

# ANZSOG Case Program

## Regulating the P2P economy: uber.com

2015-182.1

Uber's apocryphal origin story goes something like this: two American entrepreneurs are stranded in Paris on a wintry night. In town attending a tech conference, they can't get a cab back to their apartment across the city. 'Wouldn't it be great,' one asks the other, 'if I could just push a button on my phone and get a car?' In reality, the idea that eventually became Uber was one of many concepts they discussed that evening. Yet it stuck. Founders Travis Kalanick and Garrett Camp returned to the United States and in 2010 launched a trial limousine-to-order service called UberCab in San Francisco. Customers and capital soon started rolling in, while they swiftly rolled out the service across America and the globe. By 2015, the company was valued in the region of \$50 billion<sup>1</sup> and had become the world's largest taxi service, despite not owning any cabs or employing any drivers. Uber's business model and controversial tactics earned admirers and detractors, while its rapid proliferation gave it a long head start over authorities. Regulators will likely determine Uber's future, along with that of existing taxi services, but how to put the brakes on this Goliath start-up?

### How the site works

Uber operates by connecting passenger and driver via its smartphone app. Passengers submit a pickup request which is transmitted to the nearest available vehicles. Once a driver accepts the request, the passenger receives vehicle details and arrival notifications. Charges are set by Uber and subject to change, according to demand. The entire transaction occurs via the Uber app – no direct payments occur.

This case was written by Marinella Padula for Dr Michael Di Francesco, the Australia and New Zealand School of Government. It has been prepared from published materials as a basis for class discussion rather than to illustrate either effective or ineffective handling of a managerial situation.

Cases are not necessarily intended as a complete account of the events described. While every reasonable effort has been made to ensure accuracy at the time of publication, subsequent developments may mean that certain details have since changed. This work is licensed under Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Licence, except for logos, trademarks, photographs and other content marked as supplied by third parties. No licence is given in relation to third party material. Version 18122015. Distributed by the Case Program, The Australia and New Zealand School of Government, [www.anzsog.edu.au](http://www.anzsog.edu.au)



<sup>1</sup> Unless otherwise indicated, all currency in US dollars (USD).

## Passengers

Prior to using the service, passengers are required to download the mobile app and set up an account. Only legal adults can register an account and are responsible for all activity on that account. Passengers register their name, age, contact details and credit card, and agree to Uber's Terms of Service including clauses such as:

- 'Unless otherwise agreed by Uber in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. YOU ACKNOWLEDGE THAT UBER DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER.'
- 'Uber reserves the right to establish, remove and/or revise Charges for any or all services or goods obtained through the use of the Services at any time in Uber's sole discretion.'
- 'UBER DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.'<sup>2</sup>

Uber users also agree to Uber's Privacy Policy which permits the company to track, collect and share passengers' personal details, including location and trip data. Users can opt to withhold some forms of information but this can limit the functionality of the app. Furthermore, 'We may share your information – with the general public if you submit content in a public forum, such as blog comments, social media posts, or other features of our Services that are viewable by the general public.'<sup>3</sup>

Once signed up, passengers can summon a vehicle by opening the app and tapping to request a pickup at their nominated location; they can also ask for a fare estimate. Uber uses the information provided and the phone's GPS signals to determine location. When an Uber driver accepts the trip via his/her smartphone, the passenger gets an estimated arrival time plus the ability to track the car's progress and call the driver directly. The passenger also receives the driver's picture, car and plate details, along with a notification as the driver nears the collection point (Exhibit A). When the trip is complete, the passenger's card is charged. Both driver and passenger can rate each other (using a 5-point scale) and leave feedback. Passengers with consistently poor scores can find their access to the service limited or suspended. Drivers who regularly rate below 4 stars risk termination.

Uber offers a selection of different vehicles, varying from market to market (Exhibit B). These range from luxury limousines, SUVs and high-end sedans with licensed chauffeurs, to everyday private vehicles driven by members of the public (known as the UberX service). Prices are calculated using a combination of time and distance travelled, similar to metered taxis. UberX journeys are the cheapest; trips in premium cars are approximately double. Unlike taxis, Uber employs 'surge pricing', whereby charges might rise by 200-400% during peak demand periods, in order to encourage more drivers on to the roads and/or reduce consumer demand. (Customers are notified before surge pricing takes effect). Outside those times, UberX is generally about 30-40% cheaper than licensed taxis.<sup>4</sup> The Uber app allows passengers to split fares with other passengers and share real-time trip details with friends/family. Businesses, meanwhile, can set up corporate accounts.

---

<sup>2</sup> <https://www.uber.com/legal/usa/terms>

<sup>3</sup> <https://www.uber.com/legal/privacy/users/en>

<sup>4</sup> <https://help.uber.com/h/5eefb4df-493c-4e8a-a852-841e4f73e56d>

## Drivers

In 2015, anyone at least 21 years of age with: a valid driving licence; a medium or large four-door vehicle less than 10 years old; a smartphone<sup>5</sup>, and comprehensive car insurance could apply to be an UberX driver. Applicants for Uber's premium services such as UberBLACK need to have a commercial driver's licence, commercial automotive insurance and an Uber-approved vehicle. In some markets, drivers can lease a suitable car through Uber. All applicants are subject to third-party background checks and have to submit identifying information including: a copy of their driver's licence, vehicle registration, banking details, car insurance details, and proof of a completed vehicle inspection.<sup>6</sup> Prospective drivers are checked against a variety of databases for criminal convictions and traffic violations, a process that can take from 3 days to 3 weeks. Drivers are not charged upfront for background checks and do not have to meet Uber representatives in person prior to commencing work. Applicants who have a clean criminal record going back 7 years<sup>7</sup> and do not appear on any sex offender or terrorist registries will be accepted (Exhibit C). Drivers are not required to undergo training, though the company provides customer service standards and tips). Existing driver experience and on-board GPS navigation systems (built into in smartphones) are considered sufficient.

