the Australia and New Zealand
School of Government

ANZSOG Case Program

Regulating the P2P Economy

2015-179.1

Imagine being collected by a stranger in a private vehicle and driven to the home of someone you've never met for a week-long holiday in an unfamiliar city. Ten years ago, the idea that millions of people would be willing to pay for exactly that would have seemed improbable at best. However, rapid refinement of e-commerce tools, mass expansion of social networking and widespread uptake of internet-enabled mobile devices instigated massive changes to the way people worked, consumed and related – changes that spurred the emergence of a large-scale, global 'peer-to-peer (P2P) economy'. From renting driveways across the city to crowdfunding community projects across the world, the possibilities are near endless.

The 'P2P economy' – often used interchangeably with terms such as the 'sharing economy' or the 'collaborative economy'[1] – typically refers to digital platforms which facilitate the direct trade, exchange, gifting, loaning or leasing of goods and services between users. Though organised 'sharing' is hardly new, the technological capacity to dramatically reduce transaction costs and expand availability is relatively recent. P2P platforms, which can be commercial ventures or not-for-profit, tend to focus on one of the following functions:

- the resale or redistribution of goods (e.g. Gumtree, eBay)
- greater utilisation of goods or assets (e.g. Airbnb, Uber)
- the purchase, exchange or donation of labour (e.g. Airtasker, community timebanks)
- increasing access to finance (e.g. Kickstarter, Kiva)
- increasing productive capacity (e.g. skillsharing, open education resources).

[1] Though similar, these terms are different. There is also currently no widely agreed definition for 'sharing economy'.

While P2P enterprises usually connect individuals to each other, business-to-peer and government-to-peer platforms are often included. Many P2P platforms have been dubbed 'disruptive innovations' or 'disruptive technologies' due to the way they have fundamentally changed existing markets or created new ones, often displacing established players in the process. Though exactly what constitutes a genuinely 'disruptive' innovation is subject to debate.[2] A common feature of P2P outfits, however, is the removal of intermediaries such as agents, brokers, retailers distributors or dealers, to allow suppliers and consumers to transact directly. Some resemble directories or classified-type listings; others emulate aspects of time-shares, libraries or cooperatives. Business models vary but typically involve membership fees, commissions and/or advertising revenue.

Benefits to users are usually pitched in terms of lower costs, greater flexibility and convenience, release from ownership burdens, increased choice, enhanced profits, income opportunities, and the option to broaden one's social horizons and have novel experiences. P2P enterprises often emphasise collective benefits such as reduced waste and inefficiencies, expanded access to markets, more sustainable use of resources, increased community connectedness and cultural exchange. Trust oils the gears of the P2P economy. Potential risk to participants in dealing with unknown and often unvetted parties is typically offset by peer feedback and rating systems, allowing a degree of insight into prospective providers or clients. To further reassure users, many companies have added escrow payments, insurance, and dispute resolution services.

Life on the P2P frontier

Numerous P2P services arose out of the 2008 Global Financial Crisis and a slow economic recovery, coupled with long-term austerity measures, spurred considerable growth in the sector. A new generation of digital natives was also coming of age: organising their lives online, sharing large tranches of personal information and interacting with strangers across the globe was unremarkable. They were less attached to the idea of physical ownership, wary of long-term commitment and attracted to new and interesting experiences. At the same time, they faced much more uncertain futures, lumbered with greater debt and diminished job prospects. P2P services had been most enthusiastically embraced by young urban professionals in cosmopolitan metropolises, such as New York and San Francisco, where high living costs, hectic schedules and limited space were the much lamented downsides to big city living.

The size of the P2P economy was difficult to estimate but a 2014 Price Waterhouse Coopers analysis of five key sectors placed total global revenues at $15 billion[3] and predicted that it could rise to as much as $335 billion by 2025.[4] Harder to estimate was the amount of money saved. Interestingly, many people were unwitting participants in the P2P economy. Research conducted for Virgin indicated that the majority of adult Britons had never heard the term 'sharing economy' despite many being users of second-hand auction and free-cycle sites.[5]

While proponents of P2P enterprises welcomed a new world of freedom, mutuality and opportunity, others worried about potential and very real costs. Research into the P2P economy was still nascent and the impact of P2P services varied considerably depending on the sector, pre-existing regulatory settings and government responses. Despite the utopian claims, however, most for-profit 'sharing' enterprises actually involved nothing of the sort and users' motivations seemed chiefly pragmatic.[6] From the *Harvard Business Review*:

