

Policymaking for the Sharing Economy:

Beyond Whack-A-Mole

BY SUNIL JOHAL AND NOAH ZON



Acknowledgements

The authors would like to thank Mike Moffatt, Mark Jarvis, Jamie van Ymeren and anonymous peer reviewers for their valuable feedback on this report. All content and any remaining errors are the sole responsibility of the authors. The authors would also like to thank Emma Tarswell for her design work on this report.

Authors

Sunil Johal

Sunil Johal is the Policy Director at the Mowat Centre. Previously, he was a Director with the Ontario Ministry of Economic Development and Innovation and has also held senior management and policy roles with the Cabinet Office, Ministries of Finance and Intergovernmental Affairs and federal Treasury Board Secretariat. He holds degrees from the London School of Economics, Osgoode Hall Law School and the University of Western Ontario. He has been a lecturer with Ryerson University's Department of Politics and Public Administration since 2009

Noah Zon

Noah Zon is the Practice Lead for the Intergovernmental Economic and Social Policy research stream at the Mowat Centre. Prior to joining Mowat, Noah worked in the Ontario government on a range of policy files, including intergovernmental relations and climate change policy. He is a graduate of McGill University and the London School of Economics.

Contents

	Summary	1
	Introduction	3
I.	What is the sharing economy?	6
II.	Key players	10
III.	The challenge for policymakers	13
IV.	Where next? Approaches for policymakers	19
V.	Conclusion	26

Summary

Across the economy, informal and lightly-regulated marketplaces are emerging that directly connect individuals and small businesses. New technology platforms such as Uber, Airbnb and TaskRabbit are accelerating the advent of the “sharing economy” with rapid speed and massive scale. While these platforms are popular with both consumers and entrepreneurs, they have drawn significant criticism from established operators and concerns from governments about fair competition and consumer protection.

As these marketplaces expand and threaten to disrupt established business models, policymakers around the world are trying to develop appropriate responses to the sharing economy. To date, the reaction from governments has felt like a frantic game of “whack-a-mole” — struggling to contain these new enterprises while even more pop up. This is unproductive.

This report explores why the sharing economy is such a puzzle for governments. It assesses what’s new and what’s not about these marketplaces, the interests of the key players, and what characteristics of the sharing economy and government itself make this such a challenging and contentious discussion. The report concludes by proposing specific recommendations for policymakers grappling with the challenges and opportunities posed by the sharing economy, including establishing a strategic operating framework, re-aligning political and cultural incentives, modernizing government structures and adopting smarter regulatory responses.

Even as these new models emerge, there are clear signs that status quo approaches from governments are ill-suited for some aspects of the sharing economy.

Introduction

Powered by new technology, a new set of companies are creating new marketplaces with the potential to reshape the economy. These platforms — together called “the sharing economy” — allow people to buy goods and services directly from one another instead of from traditional businesses. For example, rather than staying at a hotel, a tourist might connect through the Airbnb service to another person with an available apartment. These new marketplaces cut across transportation, finance, services and retail, and they are growing rapidly. Renting an extra room or providing a ride in exchange for gas money isn’t novel. However, new technology has made these “peer-to-peer” interactions more convenient, affordable, and trustworthy.¹

By making transactions seamless, these platforms offer new options — often less expensive ones — to consumers, and allow people with spare space, goods, or time an easier chance to make some extra money. This appeal has led to rapid growth, with revenues from five key sectors of the sharing economy estimated to be USD \$15 billion today and projected to grow to USD \$335 billion by 2025.²

These new models present challenges not only for existing businesses, but also governments’ approaches to policy and regulation. They raise questions about what rules should be applied, in what manner and to whom.

- » Is Uber (a ride-sharing service) more like an unlicensed taxi service, or is it the electronic equivalent of a carpooling offer on a bulletin board at a university dorm?
- » When does a crowdfunding campaign through a platform like Kickstarter become a transaction that needs the attention of securities regulators?
- » Is Taskrabbit (a service for hiring people to complete specific tasks or projects) a communications service or a temporary employment agency?
- » Does a growing sharing economy change the way that governments look at cross-cutting issues such as economic development, labour markets, accessibility and safety?

Airbnb hosts, Lyft drivers and even Etsy entrepreneurs all by definition blend the personal and the commercial. They’ve created a gray area in the economy in between hotels and homes, between cabs and private cars, between businesses and hobbies, between professional spaces and personal ones.³

— Emily Badger, *The Washington Post*

1 *The Economist*, “The rise of the sharing economy,” (March 9, 2013). <http://www.economist.com/news/leaders/21573104-internet-every-thing-hire-rise-sharing-economy>.

2 The sectors covered by this report were accommodation, transportation, finance, services and labour, and music/video streaming. PriceWaterhouseCoopers. “The sharing economy — sizing the revenue opportunity” (2014) <http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.jhtml>.

3 Emily Badger, “Why we can’t figure out how to regulate Airbnb”, (April 23, 2014), *The Washington Post - Wonkblog*, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/04/23/why-we-cant-figure-out-how-to-regulate-airbnb/>.

Even as these new models emerge, there are clear signs that status quo approaches from governments are ill-suited for some aspects of the sharing economy. For example, the U.S. definition of small business includes operations with up to 500 employees, which puts the creative goods marketplace operator Etsy in the same category as the one million craftmakers that sell through its marketplace.⁴ Given this contrast between a sophisticated international company and the “creative entrepreneurs” who use its service— only one fifth of whom sell their goods on a full-time basis — it will be important for government policies and programs to adjust to meet shifting realities.⁵

This report explores what the sharing economy means for policymakers and how they can promote innovation and growth while delivering on their core responsibilities. This report will assess:

- » What is the sharing economy — what’s new and what’s not?
- » Who are the key players and what are their interests?
- » Why does the sharing economy pose a challenge for policymakers?
- » How can governments approach the sharing economy — where can existing policies work, where can those models be “stretched,” and where are more significant changes in approach needed?

Not everything about the sharing economy is new. Governments have dealt with change in the past and will do so in the future. However, the speed of change, the limitations of existing regulatory models, and the political and cultural context of government make the sharing economy a challenging fit for how governments manage policy and regulation. To overcome these hurdles, governments need to determine their appropriate role in these markets, realign political and cultural incentives, and explore modern approaches to regulation.

⁴ Emily Badger, “We have no idea how big the peer-to-peer economy is”, (May 21, 2014), *The Washington Post - Wonkblog* <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/05/21/we-have-no-idea-how-big-the-peer-to-peer-economy-is/>.

⁵ Etsy, “Etsy Values and Impact Annual Report 2013”. http://extfiles.etsy.com/progress-report/2013-Etsy-Progress-Report.pdf?ref=progress_report_download.

The sharing economy is characterized by an entirely different power dynamic between consumers, companies and governments.

I. What is the sharing economy?

There is no universal definition for the sharing economy, but there are two main business models that are typically part of the conversation.

The first model is based around people renting their assets to each other on a short-term basis. This approach — sometimes called “collaborative consumption” — presents a sharp contrast to the way people usually do business. In this model, production and ownership of goods and services is diffuse, and people bypass traditional businesses to rent or buy from one another instead — what PwC calls “consumers becoming competitors.”⁶ People are renting items as varied as homes (using Airbnb), musical instruments and power tools (using the Snaggoods platform).⁷ While in some cases these models look more-or-less like traditional businesses, in other cases the sharing economy is characterized by an entirely different power dynamic between consumers, companies and governments.⁸

The other main business model in the sharing economy is “product-as-a-service,” where consumers can rent products rather than buy them, often from a company that owns the asset.⁹ This business model focuses on flexibility, with companies like ZipCar and Car2Go or urban bikesharing services like Bixi offering a chance to rent products hourly that traditionally would have been bought or rented for longer stretches. While consumers may not be sharing their possessions or work with each other, they are sharing use of the same product. This part of the sharing economy is more straightforward for regulators but may have longer-term policy implications, such as reduced car ownership.

Technology plays an essential role in defining the sharing economy. While peer-to-peer transactions have always been a feature of any market economy (e.g., garage sales or car pools), recent technological advances allow new “platform businesses” (facilitating the connection between buyers and sellers) to emerge and for these marketplaces to rapidly expand and to reach a scale far beyond what has been experienced in the past.

There are five major sectors where the sharing economy may have significant impact, raising questions for policymakers.

