REGULATION OF DISRUPTIVE SERVICES:

The Cases of Uber and Airbnb

Peng Hwa Ang

Nanyang Technological University, Singapore

Corresponding address: tphang@ntu.edu.sg
Abstract

The Internet has disrupted offline rules soon after it was publicly deployed. At issue was the matter of which rules should apply. Should offline rules apply or should new rules be created?

On the one hand, the offline rules had a background of rationality and a track record of utility, at least for the most part. On the other hand, to stick to the rules may stifle innovations.

Recent innovative services such as Uber and AirBnB have proven disruptive of entire industries and their rules. The taxi and hotel industries have a long history of regulation and often for good reasons. Technically, Uber and AirBnB are illegal in just about all countries from inception.

This paper investigates how different countries have regulated such disruptive services. Do they apply offline rules to the online space? Do they apply online rules to the offline space? Or do they do something in the middle?

The thesis is that how these innovations are treated is an indication of how the country in question will thrive in the digital economy.

*Keywords*: sharing economy, digital economy, Uber, AirBnB
The Internet had been a disruptive force soon after it was introduced. And it may have been in Asia that the disruption was first noticed. The earliest disruption was in the area of censorship. Suddenly, content that had been screened out was now easily available at the click of a mouse. In Korea, censors deleted an estimated one million postings that praised North Korea. In China the various bulletin board groups were filtered to a handful, mostly in the computer field. In Singapore the government decided that although it was impossible to filter out pornography, which continues to be banned in Singapore, the anti-porn law should still stand as a “signpost” of society’s values. In practice, this meant that the law would be kept in place, and some sites would be blocked. Many other sites however, would be available as enforcement would be non-existent (Ang and Nadarajan, 1996).

Internet technology then was in its infancy and the Internet itself was not widely available. Today, with cheaper smart phones, and the emergence of a “sharing economy” the Internet is proving to be truly disruptive. New services such as Uber and Airbnb are illegal at inception in many if not all countries.

How should governments deal with such illegality?

This paper aims to study the issue of disruptive (illegal at inception) services to understand how such services have been treated and should be treated. Potentially the lessons they offer may

**Context**

Laws in areas such as public transport and hotel accommodation have had the time for the harm or mischiefs to be identified and the solutions arrived at. Although the primary harm for both Uber and Airbnb centre around the issues of comfort and safety, over time, an
encrustation of rules has developed that do not all address the primary concerns of comfort and safety. It is this set of rules that have proven more challenging to resolve.

For Uber, it concerns the taxi unions or companies and the fact that licensing has resulted in taxi licences being highly valuable. In the case of Airbnb, the rules also dwell on zoning to ensure that residents are not bothered by the frequent movement of hotel guests. Further, many countries have rules that limit short-term leases; any shorter and the premises have to be licensed as a commercial enterprise.

**Uber**

Uber as a service has some advantages over the traditional taxi service. It gives the user direct access to the driver. And with GPS technology in the smartphone, the car can also be tracked. This offers a level of assurance for the user as well as family and friends and may help explain the popularity of ride-hailing services as shown in Table 1 below.

**Table 1: Selected Ride-Hailing Services Around the World**

<table>
<thead>
<tr>
<th></th>
<th>Year</th>
<th>Origin</th>
<th>Service</th>
<th>Users</th>
<th>Market</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uber</td>
<td>2009</td>
<td>San Francisco</td>
<td>Hybrid taxi service and ridesharing</td>
<td></td>
<td>58 countries</td>
</tr>
<tr>
<td>Lyft</td>
<td>2012</td>
<td>Hybrid taxi service and ridesharing</td>
<td>3 million users a day; 400 cities in China</td>
<td>More than 20 cities in Tokyo, Osaka, Barcelona, Manchester,</td>
<td></td>
</tr>
<tr>
<td>Didi Chuxing</td>
<td>2015</td>
<td>Beijing, China</td>
<td>Hybrid taxi service and ridesharing</td>
<td>400 cities in China</td>
<td>400 cities in China</td>
</tr>
<tr>
<td>Kabbee</td>
<td>2011</td>
<td>London, UK</td>
<td>Taxi hailing service</td>
<td>70 minicab fleets</td>
<td>London</td>
</tr>
<tr>
<td>Hailo</td>
<td>2011</td>
<td>London, UK</td>
<td>Taxi hailing service</td>
<td>60,000 drivers 1 million passengers</td>
<td>More than 20 cities in Tokyo, Osaka, Barcelona, Manchester,</td>
</tr>
<tr>
<td>Ola Cabs</td>
<td>2010</td>
<td>Mumbai, India</td>
<td>Various cab services, including limos, motorbikes</td>
<td>250,000 cars; 80% market share in India</td>
<td>India</td>
</tr>
<tr>
<td>Grab</td>
<td>2011</td>
<td>Malaysia</td>
<td>Various cab services,</td>
<td>75,000 registered drivers</td>
<td>Southeast Asia</td>
</tr>
</tbody>
</table>
On the other hand, the harm that the regulations are intended to foil through insurance, background checks and licensing have indeed occurred. In the case of Uber, some passengers have been raped by drivers. The Taxicabs, Limousine and Paratransit Association (TLPA) in the USA has a website that curates news about accidents and incidents involving such ridesharing services as Uber and Lyft (TLPA, 2017). In other words, there are good rationale for the laws.