---

[2] http://fortune.com/2015/11/17/uber-disruption-christensen/
[3] Unless otherwise stated, all currency in US dollars (USD).
[4] http://pwc.blogs.com/press_room/2014/08/five-key-sharing-economy-sectors-could-generate-9-billion-of-uk-revenues-by-2025.html
[5] http://www.virgin.com/entrepreneur/infographic-is-there-a-lack-of-understanding-around-the-sharing-economy
[6] http://www.parc.com/publication/3552/muddle-of-models-of-motivation-for-using-peer-to-peer-economy-systems.html

> Competition between companies will not hinge on which platform can provide the most social interaction and community, contrary to the current sharing economy rhetoric. Our research shows that consumers simply want to make savvy purchases, and access economy companies allow them to achieve this, by offering more convenience at a lower price. Companies that emphasize convenience and price over the ability to foster connections will have a competitive advantage. Start-ups that have tried to facilitate direct connections between consumers have found low levels of trust between strangers when there is no market mediation.[7]

Lee-Sean Huang, a designer and strategist specialising in social enterprises, wrote that 'At best, the "sharing economy" label is a brand marketing strategy that attempts to take advantage of the "feel good" halo associated with words like "community" and "sharing." At worst, it is a way of obfuscating commercial transactions as "sharing" as a way to evade the reach of regulation and oversight.'[8] He coined the term 'WeWashing' to describe the latter phenomenon, 'The idea…is not meant to create an exclusive binary between "real" sharing and "fake" sharing, "real" community and "fake" community, but to draw attention to the fact that a spectrum exists,' he said.[9]

Playing catch-up

The swift uptake of P2P platforms caught many regulators on the back foot as they scrambled to devise policy responses. One factor in this was the generational divide between policymakers and P2P entrepreneurs (and many of their users). Another was the strategies some P2P companies have used to neutralise or circumvent regulation. Aggressive marketing, rapid expansion and astute exploitation of legal loopholes or outdated legislation meant that services might operate for months or years before authorities take action. Major players have the means to lobby politicians for favourable treatment, mount persuasive PR campaigns, wage lengthy legal battles and absorb the cost of enforcement activity such as fines. Regulators, by contrast, are often constrained by limited resources and the need to consult extensively before establishing new codes or guidelines. Different standards and regulatory regimes across jurisdictions can complicate matters further. So can conflicting goals, for example, the desire to promote greater efficiency whilst also protecting jobs. As P2P platforms grew, concerns were becoming more salient, particularly in the following areas.

Workers' rights

Many government officials, unions and workers feared that the P2P economy would foster or hasten a race to the bottom in terms of pay and conditions, especially in sectors where there had already been a pronounced trend towards casual or contract work. Service providers are generally treated as independent contractors, thus lack benefits such as holidays, sick leave or security of tenure, while occupational health and safety is left to client and provider. Yet providers aren't necessarily fully independent either, with some companies stipulating how tasks are to be performed and priced. Companies reserve the right to alter their Terms of Service at any time, which can affect charges, commissions and rating systems. P2P enterprises also don't typically cap provider numbers.

In terms of remuneration, some platforms offered proportional payments for a set menu of services while on others, clients could commission almost any task for whatever they were willing to pay. Activities such as screening clients, waiting for customers to arrive, maintaining assets and equipment, or answering queries are, however, frequently not factored into payments to workers. Although figures are hard to obtain, reports have suggested that jobs in what is increasingly being dubbed the 'gig economy'[10] often paid well below minimum wage, such as those on micro-task sites

[7] https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all
[8] http://www.huffingtonpost.com/leesean-huang/wewashing-when-sharing-is_b_6879018.html?ir=Australia
[9] http://www.huffingtonpost.com/leesean-huang/wewashing-when-sharing-is_b_6879018.html?ir=Australia
[10] The term typically described the world of task-to-task or project-to-project freelance work which may or may not be facilitated by P2P platforms.

like Amazon's Mechanical Turk, where the hourly rate could be as low as an average $2-$3.[11] Workers also had few protections, noted academic Trebor Schulz. Wage theft on Mechanical Turk, he claimed, was commonplace and not penalized; workers could be deactivated without warning or cause. While many 'real-world' industries and/or companies are notorious for similar abuses, digital platforms could make them easier to disguise or rationalise. Remarked Schulz:

