THE UBER CHALLENGE: A COMPARATIVE ANALYSIS OF REGULATORY SCHEMES GOVERNING TRANSPORTATION APP FIRMS

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I. INTRODUCTION

Is the convenience of on-demand transportation worth the cost of taxi mafias in Indonesia,[1] violent protests throughout Europe, [2] or fatal attacks on drivers?[3] Some describe the rapid expansion of ride-hail applications (apps) as an example of "disruptive innovation,"[4] or, as Uber phrases it, "first-to-market."[5] These examples show that ride-hail app firms' impact reaches well beyond disrupting their predecessors—taxicabs. Uber's innovative technology and business model unduly imposes costs on its drivers, riders, and others who share the road by private or public transportation.[6] At a minimum, well-designed regulations are needed to address (1) discriminatory treatment that competitively disadvantages rivals and traditional for-hire transportation services, (2) safety of and responsibility to workers and consumers, and (3) managing means of transportation in overcrowded city centers.

The existing regulatory responses to Uber's presence are a result of various factors, including discriminatory treatment, which allowed ride-hailing companies to avoid regulations that apply to licensed taxi drivers. This treatment is addressed as one of three goals in the regulation of transportation app firms. Addressing each goal is important for protecting consumers, workers, and businesses within the United States, and in the sixty-nine other countries where Uber is present.[7] The question remains, whether any one country or municipality has found a balanced way to regulate these companies without unnecessarily restricting their freedom of

1. Harrison Jacobs, *'Why Should We Make Foreigners Rich?': Taxi Drivers are Taking on Uber and Grab in Bali, and Some are Turning to Violence*, BUS. INSIDER (Jun. 23, 2018, 7:30 AM), https://www.businessinsider.com/uber-grab-bali-attacks-taxi-drivers-2018-6.

2. J. B. Bailey, *The World Trade Organization Should Lyft the Globe Out of Its Uber Problem*, 19 J. INT'L BUS. & L. 61, 70 (2019).

3. Uber Tech., Annual Report (Form 10-K) 28 (Dec. 31, 2019) [hereinafter 2019 Annual Report].

4. Hung-Hao Chang, *The Economic Effects of Uber on Taxi Drivers in Taiwan*, 13 J. COMPETITION L. & ECON. 475, 477-78 (2017) (disruptive innovation business is justified if it creates a new market with different consumers).

5. 2019 Annual Report, *supra* note 3, at 37-38.

6. This note is focused on Uber Technologies Inc., but the comparative analysis may be broadly applied to other ride-hail app firms, as well as those that offer food delivery services.

7. 2019 Annual Report, *supra* note 3, at 18. (78% of Uber trips booked in 2019 took place outside of the United States).

enterprise.[8] This note surveys a sample of regulatory schemes to determine how well they serve the recommended regulatory goals and offers tentative conclusions about the desirability of certain approaches given ride-hail and gig applications' impact on, and disruption of, traditional industries.

II. BACKGROUND

Ubercab Inc. was founded in March of 2009 as one of the first ride-hail applications in the United States.[9] The company offered a "one-click car service," which connected users with professional drivers, or what would be known today as UberBlack.[10] Ubercab—rebranded as Uber Technologies, Inc. to avoid tensions with the taxi industry—marketed itself as "everyone's private driver" until 2012, when it launched UberX.[11] At around two-thirds the cost of an UberBlack, UberX allowed nonprofessional drivers to use their personal vehicles to offer rides.[12] From then on, the app firm continued to expand and develop its "first-to-market" offerings, whether it be to autonomous vehicle development, air transportation, or non-emergency medical transportation.[13]

Uber was founded on the sharing economy concept. Through smartphone applications, drivers could share underutilized assets, their

8. Gabriel Doménech-Pascual & Alba Soriano-Arnanz, *Taxi Regulation in Spain under the Pressure of the Sharing Economy*, *in* UBER & TAXIS COMPAR. L. STUDS. 358, 365, 373-74, (Rozen Noguellou & David Renders eds., 2018) (discussing the role of the National Commission on Markets and Competition, an independent regulatory authority, and its argument that the Spanish Supreme Court ruling, which restricted one PHV (private hire vehicle) license to every thirty persons of the region, "impose[d] unreasonable restrictions on both competition and freedom of enterprise which is inefficient and reduces social welfare" by applying tech and social innovations that reduce transaction costs necessary to share underutilized resources (cars)).

9. 2019 Annual Report, *supra* note 3, at 9 (Uber amended their registration a year later under Uber Technologies, Inc.).

10. *See infra* note 16; *Uber Black*, UBER, https://www.uber.com/us/en/ride/uberblack/ (last visited Feb. 13, 2022). For an overview of Uber's changes in design, see Nathan McAlone, *This is How Uber Used to Look When It First Started Out and How It's Changed over Time*, BUS. INSIDER (Feb. 10, 2016, 1:54 PM), https://www.businessinsider.com/ubers-design-history-2010-2016-2016-2.

11. *See* Avery Hartmans & Paige Leskin, *The History of How Uber Went from the Most Feared Startup in the World to Its Massive IPO*, BUS. INSIDER (May 18, 2019, 11:42 AM), https://www.businessinsider.com/ubers-history#april-2007-travis-kalanick-becomes-a-millionaire-at-age-30-he-sells-his-startup-called-redswoosh-to-a-cloud-company-called-akamai-for-23-million-its-the-second-companys-hes-been-involved-in-since-he-dropped-out-of-ucla-in-1998-1.

12. Available to those nonprofessional drivers who were screened and passed a background check. *See id.*

13. *See* 2019 Annual Report, *supra* note 3, at 8, 32; *accord.*, Uber Tech., Form 8-K SEC filing (Feb. 10, 2021) (Uber divested their autonomous vehicle and air transportation sectors in exchange for a minority stake in the respective companies).

personal vehicles, with riders in need of convenient transportation.[14] For a service fee to drivers, Uber connected them with a rider in their area. This is more than just an intermediation service, though. Uber screens drivers and riders (with the discretion to restrict their use of the app), sets prices, and processes the parties' transactions.[15] On the one hand, Uber has done its part to broker a range of services[16] which broadened users' options for travel. A consumer previously averse to municipal carpool services can now pay a menial cost for an UberPool, while those seeking town cars may call an Uber LUX with the touch of a button. But, on the other hand, this innovative means of travel broke into the market without compatible regulations for its unique business model.

Although regulations applicable to Uber existed at the time, there were two issues. First, drivers and riders were transacting as private citizens, and questions loomed in the early stages as to what responsibilities drivers and riders owed to each other. This looked more like giving a family member gas money for driving you to the airport,[17] rather than hiring a taxi to provide the same transportation. Second, Uber did not claim to be a transportation business but a technology company,[18] and it rejected traditional transportation regulations as inapplicable to its business.[19] As the conflict with and resistance to ride-hail companies became more prevalent, individual cities and associations acted as laboratories for regulatory experiments.[20] To find a framework for a well-designed ride-hail app firm regulation, distinct

14. Bailey, *supra* note 2, at 61-62.

15. *See generally* 2019 Annual Report, *supra* note 3.

16. UBER, *Rides around the World*, UBER, https://www.uber.com/us/en/ride/ride-options/ (last visited Feb. 13, 2022). Uber offers various options for riders, which differ between cities. *Id.* The following is a brief description of each service, limited to those found in the regions discussed in this note: UberX (1-4 riders, "affordable, everyday rides"), UberXL or Van (1-5 riders, "affordable rides for groups up to 5"), Uber Green (1-3 riders, "low-emission rides"), UberPool (1-2 riders, temporarily unavailable in the United States and Canada due to COVID-19), Uber Transit ("real-time public transit information in the Uber app"), WAV (1-4 riders, "wheelchair-accessible rides"), Scooter (1 rider, "fasters & cheaper), Comfort (1-4 riders, "extra legroom and top rated drivers"), Taxi (1-4 riders, "local taxis at the tap of a button"), Select (1-4 riders, "top rated drivers with our riders' preferred vehicles"), Black (1-4 riders, "premium rides in luxury cars"), and Uber Lux (1-4 riders, "top-rated drivers in luxury vehicles"). *Id*.

17. McAlone, *supra* note 10.

18. *Uber B.V. Terms and Conditions*, UBER, https://www.uber.com/legal/en/document/?country=pakistan&lang=en&name=general-terms-of-use (last modified Dec. 31, 2019).

19. Nayeem Syed, *Regulating Uberification*, 22 COMPT. & TELECOMM. L. REV. 14, 16 (2006).

20. *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the county.").

regulatory schemes will be more closely examined, with the recommended goals in mind, alongside Uber's responses.

