**Coase & the Platform Economy**

*Orly Lobel*

***Introduction***

The synthesis of the internet, smart phones, sophisticated applications, and the integration of big data and algorithmic processing has given birth to new economic interactions. These innovative business models span a range of pre-existing service and retail industries, including ride-sharing, short-term home and room rentals, freelancing, and lending, fueled by leading platforms such as Uber and Lyft, Airbnb, Task-Rabbit, and Lending Club, respectively.[[1]](#footnote-1) These new economic models are often clustered under the somewhat misleading term, the “sharing economy.”[[2]](#footnote-2) As a number of contributors to this volume aptly note, sharing connotes a romantic ideal of collaborative, anti-corporatist exchanges. In reality, what is termed the sharing economy marketplace is controlled by multi-billion dollar corporations with profit-minded goals that have little to do with sharing.[[3]](#footnote-3) Digital platforms like Uber and Airbnb are very clearly corporate entities. Their commodity is a form of digital communication facilitating searches and transactions between providers and buyers. The digital platform market usually consists of three groups; (1) the platform, (2) end providers, and (3) end buyers.[[4]](#footnote-4)

Though seemingly in line with traditional markets, platforms challenge older models of service delivery in valuable ways. Most basically, the platform lowers costs associated with matching transaction partners and the costs of the actual transaction. In turn, end users, providers, and buyers can find what they desire, be it work, rides, or a place to stay, more rapidly than ever before. With added fluidity for job seekers, increased access to untapped resources, and the enhancement of productivity to the market, the sharing economy may contribute to a rise in the global GDP, which in turn has the potential to increase wages and lessen the gap between earned income and the actual cost of living.[[5]](#footnote-5) With the rise of the digital platform, entire industries have progressed. For example, despite the justified critique of certain Uber practices, the ride-sharing industry has increased the supply of drivers, improved the quality of services across transportation industries, including taxis, enhanced safer and more reliable ride-hailing, and even reduced drunk driving.[[6]](#footnote-6) Short-term lodging has become cheaper and more available to a wider pool of customers, which also provides greater variety in the type of lodging available and increased and prolonged traveling.[[7]](#footnote-7)

Despite the apparent benefits brought about by the new sharing economy, the advent of Uber, Lyft, Airbnb, and other digital platforms as sources of income poses a range of regulatory challenges, including worker classification, safety protections, insurance standards, taxation, and licensing and permitting requirements. Attempts to fit new breeds of online service delivery into existing laws have resulted in much litigation with very few concrete answers. As United States Federal District Court Judge Chhabria stated regarding the classification of Lyft drivers, the task is often akin to “be[ing] handed a square peg and asked to choose between two round holes.”[[8]](#footnote-8) An immediate judicial resolution has been delayed in a number of cases that have either stalled in the courts for years,[[9]](#footnote-9) been dismissed for procedural shortcomings,[[10]](#footnote-10) or settled before a decision could be rendered.[[11]](#footnote-11) As some commentators, including Judge Chhabria, have suggested, some of these issues may be better suited for regulatory and legislative resolution rather than litigation.[[12]](#footnote-12) No matter the forum, the law must grapple with the ways in which new business models create both risks and opportunities for achieving the goals underlying our social policies. For legislatures, regulators, and courts to better address the range of questions posed by the tension between business innovation and existing laws, we must understand the logic and value, as well as the risks, created by the digital platform.

This Chapter analyzes the ways in which digital platforms such as Uber and Airbnb are perfecting the stages of deal-making and lowering transaction costs. The chapter argues that – in each of the three stages of pre-deal, deal-making, and post-deal – 1) search costs; 2) bargaining and decision costs; and 3) policing and enforcement costs, may benefit from the digital platform model. Each stage depends on enhanced information and optimal matching to reduce costs. The chapter illustrates how the platforms, based on digital large scale multi-sided networks and sophisticated algorithmic pricing, positively impact the relevant transaction costs at all three stages. Drawing primarily on examples from the legal challenges platforms face in the United States, the chapter then suggests that regulators must consider the opportunities that come from platform delivery as well as the possibility that certain traditional regulations have become redundant through platform innovations. The chapter thereby urges policymakers to identify the areas that continue to require regulatory solutions and those issues that are better addressed by platform private ordering.

**1. Value Added**

In 1960, Ronald Coase wrote in his seminal article about transaction costs that pervade the stages of deal-making: “operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would be carried out in a world in which the pricing system worked without cost.”[[13]](#footnote-13) During the three stages of pre-deal, deal-making, and post-deal, transaction costs include search costs, bargaining and decision costs, and, finally, policing and enforcement costs.[[14]](#footnote-14) To reduce these costs, each stage depends on obtaining information. The digital platform has the potential to increase access to information by the application of advanced technology to every aspect of the deal. It thereby impacts the relevant transaction costs at all three stages. As the platform grows, efficiency grows as well. In systemic ways, the market perfects itself.

