or even whether to, regulate their activities. Part I of this comment gives an overview of the history of and what constitutes the sharing economy. Part I will also provide background on Uber and Airbnb’s development, corporate model, and the challenges they pose that require regulation. Part II of this comment examines the current regulatory environment of the Uber and Airbnb analogues, the hotel and taxi industry. In addition, Part II discusses how those regulations have been applied to third party platform providers. Part III provides a brief overview of the proposed methods of third-party platform regulation in the sharing economy. Finally, Part IV posits that the most efficient method of managing the sharing economy is

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∗ J.D. Candidate 2017, University of Maryland Francis King Carey School of Law; B.A. in International Relations, Washington College, 2011. I would like to thank the staff of the Journal of Business & Technology Law for their thoughtful feedback and assistance in publishing this comment. I dedicate this comment to my mother, Marcia, who has always supported and encouraged me to improve myself and achieve my dreams. I also dedicate this comment to my family who gave me the push I needed to pursue a law degree and never doubted that I would excel.

1. Brian Chesky, Shared City, MEDIUM (Mar. 26, 2014), https://medium.com/@bchesky/shared-city-db9746750a3a (“Imagine if you could build a city that is shared. Where people become micro-entrepreneurs, and local mom and pops flourish once again. Imagine a city that fosters community, where space isn’t wasted, but shared with others. A city that produces more, but without more waste. While this may seem radical, it’s not a new idea. Cities are the original sharing platforms.”).

2. Infra Part I.
3. Infra Part I.
4. Infra Part I.
5. Infra Part II.
6. Infra Part II.
7. Infra Part III.
through localized, responsive and quick acting regulations that reflect the sharing economy’s amorphous nature, which is best done at the local and community level.8

I. THE SHARING ECONOMY: WHAT IS IT AND HOW DID IT COME TO BE?

A. How Did the “Sharing Economy” Come to Be?

Activities collectively referred to as “the sharing economy” have been around long before the advent of apps like Uber or Airbnb that serve as digital third-party platforms to connect individuals with something to share and those who desire those services. Throughout history, communities have pooled their resources together in order to share amongst themselves and efficiently manage those resources.9 Examples of this practice can be found in the Native Americans, the Maasai in Kenya, and many villages in Europe that had “commons,” communal farming, hunting and grazing areas.10 Commons continue to exist today in the form of public parks, libraries, community resources, etc.11

The sharing economy was not limited to tangible goods or property. Many professions that required specialized training and involved peer-to-peer transactions had organizations that set regulations for the provision of their services, such as their salaries, tools, and work quality.12 The public nature of these specialized peer-to-peer transactions—doctors, lawyers, merchants, and other crafts—mandated some organization, such as guilds in medieval Europe or professional associations, to provide a framework that allowed the most efficient use of specialist services.13

These sharing practices have begun to re-emerge thanks to the facility of organizing peer-to-peer transactions with new technology.14 With emerging

8. Infra Part IV.

9. Molly Cohen & Arun Sundararajan, Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy, 82 U. CHI. L. REV. DIALOGUE 116, 124–25 (2015); see also Sofia Ranchordas, Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy, 16 MINN. J. L. SCI. & TECH. 413, 456 (2015) (“Sharing practices are far from unique to the 21st century. Instead, they are primitive practices that were historically used to bind and connect communities, but became diluted in our consumerist society, where we … for[got] the benefits of sharing.”).

10. Self-Regulation and Innovation, supra note 9, at 124–25.


12. Self-Regulation and Innovation, supra note 9, at 125.

13. Id.

14. Does Sharing Mean Caring?, supra note 9, at 456 (“Online platforms are taking us back to the time when we used to trust strangers and offer them shelter and food, trade goods with them to seal bonds of
research on the effect cars and other industrialized technology have on the environment, the recent movement towards protecting the environment has also served as an impetus to encourage individuals to share their excess resources. Finally, the weak economy forced many people to look for alternative sources of income and consider the nature of their consumption. The goal of sharing economy proponents is to build a more sustainable economy that focuses more on community building and sharing between strangers. However, the reality has been an attempt by a few powerful companies to extend de-regulation into previously protected portions of our lives by spending “billions of dollars … challenging democratically made laws around the world,” with an end result of the sharing economy “reshaping cities without regard to those things that make them livable.”

B. What is the Modern “Sharing Economy”? As should be clear from the various purposes listed above for the resurgence of the sharing economy, the “sharing economy” can be a bit of a misnomer. The sharing economy lacks a common definition due to the wide variety of goods, services, and activities that can be included under the umbrella term. However common terms which frequently fall under the auspices of the “sharing economy” include: “‘collaborative consumption,’ ‘peer economy,’ or ‘collaborative economy;’” the “gig economy” or “access economy.” The key element to all of these involves friendship, and share items in order to avoid acquiring goods that we do not need more than once or twice in a lifetime.”

17. PRACTICING LAW IN THE SHARING ECONOMY, supra note 15, at 4–6 (explaining the benefits of sharing activities and organizations that allow for more community development and self-reliance in the face of an uncertain economy).
18. WHAT’S YOURS IS MINE, supra note 11, at 10, 12 (“[T]he Sharing Economy is extending a harsh and deregulated free market into previously protected areas of our lives. The leading companies are now corporate juggernauts themselves, and are taking a more and more intrusive role in the exchanges they support to make their money and to maintain their brand.”). Id. at 10.
19. Does Sharing Mean Caring?, supra note 9, at 457.
20. Id. at 458 (“‘Collaborative consumption’ has been defined in the literature as ‘a form of consumption where people share consumption of goods and services online.’”).
21. Id. at 457.
22. The Editorial Board, Defining ‘Employee’ in the Gig Economy, N.Y. TIMES (Jul. 18, 2015), http://www.nytimes.com/2015/07/19/opinion/sunday/defining-employee-in-the-gig-economy.html?_r=0. The “gig economy” refers to online digital platforms that employ “independent contractors” to provide the services the platform advertises. Id.
23. PRACTICING LAW IN THE SHARING ECONOMY, supra note 15, at 4–5. The “access economy” refers to the ability to access things an individual needs without owning it. Id.
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sharing a service or resource, with or without monetary compensation.\textsuperscript{24} Generally, the sharing economy also promotes more efficient use of resources.\textsuperscript{25} For the purposes of this article, the term “sharing economy” will be used to include all of the above concepts since they each have an impact on the effective regulation of sharing economy activities.