**Airbnb**

The advantage of the Airbnb service is that travellers can experience what it is like to live like a resident of the city at a price lower than that of a hotel. Hosts in turn can rent out their spare room. Some guests, however, have been molested by their hosts; neighbours have sometimes complained about strangers coming to and fro into what is an otherwise residential place. And like Uber, there is a website — airbnbhell.com — that curates horror stories as reported by both guests and hosts.

In sum, there is a real tension—on the one hand the old economy rules do have sound rationale behind them. On the other hand, to simply apply the old economy rules would mean that these new services would never have the chance to take off.

How can this tension be resolved?

**Past Resolution**

One way to resolve this tension is to look at how similar tensions have been resolved in the past. An early example would be how the issue of online auctions was resolved. After eBay and similar online auction sites emerged, the number one source of frauds online was auction sites. They constituted 42.8%, almost half, of all such complaints. Up until 2007, they
were the number source of complaints although the percentage of the contribution of all frauds had declined. In 2008, auction frauds ranked third; in its most recent report, 2015, it ranked fourth (Internet Fraud Complaint Center, 2001, 2007, 2008, 2015).

Online auctions were actually illegal in many Commonwealth countries. This is because English law required the physical presence of an auctioneer in an auction but in the online space, there can be no physical auctioneer. Presumably, there was widespread auction fraud without the presence of an auctioneer.

The leading online auction company eBay, managed to overcome these problems through innovative measures. This included insurance as well as a ranking system so that the more reliable sellers would get a higher ranking. It was therefore a mix of old world rules along with some measures available specifically to the Internet. It does mean, however, the change of the existent rules. And so in Singapore, and presumably in many other Commonwealth countries, the rules have been changed to allow online auctions.

**Comparisons**

This section recounts how the two global companies, Uber and Airbnb, overcame their challenges in coming to east Asia.

**Uber**

**China**

China is a notoriously difficult market for non-Chinese Internet companies as global giants such as Facebook and Google have not been able to gain a foothold. After spending US$2 billion to compete, Uber sold its service to Didi Chuxing in exchange for a stake in the Chinese company (Kokalitcheva, 2016).

Didi itself has been fined “hundreds of millions of yuan” as it was considered illegal initially. Then in late 2016, new rules were formulated but they had the catch that the drivers in a city had to be residents in the city. Further, provinces and cities could formulate their
REGULATION OF DISRUPTIVE SERVICES: The Cases of Uber and Airbnb

own restrictions and many do because taxi companies pay taxes and licence fees at the local level (Chen, 2016).

Macau and Hong Kong

Uber is banned in Macau. Macau’s case is interesting for several reasons. First, there is a shortage of taxis as drivers prefer to ferry tourists. Second, some 300 Uber drivers had been fined US$1.25 million over a 10-month period from October 2015 to August 2016. When Uber said it would pull out from Macau, residents protested and Uber changed its mind. At the moment, Uber is still technically illegal but apparently allowed to operate.

In Hong Kong, Uber pulled out of the taxi and van service but is carrying on with its ride-sharing service. Hong Kong has also fined Uber drivers but after protests, no further enforcement action has been taken. Some officials have urged the Hong Kong government to clarify the status of Uber. Meanwhile Uber continued only its ride-sharing service, pulling out from the others (Yau, 2016).