In my article *The Law of the Platform*, I develop a novel taxonomy of ten distinct principles of the platform that together combine to reduce transaction costs:[[15]](#footnote-15)

1. Uber-scale: The platform connects strangers on a global scale. It creates

multi-sided networks of unprecedented size, increasing the availability of both supply and demand.

2) Resurrection of Dead Capital: The platform adds otherwise idle assets and resources to the market: physical products, skill, knowledge, and human labor.

3) Tailoring the Transactional Unit: The digital platform slices the resources it sells into smaller units, dividing up supply and demand into micro modalities: short-term rentals, an hour’s access to a car or lawnmower, a few minutes of personal assistance or delivery. The technology facilitates the smaller exchanges that would have previously never existed due to prohibitive deal-making costs. By opening up the market to micro modalities, dormant human capital is now mobilized as a market participant operating at competitive costs.[[16]](#footnote-16)

4) Commodification of Everything: The meteoric advent of the digital platform has meant that “the share of sharing is growing exponentially, but sharing is not free.”[[17]](#footnote-17) Most exchanges are based on the price of renting, trading, servicing, driving, and lending for a competitive fee, making the once-common practice of offering a friend a lift to the airport practically unheard of, and likely met with the thought, “Why couldn’t she just call an Uber?” Commodifying every transaction, similarly to the rise in scale of end users, increases supply, such that from a Coasean perspective, costs are reduced as supply appears to be infinite.

5) Deal Customization: Services and resources offered on the platform are not only offered in micro modalities, but the features of the offered deal can be combined and aggregated to offer optimal customization to fit individual needs with unprecedented specificity. Need a ride right now? Call an Uber.Can’t afford to ride on your own? Not a problem - just hop in an uberPool and share the cost of your ride with others going to your destination. Want a one day house that accommodates your entire extended family plus dog, includes a pool, but no stairs? You are likely to find it on Airbnb. Want an office space twice a week for three co-workers, including two hours of access to an administrative assistant? Shared work spaces like LiquidSpace will provide that deal. The menu of options has become wider without undermining the facility of transacting by several online clicks. .

6) Access Over Ownership: The platform aids a shift from a consumption mindset of property to one of access. This shift reduces transaction costs by mitigating the stakes of the deal. For example, buying a car is a far weightier decision than hailing a ride. The mindset of access also fuels usage and accelerates the circulation of resources in the market.

7) Overhead Reduction: The platform relies more on digital technology than brick-and-mortar offices and employees to intermediate the deal. Technological and economic innovations adopted by digital companies reduce expenses compared to their offline counterparts, and in turn, platform companies charge a relatively small percentage for their intermediation relative to their traditional brick and mortar counterpart. Still, as will be further discussed below, the question of costs is endogenous to the question of regulatory responsibility as well as the viability of a competitive market.

8) Reduced Barriers to Entry: Startup costs to digitally compete are low, primarily because of the low intermediation costs noted above. An online marketplace mostly requires a domain name and an app, dissolving some of the traditional maintenance costs. At the same time, as Kenneth Bamberger and I analyze in a forthcoming article, *Platform Market Power*, platforms tend to enjoy dominance once they have reached large scale adoption due in large part to network effects and switching costs.[[18]](#footnote-18)

9) Pricing Precision: Digital platforms rely on sophisticated pricing algorithms, which improve through data mining and artificial intelligence. Self-learning bots engage in dynamic pricing based on unprecedented amounts of information. From a Coasean perspective, the platforms reach a perfect marketing ideal: dynamic and comprehensive processing of market information to produce accurate valuation.

10) Dynamic Feedback Systems: Coase taught us that transaction costs are high when information asymmetries exist. Digital platforms innovate on this front by offering dynamic ratings, reviews, and cross-company information data to increase trust pre-deal and aid monitoring, policing and enforcement post-deal. Ride sharing consumers thus can take comfort in the knowledge that a system for flagging unfavorable drivers exists, likely creating the presumption that such drivers will be weeded out, leaving only those favorable to other passengers, and, due to their own ability to leave reviews, riders have the power post-deal to make known their complaints and to ensure that they are not again paired with the same driver against whom they have complained.

Beyond these ten features of the platform, note that platform companies also produce value by their differentiation from offline traditional exchanges. The platform economy does not simply efficiently deliver the exact same services offered before, it also constitutes new markets by accommodating and shaping user’s tastes and preferences. By introducing and normalizing new types of transactions, digital platforms are providing new solutions to old problems. At the same time, these digital platform giants are in direct competition with older traditional markets: think Uber versus traditional taxi cabs[[19]](#footnote-19), Airbnb versus the hotel industry. This in itself is key to the challenge of regulation: platforms act as market participants in a pre-existing competitive market yet they also can be categorized as their own unique market, in which they compete only against other like digital platforms: Uber versus Lyft as one example. The vast heterogeneity of goods and services offered on the platform and the innovative technologies and business models that digital platforms employ create a tension between new and old modes of service delivery. This in turn explains the ongoing legal battles that many of the leading platforms are now engaged in with both regulators and competitors trying to stand their ground within more traditional modes way of operating, while the rug is seemingly being pulled out from underneath their feet. As will be discussed in the next section, for regulators and adjudicators considering how to address these legal questions, understanding the value added by new platforms in reducing transactions costs can help them to analyze the places where continued regulation is needed and the places where regulations have become redundant.