The range of activities included in the sharing economy exist in a gray area on a spectrum between private acts and commercial activity.\textsuperscript{26} At the private end of the scale lay activities not subject to regulation as the private acts of individuals.\textsuperscript{27} At the commercial end of the scale lay activities subject to regulation, taxes, and other laws.\textsuperscript{28} The dichotomy between these two types of activities is reflected in the given name of the sharing economy. “Sharing” is generally an action motivated by generosity with no thought of profit, whereas an “economy’s” primary function is to increase and distribute profit.\textsuperscript{29}

Janelle Orsi, an expert in the field of sharing economy transactions, recognizes four “platforms” within the gray area of the spectrum encompassed by the sharing economy.\textsuperscript{30} The first platform encompasses “casual, spontaneous, and one-time transactions.”\textsuperscript{31} This includes activities such as lending a friend your car, sharing extra tomatoes from your garden, or bringing a dish to a neighborhood block party. These transactions lack a formal structure and are motivated out of a sense of generosity and the relationship shared between participants.\textsuperscript{32} Obviously, this kind of “transaction” would not be subject to government regulations.

The second platform is slightly more formal, but still closer to the personal end of the spectrum. “Building agreements” allow individuals with pre-existing relationships to make slightly more formal arrangements.\textsuperscript{33} This may involve agreeing to rotate childcare duties with neighbors or arranging a car pool with co-workers.\textsuperscript{34}

The third platform in the gray area on the sharing economy spectrum is closer to commercial activity. This platform involves “building organizations” to create lasting sharing institutions in a community.\textsuperscript{35} This level of the sharing economy is

\begin{itemize}
\item \textsuperscript{24} \textit{Does Sharing Mean Caring?}, supra note 9, at 457.
\item \textsuperscript{25} Id. at 416.
\item \textsuperscript{26} \textit{Practicing Law in the Sharing Economy}, supra note 15, at 262.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} \textit{What’s Yours is Mine}, supra note 11, at 16.
\item \textsuperscript{30} \textit{Practicing Law in the Sharing Economy}, supra note 15, at 10.
\item \textsuperscript{31} Id.
\item \textsuperscript{32} Id.
\item \textsuperscript{33} Id. at 262.
\item \textsuperscript{34} Id. at 11.
\item \textsuperscript{35} Id.
\item \textsuperscript{36} \textit{Practicing Law in the Sharing Economy}, supra note 15, at 11.
\end{itemize}
more distant from the personal transactions of the earlier two levels, as it allows the sharing arrangement to continue regardless of the continued participation of individual members.\textsuperscript{37} An example of this type of organization is a neighborhood food cooperative.\textsuperscript{38}

Finally, the most formal platform of the sharing economy envisioned by Orsi is “building larger-scale infrastructure” to create an ongoing sharing economy.\textsuperscript{39} This level is also the closest to a commercial activity. This level builds “platforms,” similar to those created by third-party platform providers like Uber and Airbnb, integrated into the community, town or region with the “cooperation of multiple stakeholders and leadership by [the] local government[].”\textsuperscript{40} An example of this level of sharing economy is a community-wide bike-sharing program.\textsuperscript{41} The sharing economy exists on a blurred line between the personal and the professional, which makes it a challenge to regulate.

C. Uber and Airbnb: The Titans of the Sharing Economy\textsuperscript{42}

The challenge of sharing economy regulation is highlighted by the wide variety of sharing services available. Individuals can share their homes, cars, parking places, used clothing, tools, time, and capital via online platforms.\textsuperscript{43} Two platforms will be used as examples throughout this article to highlight potential regulatory solutions: Uber and Airbnb.

Uber is a ride-sharing service offered around the world.\textsuperscript{44} Uber hires local “partner drivers,” as independent contractors who use the Uber digital platform application to offer their driving services to consumers.\textsuperscript{45} Uber drivers set their own hours, but they are subject to a background check and must buy the insurance Uber offers.\textsuperscript{46} Uber sets the prices and charges the passenger electronically via an algorithm that takes into account the destination and time of day, so that no cash

\begin{thebibliography}{99}
\bibitem{37} Id.
\bibitem{38} Id.
\bibitem{39} Id. at 12.
\bibitem{40} Id.
\bibitem{41} Id.
\bibitem{42} \textit{What's Yours is Mine}, supra note 11, at 12 (“For many people, these two companies are the Sharing Economy, and they have given rise to a legion of imitators pitching venture capitalists with their efforts to be ‘the Uber of this’ or ‘the Airbnb of that.’”).
\bibitem{43} Molly Cohen & Corey Zehngebot, \textit{What's Old Becomes New: Regulating the Sharing Economy}, 58 Bos. B.J. 34, 34 (2014) (“Citizens can share space in their homes (Airbnb), seats in their car (Lyft, Sidecar, UberX), places to park (Park Circa), used clothing (ThredUp), outdoor gear (gearcommons), time in the day (TaskRabbit, Instacart), and even capital (Zopa, Prosper).”).
\bibitem{44} \textit{Find a City}, UBER, https://www.uber.com/cities (last visited Oct. 25, 2016).
\end{thebibliography}
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changes hands. In exchange for this service, Uber takes a percentage of the payment for itself. Uber drivers and passengers also have the ability to rate each other, enabling drivers and passengers to make educated decisions about whether to pick up a passenger or get in the car with a driver. When a driver’s or a passenger’s rating gets too low, Uber kicks them off the service.

Airbnb is a home-sharing service that functions similarly to Uber and has faced many similar obstacles. Airbnb hosts may offer up their homes for strangers to stay in. Airbnb takes a percentage of any booking fee and collects taxes where applicable. The entire transaction is conducted online with no cash changing hands. Airbnb differs from Uber in that its hosts set their own prices. Airbnb also relies on host and guest ratings to determine who retains access to the service.