A. California, United States

Since Uber's 2010 launch in San Francisco, CA,[21] the sunshine state was a source of both growth and conflict. In 2013, the California Public Utilities Commission (CPUC) was one of the first jurisdictions[22] to deem Uber a "transportation network company" (TNC).[23] The CPUC classified Uber not as a technology company, but as a company that was essentially a limousine dispatch office.[24] Therefore, the *transportation* service Uber provided, as opposed to the operation of the app, was subject to the CPUC's transportation service regulations.[25] This classification established regulatory hurdles for Uber to overcome before it could continue business in its home state. TNC's must obtain a CPUC permit, conduct criminal background checks, implement conduct policies,[26] and require minimum insurance.[27] Resisting Uber's challenges to the new regulations, the CPUC argued that they were necessary to protect the public interest, as it was unclear what protections Uber's then-existing model offered.[28]

Effective January 1, 2020, California attempted to further regulate Uber through Assembly Bill No. 5 (A.B. 5). A.B. 5 codified the "California Supreme Court's landmark, unanimous *Dynamex* decision" and created a rebuttable presumption that workers are employees versus independent contractors.[29] The Legislature intended to restore protections and basic

21. *The History of Uber*, UBER: NEWSROOM, https://www.uber.com/newsroom/history/ (last visited Dec. 20, 2020).

22. *Transportation Network Company (TNC) Legislation*, TEX. A&M TRANSP. INST., https://policy.tti.tamu.edu/technology/tnc-legislation/ (last visited Feb. 13, 2022).

23. Syed, *supra* note 19.

24. *Id.*

25. *Id.*

26. *See Transportation Network Companies*, CAL. PUB. UTILS. COMM'N., https://www.cpuc.ca.gov/regulatory-services/licensing/transportation-licensing-and-analysis-branch/transportation-network-companies (includes Zero Tolerance Policies, Accessibility Plans, Approved Trade Dress, Driver Training Programs, and plans to prevent the use of its platform by unaccompanied minors) (last visited Feb. 13, 2022).

27. Syed, *supra* note 19.

28. *Id.*

29. Assemb. B. 5, 2019-2020 Leg., Reg. Sess. (Cal. 2019) (enacted) (codified as CAL. LAB. CODE §§ 2750.3, 3351 and CAL. UNEMP. INS. CODE §§ 605.5, 621) (includes various exempt occupations, such as certain health care professionals, real estate licensees, barbers and cosmetologists, and insurance agents); Nate Hertweck, *California Gov. Newsom Signs Critical AB5 Exemption for Music Makers into Law*, *Advocacy*, GRAMMY (Sept. 9, 2020, 4:56 PM), https://www.grammy.com/advocacy/news/california-gov-newsom-signs-critical-ab5-exemption-music-makers-law (a recent amendment has exempted music makers from A.B. 5).

workplace rights of misclassified workers.[30] As employees, ride-hail drivers would have rights and protections, including minimum wage, workers' compensation, unemployment insurance, paid sick leave, and paid family leave.[31] This classification is a widespread point of contention for Uber.[32]

The enactment of A.B. 5 brought about *People v. Uber Technologies Inc.*,[33] which was filed just five months after A.B. 5 took effect. California's Attorney General, joined by the City Attorneys of Los Angeles, San Diego, and San Francisco, sought to enjoin Uber from classifying drivers as independent contractors and require it to comply with the new law.[34] California's complaint states, "on information and belief, the illicit cost savings Defendants have reaped as a result of avoiding employer contributions to state and local unemployment and social insurance programs totals well into the hundreds of millions of dollars."[35] Uber filed a motion to stay this action pending the result of their own constitutional challenge to A.B. 5 and the result of Proposition 22.[36] Together with other app-based gig firms,[37] Uber broke the record for California's costliest ballot battle[38] with almost $200 million in contributions to their campaign for Proposition 22.[39]

30. Cal. Assemb. B. 5 §1(e) (enacted).

31. *Id.*

32. As highlighted by the following discussion of labor law disputes, *infra* p. 181, 193-200.

33. People v. Uber Techs, Inc., 270 Cal. Rptr. 3d 290, 296 (2020).

34. Bobby Allyn, *California Judge Orders Uber and Lyft to Consider All Drivers Employees*, NPR (Aug. 10, 2020, 5:30 PM), https://www.npr.org/2020/08/10/901099643/california-judge-orders-uber-and-lyft-to-consider-all-drivers-employees.

35. Complaint for Injunctive Relief, Restitution, and Penalties at 22, People v. Uber Techs. Inc., 270 Cal. Rptr. 3d 290 (2020) (No. A160706); *see also* KEN JACOBS & MICHAEL REICH, INST. RES. LAB. & EMP. U.C. BERKLEY, WHAT WOULD UBER AND LYFT OWE TO THE STATE UNEMPLOYMENT INSURANCE FUND? 1 (2020), https://laborcenter.berkeley.edu/what-would-uber-and-lyft-owe-to-the-state-unemployment-insurance-fund/ (finding that if Uber and Lyft had treated workers as employees, the two TNCs would have paid $413 million into the state's Unemployment Insurance Fund between 2014 and 2019).

36. Ord. to Stay Preliminary Injunction at 2, People v. Uber, 270 Cal. Rptr. 3d 290 (Aug. 10, 2020) (No. A160706).

37. CAL. SEC'Y OF STATE, CAMPAIGN FINANCE: YES ON 22–SAVE APP-BASED JOBS AND SERVICES, http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1422181&session=2019&view=late1 [hereinafter Yes on 22 Campaign Finance] (noting only the other app-based gig firms as contributors: Doordash, Instacart, Postmates, and Lyft) (last visited Dec. 20, 2020).

38. Ryan Menezes, et al., *Billions Have Been Spent on California's Ballot Measure Battles. But This Year Is Unlike Any Other*, L.A. TIMES, https://www.latimes.com/projects/props-california-2020-election-money/ (last updated Nov. 13, 2020).

39. Yes on 22 Campaign Finance, *supra* note 37 (total contributions between Jan. 1, 2020, and Oct. 17, 2020, was $190,270,230.49; Another $6,146,107.73 was contributed between Oct. 19, 2020, and Nov. 2, 2020). The initial contributions were made in August 2019, before A.B. 5

California voters passed the initiative during the November 2020 general election.[40] At the beginning, Uber took this win and the company submitted similar proposals in other states and countries.[41] But now, the enacted legislation has been deemed unconstitutional by a Judge Frank Roesch of the Alameda County Superior Court,[42] and local regulation and the judicial process will dictate whether Uber will be able to continue to work under its preferred business model in California.[43]

B. Sao Paulo, Brazil

Brazil is Uber's second-biggest market with seventeen million users and a 2019 reported revenue of $918 million (following the United States with a 2019 reported revenue of $8.225 billion).[44] As one of Uber's largest mobility

was made law, *California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020)*, BALLOTPEDIA, https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_(2020) (last visited Feb. 13, 2022). Despite Uber's efforts to paint Proposition 22 as favorable to drivers, the company did not hide the proposition's double-sided nature. *See Uber Announces Results for Fourth Quarter and Full Year 2019, Investor*, UBER (Feb. 6, 2020), https://investor.uber.com/news-events/news/press-release-details/2020/Uber-Announces-Results-for-Fourth- Quarter-and-Full-Year-2019/. The concerted investments in Proposition 22 were meant to "protect [drivers and delivery people's] ability to work flexibly and *clarify Uber's role as a marketplace*." *Id.* (emphasis added).

40. Suhauna Hussain & Johana Bhuiyan, *Prop. 22 Passed, A Major Win for Uber, Lyft, DoorDash. What Happens Next?*, L.A. TIMES (Nov. 4, 2020, 7:06 PM), https://www.latimes.com/business/technology/story/2020-11-04/prop-22-passed-what-happens-next. Proposition 22 was quickly met with lawsuits involving both the campaign spending and the constitutionality of the initiative as enacted. Lauren Hepler, *Lawsuits and Labor Backlash: Prop. 22's Cutthroat Final Days*, CAL MATTERS (Oct. 27, 2020), https://calmatters.org/politics/california-election-2020/2020/10/lawsuits-labor-prop-22/ (class action discrimination lawsuit that asserts unlawful coercion of drivers to support the measure) (Oct. 30, 2020). Uber is not alone as fellow gig-app Instacart faces suit based on worker misclassification. People v. Maplebear, Inc., No. D077380, 2021 BL 54204 (Cal. App. 4th Dist. Feb. 17, 2021); *see also* Maeve Allsup & Erin Mulvaney, *California Courts Grapple with Proposition 22's Gig Fallout*, BLOOMBERG L. (Feb. 25, 2021, 2:31 AM), https://news.bloomberglaw.com/us-law-week/california-courts-grapple-with-proposition-22s-gig-fallout (detailing the various legal actions filed and pending against gig companies).

41. *See* Joel Rosenblatt, et al., *Uber Won Its Prized Contractor Status for Drivers. Now What?*, BLOOMBERG L. (Nov. 4, 2020, 8:45 AM), https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/XODAEA8000000?bna_news_filter=daily- labor-report#jcite; *infra* note 148.