**2. Regulation, Meet Innovation**

Regulation can have various purposes. From a Coasean perspective, rules and regulations are designed to reduce transaction costs and make the market more efficient.[[20]](#footnote-20) But regulation can serve other goals including the promotion of equal distribution, public safety, and health and consumer protection.[[21]](#footnote-21) When policymakers face innovation in the way people transact, exchange goods and deliver services, they must decide whether and which legal rules apply. The di gital platform has been positively disruptive to traditional market models, but it is not without flaws. The global reach of platforms has presented a range of issues ripe for regulation. Some existing regulations lend themselves quite easily to direct application on the platform. Other regulations appear outdated. As with every wave of technological, social and economic innovation, regulators must consider the continued value of various legal requirements in the face of new capabilities, opportunities, risks, preferences, and norms. Moreover, regulators must consider whether technological and economic innovation on the platform can serve the regulatory goals previously achieved by straight-up top-down rules. For example, systems of ratings and review need to be examined and compared to top-down modes of pre-deal quality disclosures and post-deal monitoring. Where regulation was enacted to correct market inefficiencies, such as asymmetric information or the high transaction costs involved in monitoring and enforcing the terms of the deal, new technologies employed on the platform may serve as a substitute for those policies.[[22]](#footnote-22) When new legal forms of smart private ordering can be effectively substituted for regulation, both buyer and seller win.[[23]](#footnote-23)

On the other hand, when regulation is designed to address distributional concerns, such as equality and fairness goals, it is likely that some of the issues that pervaded offline exchanges will continue into platform relationships. The platform economy thereby offers a fresh opportunity to observe and analyze the fit between goals and actual outcomes of a range of existing laws. When laws do not promote social goals but instead protect incumbent industries against competition, the platform is clearly a welcomed intervention and such anti-competitive laws should largely be deemed obsolete. We will too, at some point, if we have not already, reach a time when the platform may surpass, or become, the incumbent.[[24]](#footnote-24) The paradigmatic example for this is Uber’s dominance in the transportation market, which has made it difficult in some localities to demand either the private ordering of safety checks or the imposition of top down regulatory requirements. When the market is more competitive, such consumer protections are more likely to be adopted. Thus we must lay the social groundwork for elimination of anti-competitive laws and set the stage for newcomers to find space in the market should they create a product sought by consumers now, as these issues first arise, so that we should have in place a means to deal with what will inevitably be a recurring problem of incumbent industries, whomever those incumbents should be, seeking to prohibit the entry of new competition into the marketplace.[[25]](#footnote-25) The most difficult cases involve regulations that promote a range of social values requiring policymakers to tread carefully in carrying over those goals into the platform.

Innovation should also be viewed as an opportunity to unpack, and rethink, traditional regulatory categories. The platform creates hybrid classes, which means that “off-on categories such as consumer/business; employee/freelancer; residential/commercial are in some instances no longer viable as organizing frameworks.”[[26]](#footnote-26)

Unique fusions emerge as technology companies centralize some important aspects of the market transaction, for example, the methods of payment, search and review, and information and trust. Simultaneously, these companies are decentralizing other fundamental aspects of the exchange, which are controlled by users, such as pricing on the lodging apps and work hours on the transportation and cleaning service apps, aspects which determined the supply infrastructure of the business. What this means for regulators is that rather than a unified single entity which has traditionally been the object of regulation, transactions are now shaped by multiple actors, with varying capacities, interests, and needs.[[27]](#footnote-27)

With these new constellation and definitional hybrids, regulators should aim to track the economic substance of the transaction, consider the Coasean costs and logic of the deal, and then examine these realities against the policy goals of the legal field in question.[[28]](#footnote-28)

Consider the field of employment and labor law. The platform is often linked to the widespread rise of the gig economy – precarious work detached from a single long-term employer. Some representations of work on the platform portray this framework as empowering workers by enabling peer-to-peer exchanges without a corporation taking an unfair cut. Under this view, workers on the platform enjoy independence, choice, autonomy, and freedom to work on their own terms and time. People providing their services on the platform are described as embodying an entrepreneurial spirit.[[29]](#footnote-29) These qualities are often associated with classifying the worker as an “independent contractor” as opposed to the more protected classification of “employee.”[[30]](#footnote-30) Others critique the gig economy as bringing vast insecurity to the job market, thereby eroding the web of twentieth century employment and labor law.[[31]](#footnote-31) Thus, the effort to classify platform workers as either employees or independent contractors is heated and fraught with clashing normative understandings of the relevant regulatory goals. In my recent article, *The Gig Economy and the Future of Employment and Labor Law*, I proposed four paths for reform: 1) clarify and simplify the notoriously malleable “employee” classification doctrine; 2) expand certain employment protections to all workers, regardless of classification, or in other words: altogether reject worker classification; 3) create special rules for intermediate categories; and 4) disassociate certain social protections, such as health care and retirement security, from work.[[32]](#footnote-32)