The vast majority of Airbnb’s business takes place in cities that are major tourist centers, which, unsurprisingly, is where the vast majority of their regulatory disputes have also occurred. Like taxi drivers and Uber, Airbnb has encountered problems with local regulations when hosts are found to be running illegal hotels. Cities with large amounts of Airbnb postings experience issues with affordable housing shortages for permanent residents, destructive tourists, and higher crime rates for activities like prostitution. New York in particular has been hard hit by housing shortages for permanent residents. This resulted in a legal dispute between the New York Attorney General, Eric Schneiderman, and Airbnb. The Attorney General’s office believed many hosts were violating housing regulations

48. What’s Yours Is Mine, supra note 11, at 64.
50. Id.; see also What’s Yours Is Mine, supra note 11, at 72.
53. Id.
54. Id.
56. What’s Yours Is Mine, supra note 11, at 35 (“The highest-profile dispute has been in New York City, but it has also run into problems in all its major markets, including Amsterdam, Los Angeles, Berlin, Barcelona, and Paris.”).
57. Does Sharing Mean Caring?, supra note 9, at 419.
61. What’s Yours Is Mine, supra note 11, at 35.
that prohibited renting out an apartment for periods of less than 30 days.\textsuperscript{62} One New York State Senator complained that Airbnb was recruiting hosts without regard for their risk of eviction,\textsuperscript{63} noting that online businesses have become highly profitable by ignoring state and local laws and ignoring the damage their business models cause to communities.\textsuperscript{64} Airbnb frequently states that 87% of its hosts rent out the residence in which they live via the Airbnb website.\textsuperscript{65} However, statistics show that, at least in New York, the remaining 13% of hosts have more than one listing on Airbnb and make up more than 40% of the listings city-wide.\textsuperscript{66} Additionally, the bulk of the listings (60%) in New York were for an entire home or apartment, not the “shared room” idea that Airbnb espouses.\textsuperscript{67} A report released by the New York Attorney General’s office in October 2014 concluded that over half of Airbnb listings were breaking the short-term rental law for multiple-dwelling buildings.\textsuperscript{68} Additionally, the report found that a small minority of hosts with multiple listings made up at least a third of Airbnb’s revenue.\textsuperscript{69} Finally, listings in Manhattan and Brooklyn made up 97% of the company’s New York revenue.\textsuperscript{70}

Surveys of listings in other major cities find that this pattern of professionalized Airbnb home renting carries over throughout the world.\textsuperscript{71} Organizations like Uber or Airbnb do not represent a true peer-to-peer economy. On the spectrum of private activities to commercial enterprise, these organizations hue closer to commercial enterprises. Uber and Airbnb are third-party intermediaries that disrupt the producer-consumer exchange or co-owner relationship characteristic of many true peer-to-peer (P2P) economies.\textsuperscript{72}

\begin{flushleft}
\begin{footnotesize}
\textsuperscript{64} Id.
\textsuperscript{65} What’s Yours is Mine, supra note 11, at 36–37.
\textsuperscript{66} Id. at 37.
\textsuperscript{67} Id.
\textsuperscript{69} Id. (6% of hosts with more than two listings made up 36% of Airbnb’s revenue); see also What’s Yours is Mine, supra note 11, at 38.
\textsuperscript{70} What’s Yours is Mine, supra note 11, at 38.
\textsuperscript{71} Id. at 39 (“Finally, despite the emphasis on regular people sharing the homes in which they live, hosts with multiple listings do make up a substantial part of the company’s business. The makeup differs from city to city.”). Id. (“In Paris, the company’s biggest city, entire homes make up nearly 90% of Airbnb’s business, and in major centers such as Berlin, Amsterdam, and Lisbon they make up over 70%.”).
\textsuperscript{72} Infra Part I.
\end{footnotesize}
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exchange for their work. Additionally, organizations like Uber and Airbnb usually take a percentage of the money a service provider earns. An Uber driver’s or Airbnb host’s options are limited to whether or not they will participate in the sharing economy as contractors. They do not have the right to make management decisions or receive equal ownership rights in the company. Without these third party intermediaries, it is possible that the sharing economy service providers would not have offered up their time and possessions. The uncertainty of how to classify or regulate these individuals, who are not quite employees (professional providers) nor contractors (private individuals), is a challenge across all third-party platforms.

II. REGULATED INDUSTRIES AND THE SHARING ECONOMY: WHEN IS A RAVEN LIKE A WRITING DESK?

The majority of the regulations that effect third-party platforms like Uber and Airbnb are municipal regulations, the same regulations that generally dictate which permits, licenses, etc. the hotel and taxi industries need to operate. Enforcement of these local regulations is generally carried out on a complaint-driven basis. Generally, regulators prefer to avoid stepping in to enforce those regulations in the hopes that parties will be able to resolve the problem themselves. Thus, there is a certain amount of leeway built into regulations; this gray area of enforcement combined with “blurred boundaries between non-commercial and commercial activities” characteristic of the sharing economy is what third-party platforms like Uber and Airbnb exploit to avoid formalized industry regulations. In order for regulators to effectively manage the scaling-up of traditionally private activities by the sharing economy they must also be able to draw boundaries within this gray

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73. Infra Part II.C.
75. Supra Part IV.

The Hatter opened his eyes very wide on hearing this; but all he said was 'Why is a raven like a writing-desk?' … 'I believe I can guess that,' [Alice] added aloud. 'Do you mean that you think you can find out the answer to it?' said the March Hare. 'Exactly so,' said Alice. 'Then you should say what you mean,' the March Hare went on. 'I do,' Alice hastily replied; 'at least—at least I mean what I say—that’s the same thing, you know.' 'Not the same thing a bit!' said the Hatter. 'Why, you might just as well say that 'I see what I eat’ is the same thing as 'I eat what I see'! … ‘Have you guessed the riddle yet?’ the Hatter said, turning to Alice again. 'No, I give it up,' Alice replied: ‘what’s the answer?’ 'I haven’t the slightest idea,' said the Hatter.
77. WHAT’S YOURS IS MINE, supra note 11, at 40.
78. Id.
79. Id.
80. Id.
area of the commercial spectrum. The current legal framework to regulate industries like the hotel or taxi business is not well-suited for regulating the amorphous commercial exchanges of the sharing economy.

