

ABSTRACT

Dispute Resolution in the Sharing Economy

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Genevieve, a young freelance writer, prepared an eBook for a client on eLance and never got paid. There was a disagreement over the quality of the product the freelancer delivered. Ultimately the freelancer involved eLance and a compromise was reached according to which she was paid a fourth of the original amount agreed upon and ended up receiving a negative review.

A young woman was locked out of an apartment she rented on airbnb. Her host was abroad, in a different time zone, unavailable. She had no choice but to check into a hotel. After much difficulty she reached an airbnb representative. She was not charged for the night on airbnb, but was never reimbursed for having to pay a higher rate for a hotel room.

Kevin performed a "HIT" for Amazon Mechanical Turk for \$1. His work was rejected. The same "Requestor" (client) subsequently put up the same HIT for one penny, which Kevin re-did, and was paid. The requestor never responded to his request to be paid for the original HIT. After approaching Amazon, his complaint was rejected as their policy "is not to interfere in disputes between Workers and Requesters." In spite of this position, Amazon did contact Kevin to tell him that a Requestor has complained about his work, without providing further details.

The examples described above all represent real life disputes that arose on the so called "sharing economy" platforms. Public attention in recent years has been focused on the rise of new business structures that have come to be known as part of the sharing economy. Uber, Lyft, airbnb, taskrabbit, and snapgoods are but a few examples of a phenomenon that has been growing by the minute. In all of these cases, new types of businesses have used technology to bring people together and allow for peer to peer cooperation over goods, services and activities previously delivered through a specialized occupation (e.g., taxi drivers) or designated entities providing regulated services (e.g., hotels). Typically, sharing economy endeavors make use of under-utilized goods, allowing individuals to lend, rent or make use of goods, space or resources that were formally idle a large percentage of the time. Passive consumers are transformed into active suppliers and producers of goods and services, and can access a wider array of goods and services from a growing variety of suppliers, often at lower cost than in the past, potentially free of cost, making use of technological advancements.

While the impetus behind the spread of the sharing economy has been a combination of what may seem as laudable causes - the move towards sustainability and the need to find creative solutions for the unemployed in the aftermath of the economic downturn of 2007, these initiatives have received a fair share of criticism. The crux of the critique against the sharing economy has been that what has been hailed as a vehicle for empowering individuals is actually a means for allowing large businesses to lower the cost of doing business by bypassing applicable laws and regulations relating to such realms as certification, labor and employment rights, taxation and safety and hygiene.

The sharing economy is also frequently labeled the “on-demand economy,” the “gig economy” and the “1099 economy.” Each of these labels captures a quality of e-commerce activity with some novel qualities. None of the labels, however, is a perfect fit. It is hard to find instances of sharing, for example, in the “sharing economy.” Airbnb hosts do not share space in their homes or apartments for free. Airbnb refers to them most often as guests rather than renters but it is a mistake to infer that the relationship is anything but commercial. These are “guests” even less than Facebook “friends” are true friends

Is the sharing economy a source of empowerment for individuals, or is it an abusive and potentially hazardous business environment? This question has become all the more significant with the incredible growth of some of the most popular sharing economy-based sites. PWC evaluated the value of the sharing economy's market share in five key sectors as \$15 billion in 2014 and estimated a \$335 billion by 2025. This value suggests a vast number of individuals engaged in sharing economy-related e-commerce transactions. As transactions increase, growth of problems, grievances and disputes will also occur. Indeed, experts estimate that the annual number of e-commerce disputes is expected to reach *one billion* by 2017. How sharing economy platforms address disputes is therefore a critical prism through which to evaluate these endeavors. In his seminal book *Justice Without Law?*, Auerbach aptly states that “[u]ltimately the most basic values of society are revealed in its dispute-settlement procedures.” In my talk, I will therefore analyze the workings of sharing economy endeavors through the prism of dispute resolution and prevention, examining the availability of redress through the platforms themselves, as well as legal recourse. Where can the aggrieved on the sharing economy platforms turn to? How are their complaints addressed? To what degree is law present? Are certain types of problems addressed more effectively than others? What accounts for the differences in the availability and effectiveness of the avenues of redress in the sharing economy? Can the law and alternative dispute resolution avenues deliver justice in the sharing economy setting?

A study of the dispute resolution landscape of the sharing economy reveals a complex picture in which the degree of access to justice and fairness depend on the nature of

the dispute and the identity of the parties. For some parties, in certain types of disputes, the sharing economy offers novel and effective avenues of redress and engages in proactive attempts to learn from such disputes and prevent them from recurring in the future. In other cases, partial access to specific dispute resolution avenues is available and the fairness of such avenues may be questionable. In other instances still, there are no available remedies for parties, either through the platform or through legal recourse. It turns out that two main axis determine the availability, effectiveness and fairness of such mechanisms: whether disputes are between the platform and a user or arise between the users themselves, and whether the aggrieved is a "customer" (e.g. consumer) or a "tasker" or "freelancer" (e.g., worker).

For disputes that arise between a user and the platform, the typical avenue of dispute resolution is pre-dispute mandatory arbitration with a class action waiver. The combination of the small number of actions brought by individuals to arbitration and the high rate at which large business prevails in such arbitrations gives rise to heavy doubts concerning the fairness of such arbitration schemes. Where disputes arise between users, the picture is more complex. For these types of disputes, legal recourse is often unavailable in light of their small scale. Meeting face to face for a mediation session is often also impractical. Platforms initially shied away from these types of conflicts, describing their own role as merely that of a convener that need not assume responsibility for problems that arise. The expectation was that reputation markets could effectively regulate behavior, preventing problems and enhancing good will between the parties. Over time, these assumptions were frustrated in a setting that is highly conducive to conflict since communication is conducted textually, interaction is cross-border, cross-cultural and cross-languages, and occurs at an incredibly fast pace. For some of these conflicts, sharing economy platforms therefore began offering accessible online avenues of redress. As we examine these Sites, they vary in the types of processes they offer and the types of disputes they provide redress for, but what is common to the platforms is that they tend to provide more avenues for consumers to raise their problems than for workers and invest more efforts in preventing problems relating to consumers from recurring, reflecting the broader social, economic and political power each of these groups enjoy.

The overall picture of dispute resolution and prevention on the sharing economy seems grim, with users enjoying limited access to dispute resolution avenues of varying quality. Can we expect this reality to change? As Uber drivers are trying to challenge the existing power structure, users try to force online entities to take on more responsibility for problems that arise between users, and the Consumer Financial Protection Bureau seeks to abolish mandatory pre-dispute arbitration clauses in the financial sector, there may be room for hope for a more accessible and equitable online dispute resolution landscape.