On the employee classification front, platform markets expose the limitations of century long lines that separated the two classes: employees and independent contractors. As Judge Chhabria, considering the class action against Lyft regarding the classification of its drivers suggested, the twentieth-century test to classify workers may not be appropriate to address twenty-first century issues.[[33]](#footnote-33) Ironically, the test has never been without problems. It has occupied courts for over a century and the lines separating independent contractors and employees have continued to be blurry. More than that, drawing those lines has only made sense for some regulatory protections, for example overtime and leave laws but not for others, such as discrimination and whistleblowing laws. *O’Connor v. Uber Techs., Inc.*, a class action in California, contested Uber’s classification of workers as independent contractors rather than employees.[[34]](#footnote-34) Unsurprisingly, given the difficulty of applying the age-old common law multifactor employee classification test, the court found there was ample evidence supporting both sides of the argument.[[35]](#footnote-35) Factors such as classifying driving as an occupation that requires no supervision and no special skills and that drivers provide a service that is integral to Uber’s business, cut towards drivers having an employee status.[[36]](#footnote-36) Factors supporting the status of drivers as independent contractors include the use of the driver’s own vehicle, the driver’s ability to be employed by a different third-party transportation company (one other than Uber), and contracts declaring no employment status had been created between the driver and Uber.[[37]](#footnote-37) Uber markets to potential drivers by spewing slogans such as “be your own boss and earn extra cash.”[[38]](#footnote-38) The company makes it clear in its terms of service that workers are not employed by Uber.[[39]](#footnote-39) Yet, the question of whether Uber has appropriately classified its workers as independent contractors and not employees is far from simple. The question depends on context and the specific goals of the protective laws that command classification. In the Uber case, the sides settled for a proposed $100 million, rendering no binding precedent.[[40]](#footnote-40) The court noted that the traditional common law test determining employment status “evolved under an economic model very different from the new ‘sharing economy.”[[41]](#footnote-41)

In the parallel case against Lyft, Judge Chhabria was tasked with deciding the same issue.[[42]](#footnote-42) Judge Chhabria questioned whether California’s test to classify workers was outdated, and reasoned that a reasonable jury could decide the case either way.[[43]](#footnote-43) In his opinion, Judge Chhabria remarked that absent legislative intervention to create a new test for modern times, cases like this will go to juries in the future and be plagued with such ambiguity that their results will never render a remotely clear answer as different juries in different jurisdictions could easily reach incompatible outcomes.[[44]](#footnote-44) The Lyft case also settled before reaching a final determination.[[45]](#footnote-45)

The employment classification example reveals the importance of context in deciding how to regulate new economic models. One cannot view employment classification in strict isolation. Rather, the reason for asking the question is key to answering it. In other words, classification must be purposive: why are we inquiring about employee status – for what statutory protection, right or duty are we posing the question? When it comes to social policies such as wage and hour protections, health and benefits, it is time for a change. These may benefit from being de-linked from the single employer model that pervaded the 20th century. However some policies should continue to be imposed on workplaces, and should be extended to all those who provide their labor, whether employees or independent contractors. For example, anti-discrimination laws should continue to be imposed on market models regardless of the classification of the worker. Yet other areas of law, such as risk regulation, safety, and privacy, depend on democratic solutions to ensure balance between competing social goals. As Nestor Davidson and John Infranca so amply have argued, many of the regulatory battles concerning the platform are happening at the local urban level. They show how the interactions between platforms and local governments help to restore balance between the efficiencies of digital innovations and the ongoing need to secure public goals. Excitingly, these interactions also require policymakers to become more open and rational about the policy goals underlying a myriad of regulations. Currently, initiatives around the world exist to better unify the local rules for operating platforms.[[46]](#footnote-46) At the same time, as Davidson and Infranca illuminate, an important characteristic of the platform is its local variety and experimental quality. Too much uniformity imposed on its evolving forms can stifle innovation. Too much uniformity also hurts that ability to digitally tailor the deal and decrease transaction costs in all three stages: it prevents experimentation with systems that allow better search and information pre-deal; more tailored and precise negotiation of the deal the parties are interested in; and a greater variety of interactive online forums that allow post deal monitoring and trust.