Singapore

Singapore has been accepting of Uber and has taken the path of leveling up Uber and other ride-hailing service drivers; some of the regulations for taxi drivers will be reduced—the training time will be cut by more than half from 60 hours to 25 hours, some of which can be done online (Lim, 2016).

Japan

Uber has not done well in Japan. The capital, Tokyo, has 50,000 taxis, four times as many as New York City and the service is regarded as efficient and high quality (Hornyak, 2015). Uber was told to stop its service in Fukuoka, the second-most visited city in Japan after Tokyo. And in Tokyo, competition from taxi apps made Uber not as compelling (The
Japan Times, 2015). Uber, however, is apparently succeeding in small towns with declining populations (Takada, 2016). The legality of Uber is determined at the local level.

South Korea

Under South Korean rules, Uber could not operate a taxi service. It could, however, offer UberBLACK, a luxury chauffeur service that could be used only by foreigners, not South Koreans. This was used by hotels. But when Uber introduced UberX, which could be used by South Koreans, it was blocked.

In December 2014, Korea became the first country to charge Uber CEO Travis Kalanick for operating an illegal taxi service. He refused to stand trial in Korea. In January 2015, Seoul City poured offered a KRW 1 million (US$870) bounty to anyone who reported an Uber driver. Taxi drivers vowed they would never work with Uber (Ramirez, 2015 Dec).

“Uber’s whole style was go to market, break the law, cause a big ruckus […] and the law gets changed,” the source close to Uber said. “In a way they got their comeuppance in Korea” (Ramirez, 2015 Dec).

Almost a year later, in November 2015, new national and municipal rules were developed to allow Uber to operate UberBLACK as well as work with taxi drivers as a booking service.

But in the meantime, at least one other Korean company has entered into the fray. Kakao, the dominant Korean mobile messaging platform, started a free taxi-hailing service that garnered more than 1.2 million ride requests in the first four months of operation. And in the same month that Uber returned, the company started Kakao TaxiBlack, a premium service that competes directly with UberBLACK.

Interestingly, a journalist who covered the Uber attempts started a ride service himself. “I supported Uber because I thought it was a very original idea,” said Park, who worked for the Korea Economic Daily. “But Uber was provocative… and that pissed the
government off. I thought that if we could take advantage of any gray areas in the regulations, we could break into the market” (Steger, 2016).

Philippines

Philippines may have passed the world’s first regulatory framework for app-based ride-hailing services such as Uber. Under the rules passed in 2015, drivers must be registered, the cars cannot be older than seven years and must be equipped with GPS (Toppa, 2015).

Taiwan

In sharp contrast to the Philippines, Taiwan raised the penalty for illegal private taxis to the world’s highest—up to US$780,000 from US$1,600 (Reuters, 2016). Uber itself has been fined total of US$2 million.
## Table 2: Uber Rules

<table>
<thead>
<tr>
<th>Local equivalent</th>
<th>Macau and Hong Kong</th>
<th>Singapore</th>
<th>Japan</th>
<th>S. Korea</th>
<th>Philippines</th>
<th>Taiwan</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Didi Chuxing</td>
<td>HK has some 20 taxi apps</td>
<td>Grabcar (dominant)</td>
<td>Kakao Taxi</td>
<td>Grabcar</td>
<td></td>
</tr>
<tr>
<td>Macau and Hong Kong</td>
<td>Effective Nov 1 2016</td>
<td>No legalization; but also no enforcement</td>
<td>Illegal but allowed to operate in Tokyo and rural Japan</td>
<td>Nov 2015 Private taxis (including UberX) banned</td>
<td>May 2015 Treats service as distinct from taxi industry</td>
<td>Fines raised for unlicensed private taxis to US$780,000</td>
</tr>
<tr>
<td>Qualification of drivers</td>
<td>Local resident • 3 years driving experience</td>
<td>25-hour training (for both taxi &amp; Uber drivers)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensing</td>
<td>None</td>
<td>None but drivers may only rent, not buy, their taxis</td>
<td></td>
<td></td>
<td>Drivers must be registered</td>
<td></td>
</tr>
<tr>
<td>Other rules</td>
<td>User data must be stored in China for at least two years</td>
<td>Users may only hail cab online, not off the street</td>
<td></td>
<td></td>
<td></td>
<td>Cars to be less than 7 years old</td>
</tr>
</tbody>
</table>

Sources: Techcrunch, 2016; Chan. 2016; Ramirez. 2015; Ministry of Road Transport and Highways,
Regulation of Disruptive Services

**Airbnb**

The major objection Airbnb faced is that inns and hotels are regulated but Airbnb homes are not. Hence it is not a level playing field. In Singapore, the conversation around this is whether to level up (new service obey old rules) or to level down (new rules apply to the service). The reality is often a mix with some new rules applying to both regimes.