> In online systems like Amazon Mechanical Turk or CrowdFlower, it is mysterious where the labor is coming from, who is requesting it, and what they are intending to do with it. The workers are tucked away. The concealed workforce is not reflected in their business plans; they only show direct employment. Thanks to this concealed labor pool, it is now possible to build a large company while keeping the number of salaried employees to a bare minimum.[12]

Indeed, many P2P companies relied on it. A number of court cases around the world have sought to determine whether providers on certain P2P platforms can be considered employees, with consistent resistance from companies and differing outcomes. As one writer observed: 'This rising legal retribution is a huge threat to the gig economy. Not being responsible for employees' taxes and benefits allows companies like Handy to operate with 20% to 30% less in labor costs than the incumbent competition...Lose this workforce structure—either by a wave of class-action lawsuits, intervention by regulators, or through the collective action of disgruntled workers—and you lose the gig economy.'[13] Attrition was already significant on some platforms, though precise rates were hard to verify.

The costs to workers weren't solely monetary. Canada's Wellesley Institute, meanwhile, noted that workers in unsteady employment reported poorer wellbeing and higher levels of depression and anxiety, and predicted that expansion of the 'sharing economy' was likely to have a negative impact on many participants and non-participants alike:

> Today's sharing economy is not generating jobs that would traditionally be considered 'good'. Although we currently lack comprehensive data … those who are already excluded from well-paying, secure employment are probably more likely to participate in the service and labour sector of the sharing economy, and therefore will experience greater impacts on their health.[14]

However, it was not yet clear what effects P2P enterprises were having on workforce composition. In Australia, the overall level of casual employment had remained relatively steady over the past decade at just under 25%.[15] Meanwhile, from 2008-2014, the proportion of independent contractors hovered around 9%.[16][17] In her paper for the University of California's Institute for Research on Labor and Employment, Annette Bernhardt wrote that, 'it has been hard to find evidence of a strong, unambiguous shift toward nonstandard or contingent forms of work – especially in contrast to the dramatic increase in wage inequality. This is not to say that there have been no changes in the workplace. But...for enforcement agencies and policymakers, it may be more fruitful to focus on specific industries and regions in assessing when and where pernicious forms of nonstandard work have grown, and which groups of workers have been most impacted.'[18] There were signs that independent contracting was growing in the US[19] but one difficulty, observed Alan Krueger and Seth Harris in their discussion paper for the Brookings Institution was that, 'New and emerging work

---

[11] http://www.technologyreview.com/view/416966/how-mechanical-turk-is-broken/
[12] http://www.publicseminar.org/2015/04/think-outside-the-boss/#.VmePjU3osdU
[13] http://www.fastcompany.com/3042248/the-gig-economy-wont-last-because-its-being-sued-to-death
[14] http://www.wellesleyinstitute.com/wp-content/uploads/2015/09/Behind-the-Bargains_How-the-sharing-economy-impacts-health-.pdf p.4.
[15] http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/Quick_Guides/CasualEmploy
[16] http://www.independentcontractors.net.au/Research/How-Many/independent-contractors-how-many
[17] http://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0
[18] http://www.irle.berkeley.edu/workingpapers/100-14.pdf
[19] http://www.forbes.com/sites/gregoryferenstein/2015/12/12/the-gig-economy-appears-to-be-growing-heres-why/

relationships arising in the "online gig economy" do not fit easily into the existing legal definitions of "employee" and "independent contractor" status.'[20] Although, according to their estimates, only approximately 0.4% of the US labour market worked with online intermediaries like Uber, they proposed a new category of 'independent worker' and a set of portable entitlements to protect this emerging section of the workforce.[21]

On the plus side, P2P platforms can offer attractive benefits. For some workers, they provide a convenient way to earn a living, or supplement their incomes, how and when they want, minus excessive agency fees and restrictions. P2P employment platforms usually present few barriers to entry; set-up costs are minimal and there are rarely any training requirements. P2P platforms also present new possibilities for workers to organise, share information, support each other and advocate for a better deal. Providers for large P2P companies have created forums for discussing issues and some have already organised protests or strike action. There is also the potential for workers/suppliers to create their own independent platforms.