42. Order Granting Petition for Writ of Mandate at 11-12, Castellanos v. State of California, No. RG21088725, https://s3.documentcloud.org/documents/21046832/castellanos-order.pdf.

43. Kate Conger, *California's Gig Worker Law is Unconstitutional, Judge Rules*, L.A. TIMES (Aug. 23, 2021), https://www.nytimes.com/2021/08/20/technology/prop-22-california-ruling.html?referringSource=articleShare; Margot Roosevelt & Suhauna Hussain, *Prop. 22 Is Ruled Unconstitutional, a Blow to California Gig Economy Law*, L.A. TIMES (Aug. 23, 2021), https://www.latimes.com/business/story/2021-08-20/prop-22-unconstitutional.

44. 2019 Annual Report, *supra* note 3, at 143.

markets, it is little wonder that it chose to invest in Brazil.[45] The Sao Paulo Tech Center was Uber's first company-wide hub in Latin America,[46] and its foundation followed the city's 2016 enactment of a progressive regulatory scheme, Decreto Municipal No. 56.981 (Decreto 56.981).

Decreto 56.981 exemplifies adaptive regulation in a variety of ways. Like California's TNC, Decreto 56.981 created the Accredited Transport Technology Operators (OTTC) classification, separate and apart from taxi services. Decreto 56.981 also set up a kilometer credit system, monitored by the City Hall, which essentially requires Uber to pay for drivers' use of public infrastructure.[47] Kilometer credits are meant to regulate private road user's "urban and financial impact" on the environment, traffic flow, and public expenditure related to urban infrastructure.[48] Further, Decreto 56.981 established the Comitê Municipal de Uso do Viário (CMUV) to monitor this decree.[49] The CMUV issues the requisite registration to drivers who show that they (1) have a license to carry out paid activity,[50] (2) are individual contributors to social security,[51] (3) have a clean criminal record,[52] (4) completed a training course approved by the CMUV,[53] and (5) provide remunerated transport services solely and exclusively through OTTCs.[54] Notably, Sao Paulo's regulation also covers driverless-rides[55] and requires that a portion of kilometer credits used be allotted to female drivers,[56] a commendable example of progressive regulatory action.

To understand the reason for Decreto 56.981's enactment, a look back at events in Brazil before these regulations can be helpful. Osvaldo Luis Modolo Filho was a fifty-two-year-old Uber driver, when two teens ordered a ride using a fake Uber account. The couple stabbed Filho, stole his car, and left him on the street to die.[57] Prior to 2016, at least sixteen Brazilian Uber

45. Uber, 2021 Investor Presentation at 27 (Feb. 10, 2021), https://s23.q4cdn.com/407969754/files/doc_financials/2020/q4/InvestorPresentation2021.pdf.

46. Camila Carvalho, *Standing for Safety: Meet the Uber Sao Paulo Tech Team, Engineering*, UBER (Jul. 28, 2020), https://eng.uber.com/meet-sao-paulo-tech/.

47. Decreto No. 56.981, de 10 de Mayo de 2016, DIÁRIO OFICIAL DO SÃO PAULO [D.O.E.S.P] de 11.05.2016, arts. 8-12 (Braz.).

48. *Id.*

49. *Id.* art. 26.

50. *Id.* art 15-A, § 1.

51. *Id.* § 3.

52. *Id.* § 4.

53. *Id.* § 5.

54. *Id.* § 6.

55. *Id.* art. 21-25 (vehicle sharing rental service available in public places on public roads only granted to OTTCs).

56. *Id.* art. 16.

57. *Id.*

drivers were murdered. These tragic events were exacerbated by the user's ability to pay cash and the minimal information required to create a rider account.[58] Requiring credit card payments, a key to the convenience of the ride-hailing process, [59] limits the amount of cash drivers would carry throughout their shift, which in turn could provide more protection from thieves or violence.[60] Despite Uber's claims that their tracking technology made their services safer than taxis, the violence and fatalities in Brazil required decisive action by the app firm and regulators.[61]

In general, Uber's expansion around the world has been accomplished in two ways. For countries with established precedent, Uber appears to conform with existing regulations; for areas without such precedent, Uber does business until its side effects become so pronounced that regulations must adapt to the issues that arise from its presence. Regulators may have greater bargaining power in the latter scenario, in which case it may be worthwhile to consider the success or lack thereof in meeting the following goals in current regulatory schemes.

III. END DISCRIMINATORY TREATMENT

Many countries where Uber is present have strict requirements and established procedures for obtaining a license as a driver for hire, whether or not there is a distinction between taxis and private hire services.[62] This first goal addresses the discrepancy between the treatment of Uber and its predecessors, which includes taxis, limousines, and other modes of for-hire

58. Mike Isaac, *How Uber Got Lost*, N.Y. TIMES (Aug. 23, 2019), https://www.nytimes.com/2019/08/23/business/how-uber-got-lost.html (Some insiders believe that this was an attempt to increase ridership, and thus global expansion, by limiting "friction" and allowing riders to sign up without requiring them to provide identification beyond an email or a phone number. Most Brazilians used cash far more frequently than credit cards, which meant "that after a long shift, a driver could be expected to be carrying a lot of money.").

59. 2019 Annual Report, *supra* note 3, at 30 ("[t]he convenient payment mechanisms provided by our platform are key factors contributing to the development of our business").

60. Isaac, *supra* note 58*;* 2019 Annual Report, *supra* note 3, at 28 (payments through the app meant more control from Uber, but also protection for drivers from serious safety incidents resulting from cash-paid trips, which accounted for 11% of Uber's 2019 global gross bookings).

61. Isaac, *supra* note 58*;* 2019 Annual Report, *supra* note 3, at 28.

62. Delphine Aurélie Laurence Defossez, *The Regulation of a Project of the Dereuglation: UBER in Brazil and the European Union*, 3 J. L. REGUL. 1, 13 (2017) (noting how the Law Commission for England and Wales advocated for similar standards for drivers to meet purposes of public safety, accessibility, enforcement of the legislation, and environmental protection, but "expressly stipulate[ing] that such companies should not be subject to sector-specific rules" aimed at taxis).

transportation in a city.[63] To lessen this discrepancy, effective regulatory schemes could hold ride-hail firms and taxis to the same or similar standards or to mitigate the competitive advantage Uber gains by its misclassification,[64] which allows it to offer lower prices for the same services provided by the incumbents.

When Uber entered the market, it had some curb appeal as one of the latest innovations within the evolving world of technology. It served users in multiple ways, it raised the standards for vehicles for hire, like taxis,[65] it created the opportunity for a new revenue stream for drivers, and it eliminated the exchange of payment at the end of a trip (in most, but not all cases, as seen in Brazil). The original conflict stemmed from the fact that Uber allowed private citizens to offer the same services as taxi drivers, without the rigorous tests of both the driver and the vehicle that were required of their counterparts. Although taxis were utilizing some form of "e-hailing" at the time, this did not level them with the new low-cost Ubers.[66]

A. Equation

One way to address the conflict between ride-hail drivers and taxis is by equating the two's regulatory standards, or requiring Uber to adapt to existing standards, which was the approach taken in Taiwan.[67] When Uber first arrived in Taipei in 2013, it maintained its U.S. business model and worked as an intermediary between riders and existing privately licensed drivers.[68] Since Uber did not own the vehicles, it was considered a "platform matchmaker rather than a transport provider."[69] Therefore, the local Uber

63. Uber's effect on the taxi industry focuses on metropolitan areas as the company has yet to successfully "penetrate lower-density suburban and rural areas," where personal vehicle ownership is less expensive and more convenient. 2019 Annual Report, *supra* note 3, at 21.

64. Based on their savings from worker classification and avoidance of transportation regulations if classified as a technology/information service company.

65. Chang, *supra* note 4, at 499.

66. *Id.* at 480; *see also*, CRISTIANO AGUIAR DE OLIVEIRA AND GABRIEL COSTEIRA MACHADO, DOES UBER COMPETITION REDUCE TAXI DRIVERS' INCOME? EVIDENCE FROM BRAZIL 6 (2017), https://lawle2014.files.wordpress.com/2017/10/cristiano-oliveira.pdf (door-to-door taxis have the same matching, georeferencing, and evaluation characteristics as Uber).

67. *See infra* note 74; *see* also *The History of Taxi Services in Prague*, PRAGUE TAXI, https://www.prague-taxi.co.uk/the-history-of-taxi-service-in-prague/ (Prague, Czech Republic also requires Uber drivers to have a taxi license and visible taxi designation) (last visited Feb. 21, 2022); *The Government and Uber Signed a Memorandum. Uber Will Adapt to Czech Law, and Drivers Will Meet the Conditions for Regular Taxi Drivers*, PRAGUE TAXI, https://www.prague-taxi.co.uk/the-government-and-uber-signed-a-memorandum-uber-will-adapt-to-czech-law-and-drivers-will-meet-the-conditions-for-regular-taxi-drivers/ (last visited Feb. 21, 2022).