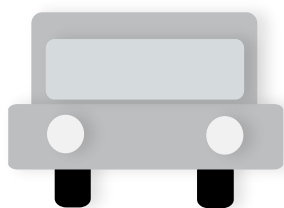
6 PriceWaterhouseCoopers, “How can established organizations play to win in the sharing economy?,” (2014) <http://www.pwc.co.uk/issues/meg-atrends/collisions/sharingeconomy/how-can-established-organisations-play-to-win-in-the-sharing-economy.jhtml?hootPostID=9e9c900a194d-750b8e5eb74c5bf972bc>.

7 *Forbes Magazine*, “AirBNB, Snaggoods and 12 more pioneers of the ‘share economy,’” <http://www.forbes.com/pictures/eeji45emgkh/airbnb-snapgoods-and-12-more-pioneers-of-the-share-economy/>.

8 Jeremy Heimans and Henry Timms, “Understanding New Power,” (December 2014) *Harvard Business Review* <https://hbr.org/2014/12/understanding-new-power>.

9 Michael Porter and James Heppelman, “How smart, connected products are transforming competition,” (November 2014) *Harvard Business Review*, pg. 73.

FIVE MAJOR SECTORS OF THE SHARING ECONOMY



TRANSPORTATION

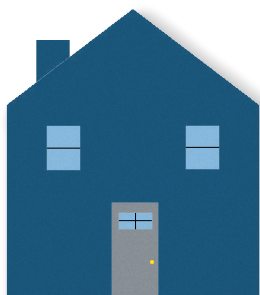
Sharing economy businesses and approaches have emerged to challenge three major segments of the transportation sector. The most prominent example is the emergence of ride-sharing services like Uber and Lyft. These services are competitors to the taxi industry, allowing consumers to connect with a pre-vetted nearby driver — whether full-time limo drivers or an ordinary driver with time to spare — willing to drive them to their destination for rates set by the service. Uber in particular has emerged as a lightning rod of the sharing economy, attracting both praise (including from politicians)¹⁰ for providing an alternative to a taxi market that is highly regulated, and equally energetic criticism from regulators and established businesses who see them as simply the latest version of illegal "bandit cabs" looking to skirt the rules.¹¹ While Uber's services are becoming increasingly popular in Canada, the company is fighting legal battles in a number of jurisdictions, including Toronto, Ottawa, Montreal and Vancouver.

The sharing economy may also disrupt other corners of the transportation market. Zipcar, AutoShare and Car2Go use technology to provide a car-sharing service that has emerged as an alternative both to car ownership and to car rentals by offering convenience and flexibility. So many businesses have emerged offering to bring Uber-like service to delivering other goods on-demand (Instacart, Zipments and Favor among the more prominent examples) that the pitch "like Uber, but for x" has become a running joke in the tech sector.

A variety of web marketplaces now allow independent producers of goods to expand beyond craft fairs and yard sales to reach a wide range of consumers with little to no investment. Etsy, eBay, Craigslist and Kijiji allow sellers to connect directly with buyers at a scale not previously possible. This development makes purchases from independent craftspeople and peer-to-peer trades a more viable competitor to the traditional retail sector. While it is hard to separate these pressures from the trends in online shopping more generally, this growth raises questions for policymakers about the threshold for distinguishing a business from a hobby.



RETAIL



ACCOMMODATION

New business models are enabling travellers to forgo licensed hotels and bed and breakfasts in favour of renting spare rooms and homes from one another. The most high-profile of the sharing economy platforms for accommodation is Airbnb, however others such as VRBO (Vacation Rentals by Owner) work on a similar basis. As of fall 2014, 15 million people have used Airbnb to rent 350,000 homes as an alternative to a hotel.¹² At this scale, the sharing economy poses a significant threat to the hotel industry and a real challenge for policymakers. While consumers and homeowners seem satisfied with the arrangement to date, these informal rentals do not comply with the same zoning, safety and accessibility laws, and generally are not subject to hotel taxes.¹³

10 Annie Lowrey, "Members of congress love Uber," (November 14, 2014), *New York Magazine* <http://nymag.com/daily/intelligencer/2014/11/members-of-congress-love-uber.html>.

11 Brian Platt, "Private member's bills targeting illegal taxis aren't aimed at Uber, MPPs claim," *QPBriefing* <http://www.qpbriefing.com/2014/12/04/private-members-bills-targeting-illegal-taxis-arent-aimed-at-uber-mpps-claim/>.

12 Heimans and Timms.

13 Nancy Scola, "The latest move in Airbnb's war with NY has it begging the state to take \$21 million," (April 16, 2014) *Next City* <http://nextcity.org/daily/entry/airbnb-legal-battle-New-York-taxes-regulation-short-term-rentals>.

Entrepreneurs are using sharing economy platforms to sell personal services and their own labour directly to consumers. Homejoy and Handy are marketplaces for housecleaning and "handyman" work, while TaskRabbit and Mechanical Turk let people outsource a wide variety of tasks and services, ranging from simple errands and chores to writing marketing material or doing business research. For governments, these platforms blur the lines between employees of a company and independent contractors. Are these "microentrepreneurs" capitalizing on flexibility and opportunity, or are companies and clients taking advantage of those without other options in a weak labour market?¹⁴ This is a regulatory question already being tested in courts, challenging the boundaries of labour laws and minimum wage rules.¹⁵



SERVICE AND LABOUR



FINANCE

The sharing economy has also been making inroads into one of the most heavily-regulated sectors in the economy — the financial industry. Through platforms like Kickstarter or Indiegogo, startups and creative projects raise financing to get their projects off the ground by securing small commitments from hundreds of different sources, rather than relying on banks or angel investors. Going even further, in seven provinces, securities regulators have introduced rules that would allow startups to sell equity in their businesses through these crowdfunding platforms, opening up one of the most restricted areas of finance for disruption.¹⁶

Crowdfunding has also extended into lending, with Lending Club, Prosper, Zopa and Funding Circle each offering a market that connects investors directly with businesses or individuals in need of loans. In addition to offering new sources of credit, these platforms typically allow for loans to be closed more quickly and at lower interest rates than traditional financing. This opens up greater opportunity for small business owners to find financing where they may struggle with traditional lenders. These efforts come up against a legal and regulatory environment designed for traditional financing, including securities laws, privacy, and consumer protection.¹⁷ Regulators will need to weigh the benefits of this expanded credit market against the risks, and decide whether smaller peer-to-peer loans should be subject to the same rules as traditional financing.

¹⁴ Natasha Singer, "In the sharing economy, workers find both freedom and uncertainty," (August 16, 2014), *New York Times* http://www.nytimes.com/2014/08/17/technology/in-the-sharing-economy-workers-find-both-freedom-and-uncertainty.html?_r=0; Leo Mirani, "The secret to the Uber economy is wealth inequality," (December 16, 2014), Quartz <http://qz.com/312537/the-secret-to-the-uber-economy-is-wealth-inequality/>.

¹⁵ Kevin Montgomery, "Handy sued for being a hellscape of labor code violations," (November 12, 2014) *Valleywag* <http://valleywag.gawker.com/handy-sued-for-being-a-hellscape-of-labor-code-violatio-1657889316>.

¹⁶ Jeff Gray and Janet McFarland, "Regulators unveil crowdfunding rules for startups," (March 20, 2014), *The Globe and Mail* <http://www.theglobeandmail.com/report-on-business/osc-proposes-limits-for-corporate-crowdfunding/article17587916/>.

¹⁷ James Shanks, "P2P lending: a new source of consumer and small business credit?" (October 2013) *Gowlings* <http://www.gowlings.com/KnowledgeCentre/article.asp?pubID=3051>.

While the sharing economy and the technology behind it may be new, the dynamic of competing interests is familiar.

II. Key players

For policymakers, decisions cannot be reduced to the simplistic question of whether the sharing economy is good or bad. To craft policies that are in the broader public interest, governments need to take into account the various interests at play and how they will be affected. In this sense, while the sharing economy and the technology behind it may be new, the dynamic of competing interests is familiar, drawn into sharp relief by changes in the bargaining power of buyers and sellers.¹⁸

ESTABLISHED OPERATORS

Often the earliest and loudest voices in the debate on any potential change to a market are established businesses. Simply put, they have the most to lose and usually have the most resources, knowledge and relationships at their disposal to protect their market access. They usually represent a relatively small number of players that are effective at speaking with one voice in favour of the status quo, even mounting national campaigns.¹⁹ While sharing economy advocates are quick to paint established operators as Luddites or protectionist cartels, they have valid concerns about facing unfair competition from operators that are benefiting from regulatory arbitrage by operating under a more lenient set of rules or avoiding regulation altogether.

PLATFORMS

Much like the established operators, the owners of the major sharing economy platforms — Uber as a company, rather than Uber drivers — are also a concentrated group of players with much to gain or lose from the way policymakers approach the sharing economy. For platforms, a receptive policy environment is essential to their ability to do business. It will be in their interest to minimize barriers to entry and loosen restrictions on their operations.