**China**

Airbnb had been slow to start up in China. It set up a separate legal entity, Airbnb China, to offer its services in December 2016. This means, however, that data of its hosts and users will be stored in China. The company ranks third with some 100,000 listings, behind two other local companies: Tujia with 440,000 listings and Mayi with 300,000 (The Economist, 2016).

The market leader, Tujia, had started in 2008. Aware of the distrust of the online space, it listed the phone number of the hosts so that potential guests can talk to them.

But once it decided to enter the market, Airbnb built relationships with Chinese government and businesses. Payment can be made through Alipay (effective 2014), the Chinese equivalent of Paypal; hosts can be contacted through WeChat (effective Feb 2016), the dominant messaging platform in China (Zaleski and Chen).

Although China’s anti-terrorism laws require hotels and other short-term rental places to register their guests (Custer, 2016), China’s short-term home rental is unregulated.

**Hong Kong**

The law requires rentals for fewer 28 days to be registered as a hotel or guesthouse with the Home Affairs Department. The Office of the Licensing Authority has a dedicated enforcement team; in 2015, a total of 132 persons were convicted for illegal rentals (Woodhouse, 2016).
REGULATION OF DISRUPTIVE SERVICES:
The Cases of Uber and Airbnb

Singapore

Short-term rentals by home owners of less than six months are illegal in Singapore. In January 2015, the Urban Redevelopment Authority, which regulates real estate use, conducted a four-month review of short-term rentals. After concluding the review, however, it said that it needed another year to decide. In the meantime the URA has continued to enforce the law with in fact a rising number of convictions—36 in 2014, 23 in 2015, and 44 in the first half of 2016. Sentences for the convictions can be up to S$200,000 (US$140,000) or one year’s jail (Navaratnarajah, 2016).

Japan

Japan has seen double-digit increase in the number of tourists for a few years but the number of hotel rooms has stayed about the same. Rules for hotels are strict, down to having a reception desk and the colour of the pillowcases (Nakamura and Takahashi). Hoteliers are adding rooms in the light of the increase, especially from Chinese tourists, and also in anticipation of the Olympics in 2020 (McMillan, 2016).

New rules register Airbnb rentals as lodging houses under the Inns and Hotels Act with a limit of 180 days a year.

Korea

Homes must be registered with the government as lodgings for foreigners before they can be listed on Airbnb. And home owners have to live in the same premises. That is, it is illegal to rent out the entire home (Ramirez, 2016 Oct).

Taiwan

In February 2015, Taiwan doubled the fine for operating an unlicensed hotel from NT$90,000-NT$450,000 (US$2,900 to US$14,300) to NT$180,000-NT$900,000 (US$5,700 to $28,500). The government may also shut off power and water to the homes (Shan, 2015).
That year, Taipei city inspectors ordered Airbnb to remove 95% of its listings for Taipei.

There had been a death from carbon monoxide poisoning and a fire in two Airbnb listed homes two years earlier, in 2013 (Chou, 2015).

Table 3: Airbnb Rules

<table>
<thead>
<tr>
<th></th>
<th>China</th>
<th>Hong Kong</th>
<th>Singapore</th>
<th>Japan “minpaku”</th>
<th>Korea</th>
<th>Taiwan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rules</td>
<td>Unregulated</td>
<td>Illegal</td>
<td>Illegal but tolerated</td>
<td>Minimum stay of a week</td>
<td>Illegal to rent out the whole home; owner must live at home</td>
<td>Illegal</td>
</tr>
<tr>
<td>Enforcement</td>
<td></td>
<td>Enforcement through Home Affairs Department</td>
<td>Enforcement mainly because of complaints</td>
<td></td>
<td>City inspectors</td>
<td></td>
</tr>
<tr>
<td>Registration</td>
<td>Must register as lodging house</td>
<td></td>
<td>Registration</td>
<td>Registration</td>
<td>Registration</td>
<td></td>
</tr>
</tbody>
</table>
Regulation of Disruptive Services

Discussion

There is a tendency at least among some civil servants, when presented with such disruptive technologies, to declare them illegal. This was my experience in Myanmar when I presented the cases of Uber and Airbnb. This instinct is not a particularly Asian one. It appears to be also a similar case in New York City where the ride-hailing apps have to function as a de facto taxi company.