Most of these regulations were designed with a competitive, not collaborative, economy in mind.81 In regulated industries, such as housing, the relationship between participating individuals is polarized.82 Additionally, the purpose of these regulated industries is usually to make a profit. Scholars typically attribute three primary motivations to participation in a competitive economy: personal, commercial, or charitable.83 The various motivations dictate the level, type, or lack of regulation assigned to it.84 The scale of the involvement also plays a part in the type of regulation.85 The motivations of the individuals and organizations in the sharing economy can be less clear-cut.86 Frequently, sharing economy participants may be involved in activities that straddle the line between any two of those three motivations.87 Finally, a transaction in the sharing economy may not involve money, whereas money is one side of the presumed exchange in a competitive economy.88 A transaction in the sharing economy may involve work for food, or good for good, with no money changing hands.89

The legal gray area that transactions in the sharing economy exist in make it difficult to regulate under current laws. Moreover, the ever-evolving nature of the sharing economy makes it difficult to create new laws that will be responsive to future developments and changes. Thus regulators are forced to ask the question: are transactions in the sharing economy private actions that should not be regulated or are they commercial activities that merit the same type of regulation as the professional industries on which they infringe?

A. Industry Regulations Protect Consumers and the Market

This conundrum requires regulators to consider the purposes and types of regulation available. A regulation “refers to the use of legal instruments to

82.  Id. (providing as an example the relationship between a landlord-tenant where there is a clear division of duties and rights apportioned to each with little to no overlap, which is less clear in a collaborative economy).
83.  Id. at 14.
84.  Id.
85.  WHAT’S YOURS IS MINE, supra note 11, at 40 (“For those of us living on streets with driveways: most of us have no problem with occasional yard sales; if a neighbor starts to run a yard sale every weekend we might get irritated with the cars parked in the street; if half a dozen people on the street are constantly having yard sales, then it starts to disrupt the community and maybe the city should enforce its zoning laws.”).
86.  PRACTICING LAW IN THE SHARING ECONOMY, supra note 15, at 15.
87.  Id.
88.  Id.
89.  Id. at 16.
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implement social and economic policy objectives. There are multitudes of regulations and the purposes of each are varied. Regulations may be designed to protect consumers or marketplaces, regulate a profession, protect communities and ecosystems, protect a resource or public necessity, protect workers or contractors in a particular industry, or ensure equitable access to public accommodations. Generally, regulations are a necessary corrective measure to address market failure in the form of “inefficient or inequitable outcomes.” P2P transactions in the sharing economy are particularly susceptible to market failure absent some form of regulation, be that via government or self-regulation. There are various theories to explain the existence and form of different regulations. One such example is the “public interest theory,” which suggests that regulations emerge from public demand in response to a market failure. The “capture theory” of regulation suggests that regulations serve the interests of the regulated industries. Regulations can ensure the public welfare, but applying those regulations to the emerging sharing economy presents unique challenges.

Taxi regulations are largely determined by the city the drivers work in, but usually they involve registration, vehicle inspections and maintenance, caps on prices, universal accessibility, extensive background checks, and minimum insurance requirements. Two common regulations require taxi firms to offer universal access: covering the entire city and ability to transport anybody without discrimination. Some taxi regulations require drivers to have knowledge of the geography and landmarks of the city. However, regulations are not limited to the quality and service of the individual taxi. Often the supply of taxis is regulated, usually in the form of a “taxi medallion,” to better manage traffic congestion by considering the number of private drivers on the road and the availability of other means of public transportation.

90. Self-Regulation and Innovation, supra note 9, at 119.
92. Self-Regulation and Innovation, supra note 9, at 120.
93. Id.
94. Id. at 120 n.9.
95. Id.
98. What’s Yours Is Mine, supra note 11, at 68.
99. Id. at 60 (“In a few cities, being a taxi driver is a skilled occupation, the most famous being London with its examination ‘The Knowledge.’ Applicants must memorize all 25,000 streets in the city, along with any businesses or landmarks on them, before they can become a driver, a task that takes several years and which is often compared to qualifying for to practice law or medicine.”).
100. Id. at 60–62.
Hotel regulations vary by municipality, but generally hotels and bed-and-breakfasts must register with their city, apply for permits and licenses, pass periodic health and safety inspections, and pay tourist taxes. By avoiding these expenses, Airbnb hosts have a financial advantage with none of the responsibilities or consumer safeguards guaranteed by city regulations.

The scale of the sharing economy creates the same problems that regulations were intended to fix in the hotel and taxi industry. New digital platforms that facilitate peer-to-peer transactions in the sharing economy are innovative and respond to a need in the marketplace. Some research suggests that economic activity on these digital platform benefit lower income consumers more than others. Regulations provide uniformity in the quality of services and ensure the provider is well-qualified for the services offered. They ensure that even if a consumer suffers from information asymmetries about her driver, such as driving skills, she knows that he had to meet specific certifications in order to receive

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A license may be issued or renewed under this subtitle only if: (1) all dwelling units are currently registered under Subtitle 4 [Non-Owner-Occupied Dwellings; Vacant Structures] of this article; (2) the registration fees and all outstanding interest and late fees required by Subtitle 4 have been paid; (3) the premises have been inspected by the Commissioner; (4) the premises are in compliance with State laws and regulations governing lead paint; and (5) the premises are not subject to an unabated violation notice issued under § 116 [Unsafe Structures] of the Baltimore City Building Code.


It is hereby declared that intensive occupation of multiple dwelling sites, overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire, and improper sanitation of multiple dwellings in certain areas of the state are a menace to the health, safety, morals, welfare, and reasonable comfort of the citizens of the state; and that the establishment and maintenance of proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards are essential to the public welfare. Therefore the provisions hereinafter prescribed are enacted and their necessity in the public interest is hereby declared as a matter of legislative determination.

See also WHAT’S YOURS IS MINE, supra note 11, at 42.

102. WHAT’S YOURS IS MINE, supra note 11, at 42; Permit Locator, S. F. BUS. PORTAL, http://businessportal.sfgov.org/permits-licenses (last visited Oct. 25, 2016) (listing permits and licenses—common to most large cities—required to run a bed-and-breakfast or hotel in San Francisco, such as a certificate of authority to collect transient occupancy tax, hotel & emergency shelter program permit, food facility registration, seller’s permit, manager’s food handling certification, weights & measures automated point of sale registration, sign permit, food handler’s card, building permit, weighing & measuring device permit).

103. Does Sharing Mean Caring?, supra note 9, at 417.

104. Self-Regulation and Innovation, supra note 9, at 129.

105. Does Sharing Mean Caring?, supra note 9, at 461.

106. Self-Regulation and Innovation, supra note 9, at 120.
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permission to give rides to passengers.\(^{107}\) The late night bar patron who calls a taxi knows that prices will be the same regardless of the time of night due to taxi regulations. If a patron books a room at a hotel, she knows that the hotel has to meet specific quality and safety tests to keep its doors open.