68. *See* Chang, *supra* note 4.

69. *Id.*

entity and drivers did not feel obligated to comply with laws applied to taxi drivers, primarily those that restricted Uber's services to those which could only be offered with government-issued taxi licenses.[70] This resulted in millions in regulatory fines and a 2017 relaunch of Uber under a government-approved model.[71] In 2019, the pressure from the taxi industry[72] resulted in the Ministry of Transportation and Communication's "Uber Clause," which required drivers to work within the Metropolitan Taxi Program (MTP).[73] Emile Potvin, Uber's APAC director of public policy, stated that Uber's desire to partner with the government led it to join Taiwan's MPT, despite not being a taxi company.[74] Although customer-facing changes are minimal, Uber has traded away the use of its preferred business model to maintain its presence in Taiwan.[75] Uber's adaption there shows that equitable treatment of ride-hail drivers and the taxi industry is possible without forcing out one or the other.[76] Given the relative novelty of the Uber Clause, further effects of Taipei's imposition of regulatory compliance, and the extent to which Uber will compromise to keep doing business there, would help advance the analysis, especially as innovative technology continues to develop.

B. Differentiation

Alternatively, regulators could differentiate ride-hails from taxis but hold them to equitable standards, much like Sao Paolo's approach. For EU Member States, local schemes flow from the European Union Court of

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70. *Id.*

71. 2019 Annual Report, *supra* note 3, at 132 ("Prior to the Company adjusting and relaunching its operating model in April 2017 to a model where government-approved rental companies provide transport services to Riders, Drivers in Taiwan and the local Uber entity have been fined by Taiwan's Ministry of Transportation and Communications in significant numbers across Taiwan.").

72. Matthew Fulco, *Uber Stays in Taiwan, But at a Price*, TAIWAN BUS. (Mar. 24, 2020), https://topics.amcham.com.tw/2020/03/uber-in-taiwan/ (In 2017, Taiwan attempted to appease the taxi industry by changing Uber's status from private cars to rental cars, but incumbents found regulations insufficient as they were still being undercut in terms of price).

73. *Id.*

74. "From the recent situation, Uber has suffered a big loss in Taiwan, because a pure sharing economy hasn't been established here," says AppWorks' Chen. "You can observe that it's just a repackaging of the old taxi business model. The only difference is the taxi doesn't have to be yellow anymore…For its part, Uber had few cards left to play. Taiwan was one of just two East Asian markets–Hong Kong being the other–where the company had a successful business of its own that it wished to maintain. Elsewhere in the region, local competitors, whether taxis or large ride-sharing operations like China's Didi Chuxing and Singapore's Grab, had already won the day.
Id.

75. *See id.*

76. *See id.;* Jessica, Pan, *UberTAXI is Arriving Soon*, UBER: NEWSROOM (Sept. 22, 2017), https://www.uber.com/en-TW/newsroom/ubertaxi-arriving-soon/.

Justice's 2017 holding in *Elite Taxi Association Professional v Uber Spain,*[77] alongside the Treaty on the Functioning of the European Union (TFEU).[78] Generally, the EU regulations allow for the freedom to provide services, but explicitly exempt the field of transport from this freedom.[79] The court in *Elite Taxi* began the analysis by noting that the act of connecting nonprofessional drivers using their personal vehicles with consumers for urban travel is an intermediation service, not necessarily a transport service.[80] Further, non-public urban transport services, i.e., taxis, "must be classified as 'services in the field of transport.'" The court reasoned:

> That intermediation service must thus be regarded as forming an integral part of an overall service whose main component is a transport service and, accordingly, must be classified not as 'an information society service'… but as a service in the field of transport'…That classification is indeed confirmed by the case-law of the Court, according to which the concept of 'services in the field of transport' includes not only transport services in themselves but also any service inherently linked to any physical act of moving persons or goods from one place to another by means of transport. . . .[81]

Based on the nature of Uber's services, along with the influence and control it exercises over how those services are provided,[82] the court held that Uber did not meet the requisite definition under the TFEU to qualify as free to provide its services, but instead, it should be subject to the same regulatory measures as taxi services. The impact of this holding throughout the EU Member States resulted in either ending the discriminatory treatment in favor of ride-hailing apps or ending the app's business altogether.

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77. Case C-434/15, Elite Taxi Ass'n Prof'l v. Uber Spain, 2017 E.C.R. 10 at p. 10 (Notably, transport and related services have not been adopted by the European Parliament, and the Council of the EU of common rules or other measures based on Article 91(1) TFEU and therefore the Member States themselves act as regulators and ensure that intermediation services within these states conform with the rules of the TFEU).

78. *Id.* at. 8; Consolidated Version of the Treaty on the Functioning of the European Union, 2012 O.J. (C 326) 47 [hereinafter TFEU].

79. Directive 2006/123 on Services in the Internal Market, Dec. 12, 2006, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0123&from=EN.

80. Elite Taxi Ass'n Prof'l, Case C-434/15, at 5 (further clarifying that by enabling the transfer of information by a smartphone, application in this setting meets the classification as an "information society service" defined by article 1(2) of Directive 98/34 and article 2(a) of Directive 2000/31); *see also* TFEU (both transport and intermediation services are protected in their freedom to provide services).

81. *Id.* at 9.

82. *Id.* (establishing that Uber determined the maximum fare, received the client's money, and then paid the driver; it also set standards for the vehicles' quality, the drivers, and their conduct, which can in some circumstances result in their exclusion).

Two German courts[83] found that when Uber directed assignments and collected customers' payments, it took on a position that taxi drivers had already occupied.[84] For these reasons, nonprofessional drivers could not legally provide transport services in their own vehicles, as they do in the United States. In response to this holding, Uber modified its operations and split its offerings into professional services (private hire vehicle or PHV) and intermediary services (UberTaxi).[85] In Berlin, all PHV drivers must have a private hire driving license, with a concession for commercial passenger transportation,[86] while Uber mediates trips through a PHV operator.[87] Alternatively, Uber's intermediary services, UberTaxi, arranges trips between taxi drivers and consumers at official taxi rates.[88] Compared to the adaptive regulatory option, Sao Paolo and Berlin's treatment seem to balance the taxi industry's concerns, lessening Uber's competitive advantage by avoiding licensing costs, with Uber's ability to conduct business.

C. Numerus Clausus

Within either of the aforementioned approaches, regulators could employ the concept of *numerus clausus*[89] through the use of medallions or licenses, which regulate the number of taxis or PHVs[90] by region,[91] population, or both.[92] This would lessen the impact of cars on the road, and

83. OVG, Sept. 24, 2014, 3 Bs 174/14, https://www.landesrecht-hamburg.de/bsha/document/MWRE140002655; OVG, Apr. 10, 2015, 1 S 96.14, https://gesetze.berlin.de/bsbe/document/JURE150006690.

84. Defossez, *supra* note 62, at 15.; Jenny Gesley, *Legal Challenges for Uber in the European Union and in Germany*, LIBR. OF CONG. (Mar. 14, 2016), https://blogs.loc.gov/law/2016/03/legal-challenges-for-uber-in-the-european-union-and-in-germany/; OVG, Sept. 24, 2014, 3 Bs 174/14, para. 14; OVG, Apr. 10, 2015, 1 S 96.14, para. 28-32.

85. Jenny Gesley, *Legal Challenges for Uber in the European Union and in Germany*, LIBR. CONGRESS (Mar. 14, 2016), *https*://blogs.loc.gov/law/2016/03/legal-challenges-for-uber-in-the-european-union-and-in-germany/.

86. *Vehicle Requirements, Germany*, UBER, https://www.uber.com/de/en/drive/requirements/vehicle-requirements/ (last visited Dec. 20, 2020).

87. *Id.*; *Fleet Partners, Germany*, UBER, https://www.uber.com/de/de/drive/vehicle-solutions/fleet-partners/ (Drivers could also apply to be an employee through a rental car company, still facilitated by Uber's technology, or become an Uber partner by setting up their own rental car company) (last visited Dec. 20, 2020).

88. *Berlin*, UBER https://www.uber.com/global/en/cities/berlin/ (last visited Dec. 20, 2020).

