



The Rise of the Sharing Economy



Susan McLean introduces us to the characteristics and challenges of the sharing economy, outlines the considerable UK developments to make special provision for it and highlights the legal issues that have to be borne in mind by those operating in it

Collaborative consumption, or the 'sharing economy' as it is also known, refers to the business model that involves individuals sharing their resources with strangers, often enabled by a third party's digital platform. In recent years, there has been an explosion of these peer-to-peer (P2P) services. Indeed, it is estimated that 25% of UK adults are already sharing online and that global revenues in the sharing economy could rise from £9 billion today to £230 billion in 2025

The more established sharing economy businesses include online marketplaces for goods and services (eBay, TaskRabbit), platforms that provide P2P accommodation (Airbnb), social lending (Zopa), crowdfunding (Kickstarter) and, of course, car sharing (Uber). But although these may be some of the best-known platforms, new sharing economy businesses are appearing at an unprecedented rate; you can

now find a sharing platform for almost anything. People are sharing meals, power tools, dog kennels, boats, driveways, bicycles, musical instruments – even excess capacity in their rucksacks.

The Internet – and, more specifically, social media platforms and mobile technology – has brought about this economic and cultural shift. Some commentators are almost evangelical about the potential disruption to traditional economic models that the sharing economy provides, and it is clear that collaborative consumption offers a compelling proposition for many individuals. It helps people to make money from underutilised assets and tap into global markets; it gives people the benefits of ownership but with reduced costs and less environmental impact; it helps to empower the under-employed; and it brings strangers together and offers potentially unique experiences. There's clearly both supply and demand, and a very happy set of users for a great many of these new P2P services.

Challenges

But, of course, not everyone is in favour of these sharing economy companies. Naturally, most of the opposition comes from incumbent businesses or entrenched interests that are threatened by the new competition or those that have genuine concerns about the risk posed by unregulated entrants to the market. Authorities and

traditional businesses have challenged and continue to challenge sharing economy businesses in a variety of ways, including arguing that the new businesses violate applicable laws, with accommodation providers and car-sharing companies appearing to take the brunt of the opposition to date.

One of the best-known sharing economy companies, Airbnb, a platform that enables individuals to rent out part or all of their home, has faced opposition in various cities around the world. Hoteliers and local regulators complain that homeowners using these platforms have an unfair advantage by not being subject to the same laws as a traditional hotel. Authorities have also cited zoning regulations and other rules governing short-term rentals as obstacles to this burgeoning market. It has been reported that some residents have been served with eviction notices by landlords for renting out their apartments in violation of their leases, and some homeowner and neighbourhood associations have adopted rules to restrict this type of short-term rental.

Similarly, companies that enable car-sharing services have also faced a barrage of opposition, both from traditional taxi companies and local authorities. Uber, the best known (and highest valued) of these companies, is currently facing challenges, legal actions and bans in various countries across the world.

Lawmakers and businesses around the world are continuing to grapple with how to interpret existing laws in the context of P2P sharing economy business models and considering whether new regulation is required. Of course, it is a particular feature of the market for P2P platforms that much of the regulatory activity tends to be at the municipal or local level, rather than national. This tends to make for a less cohesive regulatory picture.

The UK

The UK is one country where the lawmakers and stakeholders appear keen to provide support to this burgeoning sector. In recent months there has been a series of new developments aimed at helping the sector overcome existing challenges.

In September 2014, the UK's Department for Business, Innovation and Skills (BIS) commissioned a review of the UK sharing economy, led by Debbie Wosskow, the founder of sharing economy start-up, Love Home Swap. In November 2014, her report titled 'Unlocking the UK's Sharing Economy' was published (Sharing Economy Report). Recommendations in the Sharing Economy Report ranged from encouraging carpooling to reducing insurers' barriers and creating a new trade body. Alongside the Sharing Economy Report, the British Insurance Brokers' Association (BIBA) launched an insurance guide aimed at helping overcome insurance barriers that businesses and individuals face when providing or using sharing economy services.

On 9 February 2015, the government announced that it was scaling back the law

restricting short-term letting of homes under s 25 of the Greater London Council (General Powers) Act 1973 to enable Londoners to participate in the sharing economy. The change of law is included in the Deregulation Act 2015, which received Royal Assent on 26 March 2015.

On 6 March 2015, a new trade body for the sharing economy, Sharing Economy UK (SEUK), was launched. SEUK is a voluntary body that aims to represent and champion the sector and ensure good business practice. Its members include Airbnb, TaskRabbit and Zipcar. Interestingly, Uber is not a member, although it is reported to be in discussions with SEUK. According to those reports, there is some debate about whether Uber falls within the definition of a sharing economy business in the UK – in the UK Uber operates as a private hire vehicle dispatcher, which is a traditional business model.