The providers or “independent contractors” on sharing economy platforms do not face the same types of regulations. There are risks involved in transactions on the part of both the consumers and the providers that would benefit from regulation.\(^{108}\) Sharing economy providers may practice fraudulent behavior, unsafe behavior, or carry inadequate insurance to compensate consumers for injuries they receive.\(^{109}\) However, regulation of these innovative new platforms has the potential to quash the benefits they provide to society. Regulations may slow the “growth of employment” and the investment in new technology by these digital platforms.\(^{110}\) Additionally, regulations passed in reaction to sharing economy platforms currently in existence may inhibit the creation of future sharing economy practices or not appropriately regulate those future practices.\(^{111}\)

B. Regulations for the Sharing Economy Have Been Negotiated and Lobbied in Most Cities.

Regulation of industries such as hospitality and taxis vary by municipality; thus there is no standard set of regulations that apply to all third-party platforms. Inconsistency between municipal regulations have resulted in varied approaches to regulating Uber and Airbnb. However, hotel and taxi regulations, regardless of geography, share some similarities in terms of protecting consumer safety generally via permits, licenses, and quality checks.

Ride-sharing services like Uber infringe on the same services provided by the heavily regulated taxi industry, which has been known to spark protests amongst taxi drivers.\(^{112}\) Some states have taken action by imposing different sets of rules on “Transportation Network Companies” like Uber.\(^{113}\) These rules allow for freelance

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108. Does Sharing Mean Caring?, supra note 9, at 469.
109. Id. at 423.
110. Self-Regulation and Innovation, supra note 9, at 116.
111. Does Sharing Mean Caring?, supra note 9, at 421.
113. WHAT’S YOURS IS MINE, supra note 11, at 58 (“California became the first state to create a separate set of rules for what it called Transportation Network Companies (TNCs), Uber and Lyft were the main
driving via ridesharing apps but require the drivers to explain how they will accommodate disabled passengers.\textsuperscript{114} However, these regulations are not firmly enforced, as Uber claims that the Americans with Disabilities Act does not apply to it because it is not a public service.\textsuperscript{115} Other cities have answered the conflict between taxis and Uber in different ways. Berlin and Brussels banned the Uber ridesharing service completely.\textsuperscript{116} Later, the Frankfurt District Court banned Uber nationwide in Germany.\textsuperscript{117} The court noted the lack of necessary licenses and insurance, as well as the unfair competition to the taxi industry to justify its decision.\textsuperscript{118} In London, Uber faced a suit by the taxi industry who claimed that Uber’s smartphone application qualified as a “taximeter,” which regulations dictate may only be used in licensed taxi cabs.\textsuperscript{119} The taxi industry lost the suit, but Uber still faced local protests.\textsuperscript{120} These different approaches highlight the importance of the community and context in which Uber offers its services when determining regulation.

Regulation of Airbnb has likewise taken many different forms depending on the city. In particular, New York has vigilantly fined Airbnb hosts who rent rooms or homes to strangers in contravention of local housing regulations.\textsuperscript{121} Other cities, like Amsterdam, have relaxed regulations to allow Airbnb hosts to rent private homes to tourists.\textsuperscript{122} In 2012, after finding that about half of Airbnb’s 4,000 Amsterdam listings were illegal\textsuperscript{123} and not paying tourist taxes, Airbnb and Amsterdam reached an agreement that Airbnb would collect taxes on behalf of their hosts.\textsuperscript{124} This effort to reduce regulatory uncertainties by relaxing regulations is a marked contrast to New York’s approach. In Portland, Oregon, Airbnb and the city partnered on a “Shared City” initiative, which legitimized Airbnb and required its hosts to pass

beneficiaries. The TNC framework has since been adopted by Colorado, as well as Seattle, Minneapolis, Austin, Houston, and Washington.”).

\textsuperscript{114} WHAT’S YOURS IS MINE, supra note 11, at 68.
\textsuperscript{115} Id. at 69.
\textsuperscript{116} Does Sharing Mean Caring?, supra note 9, at 418.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id. at 418–19.
\textsuperscript{120} Id. at 419.
\textsuperscript{121} Does Sharing Mean Caring?, supra note 9, at 419.
\textsuperscript{122} Id. at 420.
\textsuperscript{123} Loek Essers, Amsterdam Using Airbnb Listing Service to Identify Illegal Rentals, IT WORLD (Feb. 4, 2013), http://www.itworld.com/article/2716001/it-management/amsterdam-using-airbnb-listing-service-to-identify-illegal-rentals.html. Amsterdam city regulations required residents who rented out their homes to register with the city, keep business records, limit the number of guests to a maximum of four people, and rent no more than 40% of the floor area of the house. Id.
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safety inspections, notify neighbors, and buy a permit. 125 Meanwhile, Airbnb would pay taxes on behalf of its hosts. 126 Unfortunately, this effort has not yet proven to be successful as only 166 of 1600 hosts applied for the permit by its deadline. 127 It is clear that there is not one clear approach to regulating sharing economy practices effectively.

III. THERE IS NO SCHOLARLY CONSENSUS ON THE BEST LEVEL OF GOVERNMENT TO REGULATE THE SHARING ECONOMY.

Many sharing economy activists advocate that individuals who participate as equal stakeholders in local sharing economies enjoy the benefits of sharing their services and goods within the community. However, international organizations, such as Uber or Airbnb, should not be regulated in the same way as these truly local enterprises. Scholars differ as to the best method, proposing everything from a global regulatory platform to municipal regulations. However, in order to efficiently regulate the sharing economy, local governments are the best option in order to respond to rapidly advancing technology and innovation. Local governments are in the best position to distinguish between professional providers taking advantage of loopholes in industrial regulations and casual participants in the sharing economy. This places cities in the best position to create appropriate regulations for their unique circumstances.