89. For further perspective on this approach, see Doménech-Pascual & Soriano-Arnanz, *supra* note 8, at 360-62.

90. *See id.*

91. *Id.*

92. Royal Decree 1057/2015 (B.O.E. 2015, 109832) (Spain).

competition, by controlling the supply of available services. Taiwan exemplifies this concept; medallions are required of taxi operators, and worth a substantial amount of money, so much so that many taxi drivers will work within a cooperative or a company so that numerous drivers may lawfully operate under a single medallion.[93] This motivation highlights why Uber's 2013 entry into the market harmed the incumbent taxi industry. As already mentioned, Taipei was able to maintain *numerus clausus* by equating the standards for taxis and Ubers, but the circumstances of this regulatory scheme are unique.[94]

Various regions of Spain employ *numerus clausus*, but unlike Taiwan, they differentiate the treatment between taxis and Ubers, which leaves the door open for incumbents to fight back. In Barcelona, Uber first adapted to local regulations on passenger transport vehicles (VTC)[95] licensing and the number of licenses available, which were allotted separately from taxi licenses, but vigilant taxi industry protestors forced the regulator's hand in 2019.[96] New restrictions, which required rides to be scheduled at least fifteen minutes in advance, eliminated the convenience of Uber's on-demand services and the company, along with its competitor Cabify, left the city for the second time.[97] This new measure shows the power and persistence of the incumbent taxi industry, who "celebrated what they hailed as a victory of a traditional profession threatened by the disruptive forces of the gig economy."[98] Uber does business in sixty-nine other Spanish cities,[99] but Barcelona is no longer on that list. This raises the question whether other

93. Chang, *supra* note 4, at 480.

94. *See* Fulco, *supra* note 72.

95. Fran Serrato, *Uber Returns to Operating in Madrid with Licensed Drivers*, EL PAÍS (Mar. 30, 2016), https://english.elpais.com/elpais/2016/03/30/inenglish/1459323814_036208.html.

96. Renata Brito & Joseph Wilson, *Uber, Cabify Stop Services in Barcelona Due to Tighter Laws*, ASSOCIATED PRESS (Jan. 31, 2019), https://apnews.com/article/597506ab5d574fe2a07c62b39271b14b; Luis Doncel, *Taxis vs. Uber: A War Between Very Similar Enemies*, EL PAÍS (Jan. 29, 2019, 05:07 EST), https://english.elpais.com/elpais/2019/01/29/inenglish/1548749144_862481.html (Following a series of strikes revolved around the stricter health, safety, and driving qualifications required of taxi drivers).

97. Brito & Wilson, *supra* note 96; Joseph Catà & Jordi Pueyo, *Cabify Returns to Barcelona Using Loophole Against New Restrictions*, EL PAÍS (Mar. 7, 2019, 7:03 EST), https://english.elpais.com/elpais/2019/03/07/inenglish/1551956650_438232.html (Cabify has returned to Barcelona after they found a loophole to the fifteen minute rule by applying the restriction only to the first time a customer requests a ride and requiring customers to sign a one-year contract, but the company has also decided to adapt its service from a third party platform to a transport business so it can operate in the city).

98. Catà & Pueyo, *supra* note 97.

99. *Use Uber in Cities Around the World*, UBER, https://www.uber.com/global/en/cities/ (last visited Feb. 25, 2021).

cities will follow suit or the ride-hail firm's presence is thwarted only in more populous regions with strong and united opposition from incumbents.

The success of regulations within this first goal seems dependent on the incumbents' influence within the region. Beyond the aforementioned changes, factors such as access to technology (on-demand pickup via app), means of payment (through the app or in-person, card or cash), and the type of vehicles and services would seem to fall within the traditional scope of competition. The balance found within schemes that equate the licensing requirements, making the competitive advantages, such as seamless tech or luxury vehicles, less of a result of discriminatory regulation, seem to effectively move toward a balance between Uber's ability to conduct business with the taxi industry's interest in fair competition. But regulatory schemes, like those established in Taiwan, were successful due to the unique local circumstances. Similar results with balancing the regulator's desires and Uber's ability to conduct business may not be possible elsewhere. Nevertheless, requiring Uber and its drivers to adapt to existing regulations appears to be the most promising way of achieving this goal.

IV. SAFETY AND RESPONSIBILITY TO DRIVERS AND RIDERS

An end to discriminatory treatment helps satisfy the second regulatory goal,[100] to eliminate or at least limit Uber's externalities and require greater safety and protection to its drivers and riders. This includes adequate insurance in case of an accident, data privacy, protection of individual autonomy, and drivers' rights, regardless of workers' classification. To allow Uber[101] to continually assert their status as a tech company or intermediary "negates the basic principles established with modern law, whereby the market competition and regulation of new business models, *irrespective of*

100. Doménech-Pascual & Soriano-Arnanz, *supra* note 8, at 362 ("Thirdly, it makes little sense to fight those externalities, [pollution and congestion], by establishing a *numerous clausus* only for taxies and not other vehicles," use of Pigouvian taxes or fines could better tackle these externalities).

101. *See* 2019 Annual Report, *supra* note 3, at 10 (Uber previously licensed its brand to Didi in China, Yandex. Taxi joint venture in Russia and CIS countries, and Zomato in India, which plays into the grander scope of responsibility to those working under the Uber umbrella); *see also* Uber, 2021 Investor Presentation (Feb. 10, 2021), https://s23.q4cdn.com/407969754/files/doc_financials/2020/q4/InvestorPresentation2021.pdf (Unable to maintain these agreements, Uber now has a stake in its top competitors: 35% stake in Russia and CIS countries' Yandex. Taxi; Around 16% of Grab in Southeast Asia, around 15% of Didi in China).

the terminology utilized, must align with the basic requirements of consumer protection."[102]

A. Insurance Policies

Although Uber provides some insurance to supplement a driver's personal policy in most regions, the extent of that coverage varies around the world. In the EU, Uber, and AXA, a worldwide insurance giant, announced an expansion of the joint "multimillion-dollar deal"[103] to provide EU drivers with Partner Protection. "Uber and AXA share the belief that everyone, including independent workers, should have the option of benefitting from optimum protection for themselves and their families."[104] Qualifying independent contractors[105] in the EU enjoy a range of protections, including

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102. Mišo Mudrić, *Introduction* to JASENKO MARIN ET AL., UBER—BRAVE NEW SERVICE OR UNFAIR COMPETITION, 1, 4 (76 IUS GENTIUM 2020).

103. *See* Greg Bensinger, *Uber's First-Quarter Sales Rise 70% as It Preps for IPO*, WALL ST. J., May 23, 2018, at B2.

104. *See* Press Release, AXA, Uber and AXA Join Forces to Set a New Standard for Protection of Independent Drivers and Couriers (May 23, 2018), https://www.axa.com/en/press/press-releases/uber-and-axa-join-forces-to-set-a-new-standard-for-protection-of-independent-drivers-and-couriers. As of December 2021, Uber now works with Allianz Partners to provide its Partner Protection Program across twenty-three European countries. Press Release, Allianz, Allianz Partners and Uber are Partnering to Provide Benefits and Protection Insurance for Independent Drivers and Couriers in Europe (Dec. 6, 2021), https://www.allianz-partners.com/content/dam/onemarketing/awp/azpartnerscom/press-releases/2021/Allianz-Partners-Uber-Partnership-Press-Release.pdf.

105. *See Partner Protection Insurance with Allianz Partners*, UBER, https://www.uber.com/be/en/drive/insurance/ (choose "Can all Uber partners participate in Partner Protection?" from "Frequently asked questions" dropdown) (last visited Feb. 13, 2022) [hereinafter *Partner Protection*].

> Only independent/self-employed Uber partners are eligible for Partner Protection. For this program, a self-employed partner is one that uses the Uber app under a service contract that they entered into directly with Uber BV, Rasier Operations BV or Uber Portier BV, and is not an employee of a transport company such as a taxi or limousine fleet owner. Partners who are the principal of a business entity and the only individual employed by such entity to provide Transportation/Delivery Services may qualify.

Id. Eligibility Requirements further depend on whether a driver has a passenger. "All independent Uber partners are eligible for the benefits, *Id.* (choose "What are the eligibility requirements for the On-Trip and Off-Trip protections?" from "Frequently asked questions" dropdown), "[f]rom the moment of accepting a trip or food delivery request through to completion of that request and for 15 minutes after it has been completed." *Id.* (choose "What is defined as 'On-Trip' and 'Off-Trip'?" from "Frequently asked questions" dropdown). For Off-Trip coverage, one "must be an "Active Uber Partner," having completed 150 trips in the previous 8 weeks" (averaging 2-3 trips a day, every day for eight weeks *instead of the hours worked or length of trip*) "if you are Driver Partner, or 30 trips in the previous 8 weeks if you are a Delivery Partner." *Id.* (choose "What are the eligibility requirements for the On-Trip and Off-Trip protections?" from "Frequently asked questions" dropdown).

accident, injury, illness, and paternity benefits at no cost.[106] In contrast, drivers in the United States,[107] Brazil,[108] and Egypt,[109] only receive coverage while they are online or on a trip. Insurance is provided based on a driver's country, not municipality, of operation, but in each of the regions analyzed in this note, drivers are responsible for the vehicle insurance while they are offline. This begs the question why EU drivers can receive more expansive coverage, and even greater coverage proposed,[110] than their global counterparts, but none of the regulatory schemes outlined require additional insurance coverage for Uber's current operations.[111]

What appears to be adequate coverage now could change in years to come. In 2019, and before the devastating results of the COVID-19 pandemic, Uber closed a $1 billion investment deal to develop self-driving hardware and vehicles.[112] This deal followed a tragic accident in March 2018 which suspended public-road testing of autonomous vehicles.[113] A year later, Pennsylvania allowed Uber to conduct the same testing and California granted the company a permit for testing with a trained driver in the vehicle.[114] Under the newly formed parent-subsidiary ATG, Uber was

> For Maternity Cover, if you are the natural mother of the child (and may need additional time off before the birth), we have extended the threshold to 6 months, in which you must have completed 300 trips if you are Driver Partner, or 60 trips in the previous 8 weeks if you are a Delivery Partner.