But to be fair, when the civil servants I spoke to were told that ruling these services as illegal was in effect disallowing new technologies, invariably they paused. In Myanmar, the Deputy Director overseeing tourism suggested that perhaps Airbnb services may be allowed in areas where there were not enough hotel rooms. Someone else chimed in, suggesting that perhaps a separate category may be created for such services. The mood in the room began to change; even within the legal culture, there is room to accommodate some of these disruptive services.

From the foregoing analysis, the answer to the question of whether such disruptive services will be legalized does not depend merely on how open the civil servant or the government is. Instead, there is a dynamic that also involves the company. Uber would appear to have had a harder time with officials because of its harder stance. On the other hand, Airbnb had taken a softer stance in comparison.

Both services are compared for the legality or otherwise of their service. Table 4 below suggests that there may be national stance with respect to the disruptive technologies. This national outlook may reflect a shared political outlook in the sense that it adopts the flavour of the political party of the day; when the party changes, the flavour may change. Further research will be needed to determine if this is indeed the case.
Table 4 below suggests that two disruptive but unrelated services are likely be treated in the same way. The Table shows that where Uber is legal so would Airbnb; and where the legal status of one is uncertain, so is the legal status of the other.

<table>
<thead>
<tr>
<th></th>
<th>Uber</th>
<th></th>
<th></th>
<th>Airbnb</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legal</td>
<td>Unclear</td>
<td>Illegal</td>
<td>Legal</td>
<td>Unclear</td>
<td>Illegal</td>
</tr>
<tr>
<td>Philippines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Korea</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>China</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hong Kong</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Macau</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Japan</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Taiwan</td>
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</tbody>
</table>

NB. Thin ticks mean that rules have qualifiers that limit the service.

Conclusion

This study suggests that at least on these two disruptive services, governments have adopted a common approach. It also suggests a considered approach. Any changes to the rules must recognise the rationale for the existing rules. That is, it should be clear what the harm or mischief is to be avoided.

The “mischief” includes the element that in some cases, taxi drivers have paid a fee for the licence to drive. To allow just about anyone to drive would in effect be devaluing the fee that has been paid. The rules therefore have to be changed but on a continuum from being entirely friendly to the existing regime and therefore entirely hostile to the new service to being entirely friendly to the new service. In the countries studied, where there are changes, the rules appear to have been modified so that they are positioned around the middle of the continuum.
In some cases, the drivers have to register with the taxi service regulator. In effect, the service has become a taxi operator. The business model of the service has changed.

For Airbnb, the harm is the nuisance factor in having guests coming through and disturbing the peace. So the common factor is a reduction in the number of days that hosts can rent out their apartments.

But before arriving at the specifics of the changes, there appears to have been an almost philosophical question asked: should there be any change and why? It is the answer to this question that appears to be internally consistent among the countries studied.

It should also be pointed out that one lesson companies should learn on the entry of such disruptive services is to go slow. The most striking contrast is Uber in South Korea and Airbnb in China.

Uber adopted a confrontational stance and ended up being blocked. It took a more conciliatory approach for its service to be eventually legalized. By then, however, its competitors had established a strong foothold.

Airbnb in contrast took care to work deliberately and slowly, understanding the market, building relationship with government and business and ingratiating itself with users.

The commonality in approach suggests that companies that want to influence policy should look to understand the larger national (or political) outlook to such disruptions. Governments cannot tolerate inconsistencies in law. This study suggests that many governments are willing to experiment with disruptive technologies and change their old regime to accommodate these technologies. But they will do so with their cultural outlook.
REGULATION OF DISRUPTIVE SERVICES:
The Cases of Uber and Airbnb

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