The appropriate governance level at which to regulate the sharing economy is a contentious matter amongst scholars. Some believe that a global regulatory platform would be the most efficient means of managing the sharing economy. 128 Alternatively, advocates for regulation on the national scale believe that Congress could adapt successful state and municipal sharing economy regulations to protect and manage emerging markets. 129 Others recommend a hands-off approach from the government that allows third-party platforms of the sharing economy to regulate themselves. 130 Finally, some recommend a synergistic approach of cooperation

125. Shared City, supra note 1; see also Portland, OR, AIRBNB (May 9, 2016), https://www.airbnb.com/help/article/875/portland—or (last visited Nov. 16, 2016).
126. WHAT’S YOURS IS MINE, supra note 11, at 45–46.
127. Id. at 46.
between government—whatever the level—and the third party platforms themselves.\(^\text{131}\) The global regulatory platform is frequently lauded as the most efficient means of managing corporations, since compliance with one nation’s regulations would allow a corporation to automatically be in compliance with all others.\(^\text{132}\) By streamlining regulations, Felix Salmon—one of the major proponents of this type of regulation—believes that a “huge part of any company’s regulatory headaches would disappear,” which would increase their incentive to comply with regulations.\(^\text{133}\) However, the critics of a global regulatory platform are just as vocal. One such critic called this approach “a pipe dream. A fairly worthy pipe dream, but a pipe dream.”\(^\text{134}\) These critics recognize that politics moves more like the tortoise than the quick hare of innovation, and are similarly resistant to change.\(^\text{135}\) The global regulatory platform will also prove to be unwieldy since the vast differences between the various nations, and the variety of regional differences within those nations, will make it difficult to come to a consensus about necessary and appropriate global regulations.\(^\text{136}\) Finally, in a market where these third party platforms already abdicate responsibility for the actions of their local independent contractors, while continuing to operate illegally through those same contractors, it is unlikely that a global regulatory platform would deter them.\(^\text{137}\)

As far as national regulatory platforms, the Federal Trade Commission and antitrust law are two of the most common that spring to mind regarding how the sharing economy could be regulated. When corporations are permitted to set their own review processes and oversight, even regarding otherwise legal and beneficial activities,\(^\text{138}\) profit margins may frequently take more precedence than consumer security.\(^\text{139}\) In situations where the corporation does not have sufficient financial incentive to change its behavior, the federal government must occasionally step in

\(^{131}\) Self-Regulation and Innovation, supra note 9, at 116–117.


\(^{133}\) Id. (“[Uber and Airbnb], I’m sure, would be ecstatic to be able to work within a single global regulatory regime. They could agree to do things like collect local taxes, comply with privacy regulations, and have clearly-defined avenues for redress when things go wrong.”).

\(^{134}\) Id.

\(^{135}\) Id.

\(^{136}\) Id. (“It’s not numbers alone that make a flexible global regulatory platform impossible. It’s the scope of regulations Salmon is proposing that makes the concept itself border on absurd. There’s no replacement for local regulatory measures (say, you could at one time Uber a motorcycle on Paris’s tiny, urban corridors, but not on Milwaukee’s massive highways) by global fiat.”).

\(^{137}\) The Regulatory Revolution That Just Won’t Happen, supra note 133.


\(^{139}\) Id. at 79.
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and pass regulations to modulate the corporation’s behavior. Proponents of this level of regulation believe that a national regulatory platform could set minimum standards for states, similar to the creation of California’s Transportation Network Companies, in order to create a stop-gap for more specific and locally tailored regulations to fill. Proponents believe this would provide the appropriate balance between protecting emerging technology and consumer safety. This has the advantage of providing consistency across the nation, mitigating the bureaucratic actions and red tape required to enter a new market. However, unlike finance and securities, the industries and services in the sharing economy are typically of a local character that is unsuited for federal management.

At the far end of the spectrum are scholars who believe that sharing economy companies and the innovations they introduce to the market should be largely or completely unfettered by regulation. Advocates of this regulatory approach believe that regulators are more likely to stifle innovation and technological advancement than protect those they purport to represent. Generally, proponents of this approach believe that in order to remain competitive in the market, these corporations will have the incentive to moderate their own behavior and ensure that consumers remain satisfied with their services. However, similar to the critical points mentioned in the other regulatory approaches above, corporations, which are generally profit-motivated, are unlikely to serve as the best overseers of their own actions. Regulation to some degree is clearly necessary, and the best approach may be found in city hall.

IV. SOLVING THE REGULATION PROBLEM: A SLIDING SCALE AND SUBSIDIARITY- ALLOWING LOCAL GOVERNMENTS TO SET THE REGULATIONS

Due to the complexity and ever-evolving nature of the sharing economy, proper regulation requires a level of nuance that is unsuitable for the national level. While companies in all sectors of the economy face certain types of overlapping regulation

140. Id. at 82.
141. Krauss, supra note 130, at 373.
142. Id.
145. Self-Regulation and Innovation, supra note 9, at 116–117. (“We argue that the resolution of these challenges must include self-regulatory approaches. Self-regulation is not the same as deregulation or no regulation. Rather, it is the reallocation of regulatory responsibility to parties other than the government. We explain why platforms should not be viewed as entities to be regulated but rather as actors that are a key part of the regulatory framework in this arena.”).
on the local, state, federal, and international level, the preemption of state or municipal regulations on the sharing economy by a national or international regulations creates the risk of inconsistent or unfair outcomes. No broadly drawn regulation could possibly be suitable or effective in every municipality. Applying subsidiarity principles to regulation of the sharing economy allows municipalities to address these gaps. Additionally, local regulators are in the best position to distinguish between professional providers and casual participants in the sharing economy. Local regulators will be able to target the professional providers who should be subject to the more stringent regulations and the casual participants subject to regulations similar to a private citizen. The practice of distinguishing between regulations for large firms versus small or independent providers is very common. Therefore, it is appropriate for a regulatory body to set different regulations depending on the characteristics of the business.

A. The Time and Money Earned by Participating in the Sharing Economy Should Dictate the Level of Regulation.

Despite the claims to the contrary, the version of the sharing economy espoused by third-party platforms like Uber and Airbnb is less altruistic and about neighbors sharing amongst themselves than it is about a small number of organizations making massive profits. Like many corporations, the goal is less about community development and more about increasing profit margins. Hence, many third-party platforms’ “independent contractor” or middleman approach to their workforce in lieu of cultivating full-time, knowledgeable employees in the community. Many third-party platforms claim that their contractors are only participating to make some extra money. This has come to the forefront of the new sharing economy in recent court cases. However, this language is very similar to the language of employers when women entered the work force, it is not a real job—even if it is

146. See generally Patient Protection and Affordable Care Act, 45 C.F.R. § 155.20 (2016) (distinguishing between the types of rules that apply to different types of employers and insurance plans); accord William D. Mitchell, Employer Health Care Plans After the Affordable Care Act §§ 7.3-7.9 (2016); see also Danielle Keats Citron & Frank Pasquale, The Scored Society: Due Process for Automated Predictions, 89 Wash. L. Rev. 1, 20 n.113 (2014) (suggesting setting a threshold for regulation of data-mining that permits smaller businesses’ consumer research to be unregulated).