On 18 March 2015, BIS published its response to the Sharing Economy Report. In the BIS report, the government gave its support for the sharing economy sector. It said that it was 'removing barriers that stop people from sharing their assets, and will empower people to make more from their assets and skills'. It emphasised that it is committed to ensuring that the UK is the best environment in the world for sharing economy businesses to flourish. BIS agreed with many of the recommendations made in the Sharing Economy Report. In particular, it confirmed that:

- it will be launching two sharing economy pilots in Leeds and Manchester which will cover concepts such as

shared transport and shared public space;

- the Office for National Statistics will assess the feasibility of developing statistics on the UK sharing economy and publish proposals by summer 2015;
- it intends to further improve and speed up the process of applying for criminal record checks by ensuring that the application process is digital by default and can be integrated into third-party services including sharing economy platforms through the development of an API;
- it will enable government employees to use sharing economy solutions to book accommodation and transport where this represents value for money;
- it is committed to making it easier for people participating in the sharing economy to understand their tax obligations and report their income – this will include producing bespoke guidance;
- it will amend its model agreement for an assured shorthold tenancy, look to clarify and strengthen private residential landlords' statutory responsibilities when considering requests from tenants to sublet, and legislate on prohibiting the use of clauses in private fixed-term residential tenancy agreements that expressly rule out subletting or otherwise sharing space on a short-term basis;
- it will encourage local authorities to use their business rates discretionary relief powers to support the sharing economy, including shared workspaces and makerspaces;
- it will amend its planning guidance to local authorities

to clarify that it should be possible for non-residential properties to rent out their existing parking spaces without requiring planning permission, provided that there are no substantive planning concerns; and

- the Department for Work and Pensions will update its guidance to Jobcentre Plus staff by autumn 2015, to ask them to signpost job-seekers to time bank and task-sharing opportunities, where appropriate.

However, there were a number of areas where the government disagreed with the recommendations of the Sharing Economy Report. For example, it rejected the suggestion that task-sharing platforms should be subject to less regulation than traditional employment agencies or that taxi or private hire vehicle legislation should not apply to drivers who make a profit from ridesharing.

Key Legal Issues for a Sharing Economy Business

Of course, it's not only the lawmakers and authorities grappling with legal and regulatory issues. Anyone launching a social economy business needs to consider whether and how various thorny legal and regulatory issues will affect both that operator and the users of its platform. Often an operator may need to tailor its services to anticipate particular legal or regulatory concerns. These include the following.

- *Consumer protection.* Operators need to consider the extent to which their platforms comply with applicable consumer protection laws, for example when drafting appropriate terms of use for the platform.

- **Data protection.** Operators need to address issues of compliance with applicable data protection laws in terms of the processing of the personal data of both users and users' customers, and prepare appropriate privacy policies and cookie notices.
- **Employment.** Where services are being provided, the operator needs to consider compliance with any applicable employment or recruitment laws, for example, rules governing employment agencies, worker safety and security, and minimum wage laws.
- **Discrimination.** Operators need to consider potential discrimination issues; for example, what are the consequences if users refuse to loan their car or provide their spare room on discriminatory grounds, such as a person's race or sexuality? Could the operator attract liability under anti-discrimination laws?
- **Laws relating to payments.** One key to success for a P2P business model is to implement a reliable and effective payment model. But most countries impose restrictions on certain types of payment structures in order to protect consumers' money. Where payments are made via the P2P platform rather than directly between users, operators need to address compliance with applicable payment rules and potentially deal with local payment services laws. Fundamentally, it needs to be clear whose obligation it is to comply with these laws.
- **Taxation.** Operators need to consider taxation issues that may apply – both in terms of the operator and its users. Some sectors of the economy – hotels, for example – are subject to special tax rates by many cities or tax authorities. In such cases, the relevant authorities can be expected to examine closely – and potentially challenge, or assess municipal, state or local taxes against – P2P models that provide equivalent services. In some places, collection of such taxes can be a joint and several responsibility of the platform operator and its users.
- **Safety and security.** When strangers are being brought together via a platform, security issues need to be addressed. Most social economy businesses rely on ratings and reciprocal reviews to build accountability and trust among users. However, some platforms also mitigate risks by carrying out background and/or credit checks on users.
- **Liability.** One of the key questions to be considered is who is legally liable if something goes wrong. Could the platform attract liability if a hired car crashes or a host's apartment is damaged?
- **Insurance.** Responsibility for insurance is also a key consideration. Given the potential risks triggered by these new business models, some insurance companies have been refusing to provide insurance coverage if policyholders engage in P2P sharing. Clarity over such issues is needed, which is why initiatives such as the BIBA report have been welcomed.
- **Industry-specific laws and regulations.** Companies need to consider issues of compliance with any sector-specific laws, whether existing laws or new regulations that are specifically introduced to deal with their business model (as we have seen with crowdfunding rules and P2P lending rules in the USA and the UK). As noted above, some sharing economy businesses have already experienced legal challenges from regulators, and as collaborative consumption becomes even more widely adopted, regulatory scrutiny is likely to increase. Accordingly, rather than resist regulation, the best approach for sharing economy businesses may be to create trade associations for their sector and/or engage early on with lawmakers and regulators to design appropriate, smarter policies and frameworks for their industry – as we have seen above, this is certainly the approach that the UK sharing economy sector is taking.

Conclusion

Erasmus said, *'There is no joy in possession without sharing.'* Thanks to the proliferation of these new digital platforms, millions of strangers around the world are now experiencing both the joy – and the financial benefits – of sharing their resources. However, the legal challenges need to be carefully navigated for the sharing economy to move from being merely disruptive to an established part of the economy. ●

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