Id.

106. At no cost so long as a driver meets eligibility requirements listed *in Partner Protection*, *supra* note 105.

107. *Driver Insurance, United States*, UBER, https://www.uber.com/us/en/drive/insurance/ (on-trip insurance covers third-party liability insurance, on-trip insurance covers third-party liability, un/underinsured motorist bodily injury, contingent comprehensive and collision) (last visited Dec. 20, 2020).

108. *Driver Insurance, Brazil*, UBER, https://www.uber.com/br/en/drive/insurance/ (on-trip insurance covers accidental death, total or partial disability due to an accident, and hospital and dental expenses) (last visited Dec. 20, 2020).

109. *Driver Insurance, Egypt*, UBER, https://www.uber.com/eg/en/drive/insurance/ (on-trip injury protection insurance - Uber explicitly notes provided insurance is not "commercial vehicle insurance nor is it a substitute for comprehensive vehicle [or medical] insurance") (last visited Dec. 20, 2020).

110. AXA, *supra* note 104 ("Uber and AXA expect to propose a full set of personalized offers tailored to the different profiles and needs of each partner driver or courier, notably including injury protection, income protection, family protection, health covers, retirement, savings").

111. Although, this question may be adequately answered through a look at the progressive European tax system, *see* Alberto Alesina et al., *Why Doesn't the United States Have a European-Style Welfare State?*, 2001 BROOKINGS PAPERS ON ECON. ACTIVITY 187, https://www.brookings.edu/wp-content/uploads/2001/06/2001b_bpea_alesina.pdf.

112. 2019 Annual Report, *supra* note 3, at 21.

113. *See* Daisuke Wakabayashi, *Self-Driving Uber Car Kills Pedestrian in Arizona, Where Robots Roam*, N.Y. TIMES (Mar. 19, 2018), https://www.nytimes.com/2018/03/19/technology/uber-driverless-fatality.html.

114. 2019 Annual Report, *supra* note 3, at 23.

focused on the long-term potential for cost-effective autonomous ride-hails and UberElevate,[115] which provided rides via helicopter in New York, and on developing various electric aircrafts (eVTOL).[116] Despite what may have been an innovative step for Uber on its path to expand its transportation offerings, the company seems to have avoided insurance and safety concerns for the time being. As of February 2021, Uber has divested ATG and UberElevate projects to Aurora Innovation and Jody Aviation, respectively, in exchange for minority stakes in the companies.[117] Nevertheless, these areas should be monitored as regulators develop effective schemes for ride-hail app users' safety.

B. Worker Classification

The controversy with worker classification, the gig economy, and the aforementioned battle in California is still an ongoing issue in terms of workers' rights and protections.[118] To understand Uber's view on the matter, it may be worth first considering its business model:

> We have concluded that we are an agent in these arrangements as we arrange for other parties to provide the service to the end-user. Under this model, revenue is net of Driver and Restaurant earnings and Driver incentives. We act as an agent in these transactions by connecting consumers to Drivers and Restaurants to facilitate a Trip or meal delivery service.

115. *Id.* at 5.

116. *Uber Air: Designing for the Community*, White Paper, 8 (2021) https://d1nyezh1ys8wfo.cloudfront.net/static/PDFs/Uber+Air_Designing+for+the+Community.pdf?uclick_id=eb6184a3-f7fa-4195-bb3b-aa5815663866.

117. 2021 Investor Presentation, *supra* note 101, https://s23.q4cdn.com/407969754/files/doc_financials/2020/q4/InvestorPresentation2021.pdf.

118. *See* Emergency Petition for Writ of Mandate and Request for Expedited Review, Castellanos v. State of California, Cal. Sup. Ct. (2021), https://www.courthousenews.com/wp-content/uploads/2021/01/Prop22-CalifSCWrit.pdf. (On Jan. 12, 2021, alongside the Service Employees International Union and others, four California residents, including three app-based workers and one customer, filed an emergency petition for writ of mandate with the California Supreme Court to decide the constitutionality of Proposition 22 where it requires a seven-eighths supermajority vote to enact any legislation, deceivingly named "amendments," which restricts the "unlimited" authority of the CA Legislature in the CA Constitution to enact any laws which would grant the driver's collective bargaining rights, or "preclude it from providing incentives for companies to give app-based drivers more than the minimal wages and benefits provided by Proposition 22" and generally restricts local and state governments from acting in a way contrary to "the purpose of the initiative." The petition was denied without prejudice for refiling in the appropriate court.)

As stated in Uber's 2019 Annual Report, drivers, not end-users, i.e., riders, are its customers.[119] Its revenue is primarily derived from the service fees paid by the drivers and restaurants to use the platform.[120] Uber's dependency on its drivers highlights its pervasive need to evaluate how measures such as A.B. 5 take away from their main revenue stream.[121]

As it stands, Proposition 22, the recently passed legislation which carves out an exception from A.B. 5 for gig-workers, claims to support the independence of workers who treat their gigs as supplementary income. However, the measure's findings lack data to fully understand what their customer base looks like or the preference for one worker classification over the other. "Prop 22" touts the benefit to "millions of California[n] consumers and businesses" and the threat to flexible work opportunities for "hundreds of thousands of Californians."[122] Whether or not drivers have other streams of income or benefits through some other means, workers' rights advocates still seek to protect the lifeblood of the company, their drivers, "by ensuring they receive the compensation and benefits they have earned through the dignity of their labor."[123]

119. 2019 Annual Report, *supra* note 3, at 92 ("Our sole performance obligation in the transaction is to connect Drivers and Restaurants with end-users to facilitate the completion of a successful ride-sharing trip or Eats meal delivery. Because end-users access our platform for free and we have no performance obligation to end-users, end-users are not our customers").

120. *Id.*

121. Since the early impact of COVID-19 in February/March 2020, Uber food delivery revenue has hedged lost revenue resulting in restrictions on shared rides. The food delivery sector of Uber increased by 130%, according to their 2021 SEC filing, Uber Tech., Form 8-K SEC filing (Feb. 10, 2021). Additionally, it is worth considering the recent acquisitions of Drizzly and Postmates, alongside the numerous partnerships Uber has entered as a result of their success in the food delivery sector, which it ultimately favored over the development of autonomous vehicles and air travel. Postmates, *Postmates 2018 Economic Impact Report Details how Ondemand Technology Helps Retail Merchants Grow 4x Faster* (Apr. 12, 2018), https://buyer-static-gcp.postmates.com/press-releases/postmates-economic-impact-report.pdf.

122 CAL. BUS. & PROF. CODE § 7449 (West, Westlaw through Ch. 10 of 2022 Reg. Sess.), *invalidated by* Castellanos v. State, No. RG21088725, 2021 WL 3730951 (Cal. Super. Aug. 20, 2021).

123. *See* People v. Uber Techs, Inc., 270 Cal. Rptr. 3d 290 (2020) (citing Dynamex Operations W. v. Superior Court, 4 Cal.5th 903, 952 (2018)).

Minimum wage and other protections have been established in New York City[124] and Seattle,[125] but this was done without a change in worker classification. While the text of Proposition 22 guarantees 120% of minimum wage, a study by Ken Jacobs from UC Berkeley Labor Center and Michael Reich from UC Berkley Center on Wage and Employment Dynamics found, "after considering multiple loopholes," an estimated actual wage of $5.64 for a 30 hour a week driver. [126] This amount is "one third of the required minimum pay for drivers in New York City."[127] Although the answer may not be A.B. 5 or Proposition 22, there is a clear need for some equitable standard for determining how to compensate Uber drivers.

