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PERSPECTIVE

Uber's classification has consequences

By Jonathan Michaels

By now, most consumers have likely heard of, or used, Uber — the ride-sharing app that is doing its best to reform the taxi industry. In what has become known as a “peer-to-peer economy,” Uber connects ride-seeking consumers with drivers who provide transportation in their private cars. The convenience is manifest: Riders can hail and track the location of their upcoming car simply by clicking a button on their smartphones, and then pay for the service through a credit card they have on file.

Launched in San Francisco in June 2010, Uber has burgeoned into a world-wide phenomenon now in 53 countries and 252 cities. And with its size has come wealth. Last month, Uber completed a \$1.2 billion capital raise at a valuation of \$41.2 billion — making the company more valuable than Xerox, Staples and Rite Aid combined.

Uber's simplistic business model has been the foundation of its success; however, the same simplicity has regulators — and the taxicab industry — stirring. Unlike the heavily regulated taxi industry, Uber skirts onerous regulatory requirements by insisting it is a technology company, not a transportation service provider.

And there is reason to care. Common carrier regulations protect the public by insuring that ride-share vehicles are properly maintained, that drivers' backgrounds are thoroughly checked, and that proper insurance is in place. Stepping into a private individual's car changes all of that — and there are consequences.

Uber drivers have been accused of dangerous mischief at alarming rates. Last month, an Uber driver in Boston was arrested for raping, kidnapping and assaulting a female passenger; he is being held without bail. The same month, an Uber driver in New Delhi, India, was arrested for raping a female passenger; he had been arrested for rape on two prior occasions before becoming a driver for Uber. In September, an Uber driver in San Francisco was arrested for hitting a passenger in the head with a clawed hammer, fracturing his skull; the passenger lived, but it is unclear



AP Photo
San Francisco District Attorney George Gascon, at podium, with members of his staff and the Los Angeles District Attorney's office during a news conference about the lawsuit California prosecutors have filed against Uber over the ride-sharing company's background checks and other allegations.

whether he will regain vision in his left eye.

The danger created by the lack of regulation has led to several governments around the world banning the ride-share company. So far, Uber has been banned in Nevada, Portland, Germany, France, New Delhi, the Netherlands, Thailand, Brussels, Toronto and Spain. Several other jurisdictions, including California, are similarly considering a ban.

Uber claims it has the “safest rides on the road,” stating that it's background checks are “often more rigorous than what is required to become a taxi driver.” There seems to be little truth to this, however, leading to a December lawsuit filed against the company by the Los Angeles and San Francisco district attorneys for unlawful business practices. The lawsuit seeks redress for Uber's misleading claim that it conducts “industry-leading” background checks.

The gold standard for background checks is Live Scan, an electronic fingerprinting process that searches databases maintained by the Department of Justice and the FBI for prior criminal activity. The Live Scan process also automatically updates when subsequent activity occurs, such as if a driver was arrested for drunk driving or rape. Uber's background checks do not use the Live Scan process, but a less expensive online service that requires no fingerprinting.

To understand the disparity in what it takes to become an Uber driver versus becoming a taxicab driver, consider the following. In San Francisco, a taxicab applicant must attend a seven-hour class, take and pass an exam administered by the San Francisco Municipal Transportation Agency (SFMTA), personally appear for an interview by the SFMTA, submit to a Live Scan examination,

and submit a 10-year printout of the applicant's DMV driving record that is current within 30 days.

To become an Uber driver, the applicant must have a 2004 or newer car, an auto insurance policy, a driver's license, submit to the online background check, and then watch a short video on how to use the Uber app. If drivers want more training, they must pay as much as \$65 for a four-hour class.

And then there is the matter of liability. Whereas most taxicab drivers are employees of the company, subjecting the company to vicarious liability for the tortious acts of its employees, Uber specifically classifies its drivers as independent contractors. The classification is being challenged by a class action filed in Boston, which claims that Uber drivers are not properly paid overtime, but if it holds, riders and other motorists could be left without recourse in the event of driver misconduct.

Insurance will not likely bridge this gap. Uber requires its drivers to click a box indicating that they “plan” to drive a commercially insured vehicle, but it is unlikely that drivers are doing so. The issue is significant.

Personal automobile policies will not cover intentional torts committed by a driver against a passenger. Even for ordinary acts of negligence, such as where a driver gets into an accident, the passenger may still be without coverage. Much like homeowners policies that have exclusions for business operations out of the home, it should be expected that insurance companies will deny claims made by Uber passengers, citing to the commercial nature of the relationship.

This all leaves Uber consumers in the unenviable dilemma of whether to utilize Uber's enormous convenience, while accepting the risk of rides with dangerous drivers and limited recovery if things go wrong. There does not appear to be another alternative.

Travis Kalanick, Uber's founder and chief executive, ought to be applauded for the genius involved in creating the ride-share company. Its fault lies not in its concept, but in its execution. Common carrier regulations, while onerous, serve an important purpose in protecting citizens from rogue drivers, unmaintained vehicles and uninsured claims. Until Uber recognizes that it cannot sidestep this integral part of the transportation system, its passengers will continue to be the subject of brutal attack, and Uber will continue to rack-up bans throughout.



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