¹⁸ Porter and Heppelman, pg. 72-73.

¹⁹ Mike Adler, "Taxi companies, City of Toronto trying to Uber into court over ride sharing phone app," (November 12, 2014) *York Guardian*, <http://www.insidetoronto.com/news-story/5023874-taxi-companies-city-of-toronto-trying-to-drive-uber-into-court-over-ride-sharing-phone-app/>.

ENTREPRENEURS/ SERVICE PROVIDERS

This group consists of the independent operators who provide goods and services in the sharing economy — the Lyft driver, Airbnb host, Etsy artisan or Taskrabbit assembler of Ikea furniture who uses the sharing economy to start a business or make extra cash. This is a diverse group, and understanding how to treat them fairly and appropriately is one of the core challenges for governments in grappling with the sharing economy.

While these new marketplaces offer a mix of economic opportunity and flexibility, policymakers have reason to be concerned about workers in a vulnerable position being pushed into becoming "independent operators."²⁰ The lofty claims made by both Uber and Lyft about earnings potential they offer to drivers are difficult to verify²¹ or replicate,²² leaving questions about whether the sharing economy serves the interests of these individual sharing economy entrepreneurs, and how policy can be shaped to protect those interests.

CONSUMER/ USERS

In the short-term, consumers are clearly the overall beneficiaries of the sharing economy. By increasing competition and allowing for innovation, they generally see well-priced and convenient alternatives that they can consider, but are under no obligation to use.²³

The primary risk facing users of these services is a lack of consumer protections. Within the traditional formal economy, rules are in place to protect everyone involved in a transaction and ensure that they can trust they are not being taken advantage of or discriminated against — rules on pricing, information disclosure, accessibility and safety. On the other hand, even reasonable rules can drive up costs and hamper innovation that serves consumers,²⁴ and these protections sometimes only guard against lower prices or greater convenience. With new market signals available such as rating systems, existing consumer protection systems may be obsolete.

BROADER PUBLIC INTEREST

Even when they are not directly involved, the broader public has an interest in how the sharing economy is regulated. Policymakers need to act to protect this interest even though other voices vying for their attention may be louder. Spillover effects from the sharing economy can affect the public in tangible ways. For example, the safe operation of ride-sharing or delivery services matters for all pedestrians and road users. It is also in the interest of the broader public to make sure that the sharing economy is not a clever means for people or businesses to reduce their tax liability, thereby placing a higher burden on the general public.

20 Singer, 2014.

21 Alison Griswold, "In search of Uber's unicorn," (October 27, 2014), *Slate* http://www.slate.com/articles/business/moneybox/2014/10/uber_driver_salary_the_ride_sharing_company_says_its_drivers_make_great.html.

22 Timothy Lee, "Lyft says its drivers can make \$35 an hour. I spent a week driving to see if that's true," (December 17, 2014) *Vox* <http://www.vox.com/2014/12/17/7402311/lyft-driver-pay>.

23 Michael Geist, "Why Uber has a Canadian privacy problem," (November 21, 2014) *The Toronto Star* http://www.thestar.com/business/2014/11/21/why_uber_has_a_canadian_privacy_problem.html.

24 Michael Mandel, "Hacking the regulatory state," (November 2014) *Cato Institute* <http://www.cato.org/publications/cato-online-forum/hacking-regulatory-state>.

The way that governments manage policy and regulation can make it difficult to respond to disruptive innovations like the sharing economy.

III. The challenge for policymakers

Any policy issue requires understanding how different parties are affected and the costs and benefits for the general public. In some ways, however the sharing economy appears fundamentally at odds with the way governments currently operate. In many cases, unfamiliarity with sharing economy models has hindered the ability of governments to recognize potential benefits such as innovation, economic growth, and more efficient networks for urban transportation and logistics.

Three factors in particular help to explain why the sharing economy poses difficulties for policymakers:

- » the unique features of sharing economy enterprises
- » the limitations of existing regulatory models
- » the political and cultural context of government.

Unique features of sharing economy enterprises

Two key characteristics of the sharing economy challenge policymakers: the speed and scale of change and the difficulty of categorizing these enterprises. Technological advances have set the stage for today's sharing economy. Peer-to-peer marketplaces have always been present, but were previously limited to either classified ads or people's offline social or professional networks. Each time, buyers and sellers had to negotiate terms from scratch, and could not compete at scale with traditional businesses in convenience and reliability. As recently as the early 2000s, Craigslist and eBay were significant technological milestones, making it free or very cheap to reach tens of thousands nearby, but still imposing significant transaction costs to make a deal happen.

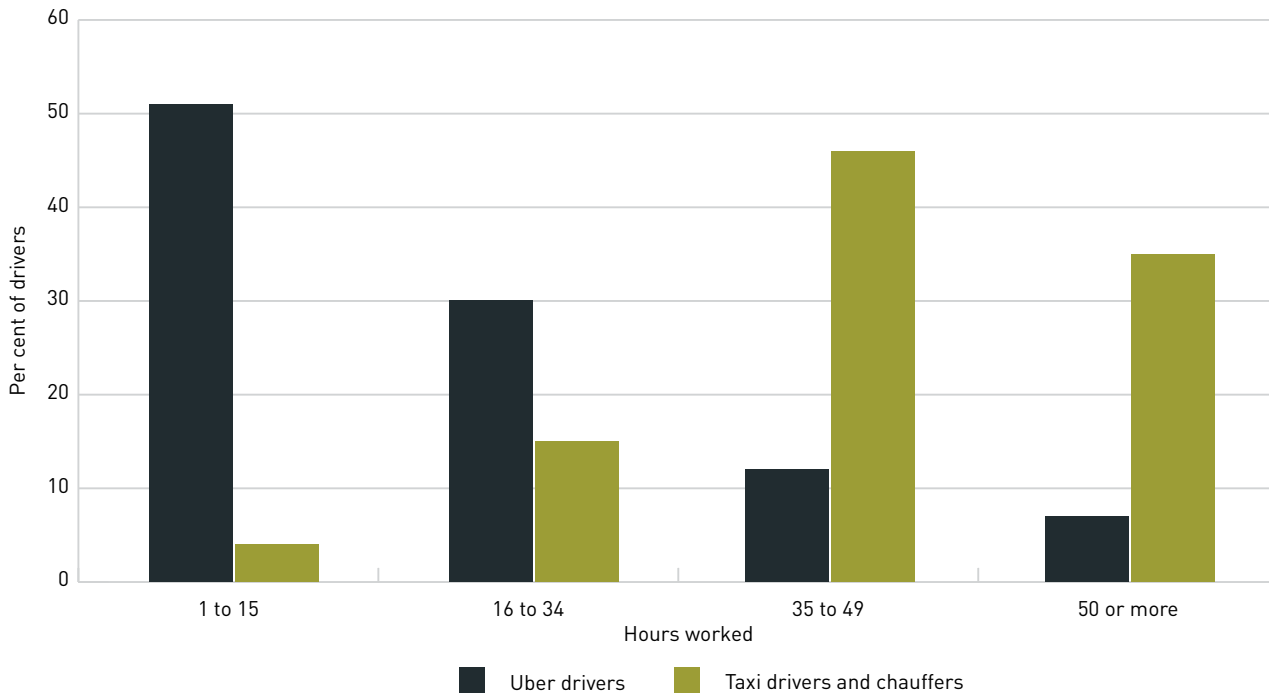
The driving innovation of the newer sharing economy enterprises has been to remove much of the friction from the peer-to-peer experience. In many cases, the experience is as simple as a few swipes on a smartphone²⁵, with 'smart-matching' algorithms bearing the burden of connecting interested buyers and sellers, and widening the pool of potential partners for any transaction. This more dynamic and efficient marketplace enables a scale and speed of expansion unlike past models. Sharing economy platforms can grow incredibly quickly compared to traditional businesses, because they require minimal infrastructure, allowing them to spread to new markets at breakneck speeds.²⁶

Sharing economy enterprises are also difficult to categorize. They are not simply new entrants into an existing market. Are Uber and TaskRabbit a taxi company and a temporary employment agency or a collection of independent contractors backed by a technology company? Is Airbnb a hotel chain, a travel agent or something different entirely that needs a new approach? The difficulty in answering these questions makes it challenging for governments to regulate using existing models.

25 Daniel Rauch and David Schleicher. "Like Uber, but for local government policy: the future of local regulation of the "sharing economy" (January 2015), George Mason University School of Law Working paper No. 15-01. pg. 9.