Drivers (or Partners, in Uber parlance) are treated as independent contractors, not employees. They can choose when and how long they work but are advised to accept at least 80% of bookings offered. Driver ratings are based on the average score from the last 500 trips; any driver involved in a serious incident is instantly deregistered. All drivers (and passengers) are required to agree to the Uber Code of Conduct which prohibits discrimination, harassment and abuse. Drivers must comply with relevant local road rules and abstain from drugs and alcohol while working.

Uber drivers (typically) retain 75-80% of the fare while Uber takes a 20-25% commission<sup>8</sup>; a division that compares favourably to mainstream taxi services where drivers might only get half or less of the day's takings unless they are owner-drivers. Uber drivers, unlike most taxi drivers, are responsible for all their on-road costs including petrol, insurance and vehicle maintenance. Drivers are covered by Uber's commercial liability insurance to the value of \$5 million, coverage that only applies after the driver's insurance policy is exhausted. Exactly what circumstances will and won't be covered, however is not entirely clear. Uber has argued that their drivers can earn significantly more on average (in the US at least) than other types of commercial drivers. The company has also claimed that the median income of UberX drivers working 40 or more hours per week was close to \$75,000 p.a. in San Francisco and more than \$90,000 p.a. in New York, which was more than double the typical NYC cabbie's annual earnings.<sup>9</sup> These figures, however, did not account for Uber driver outgoings and proved difficult to verify. Moreover, as Uber reserved the right to change its pricing structure at any time, fares could be revised up or down without prior consultation.

According to research commissioned by Uber<sup>10</sup>, more than 50% of US Uber drivers were part-timers, the majority of whom held other jobs. Almost 20% were drivers for Uber's premium services and approximately 50% had crossed over from for-hire transportation industries.<sup>11</sup> Conversely, roughly half of Uber drivers had never before driven professionally. More than 80% of drivers reported joining Uber to be their own boss, enjoy a flexible work schedule and earn more income to better support

---

<sup>5</sup> Uber drivers downloaded an app which served as their dispatch and navigation system. Uber can supply smartphones to drivers, if necessary.

<sup>6</sup> Information requirements varied somewhat according to the jurisdiction.

<sup>7</sup> Earlier crimes may or may not be picked up by Uber background checks.

<sup>8</sup> This could vary between markets and Uber services. Uber could also levy small additional charges per ride.

<sup>9</sup> <http://www.washingtonpost.com/news/innovations/wp/2014/05/27/ubers-remarkable-growth-could-end-the-era-of-poorly-paid-cab-drivers/>

<sup>10</sup> In selected US cities.

<sup>11</sup> <http://newsroom.uber.com/2015/01/in-the-drivers-seat-understanding-the-uber-partner-experience/>

themselves and their families.<sup>12</sup> Over half of US Uber drivers were aged between 30 and 50, and 86% were men. More than 70% of drivers had dependent children or parents living at home.<sup>13</sup> Seventy-three percent of Uber drivers agreed that they would prefer greater autonomy and flexibility to working regular hours with some benefits and a set salary.<sup>14</sup>

The opportunities were sufficiently enticing that in 2014, Uber was recruiting some 20,000 drivers globally per month. San Francisco's Cab Drivers' Association estimated that 1/3 of its registered drivers had switched to Uber or similar platforms during a 12-month period.<sup>15</sup> Uber operated in more than 230 cities across 60 countries. In the US, more than 137 million Americans had access to Uber with average pickup times of less than 10 minutes.<sup>16</sup> Company estimates suggested the platform was responsible for \$2.8 billion in direct and indirect economic activity in the US alone. Uber was more guarded about its financial position – leaks suggested that the company had yet to turn a profit thanks to its rapid and ambitious expansion. Lyft was its main US competitor but its biggest battles so far had been with the taxi industry and local regulators.

## An industry asleep at the wheel

Uber CEO Travis Kalanick's mission was never to run a taxi service, it was to revolutionise the transport and logistics industry and eventually render private vehicles (and even driving) obsolete for the majority of city dwellers. 'We want to get to the point that using Uber is cheaper than owning a car,' said Kalanick in a 2014 interview, 'Transportation that's as reliable as running water'.<sup>17</sup> The company argued that Uber had potential to cut traffic congestion, reduce pollution and diminish the need for parking. The company was also expanding into courier and car-pooling services and investing in driver-less car technology. 'If we can get you a car in five minutes, we can get you anything in five minutes,'<sup>18</sup> Kalanick claimed. The taxi industry just happened to be a very good place to start.

This was because just about everyone had a story about the parlous state of taxis: the \$50 five-minute journey; the driver who couldn't find a major landmark; the white-knuckle ride at twice the speed limit; the pre-booked cab that never turned up. Women and minority group members often had to contend with discriminatory or other inappropriate treatment. Issues with safety, reliability, availability, courtesy and affordability constituted the bulk of complaints around the world. This included Australia where sprawling cities and patchy public transport networks often made taxi travel unavoidable. Even where service standards were reasonably high, costs could be prohibitive.