147. Supra note 146.


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your primary source of income—so drivers do not need the protections given to employees.\textsuperscript{150}

In order to effectively manage the balance between allowing part-time casual workers who want to make some extra money and those using sharing economy sources in ways similar to the more heavily regulated industries like hotels and taxis, a sliding scale of “independent contractor” participation should be implemented. This should prevent the type of abuses seen in many cities by landlords emptying rent-controlled apartments for more lucrative short-term Airbnb rentals\textsuperscript{151} or the taxi industries fear of being supplanted by full-time Uber drivers.\textsuperscript{152} This sliding scale should also force third-party platforms to be more aware of those abusing the system in order to avoid regulations. If an individual participates above a certain amount of hours, at that point they should be considered an employee of the third-party platform. This would force those organizations to keep a better internal management system to comply with local regulations. By considering those individuals “employees” of the platform, it would make the company liable for the individual’s actions in the case of regulatory violations while protecting the independent contractors from being abused by the platform system.\textsuperscript{153} Additionally, it would draw a clearer line between private sharing facilitated by the third-party platforms and those using the platforms professionally to circumvent regulations.

This type of distinction was acknowledged in San Francisco’s Proposition F.\textsuperscript{154} It proposed different, more stringent regulations for those who rent above 75 nights a year for a single unit.\textsuperscript{155} This recognizes the difference between the true sharing economy participants working as private individuals and those working as platform

\textsuperscript{150} What’s Yours is Mine, supra note 11, at 10–11, (“The language of ‘a little extra money’ turns out to be the same as that used about women’s jobs forty years ago, when they were not seen as ‘real’ jobs that demanded a living wage, and so did not need to be treated the same, or paid as much, as men’s jobs.”).

\textsuperscript{151} Bianca Barragan, Rent-Controlled Tenants Were Evicted, Then Found Their Apartments on Airbnb, CURBED (Dec. 17, 2015), http://la.curbed.com/archives/2015/12/ellis_act_evictions_airbnb_lawsuit.php; see also WHAT’S YOURS IS MINE, supra note 11, at 39.


\textsuperscript{153} The Scored Society, supra note 147, at 19 (“One of the great accomplishments of the legal order was holding the sovereign accountable for decision making and giving subjects basic rights, in breakthroughs stretching from Runnymede to the Glorious Revolution of 1688 to the American Revolution. New algorithmic decision makers are sovereign over important aspects of individual lives. If law and due process are absent from this field, we are essentially paving the way to a new feudal order of unaccountable reputational intermediaries.”).


\textsuperscript{155} Id.
employees. The sliding scale of employment theory is not new.\textsuperscript{156} Currently, there is a binary in the marketplace between employee and independent contractor with nothing in between.\textsuperscript{157} An ideal marketplace would include a continuum with possibilities in the middle, but that is not how the market currently works.\textsuperscript{158} Acknowledging the realities of the current market, regulators can take advantage of the current bipolar system of employment to encourage accountability. By classifying individuals on third party platforms as employees when they pass a certain threshold of time worked or money earned, regulators can force cost-averse companies to be more vigilant in monitoring their contractors. By preventing abuse of their systems, third party platforms will ensure that individuals cannot circumvent local hotel or taxi regulations and thereby subject the company to regulatory liability. The independent contractors on these third party platforms are currently in a kind of limbo regarding their work. Depending on their level of engagement with the platform, particularly if it serves as their primary source of income, they are not true independent contractors. It is this extreme level of participation that creates problems which necessitate regulation and removes the activity from the private realm.\textsuperscript{159}

This is a similar predicament to those individuals who participate in crowd-sourcing. Crowd-sourcing is a relatively new phenomenon wherein businesses create minor, discrete tasks and then publish them in an online forum for the general public to complete, generally in exchange for a small amount of monetary compensation.\textsuperscript{160} Occasionally, no money is offered, but individuals will contribute regardless.\textsuperscript{161} Businesses engage in this practice for many reasons, from gathering data to avoiding hiring an employee to complete the same task. Individuals engage
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in either skilled or un-skilled tasks in exchange for pay, of which the platform will generally keep a percentage.162

Thus, the structure of a third-party platforms’ independent contractor system is similar to the crowd-sourcing phenomenon. Tests proposed for determining whether click-workers are entitled to employee benefits may be similarly applicable in determining the level of regulation for which the individual working for the third party platform is subject. One test proposed to regulate click-workers, which would be similarly applicable to independent contractors on third party platforms, requires regulators to place themselves in the shoes of the workers.163 This test proposes that in addition to income, the amount of time invested in the activity should be considered in determining whether the work is being “meaningfully used to support one’s livelihood.”164 The consideration of time and income should allow those casually using these platforms to earn extra income without being subject to the same stringent regulations as professionals in the same industry.165 Local regulators are in the best position to judge an individual’s veracity than state or national regulators, much like how an appellate court does not challenge the trial judge’s opinion of a witness’ veracity.

B. Subsidiarity: Why Local Government Is Best Suited to Regulate the Sharing Economy.

As discussed in Part III, there are many opinions about which level of government is best suited to regulate the sharing economy. This Comment suggests that local government is the best vehicle for sharing economy regulation by applying principles of subsidiarity. Subsidiarity is a theory of governance which suggests that “action should be taken at the lowest level of government at which particular objectives can adequately be achieved.”166 This is not a novel suggestion.