26 Mike Isaac, "Instacart, a grocery delivery start-up, raises \$220 million," (January 12, 2015) *New York Times* <http://mobile.nytimes.com/blogs/bits/2015/01/12/instacart-a-grocery-delivery-start-up-raises-220-million/?referrer=>.

FIGURE 1:
HOURS PER WEEK WORKED BY UBER DRIVERS VS. TRADITIONAL TAXI DRIVERS AND CHAUFFERS



Source: Hall and Krueger, 2015

Someone who rents their apartment out twice a year or picks up passengers in their car three times a week is unlikely to comply with reams of licensing and legislative requirements. This was as true in 1975 as it is in 2015. The distinction is that in 1975 the scale of this activity was essentially immaterial to government. Today, this activity is at a scale that blurs the boundaries of the personal and the commercial and threatens to disrupt existing markets and regulatory models. Regulators are no longer able to turn away from the sharing economy and must adapt their current approaches if they are to avoid stifling innovation or even in the longer-term, their own obsolescence.

It is possible to get sense of how different those patterns are today by looking at newly-available data about how Uber drivers operate. It turns out that for drivers at least, Uber is different than the taxi system by another name. Drivers are taking advantage of the flexibility that the sharing economy offers by working part-time, coming and going from the service, and varying their hours significantly week to week — fewer than one in five Uber drivers worked within a 10 per cent variation in their number of hours week to week.²⁷

27 Jonathan Hall and Alan Krueger, “An analysis of the Labor Market for Uber’s Driver-Partners in the United States,” (January 22, 2015).

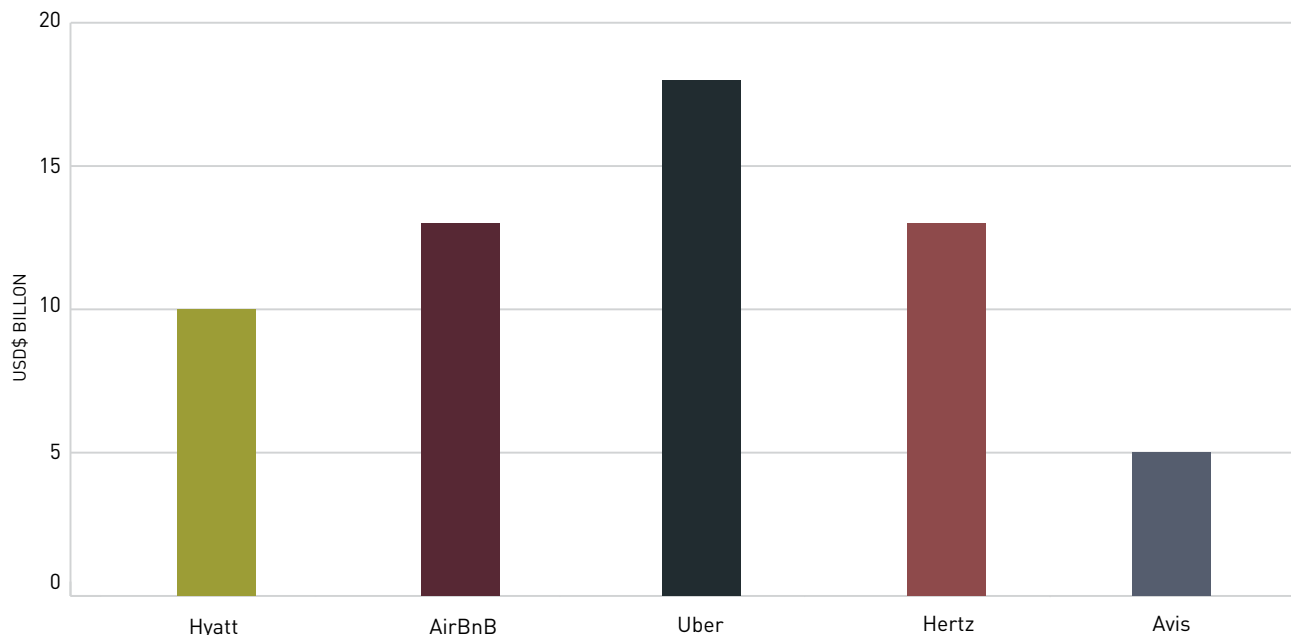
Limitations of existing regulatory models

The way that governments manage policy and regulation can make it difficult to respond to disruptive innovations like the sharing economy. Prescriptive and rigid structures are slow to respond to new ways of doing business. The resulting lag can mean that governments are unable to keep pace with protecting the public interest and that different businesses in the same sector face different sets of rules.

Most industrialized countries operate their regulatory systems in a manner that has remained relatively static over the past several decades. In large measure, these systems rely on what can be termed a ‘command and control’ approach to regulation.²⁸ This approach relies on prescriptive standards established by government that must be met at the threat of a penalty and exists in a wide range of policy areas,

28 Glen Hepburn, “Alternatives to traditional regulation,” OECD www.oecd.org/gov/regulatory-policy/42245468.pdf; Neil Gunningham, “Regulatory reform beyond command and control,” paper presented to the Amsterdam Conference on the Human Dimensions of Global Environmental Change, 24-26 May 2007, http://www.2007amsterdam-conference.org/Downloads/AC2007_Gunningham.pdf.

FIGURE 2:
VALUATION — SHARING ECONOMY AND TRADITIONAL ENTERPRISES (2014)



Sources:
Cannon and Summers (2014); *Forbes* (2014); *Wall Street Journal* (2014)²⁹

ranging from building and fire codes,³⁰ to managing toxic waste³¹ to what protection workers must wear when operating a chainsaw.³²

This prescriptive approach is in place in many of the areas that touch the sharing economy. For example, in Toronto taxi drivers and taxi vehicles are subject to roughly 40 pages of licensing requirements, spelling out mandatory training, the minimum number of hours to be driven a month (167), the precise number of stickers related to cyclist safety that must appear in a taxi (three), and a limit on the age of taxis (five model years).³³ Similarly,

the hotel industry in Ontario faces four pieces of legislation that govern the types of signs that must be displayed in hotel rooms — the *Fire Code*, *Innkeepers Act*, *Hotel Registration of Guests Act* and *Smoke Free Ontario Act* — along with 29 other pieces of provincial legislation that impose some type of obligation on hotels and motels.³⁴ While governments have added to these requirements, they rarely get rid of old ones that are obsolete — the *Innkeepers Act* dedicates roughly a quarter of its text to spelling out rules on how, and when, a hotel owner can place a lien on (and if necessary, sell) a customer’s horse.

29 Sarah Cannon and Lawrence H. Summers, “How Uber and the Sharing Economy can win over regulators,” (October 13, 2014) *Harvard Business Review* <https://hbr.org/2014/10/how-uber-and-the-sharing-economy-can-win-over-regulators/>; *Forbes Magazine*, “At \$18.2B, Uber worth more than Hertz, United, Continental,” (June 6, 2014), <http://www.forbes.com/sites/ellenhuet/2014/06/06/at-18-2-billion-uber-is-worth-more-than-hertz-united-airlines/>; *Wall Street Journal*, “Airbnb weighs employee stock sale at \$13 billion valuation,” (October 23, 2014), <http://www.wsj.com/articles/airbnb-mulls-employee-stock-sale-at-13-billion-valuation-1414100930>.

30 See for example the Ontario Building Code <http://www.mah.gov.on.ca/Page7393.aspx>; Alberta Fire Code http://www.municipalaffairs.gov.ab.ca/cp_fire_codes_standards.cfm.

31 See the *Ontario Toxics Reduction Act*, 2009 http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_090455_e.htm.

32 See the B.C. *Occupational Health and Safety Regulations* <http://www2.worksafebc.com/Publications/OHSRegulation/Part8.asp>.

33 Toronto Municipal Code Chapter 545, Licensing. http://www.toronto.ca/legdocs/municode/1184_545.pdf.

The taxi and hotel industries are not unique in this respect. Many of the markets that sharing economy enterprises are joining — retail, personal services, deliveries — are subject to a variety of prescriptive regulations. Many have not been updated to reflect new technological and social realities. This reinforces the status quo, by creating high barriers to entry for new enterprises — especially those that don’t easily fit the existing regulatory mold — while larger existing players are more likely to have the wherewithal and resources to comply with prescriptive regulations.

to.ca/legdocs/municode/1184_545.pdf.

34 Ontario Restaurant Hotel & Motel Association, “Regulatory Burden in Ontario,” (2011). <https://www.orhma.com/Portals/0/PDF%20Files/GovtRelations/FoodSafetyNutrition/2011.02RegulatoryBurden.pdf>.