A study from the UC Santa Cruz Institute for Social Transformation provides insights related to drivers, as opposed to employees, which Uber has not yet offered. The study was requested to help San Francisco "better understand this workforce and determine whether the labor policies of emerging mobility companies align with the City's labor principle, namely that they 'ensure fairness in pay and labor policies and practices.'"[128] The key goal of its methodology was to consider "a representative sample of on-demand *work* being done in the city, not of all on-demand *workers*."[129]

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124. Shira Ovide, *An Uber Wage Experiment Worked*, N.Y. TIMES (Oct. 1, 2020), https://www.nytimes.com/2020/10/01/technology/uber-wages-new-york.html (minimum wage of $17.22 per hour after expenses); *see also* Emma G. Fitzsimmons & Noam Scheiber, *New York City Considers New Pay Rules for Uber Drivers*, N.Y. TIMES (July 2, 2008), https://www.nytimes.com/2018/07/02/nyregion/uber-drivers-pay-nyc.html (at the time of the Taxi and Limousine Commission's 2018 study 40% of drivers qualified for Medicaid and 15% for food stamps).

125. Seattle, Wash., Ordinance 125976 (Nov. 25, 2019) (Seattle has also passed an ordinance establishing job security for TNC drivers through deactivation protections; minimum wage for drivers set at $16.39/hour).

126. *See* Ken Jacobs & Michael Reich, *The Uber/Lyft Ballot Initiative Guarantees only $5.64 an Hour*, UC BERKELEY LAB. CTR. (Oct. 31, 2019), https://laborcenter.berkeley.edu/the-uber-lyft-ballot-initiative-guarantees-only-5-64-an-hour-2/ (the study's calculation includes gross driver earnings, driver costs, including waiting time/miles and compensation for expenses, and health benefits); *see also*, California Labor Federation (@californialabor), INSTAGRAM (Oct. 21, 2020), *https://www.instagram.com/p/CGm_bxQAyRP/* (a photo sent from a food delivery driver showing numerous other drivers waiting over an hour for pickups, highlighting the fact that drivers are not compensated for the time on the job, but just the work completed). For additional commentary in the discussion of actual wages, *see generally* the driver-generated comments that were compiled by @ravbuc. @Horror-Return2321, REDDIT: R/UBERDRIVERS, https://www.reddit.com/r/uberdrivers/comments/p9ipzj/can_we_get_a_list_of_what_citystate_pays_out_per/ (last visited Sept. 16, 2021).

127. *See* Jacobs & Reich, *supra* note 126.

128. Chris Benner et al., *On-Demand and On-The-Edge: Ride-Hailing and Delivery Workers in San Francisco*, Introduction, UC SANTA CRUZ INST. SOC. TRANSFORMATION (May 5, 2020), https://transform.ucsc.edu/wp-content/uploads/2020/05/OnDemandOntheEdge_ExecSum.pdf.

129. *Id.* at 1.

> This is important. Representative samples of all *people* who do some work for on-demand app companies show many people working for short periods of time or earning only a small portion of their earnings from this type of work. But we wanted to develop a representative sample based on the actual work being done in the city, which we believe is a better basis for understanding labor practices and developing labor market policy.[130]

Of the 862 surveys in the three months surrounding initial COVID-19 stay-at-home orders, some key findings are as follows: (1) the workforce is highly diverse (seventy-eight percent are people of color and fifty-six percent are immigrants),[131] (2) workers are financially struggling (forty-five percent could not handle a $400 emergency expense, one fifth does not have health insurance, and fifteen percent rely on some form of public assistance)[132] and "COVID-19 has had a starkly negative impact" on driver's finances and job opportunities within the app,[133] (3) the job is "not a gig for most people" (fifty percent work more than forty hours and forty percent work twelve or more straight hours at least several times a month),[134] (4) earnings are low (averaging $900/week, but when accounting for wear-and-tear to vehicles, twenty percent of drivers "might be earning nothing" after expenses), and (5) opportunities for work, bonuses, or incentives are structured according to the number of jobs workers decline (twenty-seven percent deactivated or threatened with deactivation).[135] The available data is generally limited, as it relates to drivers in California, but this external research offers further useful considerations.

130. *Id.*

131. *Id.* at 4.

132. *Id.*

133. *Id.* at 2-3 (food delivery drivers reported two to fourteen percent more difficulty in these areas than ride-hail drivers).

134. *Id.* at 3 (seventy-one percent work more than thirty hours a week, forty-six percent support others with their earnings, and thirty-two percent reported sometimes or often sleeping in their cars before or after performing app-work); *see generally* UBER, *Driving Time*, https://help.uber.com/driving-and-delivering/article/driving-time?nodeId=c8785b5d-e2eb-42be-8c99-000d111e06d0 (last visited Oct. 14, 2021) (unlike non-exempt employees under CA Labor Code § 512(a), which requires thirty-minute breaks under six hours, "Drivers using the Uber app will be *prompted* to go offline for at least 6 hours after a total of 12 hours of driving time in a 24-hour period").

135. Benner et al., *supra* note 128, at 3-4 (this level of control further supports driver's status as employees under A.B. 5).

Uber itself provides little information about its drivers in California,[136] and the available sources are deficient.[137] Proponents of classifying gig workers as employees state that misclassification is a significant factor in the erosion of the middle class and the rise in income inequality.[138] Meanwhile, an economist for Uber projected a seventy-six percent decrease in the number of drivers finding work on the Uber platform if they were reclassified as employees.[139] Uber's primary argument in favor of classifying drivers as independent contractors is flexibility. However, labor laws do not prohibit flexible working conditions, nor do they require duty of loyalty clauses; Uber does.[140] Focusing on drivers who seek a supplementary income made it easier to argue that the benefits such as health insurance are outweighed by the advantages of flexible hours since these drivers could have insurance from their primary employer or family. Without representative data from Uber as to the number of active drivers or their working hours,[141] it is difficult to

136. Since the measure passed in November 2020, Yeson22.com has been deactivated and any mention of its passing removed from Uber's website. It has now been enveloped by UBER, WORKING TOGETHER*:* PRIORITIES TO ENHANCE THE QUALITY AND SECURITY OF INDEPENDENT WORK IN THE UNITED STATES (2020), https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2020/08/Working-Together-Priorities.pdf; *see also* Benner at el., *supra* note 128.

137. *E.g.*, 2020 ESG Report touts that 80% of drivers were satisfied with the experience driving for Uber yet fails to provide the data as to how many persons were surveyed. *ESG Report*, UBER (2020), https://s23.q4cdn.com/407969754/files/design/Uber-2020-ESG-Report-Final.pdf; *2020 Investor Presentation February 6, 2020*, UBER, https://s23.q4cdn.com/407969754/files/doc_financials/2019/sr/InvestorPresentation_2020_Feb13.pdf (citing 5 million drivers which covers both ride-hail "mobility" drivers and food delivery drivers as of 2020 Q4).

138. Lauren Hepler, *Uber, Lyft and Why California's War Over Gig Work is Just Beginning*, CAL MATTERS (Aug. 13, 2020), https://calmatters.org/economy/2020/08/california-gig-work-ab5-prop-22/?; Complaint for Injunctive Relief, Restitution, and Penalties, *supra* note 35.

139. Alison Stein, *Analysis on Impacts of Driver Reclassification*, MEDIUM (May 28, 2020) https://medium.com/uber-under-the-hood/analysis-on-impacts-of-driver-reclassification-2f2639a7f902 (noting "the losses are concentrated in less urban markets") (last visited Dec. 20, 2020).

140. Carmel DeAmicis, *Despite Uber's Arguments, Flexibility for Employees Is a Company's* Choice, VOX (Aug. 11, 2015) https://www.vox.com/2015/8/11/11615468/despite-ubers-arguments-flexibility-for-employees-is-a-companys-choice; *see also* Benjamin Sachs, *Uber's Flexibility Myth: Reprise*, ON LABOR (Aug. 19, 2020), https://onlabor.org/ubers-flexibility-myth-reprise/; *contra* Dara Khosrowshahi, *I Am the C.E.O. of Uber. Gig Workers Deserve Better.*, Opinion, N.Y. TIMES (Aug. 10, 2020), https://www.nytimes.com/2020/08/10/opinion/uber-ceo-dara-khosrowshahi-gig-workers-deserve-better.html.

141. *See generally* CA APP-BASED DRIVER SURVEY, (June 2020) https://d3n8a8pro7vhmx.cloudfront.net/themes/5ef0e34fc294806719977470/attachments/original/1592866174/cadriversurvey.pdf?1592866174 (study commissioned by Uber and surveyed 718 California rideshare and food delivery drivers over twenty-four days) (last visited Dec. 20, 2020); Stein, *supra* note 139 (although this post is commonly cited as a source of authority for Uber, the number of active drivers in California is estimated at 209,000 per quarter which would make the survey cited representative of less than .003% of drivers).

determine whether Uber or its customers are the true beneficiaries of Proposition 22. That said, perhaps a simple solution may be not to classify all one million American Uber drivers[142] the same way, but instead distinguish those who value the flexibility of Proposition 22 from those who qualify for and are thus entitled to the full legal benefits and protections of employment. The option to join Fleet Partnerships is available to Uber drivers in countries outside of the United States[143] and should be considered as at least a step toward remedying issues concerning worker classification.