**3. Regulators, Meet Ratings**

The current era of the digital platform is moving towards lower transaction costs by cutting out excessive bargaining time.[[47]](#footnote-47) While transaction costs still exist in these platforms, as the number of transactions increase, so does efficiency. As efficiencies increase, transaction costs become smaller, and society begins to move closer to the marketplace Coase once envisioned. In his article, Coase states:

In order to carry out a market transaction it is necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to under-take the inspection needed to make sure that the terms of the contract are being observed, and so on.[[48]](#footnote-48)

To reach such efficiencies in drawing the terms of the deal, one also needs confidence and assurances about the enforcement of the deal. As Dahlman explains in expanding on Coase’s analysis, “after the trade has been decided on, there will be the costs of policing and monitoring the other party to see that his obligations are carried out as determined by the terms of the contract, and of enforcing the agreement reached.”[[49]](#footnote-49)

Monitoring transactions has become part of the experience of the platform, and has given a sense of control to those using the platform. Incentivizing or mandating the review of one’s most recent experience with a platform company has begun to create a relatively self-regulating system which customers can rely on, one that provides a level of accountability that could potentially replace regulatory oversight. An Uber driver, for example, who knows he or she is necessarily going to be rated and reviewed upon completion of an upcoming ride, is given an incentive to be timely, efficient, and safe that cannot be imposed nor paralleled by less salient statutory regulations. This also why Coase’s three stages of the deal are inevitably interrelated: ex-post reviews aid not only for ex-ante trust and monitoring, but also help provide future deals with information that aids search. Digital ratings and reviews, along with digital platforms’ internal dispute resolution systems, can disincentivize and weed out fraudulent or irresponsible users, thus providing users with greater confidence in who they are contracting with – a necessary element to the carrying out of a market transaction in the Coasean view. As John Hawksworth, chief economist at PwC, put it, “modern digital communications allow sharing to happen across a global village of consumers and providers, with trust established through electronic peer reviews.”[[50]](#footnote-50) On the platform, services, providers, and users all track and review each other, creating a utopian (or some might say dystopian) Foucauldian panopticon. Eric Goldman has referred to this feature of online ratings as the “secondary invisible hand”:

When information is costly, reputational information can improve the operation of the invisible hand by helping consumers make better decisions about vendors. In this sense, reputational information acts like an invisible hand guiding the invisible hand…because reputational information can guide consumers to make marketplace choices that, in aggregate, effectuate the invisible hand.[[51]](#footnote-51)

Reliance on vast, dynamic information for each transaction may well be more efficient than one-shot regulatory screenings, such as licensing or quality control requirements.[[52]](#footnote-52) The design of these systems, as two-way reciprocal assessments, allows buyers and sellers to rate each other. At the same time, it is far from a perfect system. In general, there is no control over who leaves a rating or if that rating is even true. Research has shown ratings may be biased toward positive reviews because only satisfied customers bother to leave one.[[53]](#footnote-53) Some have suggested directions to increase transparency about the ratings system include showing the user’s percentile ranking along with her aggregate score, reporting the number of completed transactions compared to the number of reviews, and weighing more recent transactions heavier than older ones.[[54]](#footnote-54) Others suggest that platforms should take a more active role in conducting background checks of suppliers/users and offering refunds or insurance to consumers. What is important in these systems is that the longer they exist and the more users on the platform, the greater confidence users have in the ratings. Again, this promises an effective, and nearly costless, private mechanism of quality control.

At the same time, it again raises the question about platform market power, as dominant platforms will have the advantage of size and age of their network, making customers more inclined to stay with the service rather than switch to a new competitor. Moreover, at the same time that big data and the use of vast information to monitor transactions creates efficiencies, it also raises new risks concerning privacy. Kenneth Bamberger and I have raised the question of whether dominant platforms will be able exploit market power to unfairly limit consumer choice regarding privacy protections. For example, Uber is emerging as a data-driven company, leading analysts to predict that “we are going to see the transformation of Uber into a big data company cut from the same cloth as Google, Facebook and Visa - using the wealth of information they know about me and you to deliver new services and generate revenue by selling this data to others.”[[55]](#footnote-55) Julie Cohen urges us to pay more attention to the ways platform businesses are reshaping the landscape of legal entitlements and obligations, for example, ownership of data, privacy rights, and the immunities provided to digital intermediaries.[[56]](#footnote-56) As Cohen insightfully describes, “the uncoordinated patterns of self-interested, strategic intervention by platform firms are producing new legal-institutional formations optimized to their various projects and goals.”[[57]](#footnote-57)

Regulators thus have a new task of examining the ways data offers immense potential to replace traditional regulatory and enforcement mechanisms but can also create new perils and new forms of market abuse and inequities. The decision to be made, then, lies in whether policymakers and we as a society are willing to trade efficiency for privacy. In short, we must ask, determine, and decide, if the ability of the platform to keep transaction costs down with the implementation of technology that, more or less, allows for self-policing, is worth more than the sharing of information from, and about, us. Some may find the trade-off of their email address being sold to generate revenue a small inconvenience, at best, when compared to the ability to hail a ride anywhere, at a moment’s notice, while others may find this too intrusive. Those that find release of an email address worthwhile may find the sale of information as to when, where, and how frequently they visit certain locations to cross the line, while still others may find this a fair trade. Thus, in deciding whether deals made between users of the platform and creators of it are “worth it” in Cosean terms, policymakers must take into account the fact that the price on privacy, unlike so many costs on the platform, is not a flat rate.