Another challenge of the existing regulatory approach comes from the way the different regulators coordinate with another — or rather the way they fail to do so. Rigid organizational hierarchies and silos between different departments — let alone levels of government — inhibit the ability of policymakers to design holistic regulatory regimes or responses to emerging and disruptive technologies. Bureaucratic models designed for the agrarian age were starting to show signs of strain by the end of the 20th century, and are now threatening to collapse in the digital era.

Governments have neatly categorized types of regulatory responses – taxation can be income or a sales tax, product safety and liability issues are usually categorized by types of activities (e.g., building codes, food safety, taxi licensing). However, because sharing economy enterprises defy easy categorization, they have been met with a reaction from governments that to date could charitably be described as uncertain and inconsistent.

Regulatory capture, where regulators over time tend to advance the interests of regulated entities, is another issue that is often invisible but has serious implications for consumer welfare and fair competition. This dynamic can also promote socially unproductive but costly rent-seeking behaviour by firms seeking to maintain their market stronghold through lobbying, donations and other means.³⁵ In New York City there are roughly 13,000 licensed yellow taxi cabs on the streets, approximately the same number as in 1937 when the City's licensing program was established.³⁶

At its peak in June 2013, a New York City taxi medallion was worth \$1 million, however this price has dropped almost 20% to \$840,000 as of December 2014, largely as a result of the success of ride-sharing applications like Uber and Lyft.³⁷ These figures make it clear that existing operators benefitted considerably from tight controls on entry to market and also make it clear why they

35 Christopher Koopman, Matthew Mitchell and Adam Thierer, "The sharing economy and consumer protection regulation: the case for policy change," (December 8, 2014). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2535345 p. 8-11.

36 Nancy Scola, "The black car company that people love to hate," (November 11, 2013), *NextCity* <http://nextcity.org/features/view/the-black-car-company-that-people-love-to-hate>.

37 Josh Barro, "New York taxi medallion prices fall again," (December 2, 2014) *New York Times - The Upshot* http://www.nytimes.com/2014/12/03/upshot/new-york-taxi-medallion-prices-fall-again.html?_r=0&abt=0002&abg=1.

lobbied successfully for many years to maintain those controls.

More recently there have been some shifts towards market-based and performance-based approaches to regulation that might be more appropriate for the sharing economy.³⁸ However, these remain the exception, not the rule, and are taking hold too slowly to keep pace with the sharing economy.

Political and cultural context of government

While some of the challenges that government faces in finding the right way to regulate the sharing economy can be explained by the nature of the sharing economy and the regulatory tools available, policymakers are also hampered by the well-established political and cultural context of government itself.

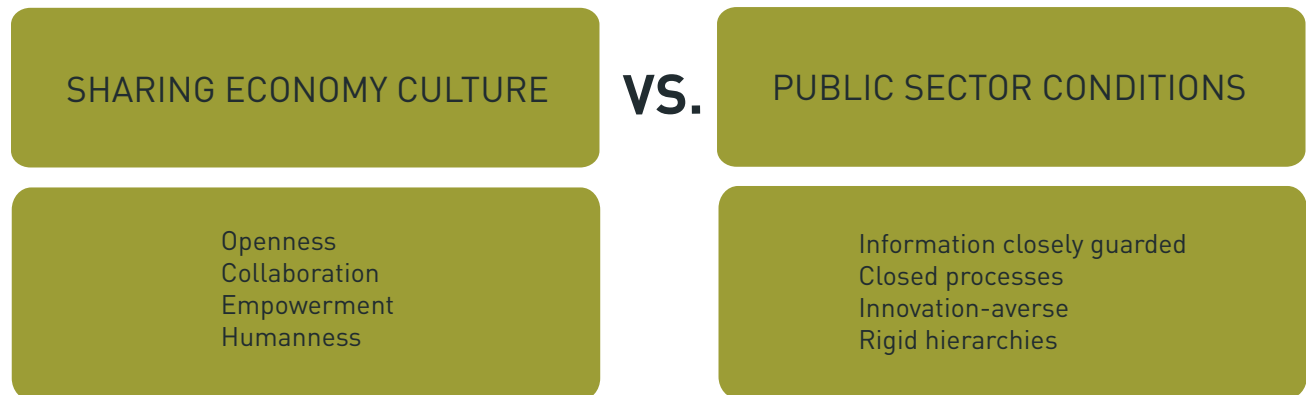
For governments, and particularly politicians, the voices of key stakeholders loom large. Elected officials at all levels are constantly meeting with a diverse range of groups and making tradeoffs to maintain support. When a large and well-formed constituency has concerns, politicians will listen. The sharing economy threatens to upend some of those organized traditional businesses such as taxis, hotels and retailers. The reaction from those groups has been swift. Taxi companies across North America and Europe have joined up efforts to oppose Uber and have also intensively lobbied politicians to introduce legislation with stiff penalties for drivers of illegal cabs.³⁹

Politicians are in an uncomfortable spot. They are being lobbied intensively by vested interests, but cannot close their eyes to the fact that technology is moving forward and the horse and buggy

38 Recent examples include the state of Virginia's trading program to improve water quality in the Chesapeake Bay and Quebec and California's market-based cap-and-trade agreement for greenhouse gases

39 Jessica Smith Cross, "Inside Toronto cabbies' battle to beat Uber," (December 15, 2014) *Metro* <http://metronews.ca/news/toronto/1238329/inside-toronto-cabbies-battle-to-beat-uber/>; Amber Cortes, "Uber complicated: rideshare legal battles heat up across the country," (February 27, 2014) *Grist* <http://grist.org/article/uber-complicated-rideshare-legal-battles-heat-up-across-the-country/>; Lisa Fleisher, "Thousands of European cab drivers protest Uber, taxi apps," (June 11, 2014), *Wall Street Journal* <http://www.wsj.com/articles/london-black-cab-drivers-protest-against-taxi-apps-1402499319>.

FIGURE 3:
COMPARING CULTURES



Source: See Pick 2014⁴⁰ and Galley et. al., 2013.⁴¹

industry didn't last long as a source of support once its downfall began. They must carefully balance the weight of existing operators, who are concentrated and organized, against broad but diffuse interests (such as voters or consumers). Uber as a single company can lobby, but many of its drivers are part-time, with perhaps moderate interest in political engagement.

Different cities in Canada have exhibited the full spectrum of reactions to the sharing economy. Edmonton has called for a temporary suspension of ridesharing companies while they work out the right response,⁴² while Toronto's new mayor, John Tory took issue with his own bureaucrats' hesitance with Uber,⁴³ saying that the service is "here to stay" and that "regulators, whether it be taxis or other industries, have to take into account in doing their job that the world is changing and it's changing for the better, and that regulations have to be modernized."⁴⁴

40 Francesca Pick "Communities: the institutions of the 21st century? An interview with Rachel Botsman," (March 22, 2014) *Ouishare Magazine* <http://magazine.ouishare.net/2014/03/communities-the-institutions-of-the-21st-century-an-interview-with-rachel-botsman-2/>

41 Andrew Galley, Jennifer Gold and Sunil Johal, "Public service transformed: harnessing the power of behavioural insights," (November 19, 2013) *Mowat Centre* <http://mowatcentre.ca/public-service-transformed/>.

42 Don Iveson, "The night Uber came to town," (January 21, 2015) <http://doniveson.ca/2015/01/21/the-night-uber-came-to-town/>.

43 City of Toronto, "Statement in response to UberX" <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=b3cd3845a5068410VgnVCM10000071d60f89RCRD&vgnextchannel=69b5a83b82870410VgnVCM10000071d60f89RCRD>.

44 "John Tory joins competition bureau in backing Uber-like taxi apps," (November 25, 2014), *The Globe and Mail* <http://www.theglobeandmail.com/report-on-business/uber-like-taxi-apps-good-for-consumers-competition-bureau-says/article21757310/>.

Civil servants, as well as politicians, tend to move slowly and operate in a risk-averse environment that rewards caution and prudence over bold, innovative measures. There are many reasons for this, including the nature of the 24/7 news cycle, the sensitivity and liability risks of being responsible for human health and safety, and the media and public's endless appetite for scandal. Governments rarely get credit for innovation, but often get punished for missteps. Figure 3 summarizes some of the inherent contradictions between the sharing economy's culture of openness and collaboration and the operating environment of the public sector.

What will it take for governments to continue to discharge their critical mandate to protect the public interest, while also recognizing the innovative potential of sharing economy enterprises to unlock greater labour market efficiency, enhanced consumer welfare and enhanced economic growth? Furthermore, how can government do so in a manner that takes account of existing operational realities grounded in long-held political, cultural and structural traditions?