Life in the driver's seat was often no better: poor conditions, physical hazards and low wages made it hard to recruit and retain workers. Ownership required a large initial investment. Taxi numbers were typically capped by local authorities who issued licences which could cost tens of thousands of dollars – sometimes hundreds of thousands in secondary markets – or hefty annual fees. Dispatch services, payment processing, accreditation and other requirements boosted operating costs. Most taxi and transport legislation was decades old and companies had not kept pace with customer expectations, workforce needs or new technology. Taxi companies resisted changes likely to increase competition or devalue existing licences. Regulators were often too under-resourced or ill-equipped to enforce existing rules. Uber was well poised to launch an all-out assault on the taxi industry and stir up a very stagnant status quo.

---

<sup>12</sup> <http://newsroom.uber.com/2015/01/in-the-drivers-seat-understanding-the-uber-partner-experience/>

<sup>13</sup> <http://newsroom.uber.com/2015/01/in-the-drivers-seat-understanding-the-uber-partner-experience/>

<sup>14</sup> <http://newsroom.uber.com/2015/01/in-the-drivers-seat-understanding-the-uber-partner-experience/>

<sup>15</sup> <http://www.washingtonpost.com/news/innovations/wp/2014/05/27/ubers-remarkable-growth-could-end-the-era-of-poorly-paid-cab-drivers/>

<sup>16</sup> <http://newsroom.uber.com/2014/05/an-uber-impact-20000-jobs-created-on-the-uber-platform-every-month-2/>

<sup>17</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

<sup>18</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

## Collision course

Uber had run-ins with regulators from the outset. Soon after setting up in San Francisco, the company received a cease-and-desist order from the San Francisco Municipal Transportation Agency, as well as the California Public Utilities Commission. One of their objections was the use of ‘cab’ in UberCab’s name, since it did not have a taxi licence. The company responded by changing its name to Uber and continuing to operate. ‘We’re totally legal...’ said Kalanick recalling the time, ‘and the government is telling us to shut down. And you can either do what they say or you can fight for what you believe.’<sup>19</sup> Uber’s CEO quickly established a reputation for being combative and contemptuous of his critics. ‘Some city-council people are really awesome, but most are uninspired,’ he said. ‘I meet with them as little as possible...If you don’t agree with the core principles, which are the premise of that compromise, then you have to have what I call principled confrontation... that is the thing that we do that I think can rub some people the wrong way.’<sup>20</sup>

A similar situation unfolded in Washington. Uber GM Rachel Holt received notice one day that the DC Taxi Commissioner had ordered a ride. Confident the company was not breaking any laws, she sent the car as requested. The Commissioner took his trip to a city hotel where the waiting press watched him impound the driver’s car and issue \$2,000 worth of tickets.<sup>21</sup> Uber wasn’t going to be cowed, though. Said Holt:

I spent the rest of the day calling every partner that we had, saying, ‘This is what happened. We’re 100% behind you. If anything like this happens again, we’re going to reimburse you for any tickets and any citations. We’re behind you.’ We called every driver personally. We had more drivers on the road that evening than we had ever had before.<sup>22</sup>

Uber tended to enter new markets with its upmarket UberBLACK service before expanding to the lower-cost UberX option. UberBLACK closely resembled existing limousine services which in many jurisdictions were subject to less onerous registration and operation regulations than taxis – regulations that (technically) enabled Uber to operate since all journeys were pre-booked and drivers could not be hailed. Uber viewed itself as a mere go-between linking passenger to driver. ‘We don’t have to beg for forgiveness because we are legal,’ said Kalanick. ‘But there’s been so much corruption and so much cronyism in the taxi industry and so much regulatory capture that if you ask for permission upfront for something that’s already legal, you’ll never get it. There’s no upside to them.’<sup>23</sup> Barry Korengold, president of the San Francisco Cab Drivers Association, described ride-sharing services like Uber as ‘robber barons’. He said: ‘They started off operating illegally, without following any of the regulations and unfairly competing. And that’s how they became big—they had enough money to ignore all the rules.’<sup>24</sup>

Uber’s experiences in San Francisco and Washington formed the template for global rollout: set up in a city with ambiguous or non-existent ride-sharing rules; invest heavily in marketing, especially social media; and recruit influential product champions. Months or years later, when regulators are organised enough to respond, Uber has a strong user base that can be mobilised to lobby lawmakers in its favour. Uber can also use the courts to delay action or challenge regulation. Eventually, the difficulty of enforcement, coupled with public pressure, encourages authorities to capitulate.

Uber’s repertoire reportedly included more dubious means of thwarting regulators and fending off competitors, such as blocking the accounts of transport inspectors. Uber’s ability to track drivers and passengers raised broader issues about data security and user privacy. After Uber investigated an

---

<sup>19</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

<sup>20</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

<sup>21</sup> <http://fortune.com/2015/06/03/uber-an-oral-history/>

<sup>22</sup> <http://fortune.com/2015/06/03/uber-an-oral-history/>

<sup>23</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

<sup>24</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

executive for unauthorised viewing of a journalist's account, protocols governing employee access to user information were reviewed. Other reports suggested an internal 'dirt unit' was set up to discredit critics.<sup>25</sup> Serious concerns about passenger safety also emerged. Critics noted that taxi authorities in many jurisdictions required drivers to provide fingerprints as identity details could be, and had been faked, allowing career criminals to bypass screening.<sup>26</sup> It was not clear how often Uber performed criminal checks after its initial screening.