***Conclusion***

In *The Problem of Social Cost*, Ronald Coase explains that if we reduce transaction costs throughout all stages of the deal, we will move to more efficient and fair outcomes for all parties involved.[[58]](#footnote-58) The higher the transaction costs, the more likely a deal will work out more advantageously for one party than another, and the more likely that that party will be the one with more resources. However, if there are lower transaction costs, and each party can monetize that which they are bargaining with, the benefits will end up relatively equal for each party.

The rise of twenty-first century digital platforms has unleashed a new market

system that changes many of the practices of twentieth-century markets. This article discussed how fundamental principles of the platform economy – a larger scale of supply and demand, a growing archive of information based on multisided end-user networks, an ability to granulate and micro-tailor transactions - help lower costs in each of Coase’s stages of the deal. The digital platform model presents an unprecedented opportunity to get closer to achieving Coase’s theoretical ideal. At the same time, questions about the regulation of platforms are complex and will largely depend on the social policy goals before us. In some contexts, such as safety regulation, the platform may be well-suited for private ordering as systems of ratings and reviews become increasingly broad and deep. For other contexts, such as ensuring basic welfare conditions for gig workers, the platform may be disrupting settled expectation of the workforce and policy makers must step in to provide a supplementary system that delinks work and social welfare.[[59]](#footnote-59)