Uber's "whack-a-mole" relationship with taxi regulators around the world makes for interesting conversation, yet is not productive

IV. Where next? Approaches for policymakers

Governments need different and better approaches to deal with the issues raised by technological innovation, and the sharing economy brings this issue to the fore. Uber's "whack-a-mole" relationship with taxi regulators around the world makes for interesting conversation, yet is not productive. But in the words of one observer, "Ignoring this conflict can't be an option. The city didn't adopt a set of rules and regulations for the taxi industry just for the fun of it."⁴⁵

There are four key steps policymakers should consider as they develop new approaches to the sharing economy:

- » establish a strategic operating framework
- » re-align political and cultural incentives
- » modernize government structures
- » adopt smarter regulatory responses.

Establish a strategic operating framework

Any choice that governments make about the right policy approach for the sharing economy starts from a particular perspective about what role governments should play in the economy, and society more broadly. Consciously and proactively establishing a strategic operating framework that contemplates a range of key considerations provides governments with a basis for making specific policy decisions, evaluating those decisions and making mid-course adjustments. A framework should address some of the following key questions:

- » **Impacts on broader policy objectives.** There are a variety of reasons why governments regulate markets today. In the case of the taxi industry, governments generally have managed supply to ensure there are sufficient cabs available to be a reliable part of urban transportation networks. Licensing businesses can also provide a lever to influence other goals such as accessibility and equity through specific permitting requirements. These are important considerations that should not be lost in the rush to respond to new technological advances.
- » **The scope of the underground economy.** No matter how governments design their policy frameworks, a certain share of economic activity cannot be, or is not, subject to those rules. These concessions range from not requiring sales tax from a 5 year old's lemonade stand, to the impossibility of capturing all "under the table" cash transactions that take place every day. The sharing economy means a greater share of the market is filled by activities that look more like these informal transactions. However, the sharing economy's technology may also make it easier for governments to track and enforce previously un-regulated activities — a home cleaner hired through Homejoy will have a digital trail and records that cash transactions never allowed. The tradeoffs between impacts on the fiscal position of government from foregone revenue and the opportunities afforded by more

45 Matt Elliott, "Two ways Toronto can deal with Uber cabs, without running them out of town," (November 23, 2014), *Metro* <http://metronews.ca/voices/urban-compass-toronto-2/1220784/two-ways-toronto-can-deal-with-uber-cabs-without-running-them-out-of-town/>.

innovation and lower enforcement costs are among the considerations that should inform this framework.

» **The role of government in the market.**

Governments need to consider how many of these issues the market will sort out for itself in a satisfactory way. In an effort to ease some of the tension points of the sharing economy, and pre-empt more active regulation, sharing economy platforms are taking steps to address some of these issues. For example, TaskRabbit has instituted a site-wide minimum wage,⁴⁶ and Peers (a platform for sharing economy workers) has put together insurance products for Airbnb hosts and ride-sharing drivers that offer a market solution to some of the risks associated with being an independent contractor.⁴⁷ Each of the platforms offers some degree of self-regulation⁴⁸ — the question becomes do they offer enough to protect the public interest?

» **Defining economic activities.** Governments must also determine when economic activity in the sharing economy crosses the threshold from an income-generating hobby to a business. Ultimately, this shapes a government's approach to taxation and enforcement of labour standards. If someone hires a twelve-year-old neighbour to shovel snow, they are not expected to pay Employment Insurance contributions, enforce workplace safety standards, or provide vacation and sick pay.⁴⁹ However on the other side of the dividing line, if that child were working for the Mr. Plow snow removal service, then there are taxes to be paid and rules that are enforced. Establishing a threshold that allows business to thrive while protecting workers and consumers is a critical first step for governments.

» **Impacts on social programs and policies.**

Governments must also consider the implications of the sharing economy for social programs and policies. Steady full-time

relationships with employers are important for a large share of Canadians for retirement income security, supplemental health coverage, and insurance against disability or job loss. If more Canadians move into the role of sharing economy entrepreneur, then governments will need to re-examine whether this opens up new gaps or places new pressures on Canada's social architecture.

More broadly, governments must turn their minds to their appropriate role with respect to protecting users of new technology or business models. Adam Thierer lays out two competing answers to this question.⁵⁰ On the one hand, adopting the "precautionary principle" which is influential in environmental law and policy, would see governments err towards making sharing economy activity illegal if it poses significant risk of harm, even if it is too early to have proof of that harm.

The competing vision of "permissionless innovation" sets the default at allowing the sharing economy to go ahead relatively unencumbered in the name of innovation, with the burden of proof flipped so that it is assumed to be beneficial unless proven otherwise. Using this approach policymakers should wait and see if the sharing economy comes up with answers of its own before bringing in regulation that might stifle innovation.⁵¹

The way people answer this question tends to shape whether they think that placing strict regulations on the sharing economy is protecting consumers from possible harm, or harming them by taking away competition for their business. The truth, as usual, is more murky. Better policy would benefit from a more robust assessment of the risk that comes from allowing —or banning — a new sharing economy approach, and delivering a regulatory approach that is targeted at that informed risk-assessment. By establishing a strategic operating framework that assesses a broad range of relevant issues, governments will be better positioned to deliver balanced, modern approaches that meet the needs of a range of interested parties and the broader public.

46 Singer, 2014.

47 Sarah Buhr, "Peers now offers products for independent workers in the sharing economy," (December 4, 2014) TechCrunch <http://techcrunch.com/2014/12/04/peers-now-offers-insurance-products-for-workers-in-the-sharing-economy/>.

48 Arun Sundarajan, "Trusting the 'sharing economy' to regulate itself," (March 3, 2014) *New York Times - Economix* http://economix.blogs.nytimes.com/2014/03/03/trusting-the-sharing-economy-to-regulate-itself/?_php=true&_type=blogs&_r=1.

49 Kevin Roose, "Does Silicon Valley have a contract-worker problem?" (September 18, 2014) *New York Magazine* <http://nymag.com/daily/intelligencer/2014/09/silicon-valleys-contract-worker-problem.html>.

50 Adam Thierer "Permissionless Innovation: the continuing case for comprehensive technological freedom," (2014) *Mercatus Center* http://mercatus.org/sites/default/files/Permissionless.Innovation.web_v2_0.pdf.

51 Darcy Allen, "What is a taxi? Regulation and the sharing economy," (22 December, 2014) *OECD Insights* <http://oecdinsights.org/2014/12/22/what-is-a-taxi-regulation-and-the-sharing-economy/>.

MANAGING REGULATORY ARBITRAGE IN AN INNOVATIVE MARKETPLACE

Governments must conduct a balanced appraisal of individual marketplaces and how their regulatory frameworks may impede either innovation or fair competition. The greater the ‘regulation gap’ between established operators (e.g. taxi drivers) and new operators (e.g. Uber drivers), the more problematic for market fairness, assuming the existing and new operators are in fact alike and should be treated as such.

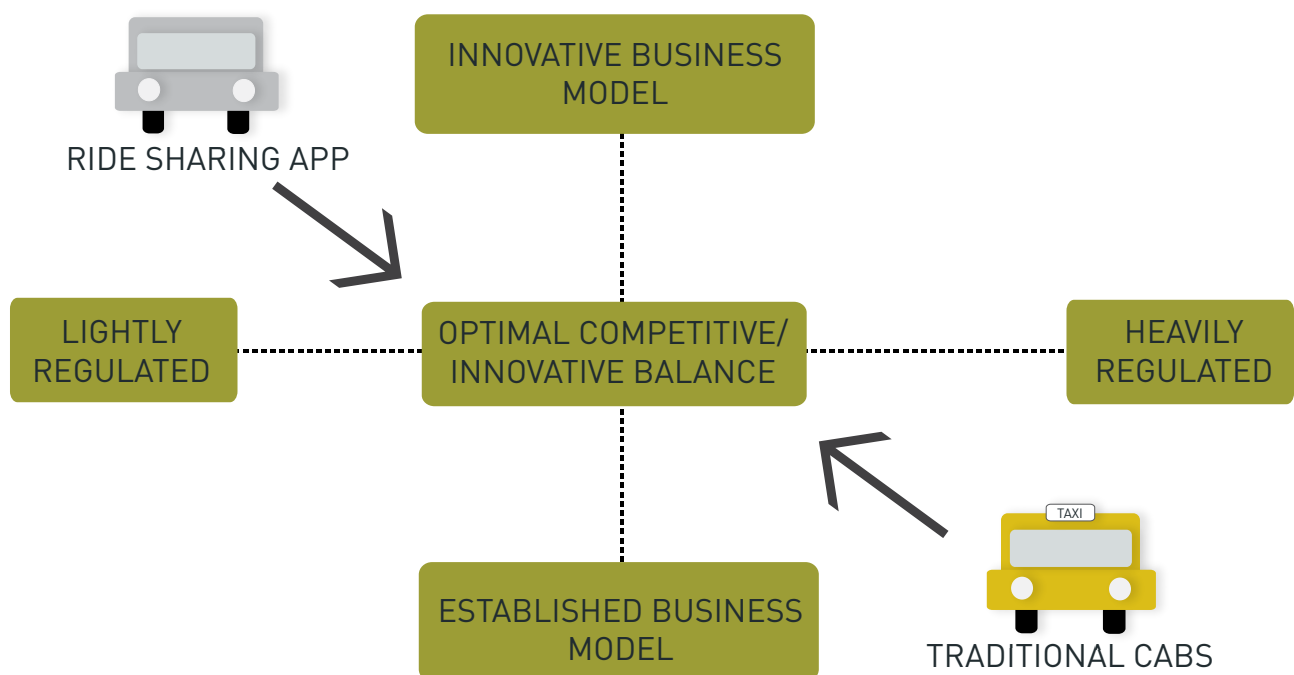
For example, in figure 4, if Uber is lightly regulated, the regulation gap with taxi drivers is significant. Uber and its drivers can then undercut existing operators with lower prices and more flexibility, driving them out of business and perhaps ultimately raise prices and reduce service levels in a new, less competitive marketplace. A hands-off approach may make sense where Uber drivers aren’t really taxis, but if they are — then, they should be regulated as such.