Uber had also been accused of interfering with competitors such as Lyft by making fake bookings, aggressively headhunting drivers and trying to undermine funding efforts, while Uber's pricing practices were attracting increased controversy and censure. Surge pricing during major events left many customers angry and frustrated, in particular during New York's Hurricane Sandy and Sydney's Martin Place terrorist siege. Following intensely negative publicity about the latter, the company apologised and issued refunds. In the US, Uber reached agreement with regulators to halt surge pricing during national emergencies.<sup>27</sup>

Dropping prices attracted controversy as well. Uber's 2014 decision to slash fares by 20% or more in 16 US markets, in order to squeeze competitors, was opposed by drivers who also had to take a price cut.<sup>28</sup> The company's ability to change pricing and remuneration structures without warning, had led to driver protests in New York and San Francisco.<sup>29</sup> The company claimed that cutting prices increased demand and kept driver earnings steady, but drivers complained that they were earning far less than Uber claimed while on-road expenses remained the same. Online forums enabled contractors to compare notes and push back against Uber and similar companies. Some Uber drivers were concerned that since Uber failed to cap driver numbers, their earnings were likely to decline even further. Said one New York City driver: 'If Uber brings in 1,000 more drivers this week, they will tell everyone to welcome them, but the business is being depleted...There's one pie. Last year, the pie was shared by 20,000 Uber drivers. Now it's being shared by almost 30,000. I am making less money. I don't know about other drivers, but I don't see how they can say they're making more money.'<sup>30</sup> Attrition was significant. Uber reported that only 40% of drivers were still active on the platform 12 months after joining.<sup>31</sup> They argued that it was because it was occasional or stop-gap employment for most Partners; critics argued because it was too difficult to earn a decent living.

## Road rage

Though taxi companies and regulators had typically been slow to respond to Uber's arrival, few were prepared to let the company overtake without a challenge. Taxi operators objected to Uber principally because it was a taxi company in all but name, yet not subject to the same tax obligations and licensing requirements. Regulators harboured a range of concerns, including public safety, revenue collection (individual and corporate) and 'employee' protections such as workers' compensation. Taxis, considered a form of on-demand public transport in many cities, were subject to service agreements that 'ride-share' and hire-car companies were not. Uber meanwhile argued that the taxi industry's woes were largely of its own generation and that governments should not stifle the competition that patrons clearly craved. The company also claimed that its system of checks and balances was no worse (and in many instances vastly superior) to that of taxi operators.

Though some markets had welcomed Uber or not actively obstructed it, opposition appeared to be the norm, extending as far as Hong Kong and Rio. European resistance was especially vocal and

---

<sup>25</sup> <http://www.buzzfeed.com/bensmith/uber-executive-suggests-digging-up-dirt-on-journalists#.tawnAM4gd>

<sup>26</sup> <http://www.cnet.com/news/ubers-background-checks-dont-catch-criminals-says-houston/#!>

<sup>27</sup> <http://www.bbc.com/news/technology-30595406>

<sup>28</sup> <http://techcrunch.com/2014/01/09/big-uberx-price-cuts/>

<sup>29</sup> <http://time.com/92988/uberx-san-francisco-protest-uber/>

<sup>30</sup> <http://prospect.org/article/road-nowhere-3c>

<sup>31</sup> <https://medium.com/@davidplouffe/uber-and-the-american-worker-bdd499ec5323#.i7bcpo8us>

occasionally violent, with protests by taxi companies and drivers in 2014 and 2015. In Paris, riot police had to quell demonstrations as drivers blocked streets and set fire to vehicles (Exhibit D). Mass rallies occurred in Berlin and Madrid. London's famed Black Cab drivers shut down the streets of Westminster while thousands of Milanese taxi drivers went on strike – actions that increased public interest in Uber. Eventually, UberX services were banned or severely curtailed in cities across Spain, Germany, France, Italy, Belgium, Switzerland and the Netherlands. In the *New York Times*, Om Malik wrote that the issue involved more than incumbent versus interloper:

The Parisian taxi drivers are partly protesting against economic regulations in cities where taxi drivers have to pay for expensive medallions while Uber drivers do not. But, in a larger sense, they're actually protesting against our increased impatience. We don't have time to wait for a cab, because someone around the corner is willing to do the same job more cheaply. Our phones make us more productive while we wait, and yet we don't ever want to wait. As individuals, taxi drivers are stuck: their industry is controlled by outdated regulation and now they face ruthless free-market competition. Meanwhile, the habits and the expectations of their customers are changing—people are voting with their wallets and with their time. And that's not something that protests in the streets, whether in Paris or Nottinghamshire, are likely to change.<sup>32</sup>

While Uber mounted various legal challenges to the bans, its senior executives also saw the need to take a more strategic approach. 'What we maybe should've realized sooner was that we are running a political campaign and the candidate is Uber. And this political race is happening in every major city in the world,' said Travis Kalanick. Uber hired David Plouffe, coordinator of the 2008 Obama presidential campaign, to spearhead Uber's efforts in public policy and communications. Plouffe rejected suggestions of an image problem: 'I actually think when you are a disrupter you are going to have a lot of people throwing arrows.'<sup>33</sup> Uber's opponents were unlikely to stop slinging arrows, bricks or burning tyres any time soon but during a 2015 visit to Australia, Plouffe claimed that the company wanted to work with – not against – authorities:

There's a misconception out there that Uber doesn't want to be regulated. We do...We're in the room there every day trying to help governments figure out how to move forward in a smart way with modern regulations so people can get on the road and start making money, and also have competition and choice. The benefit for cities is going to be profound in the long run...In market after market Uber is an additive. It's an extra alternative. And the taxi industry is still going to be very viable in cities. But it gives more opportunity to taxi drivers. In San Francisco people will be driving a taxi, they'll be driving for Uber and they'll be driving for Lyft. There's choice there.<sup>34</sup>