Public safety and consumer protection

Many if not most occupations, services and products have legally mandated minimum standards to protect consumers, suppliers and the wider public, often coupled with formal mechanisms to oversee accreditation or quality assurance. By contrast, P2P platforms tend to offer little beyond basic identity or background checks and customer ratings. It is usually up to the parties to a transaction to check credentials, ensure compliance with applicable laws and deal with the aftermath of fraud, damage or default. Terms and Conditions on P2P platforms invariably require users to agree that they are using the site at their own risk and that the company is not liable for any loss or injury incurred. This is irrespective of whether the company in question is operating legally in their jurisdiction.

Sites increasingly provide user guidelines, warnings and safety tips but these can be easily overlooked or ignored. Feedback systems are not impervious to manipulation and the capacity of P2P businesses to address service failures, disputes, or other issues, in a timely, transparent manner has been brought into question. While some companies have worked quickly to improve practices and rectify problems, others have refused to act until the volume of complaints or bad publicity became too loud to ignore. As communications strategist and academic Brad Chase observed:

> The vast majority of sharing economy startups aim to build bridges between buyer and seller without any consideration for other audiences. No understanding that private and public properties only exist in the context of the community and the neighbors and peers in it. No recognition that the sale, lease or sharing of products and services cannot be conducted in a bubble.[22]

P2P operations face an ongoing tension between improving service and safeguards to attract and retain users, and avoiding costly/lengthy procedures that might cut profits, raise prices or deter registrations. Added protections, such as criminal checks, or site 'guarantees', can also engender a false sense of security. Meanwhile, the more P2P enterprises regulate user transactions, the greater their potential exposure to legal liability and the harder it becomes to convince lawmakers that they are simply connecting buyers and sellers.

Legal and insurance issues are two areas of great complexity and uncertainty, especially when disputes involve multiple parties in different jurisdictions, or people not party to the original transaction. Many relevant laws and regulations predate the internet. Councils and other authorities are being increasingly called upon to arbitrate conflicts or manage problems caused by P2P

---

[20] http://www.brookings.edu/~/media/Research/Files/Papers/2015/12/09-modernizing-labor-laws-for-the-gig-economy/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf?la=en
[21] http://www.brookings.edu/~/media/Research/Files/Papers/2015/12/09-modernizing-labor-laws-for-the-gig-economy/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf?la=en
[22] http://www.huffingtonpost.com/brad-chase/sharing-is-caring-but-not-millenials_b_5618963.html?ir=Australia

operations and responses can be inconsistent. P2P enterprises have been engaged in talks with insurance companies to develop new products for their users since 'off-the-shelf' insurance policies don't routinely cover sharing economy activities as yet. This leaves many 'buyers' and 'sellers' knowingly or unknowingly exposed to serious risks. The way P2P platforms blur traditional distinctions between commercial and personal spaces and dealings has made it difficult to address contingencies and establish responsibility. For example, service-based P2P companies often don't consider travelling between jobs to be 'work' activity thus site-based insurance policies are unlikely to apply to incidents during this time. Some P2P leaders have expressed a willingness to work with governments to clarify these issues but others have employed a more adversarial approach.

Privacy

P2P platforms can and do collect large volumes of data on their users. What data is stored, how it is secured and used (and by whom) is starting to emerge as a serious issue, as it already is for social networking sites. Indeed, some P2P businesses require users to sign up with their social networking profiles and allow third parties to access their data for identity verification and other purposes. The rights of users to access or delete data stored by P2P platforms are often unclear or not yet determined.

Competition

Governments are under increasing pressure to ensure that P2P platforms are operating on a level playing field with pre-existing operators. P2P platforms rely on a critical mass of users to be profitable and function effectively. Achieving that critical mass almost invariably requires considerable effort and money; leaders in the P2P economy either started with, or quickly attracted, significant capital. Platforms backed by billions of dollars can grow quickly, subsume or undercut competitors and deflect regulatory efforts. As much as P2P platforms may improve competition in certain sectors, especially those with high rents, there is also the potential for monopolies or duopolies to emerge with serious implications for established businesses, new startups, workers, consumers and entire industries. Several of the larger P2P platforms have already been embroiled in controversies over their business practices.