1. Bernard Marr, *The Sharing Economy – What it is, Examples, and How Big Data, Platforms And Algorithms Fuel It,* Forbes(Oct. 21, 2016), <https://www.forbes.com/sites/bernardmarr/2016/10/21/the-sharing-economy-what-it-is-examples-and-how-big-data-platforms-and-algorithms-fuel/#7c1225f17c5a>. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. Lauren Thomas, *Airbnb just closed a $1 billion round and became profitable in 2016*, CNBC (Mar. 9, 2017, 10:45 AM), <http://www.cnbc.com/2017/03/09/airbnb-closes-1-billion-round-31-billion-valuation-profitable.html>; Richard Beales, *Uber’s $70 bln value accrues mainly to customers*, Reuters (Dec. 22, 2016, 12:40 PM), http://www.reuters.com/article/us-uber-valuation-breakingviews-idUSKBN14B23A. [↑](#footnote-ref-3)
4. FTC Staff Report, *The “Sharing” Economy Issues Facing Platforms, Participants & Regulators,* Federal Trade Commission(Nov. 2016), <https://www.ftc.gov/system/files/documents/reports/sharing-economy-issues-facing-platforms-participants-regulators-federal-trade-commission-staff/p151200_ftc_staff_report_on_the_sharing_economy.pdf>. [↑](#footnote-ref-4)
5. Alexander Howard, *How Digital Platforms Like LinkedIn, Uber And TaskRabbit Are Changing The On-Demand Economy,* Huffington Post (Jan. 03, 2017), <http://www.huffingtonpost.com/entry/online-talent-platforms_us_55a03545e4b0b8145f72ccf6?ncid=engmodushpmg00000004> [↑](#footnote-ref-5)
6. FTC Staff Report, *supra* note 4. [↑](#footnote-ref-6)
7. FTC Staff Report, *supra* note 4. [↑](#footnote-ref-7)
8. *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1081 (N.D. Cal. 2015). [↑](#footnote-ref-8)
9. *See* *Ehret v. Uber Techs., Inc.*, 148 F. Supp. 3d 884, 888 (N.D. Cal. 2015) (class action alleging “representation of a 20% gratuity is false, misleading and likely to deceive members of the public”); *L.A. Taxi Coop., Inc. v. Uber Techs., Inc.*, 114 F. Supp. 3d 852 (N.D. Cal. 2015) (alleging Uber made false and misleading statements about safety). [↑](#footnote-ref-9)
10. *See* *Greenwich Taxi, Inc. v. Uber Techs., Inc.*, 123 F. Supp. 3d 327, 336, 337, 338-40, 342, 343 (D. Conn. 2015) (insufficient and inadequate pleading on counts of false advertising, misrepresentation, false association, RICO, and CUPTA); *XYZ Two Way Radio Serv., Inc. v. Uber Techs., Inc.*, 214 F. Supp. 3d 179 (E.D.N.Y. 2016) (insufficient and inadequate pleading on counts of false advertising, Uber’s “partnership” with its drivers, and tortious interference). [↑](#footnote-ref-10)
11. *Cotter v. Lyft, Inc.*, No. 13-cv-04065-VC, 2017 WL 1033527, at \*1 (N.D. Cal. Mar. 16, 2017). [↑](#footnote-ref-11)
12. *See Cotter*, 60 F. Supp. 3d at 1081. [↑](#footnote-ref-12)
13. Ronald Coase, *The Problem of Social Cost*, 3 J. of Law and Econ. 15 (1960). [↑](#footnote-ref-13)
14. Carl J. Dahlman, *The Problem of Externality*, 22 J. of Law and Econ. 1, 148 (1979). [↑](#footnote-ref-14)
15. Orly Lobel, *The Law of the Platform*, 101 Minn. L. Rev. 87, 87 (2016). [↑](#footnote-ref-15)
16. Yochai Benkler, The Wealth of Networks: How Social Production Transforms Markets and Freedom 100 (2006). [↑](#footnote-ref-16)
17. Lobel, *supra* note 15. [↑](#footnote-ref-17)
18. Bamberger & Lobel, *Platform Market Power forthcoming* Berkeley Technology Law Journal, Vol. 32, 2017. [↑](#footnote-ref-18)
19. Vanessa Katz, *Regulating the Sharing Economy*, 30 Berkeley Tech. L.J.1066, 1092 (2015) (“… [T]axi dispatch services in Boston and Chicago have pursued claims against Uber under the Lanham Act and state unfair competition laws.”) [↑](#footnote-ref-19)
20. Paul Stephen Dempsey, [*Market Failure and Regulatory Failure as Catalysts for Political Change: The Choice Between Imperfect Regulation and Imperfect Competition*, 46 Wash. & Lee L. Rev. 1 (1989)](http://web2.westlaw.com/find/default.wl?rs=WLW8.01&serialnum=0101617287&fn=_top&sv=Split&tc=-1&findtype=Y&tf=-1&db=1282&vr=2.0&rp=%2ffind%2fdefault.wl&mt=LawSchoolPractitioner). [↑](#footnote-ref-20)
21. Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 Minn. L. Rev. 342, 415 (2004).; Orly Lobel, *New Governance as Regulatory Governance, in* Oxford Handbook of Governance(David Levi-Four ed. 2012);Cass R. Sunstein, After the Rights Revolution: Reconceiving the Regulatory State 84-91 (1990). [↑](#footnote-ref-21)
22. Eric Goldman, *Regulating Reputation, in* The Reputation Society: How Online Opinions Are Reshaping the Offline World 51, 53 (Hassan Masum and Mark Tovey eds., 2011); *see also* Chrysanthos Dellarocas, *Designing Reputation Systems for the Social Web, in* The Reputation Society: How Online Opinions Are Reshaping the Offline World 3 (Hassan Masum and Mark Tovey eds. 2011); Liangjun You & Riyaz Sikora, *Performance of Online Reputation Mechanisms under the Influence of Different Types of Biases*, 12 Info. Sys. and e-Bus. Mgmt. 417, 418 (2014); Vanessa Katz, *Regulating the Sharing Economy*, 30 Berkeley Tech. L.J.1066, 1075 (2015) (arguing that reputation systems can serve as a safety measure). [↑](#footnote-ref-22)
23. *See also* Arun Sundarajan, The Sharing Economy: The End of Employment and the Rise of Crowd Based Capitalism (2016) [↑](#footnote-ref-23)
24. Kenneth Bamberger & Orly Lobel, *Platform Market Power*, Berkeley L. and Tech. J. (forthcoming 2018); Joanna Penn & John Wihbey, *Uber, Airbnb and Consequences of the Sharing Economy: Research Roundup*, Journalist’s Resource (June 3, 2016), https://journalistsresource.org/studies/economics/business/airbnb-lyft-uber-bike-share-sharing-economy-research-roundup. [↑](#footnote-ref-24)
25. Harriet Taylor, *What Happened in Austin After Uber and Lyft Got Up and Left*, CNBC (Aug. 18, 2016), <https://www.cnbc.com/2016/08/18/what-happened-in-austin-after-uber-and-lyft-got-up-and-left.html>; Patrick Sisson, *Uber and Lyft Return to Austin: What’s Changed, and Why It’s Important*, CURBED (June 14, 2017),