Taxi companies were far from convinced. In New York, taxi owners and financiers launched legal proceedings against New York City and its Taxi and Limousine Commission, seeking compensation the basis that: 'Defendants' deliberate evisceration of medallion taxicab hail exclusivity, and their ongoing arbitrary, disparate regulatory treatment of the medallion taxicab industry, has and continues to inflict catastrophic harm on this once iconic industry, and the tens of thousands of hardworking men and women that depend on it for their livelihood.'<sup>35</sup> According to the lawsuit, the number of Uber rides in central Manhattan rose by 3.82 million from April to June 2015, compared with a year earlier, while medallion cab pickups fell by 3.83 million. As a result, the value of medallions had fallen by 40%.<sup>36</sup>

---

<sup>32</sup> <http://www.newyorker.com/tech/elements/the-long-history-of-the-fight-against-uber>

<sup>33</sup> <http://www.vanityfair.com/news/2014/12/uber-travis-kalanick-controversy>

<sup>34</sup> <http://www.businessspectator.com.au/news/2015/2/10/technology/uber-defends-practices-victorian-regulators-sharpen-knives>

<sup>35</sup> <http://www.reuters.com/article/newyorkcity-taxis-uber-idUSL1N13D00B20151118>

<sup>36</sup> <http://www.reuters.com/article/newyorkcity-taxis-uber-idUSL1N13D00B20151118>

## Uber down under

Uber launched its UberBLACK service in Sydney in 2012. In 2014 the company commenced low-cost UberX services, which by 2015 were operating in four states: Western Australia, Victoria, New South Wales and Queensland. Uber primarily served the state capitals and a few regional areas, with services initially restricted to inner suburbs and airports. Eleven percent of Sydneysiders trialed the service during its first 6 months.<sup>37</sup> From January 2014 to January 2015, Uber enjoyed an estimated 700% growth and accounted for some 22% of electronic taxi payments.<sup>38</sup> (Electronic taxi payments account for approximately 40% of taxi trips.) Uber's enthusiastic uptake came as the Victorian tax inquiry revealed widespread user dissatisfaction, high costs and systemic quality and safety issues – a situation with parallels across Australia. Dilapidated fleets and outdated technology were major contributors to the problem.

In the meantime, a new generation of passengers was ready to move on. Most Uber users were tech-fluent urban dwellers aged between 20 and 40. A survey of 2000 Sydney residents found that half of those who used taxi alternatives did so because of cost. Sydney communications worker Peter Kloczko (28) was typical. He used Uber almost weekly and found it vastly preferable:

I can't recommend it enough. It's always been a nicer car than any other taxi, and I've been in shockers that stink to high hell and barely run...It's a really intuitive and easy app to use and the customer experience is great. I've never had (a car) ditch me, I've never had one not show up, and the transaction at the end is easy because they have your credit card (details).<sup>39</sup>

Uber also had substantial appeal for drivers with UberX reportedly signing 15,000 Partners within 12 months. (There were approximately 21,000 licensed taxis on Australian roads.) Most Uber drivers had never worked as professional drivers previously. The Australian Taxi Industry Association (ATIA) claimed that Australia's pool of 68,000 taxi drivers remained largely the same.<sup>40</sup> However, it seemed that some of them were moonlighting for Uber to supplement their incomes - an average \$10 per hour after expenses.<sup>41</sup> NSW tax licences, for example, cost \$375,000 on average, and with other assorted fees and charges, made it difficult for new entrants to ever see a profit.<sup>42</sup> As Australian Taxi Drivers Association president Michael Jools observed: 'The problem of the regulations is they add about \$50,000 to the cost of operating a taxi and that cost is reflected in the fares. The regulations need to be fundamentally altered.'<sup>43</sup>

The launch of UberX prompted the taxi industry to step up its campaign against the company and to compel authorities to act. 'It's not a level playing field,' ATIA Executive Director Blair Davies said. 'We run cabs in the outerlying areas where there is no public transport, we look after people in wheelchairs – smartphone apps are basically a dispatch service for the cars which don't have to operate where they don't [want] to,' he says.<sup>44</sup> (Service agreements with state governments included a requirement that taxi companies ensure a percentage of vehicles were equipped for disabled passengers, and to accept fares regardless of destination in metropolitan areas, though this was little

---

<sup>37</sup> <http://www.news.com.au/finance/business/uberx-versus-taxis-why-the-time-for-taxis-is-over/story-fnkgde2y-1227274842438>

<sup>38</sup> <http://www.gizmodo.com.au/2015/01/the-rise-and-rise-of-uber-in-australia/>

<sup>39</sup> <http://www.news.com.au/finance/business/uberx-versus-taxis-why-the-time-for-taxis-is-over/story-fnkgde2y-1227274842438>

<sup>40</sup> <http://www.news.com.au/finance/business/uber-driver-numbers-reveal-impact-on-taxi-industry/story-fnkgde2y-1227477030842>

<sup>41</sup> <http://www.gizmodo.com.au/2014/02/aussie-taxi-drivers-say-rise-in-cashless-payments-has-reduced-their-earnings/>

<sup>42</sup> <http://www.news.com.au/finance/business/uberx-versus-taxis-why-the-time-for-taxis-is-over/story-fnkgde2y-1227274842438>

<sup>43</sup> <http://www.news.com.au/finance/business/uberx-versus-taxis-why-the-time-for-taxis-is-over/story-fnkgde2y-1227274842438>

<sup>44</sup> <http://www.brw.com.au/p/entrepreneurs/service-the-taxi-industry-uber-fighting-Ue4QdfXBTd1T7CIXZUaHTN>



enforced.) Reports had emerged from overseas that Uber drivers were consciously avoiding low-income and some racially diverse areas.<sup>45</sup> The NSW Taxi Council argued for outright prohibition:

Ride-sharing is a for-profit enterprise that provides illegal taxi services. It places the public at risk through the lack of proper government-backed checks and compliance measures for drivers and vehicles, and it directly undermines the efforts of hardworking and law-abiding taxi drivers, operators and owners...Operating under the guise of the 'shared economy', ride-sharing, and specifically UberX, are exposing both drivers and customers to increased risk through (but not limited to) noncompliance with the law, including the non-adherence to the government required checks for authorities and licences; inadequate or no insurance; no workers' compensation insurance; no industrial relations arrangements; and the insidious practice of surge pricing.<sup>46</sup>

Consumer advocacy organisation Choice, however, believed that it was time for the taxi industry and governments to accept the new reality. Said a spokesperson: 'Uber's entry into the market was a wake-up call for an industry that was not meeting consumer expectations. The task for governments is to ensure consumer protection and safety, whether that is in a taxi or ride-sharing. It's not to prop up outdated, legacy business models. No one should be operating outside of the law, but our laws need to keep pace with the peer-to-peer economy, and right now, they seem to be lagging behind.'<sup>47</sup>

## Road rules

By early 2015, UberX services were either illegal or operating in an indeterminate legal space depending on the state. In Victoria, Taxi Commission officers initially began by issuing \$A1,700 fines to UberX drivers, which the firm paid. During a 2014 sting operation, inspectors charged 15 drivers from UberX with operating a commercial vehicle without a licence – an offence bearing a \$7,500 penalty. The Melbourne Magistrates' Court eventually convicted one of driving and owning a car used for commercial purposes without accreditation or registration and fined him \$900.<sup>48</sup> Uber funded the legal defence of its drivers and paid their fines. Meanwhile, the company had made a submission asking the state government to create a new subclass of 'special purpose vehicles' to cover ride-sharing drivers. The Victorian Taxi Commission entered into talks to see if UberX drivers could undergo a similar accreditation process to chauffeur-car drivers. The government was expected make a decision of 'ride-sharing' in 2016.

Prior to the 2015 state election, the Queensland government indicated it wouldn't seek to regulate the ride-share industry. However, the new Labor government issued Uber a cease-and-desist order due to concerns for passenger safety. Uber continued to operate and paid drivers' infringement notices while distributing a 44-page document to state MPs. It argued that Uber was actually fulfilling government policy goals seeking to reduce traffic and promote shared journeys. However, 'in practice, the regulatory enforcement arms of governments appear distant from the policy objectives and are unwilling to embrace change.'<sup>49</sup> Uber also criticised the Queensland government for excluding it from the Public Transport Driver Authorisation System which conducted criminal checks on drivers and alerted taxi companies, calling it hypocritical to question Uber's commitment to safety while denying an opportunity to improve it.

---

<sup>45</sup> <http://archives.sfexaminer.com/sanfrancisco/ca-judge-considering-372-million-fine-to-uber/Content?oid=2924605>

<sup>46</sup> <http://www.news.com.au/finance/business/uberx-versus-taxis-why-the-time-for-taxis-is-over/story-fnkgde2y-1227274842438>

<sup>47</sup> <http://www.news.com.au/finance/business/uberx-versus-taxis-why-the-time-for-taxis-is-over/story-fnkgde2y-1227274842438>

<sup>48</sup> <http://www.theage.com.au/victoria/uber-explainer-what-does-the-court-decision-mean-for-customers-20151204-glfu2d.html#ixzz3uY3BNCmV>

<sup>49</sup> <http://www.gizmodo.com.au/2015/05/the-uber-queensland-papers-ride-sharing-service-airs-its-dirty-laundry-in-fight-with-sunshine-state/>

Mixed messages emerged from Western Australia, where the Premier expressed support for Uber while the Transport Minister noted that it was ‘not a legal service’ and the Department of Transport sought private investigators to conduct a crackdown on ride-sharing services.<sup>50</sup> A WA government Green Paper argued for a single licensing regime applying to all drivers of taxis, Uber vehicles and other new technology-based services.<sup>51</sup> Meanwhile, the Australian Capital Territory decided to allow Uber to operate from late 2015. However, all ride-sharing vehicles would be subject to new regulations such as vehicle safety inspections and driver health assessments every five years. Third party and property insurance would also now be compulsory for all ride-sharing cars while taxi licence fees would be cut.

NSW declared UberX illegal in 2014, with drivers fined; in 2015 the government announced an independent taskforce to look at the taxi industry and ride-sharing apps. By the end of the year, the government decided to legalise Uber and compensate taxi licence plate holders with funds raised from a levy on taxi and Uber rides. Uber and other ride-share drivers would be required to pay a nominal registration fee and undergo criminal and safety checks. Taxis would retain the exclusive right to collect fares from the street.<sup>52</sup>

At the Federal level, the Australian Taxation Office ruled that Uber was operating a taxi service and that drivers would be required to collect GST, irrespective of their takings from August 2015. (This was despite the fact that Uber’s operations were still technically illegal in Australia at the time of the ruling.) In a Federal Court challenge, Uber argued that GST should not apply to drivers under the turnover threshold of \$75,000 p.a. Questions were also raised about Uber’s tax status and where its Australian earnings went. The Australian Senate inquiry into multinational tax avoidance was calling upon sharing economy companies, including Uber and Airbnb, to explain their taxation activities.

