

THE CASE FOR REGULATING THE SHARING ECONOMY

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WHAT THE COLLABORATIVE ECONOMY IS (NOT)

- peers are not full-time, large scale professionals, but “prosumers”
- professional standards are not applicable to small scale, non professional providers (peers)
- collaborative platforms are not service providers, but “digital marketplaces”
- rules for service providers are not applicable to platforms (e.g. ADA, discrimination)





A EUROPEAN VIEW OF THE CATHEDRAL

**The collaborative economy between fundamental
freedoms and consumer protection**

PEERS: FUNDAMENTAL FREEDOMS AND SERVICE DIRECTIVE

- restrictions to market access must be: non-discriminatory (residence?), necessary, proportionate and justified;
- rules proportionate to the scale of operation
- peers or professionals? spectrum, but need of a clear-cut rule
- under the threshold: lighter regime for peers providing services on occasional basis
- over the threshold: simplify procedures and formalities for professionals

PLATFORMS: ECOMMERCE DIRECTIVE

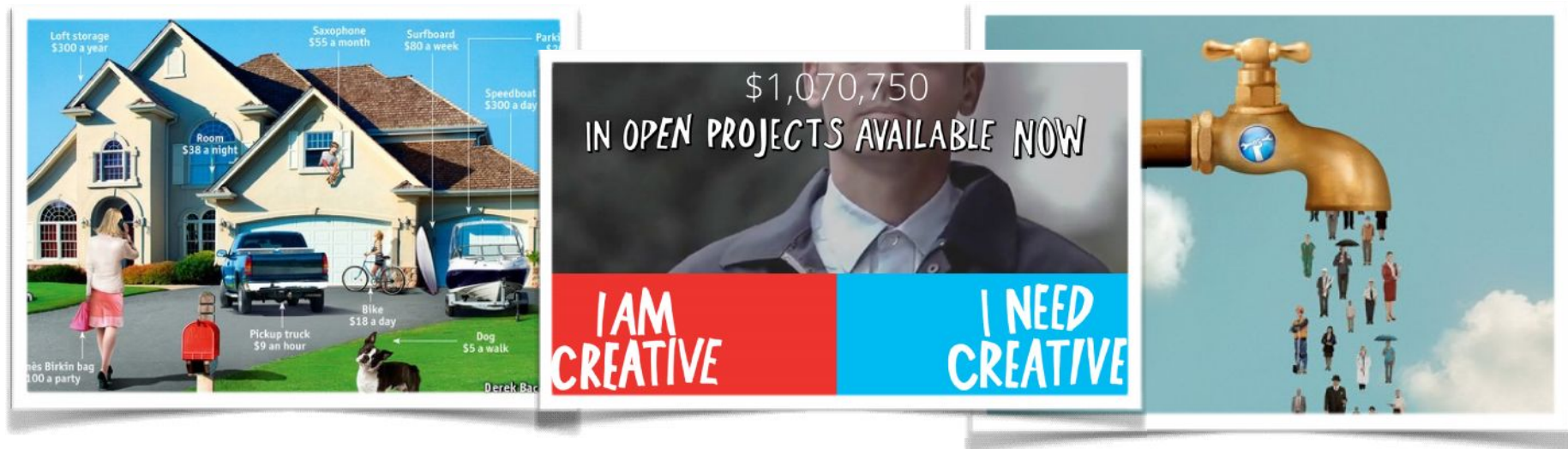
- minimal regulatory requirements for information society services
- liability exemption for “hosting data”, not for “active role”
- case-by-case assessment of control and influence
- right proxies for collaborative platforms? ownership, contract, price
- potential tension between liability exemption and encouraging responsible behaviour
- collaborative platforms as “marketplaces” (see definition) or firms with new employment models? or hybrids?

USERS: CONSUMER AND MARKETING LAW

- applicable only between “trader” and “consumer”
- trader: person “acting for purposes relating to his trade, business, craft or profession”
- consumer: person “acting outside his trade, business, craft or profession”
- are peers and/or platforms “traders”? what if none of them is “trader”?

EU LAW. AN OVERALL ASSESSMENT

- review legislation developed in an era of full-time professional service providers
- provide clear criteria to assess whether: a) platforms are “service provider” or “intermediary service”; b) providers are professionals
- risk: no consumer law/sector-specific legislation applicable to both peers and platforms
- challenge: protecting consumers in the age of peers



IS PROTECTING CONSUMERS A REAL PROBLEM IN P2P ECONOMY?

- accept some kind of imperfections in p2p provision of services
- who's the weaker party between peers?
- platforms can/have an interest to regulate themselves
- trust mechanism and information/reputation-based systems for data based solutions
- the end of asymmetric information?

TRUE, BUT ... ALL MARKET FAILURES? OTHER NORMATIVE QUESTIONS?

- it's not just about imperfection: safety, health concerns, etc.
- platforms may mitigate most, but not all, market failures
- platforms may have no interest to correct all market failures
- monopoly (two-sided network effect, demand-side economies of scale, winners take most/all, big data)
- potential new market failures
- distributive impact (underserved communities, discrimination)
- values (big data, surge pricing mechanism, commodification)



FINAL RECOMMENDATIONS

- regulation with a combination of strict rules vs principles
- a) strict rules for the scope of application (professionals vs peers);
- b) principle for safety concern and consumer protection: proportionate to the scale of operation, what precautions are reasonably practicable
- regulation as a last resort and non-regulatory alternatives
- platforms as rulers and enforcers: leveraging platforms' self-governing and enforcement capacity (at trivial costs)
- public regulators for aspects that platforms cannot/have no interest to address
- market failures and beyond