Access and equity

P2P platforms, especially not-for-profit ones, have great potential to give large numbers of people access to goods, services and opportunities that may otherwise be out of reach for financial or logistical reasons. The flipside is that P2P networks can replicate and reinforce existing social hierarchies where race, class, appearance, ethnicity, gender, sexuality and ability (or disability) impact participation. For example, a 2014 Harvard Business School paper revealed that Airbnb's black New York City Hosts charged approximately 12% less than other Hosts for an equivalent rental.[23] Although discrimination is discouraged by the company, the authors argued that the push for ever greater transparency to build trust (through mechanisms such as photos and personal details) could have unintended consequences. How equal opportunity legislation might apply to P2P transactions has not yet been fully explored.

Commentators have also worried that some P2P platforms would exacerbate growing inequality and erode, rather than promote social cohesion. Those poised to make the best use of many P2P platforms are those who already have desirable assets to 'share', for example, an attractive apartment in a convenient location. Success on crowdfunding sites often relies on having sufficient skills and capital to put together an appealing presentation. Meanwhile, access to loans and credit could become increasingly difficult for a new class of 'micropreneurs'. Offering goods and services on

[23] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2377353

P2P platforms did help many people pay bills, rent or mortgages and fund studies. Yet, ironically, P2P platforms also threatened to aggravate cost-of-living issues. The disadvantaged were at risk of being left even further behind. Brand strategist Nick Liddell mused:

> Separating ownership from use is not necessarily a good thing. And it doesn't always lead to more efficient resource use. It has the potential to drive up prices and to expose renters to speculative bubbles in asset prices. It denies them the opportunity to accumulate wealth of their own. It creates the possibility that wealth and income will concentrate further in the hands of a privileged minority. It drives an unpredictable wedge between the 'haves' and the 'have nots'.[24]

For many people, including Kennedy School Professor Steven Strauss, the 'future' looked quite a bit like the past: 'The 21st century sharing economy isn't being embraced because people want "lightweight (asset-free) living". It's usually embraced for the same reasons it was embraced in the 1920s-1930s. For many people, there's not any other choice.'[25] Author Nathan Schneider saw the great promise of P2P, that an economy built on sharing could reduce inequality, slipping away:

> Sharing enables ordinary people to buy less, connect to one another more and keep the economic value they generate in their own communities. But sharing could also make us even more reliant on corporate whims, allowing companies to dictate how, why, when and what we share and extracting fees for themselves in the process. It depends on who winds up controlling the essential resources — from homes to Web servers to gardens — and who benefits from their use. Unless better models are strenuously, creatively pursued, the corporate one will win by default.[26]

Taxation and welfare

If the future is to entail more diversified sources of income and greater employment instability, then governments will have to grapple with a new set of issues around tax collection, including income reporting and forecasting revenues. Greater employment instability also has implications for the provision of welfare and other social services. Collecting taxes on transactions that may be technically illegal has been a contentious issue for some governments. Depending on the jurisdiction, some P2P platforms automatically add government fees and levies to transactions (where applicable) but leave individual income reporting to users. Others leave compliance matters entirely in the hands of users. Several major P2P entities have also come under fire for their own taxation arrangements which see profits earned in one country siphoned to offshore tax havens.

Environmental impacts

P2P platforms often emphasise the environmental benefits of large-scale 'sharing': from less landfill due to the recirculation of goods, to lower carbon emissions through carpooling. Consultant Kyle Hutzler argued that widespread use of these platforms might inspire an even more fundamental change:

> Because the sharing economy decouples ownership of an asset from its use, it could appear to inspire a breaking away from the consumerist mindset that demands the accumulation of ever more goods. With the sharing economy, we can have the middle-class benefits of a car when we need it without feeling the obligation of owning a car to feel middle class. And without a car to own, we can sidestep entirely the social considerations of what kind of car to buy and what it does or doesn't say about our identity and status.[27]

However, it is hard to calculate exactly what impact the P2P economy is having or will have on the environment. Lower travel costs, through home-swapping for instance, might prompt people to travel

[24] http://www.huffingtonpost.co.uk/nick-liddell/sharing-economy_b_6326540.html
[25] http://www.huffingtonpost.com/steven-strauss/welcome-to-the-sharing-economy_b_4516707.html?ir=Australia
[26] http://america.aljazeera.com/opinions/2014/5/sharing-economy-inequality.html
[27] http://www.huffingtonpost.com/kyle-hutzler/the-sharing-economy-at-a-_b_5638328.html?ir=Australia

more frequently. Likewise, people selling unwanted goods could simply go out and buy more with the extra cash and space now available to them.