Many nations have a vertical governance structure that grants different levels of government specific powers and responsibilities. For example, in the United States we adhere to principles of federalism. Federalism permits the states a large degree of autonomy to manage their own affairs. One of the purposes of this policy is so that

162. Click-Work or Click-Play, supra note 157, at 20.
163. Id. at 33.
164. Id. at 34.
165. Id. at 33 (“[I]t is less important to protect the penny-earners unless the clicker’s financial situation dictates otherwise. The court should not craft its dragnet to capture negligible amounts.”).
166. George Bermann, Taking Subsidiarity Seriously: Federalism in the European Community and the United States, 94 COLUM. L. REV. 331, 338 (1994) (“The notion that action should be taken at the lowest level of government at which particular objectives can adequately be achieved can be applied in any polity in which governmental authority is lodged at different vertical levels.”).
states may serve as proving grounds for effective policies of national problems. The inverse of this concept is subsidiarity. Instead of testing policy plans or regulations on the local or state level to later implement at the national level, subsidiarity suggests that if they are successfully regulated at those lower levels then there is no need for a higher level of government to preempt those regulations. It is important to note that many of the pertinent regulations implicated by the sharing economy are already resolved at the state and municipal level. Therefore, there are many advantages to allowing this model to stand and avoiding preemption by national or international regulatory frameworks.

Much like regulation of traffic and housing ordinances, local governments generally have the best grasp on the unique problems and pitfalls of regulation in their communities. Local governments are typically more responsive and act more quickly than state and federal government since there is a congruence in interests that does not require as much compromise as larger regions. Additionally, local governments are already the means by which many shared goods are provided, such as sports fields, libraries, and pools, to name a few. Finally, local regulation would encourage innovation by allowing cities to experiment with different regulations in order to arrive at the most efficient means of managing the sharing economy. This experience combined with an understanding of the community character makes local government the ideal vehicle to regulate the sharing economy.

Third-party platforms like Uber and Airbnb have recognized the power that local governments hold over the success of their business. In Texas, Uber launched attack ads against a councilmember who proposed enhancing the background checks on Uber drivers. This is not a new tactic for Uber. Airbnb has also gotten into the political fray by launching an ad campaign in San Francisco in response to

167. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).


169. Orly Lobel, The Law of the Platform, LEGAL STUD. RES. PAPER SERIES, Res. Paper 16-212, 51 (Mar. 2016), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2742380 (“A promising aspect of the contemporary law of the platform is that many of the regulatory questions of Web 3.0, including zoning, consumer protection, residential and transportation safety, worker rights, and occupational licensing, are traditionally resolved at the state and local levels. This decentralization lends to a productive natural experiment. Local governments can learn to see the benefits of collaborating and participating in the platform economy and to try different paths toward the policy goals with which they are charged.”).

170. WHAT’S YOURS IS MINE, supra note 11, at 23.


172. Id.; see also WHAT’S YOURS IS MINE, supra note 11, at 19.
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proposed restrictions on how often an Airbnb host may rent their home.\(^\text{173}\) San Francisco’s Proposition F would cap private short-term rentals, such as those offered by Airbnb hosts, at 75 nights per unit.\(^\text{174}\) Additionally, there would be regulatory oversight to ensure compliance with housing codes, payment of hotel taxes, filing of quarterly reports with the city, and increase the ability of those affected by the rentals to have standing to bring lawsuits.\(^\text{175}\)

Though third-party platform providers are international corporate juggernauts, their work force of “independent contractors” live and operate in their local communities. For example, it would be unusual to think of riding an Uber for a significant distance, as it is typically used for short to medium distance rides in urban centers. Uber is not available everywhere in a state, but usually only in cities and surrounding areas.\(^\text{176}\) Municipal and state government is already the primary means of enforcing regulations regarding community resources and localized industries, such as the hotel and taxi industry, and it is well situated to create and enforce regulations of individuals participating in the sharing economy. After all, “[e]ach city’s needs are different, because the stresses and challenges facing each city is different.”\(^\text{177}\) As sociologist Juliet Schor points out, there is a mental disconnect between treating the sharing economy and traditionally regulated industries or local public commons as substantially different merely because the internet is involved.\(^\text{178}\) Thus, local regulation is the best approach for managing such a broad and unwieldy field as the sharing economy and should not be preempted by national or international regulatory platforms.


\(^{175}\) Id.


\(^{177}\) WHAT’S YOURS IS MINE, supra note 11, at 22–23.

\(^{178}\) Id. at 19 (“There is great diversity among activities as well as baffling boundaries drawn by participants... Airbnb is practically synonymous with the Sharing Economy, but traditional bed and breakfasts are left out... Shouldn’t public libraries and parks count?”).

\(^{179}\) Aaron Mesh, City Commissioner Nick Fish Berates Airbnb Lobbyist, Willamette Week (Dec. 22, 2014), http://www.wweek.com/portland/blog-32614-video_city_commissioner_nick_fish_berates_airbnb_lobbyist.html (“This has shades of Uber all over it. We invoke the Internet, and we claim an exemption from all the other laws and rules of society, because we’re somehow ‘on the Internet.’ We welcomed you to Portland. We’re pleased that you’ve harnessed the Internet. But sir, we have to make sure that the guests in one of your hosts’ places—and you do not inspect your hosts’ places—we have to make sure that guest is safe.”).
V. CONCLUSION

Third party platforms in the sharing economy, though they may utilize typically private activities, should not be regulated in the same manner as private citizens.\textsuperscript{180} To efficiently regulate these businesses, local governments are best-situated to respond to rapidly advancing technology and innovation.\textsuperscript{181} Furthermore, they already control many regulatory issues affected by the rise of the sharing economy.\textsuperscript{182} Principles of subsidiarity suggest that regulation should therefore remain at this level and not be preempted by national or international regulations.\textsuperscript{183} Regulation of the individuals working as “independent contractors” for these organizations will be a key aspect in effective regulation.\textsuperscript{184} Local regulations should allow sufficient flexibility for truly private individuals to participate via the platforms, without overly stringent regulations, while preventing circumvention by those who abuse the third-party platforms.\textsuperscript{185} In order to do this, local regulators must place themselves in the shoes of the individuals working for the platform and analyze the time invested and income received by those sharing economy activities.\textsuperscript{186} This should also encourage the third-party platforms to be more diligent in assuring that their “contractors” do not abuse local regulations, or risk facing the liability of those contractors as employees.\textsuperscript{187} By applying principles of subsidiarity and recognizing a spectrum of sharing economy participation from casual participant to professional provider, local regulators should have flexibility to encourage the innovations and benefits brought about by the sharing economy without infringing upon traditionally regulated industries and endangering public health or safety.

\begin{footnotes}

\footnotetext[180]{Supra Part IV.}
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