Opportunities for regulatory arbitrage in a poorly managed marketplace would abound if governments abdicated their responsibility to ensure new operators are playing by fair rules. But at the same time, treating new market entrants in the same way as existing operators can stifle innovation and dampen consumer choice through high costs of licensure that artificially limit supply of services.

Governments should not default to treating new, potentially innovative platforms in the same way as existing operators. Fair rules do not mean that existing rules should not be reconsidered. In order to foster marketplaces that promote both innovation and competition, governments should focus on reducing the ‘regulation gap’ between new and existing operators by adopting a two-track approach that:

- » modernizes prescriptive regulations for existing operators to more flexible frameworks that support innovation and reduce red-tape requirements, while not losing sight of the public interest and health and safety considerations. Opportunities to remove non-material barriers to entry for certain professions should also be explored
- » ensures new operators are regulated in a manner that protects the public interest and other key policy objectives while not impeding innovation or consumer choice.

FIGURE 4:
CLOSING THE REGULATION GAP



Re-align political and cultural incentives

A number of political and cultural factors specific to governments' unique operating environment are also worth discussing in the context of the sharing economy. These include:

- » **Political transparency.** The sharing economy brings stakeholder interests into sharp relief. From a political perspective, the clash of vested interests and new market entrants, overlaid against complex policy issues, is a particular challenge. Adopting a political leadership approach that is open and transparent is critical to ensuring that smart decisions and policies are made and adopted. This means being highly transparent about which stakeholders are lobbying and contributing at the political level, in order to maintain the trust of the public and business that decisions are being made for the right reasons. Since decisions around market entry have such significant implications for both existing enterprises and prospective entrants, there is a particular need to avoid any suspicion of unfair dealing.
- » **Open dialogue.** Political leaders must also ensure they are engaged in, and promoting, a vibrant, active and open discussion among all key stakeholders. Setting a culture and tone that is open to new opportunities and welcomes the clash of different ideas and voices is critical. The inclination to be cautious or listen only to familiar voices will result in stagnancy. Mayor Tory's recognition that new business models are here, and here to stay, is a welcome signal to the public, stakeholders and bureaucrats that the status quo may need to change.
- » **Bureaucratic incentives.** Political leadership is vital because without it, the bureaucracy has many reasons to defer, delay and deny change. However, the public service's culture is not so mutable that a press release or statement by the political head of government necessarily drives change on its own. Public servants must be empowered to be innovative and bold where necessary in the face of new technologies that do not easily fit within existing regulatory and policy frameworks. Potential opportunities in this regard involve greater use of policy labs that bring together diverse sets of stakeholders to identify policy options and greater use of

pilot programs to test regulatory and policy approaches on a smaller-scale before they are universally implemented. Both approaches would promote more innovation by providing a safe space to test ideas.

- » **Adopting an end-user perspective.** Governments need to re-consider their approach to regulation and services by shifting towards a mindset that puts end-users, rather than government operations, at the centre of design. Laws and regulations that are easier to understand are more effective and get higher rates of compliance.⁵² The United Kingdom's behavioural insights team has employed the EAST acronym to describe how government should try to encourage behaviours — make them easy, attractive, social and timely.⁵³ This same advice holds true for many government services and regulatory interactions with the public and stakeholders. Adopting a mindset of making rules designed to be easy to understand would go a long way to making regulatory frameworks more effective, both for existing and new enterprises.

Modernize government structures

The structures of government were not designed for a digital world. The advent of the digital era, and the sharing economy give rise to a number of questions about how government can best organize itself to operate in a world where information flows freely across borders and citizens expect greater levels of speed, transparency and effectiveness.⁵⁴ The speed of change found in the sharing economy and other changes driven by technology requires different types of responses. Policy cannot be static — it may be the case that the sharing economy platforms of today will themselves soon be made obsolete by other technologies — fully autonomous vehicles for example.

52 See OECD, "Reducing the risk of policy failure: challenges for regulatory compliance," (2000) <http://www.oecd.org/gov/regulatory-policy/46466287.pdf>; Henry Aaron and Joel Slemrod "the Crisis in Tax Administration," (2004) *Brookings Institute*. <http://www.brookings.edu/research/books/2004/crisisintaxadministration>. p. 93.

53 The Behavioural Insights Team, "EAST: Four simple ways to apply behavioural insights," (April 11, 2014) <http://www.behaviouralinsights.co.uk/publications/east-four-simple-ways-apply-behavioural-insights>.

54 Sunil Johal and Andrew Galley, "Reprogramming government for the digital era," (November 11, 2014) *Mowat Centre* <http://mowatcentre.ca/reprogramming-government-for-the-digital-era/>.

Given the boundary-blurring issues raised by sharing economy platforms, governments particularly need to think about how they can promote greater integration of information-gathering, advice provision and regulation between and amongst different governments. Finding the appropriate tools to consider issues that fall between many mandates requires thinking outside of governments' existing tool-boxes. Developing a holistic approach to enterprises that call into question existing employment standards, definitions of corporations, and other regulatory questions requires all relevant levels of government and departments within governments to work together. This could mean the development of a task-force with senior officials from all levels of government that tackles the questions about the appropriate role of governments, desired policy objectives and regulatory response as they relate to the sharing economy.

An independent review of the sharing economy in the UK recommended an Innovation Lab for the sharing economy for just this purpose.⁵⁵ Sharing of experiences and best practices through an international forum could also be valuable, given that governments in many different jurisdictions are facing similar issues. It could also lead to the creation of a more permanent function that brings together policymakers and allows them to consider issues in an ongoing manner as conditions evolve and as the need for policy and regulatory changes dictates.

Adopt smarter regulatory responses

Beyond these broader structural issues, there is an urgent need to re-think how governments regulate. Most of these issues pre-date the sharing economy and are the result of the gradual accretion of many rules developed by many governments and departments over decades, with the end result being a thicket of regulation that envelops businesses. Too often, regulations are out-dated, work at cross-purposes with each other, and take little to no account of business' ability to navigate the complex web of rules effectively, nor the costs of

doing so. The sharing economy, however, does bring these issues into even sharper relief. So, what can governments do to modernize the way they regulate?

There is an argument that existing models of regulation can be stretched to accommodate sharing economy enterprises, at least in the form they take today. Is there really a substantive difference between Uber's model and existing taxi companies? If so, it seems to fall at the margins. In the case of Uber in the City of Toronto, one could imagine tweaks to existing rules that categorized 'full-time' Uber drivers in much the same way as existing licensed taxi-drivers, while part-time or occasional drivers using personal could be treated less formally.

Similarly, black cabs in London have long required one of the most rigorous tests in the world to obtain a license. Called 'the knowledge', prospective drivers spend years committing the details of routes and points of interest to memory.⁵⁶ Some of these rules are in place for good reason, but in an age of GPS technology, is 'the knowledge' really required? Do consumers want to, or need to, pay a premium for a black cab when other, cheaper options could be made available? Existing licensing restrictions in London mean that black cabs are still the only option for someone wanting to hail a cab on the street, while other taxis and Uber drivers must be booked in advance. By enabling the 'advance booking' to happen instantly via a smartphone, Uber threatens black cabs more than other bookable mini-cabs.