    <https://www.curbed.com/2017/6/14/15803138/austin-uber-lyft-transportation-ride-hailing-return> [↑](#footnote-ref-25)
26. Lobel, The Law of the Platform, *supra*. [↑](#footnote-ref-26)
27. *Id.*  [↑](#footnote-ref-27)
28. Victor Fleischer, *Regulatory Arbitrage*, 89 Tex. L. Rev. 227, 229 (2010). [↑](#footnote-ref-28)
29. Joao E. Gata, *The Sharing Economy, Competition, and Regulation*, Competition Pol’y Int’l 1, 3 (2015), https://www.competitionpolicyinternational.com/assets/Europe-Column-November-Full.pdf. [↑](#footnote-ref-29)
30. 19 Samuel Williston, Williston on Contracts § 54:2 (4th ed. 2017). [↑](#footnote-ref-30)
31. Robert Kuttner, *The Task Rabbit Economy*, The American Prospect (Oct. 10, 2013), <http://prospect.org/article/task-rabbit-economy>. [↑](#footnote-ref-31)
32. Orly Lobel, *The Gig Economy & The Future of Employment and Labor Law* 51 U.S.F. L. Rev. 51 (2017). [↑](#footnote-ref-32)
33. *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1081 (N.D. Cal. 2015). [↑](#footnote-ref-33)
34. *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1113 (N.D. Cal. 2016). [↑](#footnote-ref-34)
35. *Id.* at 1145. [↑](#footnote-ref-35)
36. *Id.* at 1151, 1152-53 [↑](#footnote-ref-36)
37. *Id.* at 1136, 1137, 1149. [↑](#footnote-ref-37)
38. *Id.* [↑](#footnote-ref-38)
39. Alexis Kramer, *Uber Driver Fight Helps Shape Sharing Economy*, Electronic Commerce and Law Report (BNA) (Dec. 14, 2016), <https://www.bloomberglaw.com/product/tech/document/X3AHG5DC000000?bc=W1siU2VhcmNoIFJlc3VsdHMiLCIvcHJvZHVjdC90ZWNoL3NlYXJjaC9yZXN1bHRzLzQ3MjdiNjMxNzY5Yjc5YzI4MmZkY2Y5MzU2OThmNWNhIl1d--6936480fbc7404c45fb15622a09a57e695085dd1&search32=OyPRDY_N1BIJpQQMy18fSQ%3D%3D1f4diVk3bl_NuJsG2lNr7AHooApJAhdIrpV_qGd8lvpfE-J7cbkchphhq0g6aB-FLdDjKSvgtgVPuvpxDVtZELuW60xgC-Ff5SDJc3KEk2p3W0SZ12kvXg04t0cSpbPS>. [↑](#footnote-ref-39)
40. Cyrus Farviar, Judge Expresses Notable Concerns over Proposed $100M Settlement in Uber Case, arsTECHNICA (June 2, 2016, 5:17 PM), http://arstechnica.com/tech-policy/2016/06/most-drivers-in-uber-labor-case-would-get-under-25-so-some-protest-settlement. [↑](#footnote-ref-40)
41. *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1153 (N.D. Cal. 2016). [↑](#footnote-ref-41)
42. *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1081 (N.D. Cal. 2015). [↑](#footnote-ref-42)
43. *Id.* at 1070, 1077. [↑](#footnote-ref-43)
44. *Id.* at 1082. [↑](#footnote-ref-44)
45. *Cotter v. Lyft, Inc.*, No. 13-cv-04065-VC, 2017 WL 1033527, at \*1 (N.D. Cal. Mar. 16, 2017). [↑](#footnote-ref-45)
46. Marie Mawad, *City Mayors Worldwide Forge Alliance in Response to Airbnb, Uber,* Bloomberg Technology (Jun. 20, 2016), <https://www.bloomberg.com/news/articles/2016-06-20/city-mayors-worldwide-forge-alliance-in-response-to-airbnb-uber>. [↑](#footnote-ref-46)
47. *See* Katz, *supra note 19* at 1100-1. [↑](#footnote-ref-47)
48. Coase, *supra* note 13. [↑](#footnote-ref-48)
49. Dahlman, *supra* note 14, at 148. [↑](#footnote-ref-49)
50. Gill Carson, *Five key sharing economy sectors could generate 9 billion of UK revenues by 2025*, PWC Blogs 15 August 2014 <http://pwc.blogs.com/press_room/2014/08/five-key-sharing-economy-sectors-could-generate-9-billion-of-uk-revenues-by-2025.html>. [↑](#footnote-ref-50)
51. Eric Goldman, .ig Data Company, Forbes (March 23, 2015), 15 a)al Production Transforms Markets and Freedom 100 (2006). *Regulating Reputation, in* The Reputation Society: How Online Opinions Are Reshaping the Offline World 51, 53 (Hassan Masum and Mark Tovey eds., 2011); *see also* Chrysanthos Dellarocas, *Designing Reputation Systems for the Social Web, in* The Reputation Society: How Online Opinions Are Reshaping the Offline World 3 (Hassan Masum and Mark Tovey eds. 2011); Liangjun You & Riyaz Sikora, *Performance of Online Reputation Mechanisms under the Influence of Different Types of Biases*, 12 Info. Sys. and e-Bus. Mgmt. 417, 418 (2014). [↑](#footnote-ref-51)
52. FTC Staff Report, *supra* note 4, at 1, 5. [↑](#footnote-ref-52)
53. *Id.*  [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. Ron Hirson, *Uber: The Big Data Company*, Forbes (Mar. 23, 2015), <https://www.forbes.com/forbes/welcome/?toURL=https://www.forbes.com/sites/ronhirson/2015/03/23/uber-the-big-data-company/&refURL=&referrer>. [↑](#footnote-ref-55)
56. Cohen, *Law for the Platform Economy*, 51 U.C. Davis L. Rev. (forthcoming 2017). [↑](#footnote-ref-56)
57. *Id.*  [↑](#footnote-ref-57)
58. Coase, *supra* note 13, at 1, 15. [↑](#footnote-ref-58)
59. Lobel, *supra* note 32. [↑](#footnote-ref-59)