As some Australian states got on board with ‘ride-sharing’, question marks lingered over insurance. For example, a July 2015 media report found, in Western Australia, that only one insurer contacted – SGIO – had made a ‘discretionary decision’ to cover policyholders who drove for UberX.<sup>53</sup> This was starting to change with a few insurers covering part-time ridesharing. In the interim, Uber was refusing to publicly release details of its US \$5 million third-party policy which appeared untested in Australia.<sup>54</sup> Worker’s compensation insurance for drivers was another issue. Uber was not yet required to hold it and it wasn’t clear whether drivers would be able to arrange their own.<sup>55</sup>

Thus, the legal status of Uber Partners would be another issue for Australian authorities to address. The California Labor Commissioner ruled that an Uber Partner could be considered an employee, as Uber was involved in every aspect of the operation, much like an employer. This finding had numerous implications and Uber vigorously resisted such moves, arguing that its Partners were independent contractors as they had complete control over how and when they worked.<sup>56</sup> Similar cases brought in other US states upheld Uber’s position. However in December 2015, a US Federal court judge expanded a class action lawsuit that California Uber drivers were bringing against the company to be considered employees.<sup>57</sup> Elsewhere, the Seattle City Council passed a bill permitted

---

<sup>50</sup> <http://www.abc.net.au/news/2015-07-07/private-investigators-to-be-used-to-investigate-uber/6601556>

<sup>51</sup> <http://www.abc.net.au/news/2015-07-17/sweeping-changes-to-the-taxi-system-in-wa-proposed-in-green-pap/6628880>

<sup>52</sup> NSW Government, 2015, *A New Framework for Point to Point Transport* <http://www.transport.nsw.gov.au/pointtopoint>

<sup>53</sup> <https://au.news.yahoo.com/thewest/wa/a/28228915/insurance-doubts-for-uber-drivers/>

<sup>54</sup> <http://www.abc.net.au/news/2015-07-27/uber-director-answers-common-questions-about-the-service/6650054>

<sup>55</sup> [http://www.hopgoodganim.com.au/page/publications/Australian\\_Uber\\_drivers\\_may\\_be\\_without\\_access\\_to\\_workers\\_compensation\\_insurance\\_%25E2%2580%2593\\_16\\_November\\_2015?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](http://www.hopgoodganim.com.au/page/publications/Australian_Uber_drivers_may_be_without_access_to_workers_compensation_insurance_%25E2%2580%2593_16_November_2015?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original)

<sup>56</sup> <http://www.reuters.com/article/2015/06/18/us-uber-california-idUSKBN0OX1TE20150618>

<sup>57</sup> <http://www.latimes.com/business/technology/la-fi-tn-uber-class-expansion-20151209-story.html>

ride-sharing drivers to unionize, though they would still be considered independent contractors.<sup>58</sup> Labour cases were also underway elsewhere in the world, including the United Kingdom.

As time went on and competitors emerged, regulators roused and incumbents rallied, it became increasingly clear that Uber couldn't bypass every roadblock. As one journalist wrote:

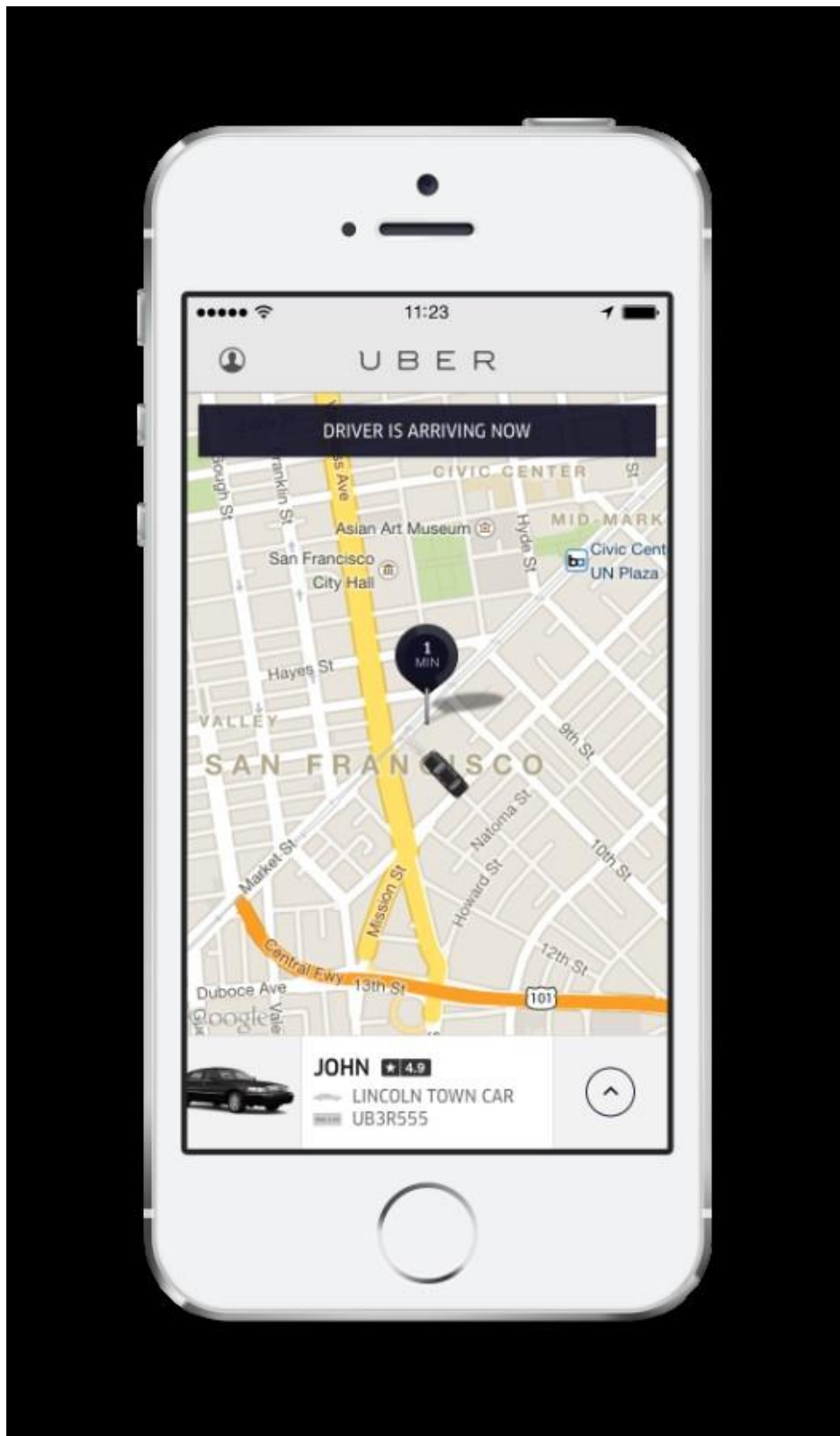
Even with an algorithm matching passengers and drivers rather than someone at a radio console, many problems seem to crop up for Uber and its brethren—just as they do for regular cabs. Passengers get angry. Drivers get lost, or worse. Cars break down. Collisions happen and sometimes, sadly, six-year-old kids wind up dead. Hiding all of this behind a smartphone interface changes nothing. Uber cannot protect its drivers or its users from all of the terrible things that happen while people are humping to Point A from Point B in the modern city, and there are not enough lobbyists in the world to convince a state or a city that it isn't within their rights to force the company to try harder anyway.<sup>59</sup>