These examples both point to the conclusion that existing regulatory schemes likely need to be updated to reflect new technology and new options for consumers.⁵⁷ However, options with no regulation are not in the public's interest either. A middle ground that exists between old laws and no laws can and should be found. How then can governments adapt existing regulatory models to be smarter and, where necessary, develop new regulatory models that are smarter?

Some starting points for governments to consider as they address these issues include:

55 Debbie Woskow, "Unlocking the sharing economy: an independent review," (November 26, 2014) UK Department for Business Innovation & Skills <https://www.gov.uk/government/publications/unlocking-the-sharing-economy-independent-review/unlocking-the-sharing-economy-independent-review>.

56 Jody Rosen, "The Knowledge, London's legendary taxi-driver test, puts up a fight in the age of GPS," (November 10, 2014) *New York Times Magazine* <http://tmagazine.blogs.nytimes.com/2014/11/10/london-taxi-test-knowledge/>.

57 Koopman et al., 2014.

- » **Greater adoption of performance-based regulations.** Rather than exhaustively listing prescriptive requirements for businesses, governments should, where possible, consider the development and adoption of performance-based approaches that focus on results but are agnostic as to means. There's nothing inherently wrong with command and control regulatory approaches, but there is now a growing recognition that while they offer certainty, they do not promote innovation and may in fact stifle it.⁵⁸ While some, particularly smaller businesses, prefer clear rules to follow, others would welcome more flexible approaches.
- » **Harness reputational information of sharing economy platforms.** Many sharing economy enterprises focus a great deal on reputational information. Many applications permit both parties to a transaction to rate each other, whether the service provider or the customer. Governments should consider how this information should inform regulation of sharing economy marketplaces, as poor ride-sharing drivers or belligerent passengers are quick to be revealed. While user data may not be adequate for issues such as product safety or tax evasion, they can provide a significant amount of information on how users are being served and what their needs are. This stands in contrast to complaint-based or investigation-based systems that typically underlie traditional regulatory models, and which are much slower to reveal problematic service-providers.
- » **Waivers and exemptions.** Another option for governments includes the use of temporary regulatory waivers or exemptions. This approach allows sharing economy enterprises to keep operating while regulators gather real-world experience to inform regulation that makes sense given market dynamics. New York City adopted this approach by introducing a one-year trial for e-hailing taxi apps.⁵⁹ Likewise, Pennsylvania and Detroit have recognized the experimental nature of these services with temporary two year approvals.⁶⁰

58 See Hepburn (OECD). A number of jurisdictions, including the UK and Australia, have begun to more broadly experiment with different approaches to regulation that focus on performance-based regulation, market-based interventions, co- and self-regulatory approaches, codes of conduct and voluntary compliance, to name just a few.

59 Scola, 2013.

60 Andrew Leigh, "Sharing the benefits of the sharing economy," (Janu-

Beyond these specific tools, there are some comprehensive strategies that governments should strongly consider as they re-think their regulatory approaches for the sharing economy and other disruptive challenges, including:

- » **Regulatory reviews.** A more structured approach to the regular review of regulations is critical in a world where market dynamics are so fluid and technological change is ever-present. There is a far clearer process for making rules and regulations than there is for un-making them.⁶¹ One way to do this is to mandate sunset or review clauses as a matter of course for rules that impact markets, labour standards, health and safety standards, tax approaches and other policy issues impacted by societal and technological change.
- » **More transparent consultations.** Governments should look to re-invigorate their engagement with stakeholders with respect to regulatory development. Open, transparent consultations that are designed to ensure as many relevant stakeholders as possible inform the development of regulations will minimize the risks of laws that take a narrow approach to issues such as consumer welfare or market competition and privilege regulated firms with informational advantages over new potential competitors. Authorities responsible for market competition could also take on a stronger role at the outset of regulatory development, rather than intervening based on complaints or investigations, to ensure that potential new market entrants are not unfairly excluded.
- » **Using data to assess risk.** Governments should consider how the technology underpinning the sharing economy can allow for different approaches to regulation and service delivery that draw on the significant amount of useful data generated by platforms. Information about service quality can help regulators develop risk-based approaches for platforms that focus regulatory oversight on high-risk activities and serious, repeat violators.⁶² Governments could also consider agreements that give

ary 29, 2015), *The Mandarin* <http://www.themandarin.com.au/19711-andrew-leigh-sharing-benefits-sharing-economy/>.

61 Mandel, 2014.

62 Koopman et al., 2014, p. 15.

companies more operational flexibility, in the form of co- or self-regulation, if they provide regulators with valuable data that enhances risk-assessment capabilities.

- » **Cultivating expertise.** Policymakers must have the right expertise and information available to make informed decisions on challenging issues. In Canada, the cost-benefit analysis that informs regulatory development typically focuses on the isolated impact of new regulations. Little attention is paid to downstream effects, social impacts and the interplay of different regulations with each other. These are complex issues, and they require sophisticated expertise. Developing that expertise and deploying it to examine not just new regulations, but existing regulatory frameworks and how those frameworks interact with new technologies is critical.

Thinking creatively about service delivery — opportunities for governments

Governments have too often been reacting from a defensive posture in the sharing economy debates. However, there are clear opportunities to both work directly with and glean lessons from platform operators to improve the functioning of some of the services that governments deliver and marketplaces that they regulate.

Data collected by platform operators could help governments improve public service delivery. For example, a municipality could use ride-sharing data to identify opportunities to improve late-night transit routes in a particular neighbourhood or might use crowd-funding data to enhance access to capital for small businesses. While providing this data may not appear to be in the companies' immediate interest,⁶³ letting government access some of this information could mitigate concerns around service quality and consumer welfare.

Governments already operate or regulate certain marketplaces that are characterized by inefficiencies and high transaction costs for certain participants. Employment services funded by governments to connect job seekers with positions, and private sector temporary help agencies that fulfill similar functions, have both been criticized for poor outcomes and inefficiencies.⁶⁴ Governments should consider adopting technology from the sharing economy to seamlessly connect job seekers with opportunities, either directly or in partnership with the private sector. This approach could lower costs, lead to higher wages for employees and faster, more responsive service for employers.

⁶³ Scola, 2013; Cannon and Summers, 2014.

⁶⁴ See for example, Commission on the Reform of Ontario's Public Services, "Employment and Training Services," (2012) Chapter 9: <http://www.fin.gov.on.ca/en/reformcommission/chapters/ch9.html> and Ontario Council of Agencies Serving Immigrants, "Submission to Standing Committee on General Government," (October 18, 2014) www.ocasi.org/sites/.../OCASI_Submission_Bill_18_October_2014.pdf.

V. Conclusion

While the almost daily announcements of new sharing economy start-ups can be dizzying, these new approaches change the context but not the business of public policymaking.⁶⁵ In heated debates characterized by hyperbolic and red herring arguments governments' responsibility is to take a balanced, long-term approach that takes into account the interests of all parties, with a particular emphasis on the broader public interest.

In some ways, the sharing economy is not fundamentally different from the models it is replacing. Whether someone hails a licensed taxi from their smartphone or an Uber black car look quite similar, and represent an opportunity for governments to “stretch” existing frameworks to match today’s technologies and today’s economy. In other cases, such as investment in businesses through equity crowdfunding, the very basis of existing regulatory models is being tested and may need to be re-thought.

These questions are not unique to the sharing economy. Technology has consistently moved more quickly than governments ability to keep up. Given the rapid pace of technological change and the dominant influence of technology in how people work with and interact with each other today, this game of catch-up is becoming a persistent, and problematic, condition. The structural and cultural changes within government and adoption of new regulatory frameworks that are needed to keep up with the sharing economy are equally relevant for other complex challenges that face governments.

Facing these challenges head-on is essential, not only to ensure that policy and regulation is coherent and effective, but also for creating an environment that supports innovation, consumer choice and investment.⁶⁶ Jurisdictions that move early to respond to new trends will benefit from better options for their citizens and more dynamic and competitive economies.

⁶⁵ Daniel Paré and Jeremy Geelen, “Technology: governing the ungovernable?” (June 2013) Policy Horizons Canada <http://www.horizons.gc.ca/eng/content/technology-governing-ungovernable>.

⁶⁶ Adam Thierer, “Global innovation arbitrage: commercial drones and sharing economy edition” (December 9, 2014) <http://techliberation.com/2014/12/09/global-innovation-arbitrage-commercial-drones-sharing-economy-edition/>.