---

<sup>58</sup> <http://gizmodo.com/seattle-city-council-just-passed-a-bill-to-let-uber-and-1748009134>

<sup>59</sup> <http://www.vice.com/read/a-recent-history-of-uber-lobbying-lawsuits-and-a-scuffle-718>

## Exhibit A: Uber App Screenshot



Source: Uber Press Kit, [www.uber.com](http://www.uber.com), accessed: August 2015.

Exhibit B: Sample vehicle selection

# REQUEST A RIDE AT THE PUSH OF A BUTTON

uberTAXI

uberX

UberBLACK

UberSUV

11:23

UBER

PICKUP LOCATION

EMPIRE STATE BUILDING

DISTRICT Times Sq - 42 St

MIDTOWN

1 MIN SET PICKUP LOCATION

Penn Station

W 31st St

W 30th St

W 29th St

W 28th St

W 27th St

W 26th St

W 25th St

W 24th St

W 23rd St

W 22nd St

W 21st St

W 20th St

W 19th St

W 18th St

W 17th St

W 16th St

W 15th St

W 14th St

W 13th St

W 12th St

W 11th St

W 10th St

W 9th St

W 8th St

W 7th St

W 6th St

W 5th St

W 4th St

W 3rd St

W 2nd St

W 1st St

E 34th St

E 33rd St

E 32nd St

E 31st St

E 30th St

E 29th St

E 28th St

E 27th St

E 26th St

E 25th St

E 24th St

E 23rd St

E 22nd St

E 21st St

E 20th St

E 19th St

E 18th St

E 17th St

E 16th St

E 15th St

E 14th St

E 13th St

E 12th St

E 11th St

E 10th St

E 9th St

E 8th St

E 7th St

E 6th St

E 5th St

E 4th St

E 3rd St

E 2nd St

E 1st St

TAXI

uberX

BLACK CAR

Source: Appadvice, [www.appadvice.com](http://www.appadvice.com), accessed: August 2015.

## Exhibit C: Exclusion criteria Uber Partners

| All driver-partners   | In addition, for UberX and UberTaxi  | In addition, for UberBLACK   |
|---|--|--|
| <p>Disqualification if potential driver appears on the DOJ50-State Sex Offender Registry or the National Sex Offender Registry or on a series of databases that flag suspected terrorists.</p> <p>Disqualification if within the last 7 years, he/she is found to have convictions for any of the below on their record:</p> <ul style="list-style-type: none"> <li>• DUI or other drug-related driving convictions</li> <li>• Fraud</li> <li>• Reckless driving</li> <li>• Hit and runs</li> <li>• Violent crimes (assault, battery, homicide)</li> <li>• Acts of terror</li> <li>• Sexual offenses</li> <li>• A crime involving property damage</li> <li>• Felony or misdemeanor for theft (burglary, stealing, robbery, anything alike)</li> <li>• Fatal accidents</li> <li>• Resisting/evading arrest</li> <li>• Any other felony</li> </ul> <p>Disqualification if in the state in which the potential driver is currently licensed, the potential driver is found to have any of the below on their record within the past 3 years:</p> <p>Driving on a suspended, revoked, or invalid license</p> <p>Driving with suspended, revoked, or invalid insurance</p> | <p>Disqualification if in the state in which potential driver is currently licensed, the potential driver is found to have had a total of <b>THREE</b> minor violations or incidents in the past <b>THREE</b> years:</p> <ul style="list-style-type: none"> <li>• Accidents</li> <li>• Normal speeding tickets</li> <li>• Miscellaneous driving violations (e.g., traffic violations)</li> </ul> | <p>Disqualification if in the state in which potential driver is currently licensed, the potential driver is found to have had a total of <b>FIVE</b> minor violations or incidents in the past <b>FIVE</b> years:</p> <ul style="list-style-type: none"> <li>• Accidents</li> <li>• Normal speeding tickets</li> <li>• Miscellaneous driving violations (e.g., traffic violations)</li> </ul> |

Source: Uber, [www.uber.com](http://www.uber.com), accessed: August 2015.

## Exhibit D: Uber protest



Source: <http://www.newyorker.com/tech/elements/the-long-history-of-the-fight-against-uber>