To drivers within the EU, the courts holding in *Elite Taxi v. Uber Spain*, and its finding that Uber exercises "decisive influence" over business, suggests that "Uber drivers are in fact workers entitled to the national minimum wage or sick pay and that they may also be taxed on an employment basis."[144] In early 2021, the United Kingdom Supreme Court held in favor of an employee/worker classification[145] based on five aspects relating to control: (1) fares are fixed by Uber and drivers have no say in the remuneration they receive, (2) drivers are required to accept and follow Uber's standard contractual terms, (3) drivers have no choice about whether to accept a request a ride, and are penalized based on their rate of acceptance, and cancellation, of trip requests, (4) although drivers provide the physical equipment, the technology "integral to the service is wholly owned and controlled by Uber and is used as a mean of exercising control over drivers,[146]

142. UBER, WORKING TOGETHER, *supra* note 136, at 3.

143. *Join a Fleet in Germany*, UBER, https://www.uber.com/de/en/drive/vehicle-solutions/fleet-partners/ (last visited Nov. 6, 2021) (in Germany, for example, and many other countries, drivers may join a "fleet" similar to the franchise structure contemplated in the United States where drivers work as employees under a private hire vehicle operator).

144. K&L Gates LLP, *Uber May Face Stricter Regulation by Member States after EU's Highest Court Rules it is a Transport Service*, LEXOLOGY (Jan. 25, 2020), https://www.lexology.com/library/detail.aspx?g=70c66dd8-7e6e-44ee-b7e9-5a80077e7353.

145. Uber BV v. Aslam [2021] UKSC 5 (appeal taken from EWCA Civ. 2748) (issue of the lack of a contract between Uber and drivers in light of their assertion that Uber as an agent acted on behalf of drivers to book rides);

> In a recent judgment, the Grand Chamber of the CJEU has emphasized that, in determining whether such a relationship exists, it is necessary to take account of the objective situation of the individual concerned and all the circumstances of his or her work. The wording of the contractual documents, while relevant, is not conclusive. It is also necessary to have regard to how relevant obligations are performed in practice.

See also Case C-610/18, AFMB Ltd v. Raad van bestuur van de Sociale verzekeringsbank, 2020, E.C.R. 1432 ¶¶ 60-61.

146. The court makes an interesting note that the rating systems for both drivers and customers are purely internal tools to determine performance levels. They are not used so that a driver or passenger may choose whether or not to accept a ride or pay a higher fare. "This is a classic form of subordination that is characteristic of employment relationships." Uber BV v. Aslam [2021] UKSC 5 at 31.

and 5) all means of communication between driver and passenger, to make payments, or lodge complaints, are channeled through Uber.

In stark contrast to California voters' decision on Proposition 22, the EU and the UK courts have been more successful in awarding drivers' protections, like minimum wages and holidays.[147] Although a larger-scale analysis would be required to determine the relative differences in wages across these regions, the crux of the matter for Uber rests in balancing flexibility and worker rights and protections.[148] None of the regulatory schemes outlined thus far, which rely on the binary categories of employee and independent contractor, appear to have found this balance, if one exists.

In the end, the most equitable solution may not lie in the binary worker classification. Uber itself stated that gig work could not fit within this traditional system, which motivated it to lobby in favor of labor regulation reform.[149] Whether app-based workers will usher in a new classification is something only time will tell, but some conclusions may be drawn for the sake of this note.[150] A shift in focus from breadth (global expansion) to depth (strengthening the existing system) does not place an unreasonable administrative burden on Uber. This could be achieved by an individualized determination of a person's intent when signing on to become a driver. Drivers who use Uber as a primary source of income could sign a formal employment contract like those seen in Fleet Partnerships outside of the United States.[151] For those seeking supplementary income, the protections provided by Proposition 22 may have been a good start, although the

147. Delphine Strauss, *'Momentous' Uber Ruling Prompts Call for Clarity on UK Workers' Rights*, FIN. TIMES (Feb. 19, 2021), https://www.ft.com/content/1bf50459-b0a3-42d5-8be3-4b721c7a5142; *See also* Adam Pharaoh, *Uber: The Gig Is Up*, FIN. TIMES (Feb. 19, 2021), https://www.ft.com/content/69779482-c462-44cd-b416-6752c0d92bbb (Uber as a large corporation is not impacted as much as its direct competitors).

148. *A Better Deal: Partnering to Improve Platform Work for All*, UBER, https://uber.app.box.com/s/tuuydpqj4v6ezvmd9ze81nong03omf11?uclick_id=084011f0-33b2-43d8-941c-857b0ef562f4 (Uber has introduced and called on EU officials to implement California's Proposition 22 framework), https://www.vice.com/en/article/wx8y9x/uber-wants-to-export-prop-22-to-europe.

> These new benefits would be provided in addition to Uber's longstanding commitment to accessible work and worker-defined flexibility. We commit to working proactively and in partnership with lawmakers in Washington, DC and in state capitols on legislation to deliver certainty for millions of independent contractors who will increasingly rely on independent work to help them face the economic challenges that lie ahead during a recovery from the COVID-19 pandemic.

UBER, WORKING TOGETHER, *supra* note 136, at 5.

150. Conclusions tied to ride-hail drivers, but practically speaking, they would apply just as much to food delivery drivers.

151. UBER, WORKING TOGETHER, *supra* note 142.

legislation itself raised constitutional questions.[152] The one size fits all classification has been the point of contention between fair labor advocates and Uber, so a compromise between parties must be reached, which is well within their capacity.

C. Data Privacy

Convenient access to Uber comes with an exchange of user data; the misuse of which should be a concern to regulators under this goal. Preliminary discussions for regulation of Uber in Egypt highlighted concerns with data privacy. The relationship between Uber and the Egyptian government was controversial at first. Egypt's first wave of regulatory attempts was a draft of Law No. 87 of 2018.[153] This law required government access to Heaven, Uber's internal software which tracks live data about customers, drivers, and their journeys.[154] Those circumstances differ from those in Taiwan, where Uber was willing to comply with stricter regulations to maintain its stake in the market. Although Cairo was Uber's third-largest city by the number of rides, company spokespersons denied any assertion that the company would share real-time access to rider data.[155] Its 2019 Annual Report stated that it might not be willing to provide certain personal data in order to operate their app, thus risking their stake in Egypt's market.[156]

Egypt's Parliament eventually passed Resolution 2180 of 2019 (the executive regulation of Law No. 87 of 2018), which required ride-sharing apps to provide passenger data only when requested by security agencies, similar to the United States.[157] Uber praised Egypt as "one of the first

152. *See* Castellanos v. State, No. RG21088725, 2021 WL 3730951 (Cal. Super. Aug. 20, 2021). Proposition 22, enacted as CAL. BUS. & PROF. CODE § 7451 was declared unconstitutional but remains active legislation. Uber contends it will seek an appeal of this decision. *Supra* p. 182.

153. Law No. 87 of 2018 (Ministerial Resolution Issued to Regulate Activities of Ride-Sharing Companies), *al_Jaridah al_Rasmiyah*, Vol. 23, Jan. 11, 2018, arts. 9, 11; *See* also Declan Walsh, *Dilemma for Uber and Rival: Egypt's Demand for Data on Their Ride*, N.Y. TIMES, June 11, 2017, at 10N.

154. *See also* Walsh, *supra* note 153.

155. *Id.* (Matt Kallman, Uber Spokesperson, "we do not and have never provided any government with real-time access to riders' data, and we'll always fight to protect their privacy").

156. 2019 Annual Report, *supra* note 3.

157. This approach is standard, at least in the United States in limited circumstances, following the requisite procedure. *See Guidelines for United States Law Enforcement*, UBER (Jan. 1, 2021), https://www.uber.com/legal/en/document/?_ga=2.46755171.530939684.1614472203-1981180667.1612570982&country=united-states&lang=en&name=guidelines-for-law-enforcement (last modified 4/3/2021).

countries in the Middle East to pass progressive regulations."[158] The same year, "as [Egyptian] security agencies stepped up demands [for consumer data], the Uber app started to crash in Egypt, said an official with knowledge of talks between Uber and the Egyptian government."[159] As Resolution 2180 currently reads, Egypt does require unfettered access to live data. However, if Uber did not maintain their strict policy against sharing personal information, "this law could provide authorities with the locations and social networks of activists, dissidents, and rival politicians . . . ."[160] After Resolution 2180's enactment, Uber invested $20 million into its new support center in Cairo[161] and acquired Careem, a vehicle for hire company based in Dubai,[162] which, pending approval, allows it to conduct business in Egypt, Jordan, Saudi Arabia, the United Arab Emirates, Pakistan, Qatar, and Morocco.[163] The public has yet to see how Uber will proceed with its operations in Cairo, if the data privacy it hopes to protect is at risk of misuse by the government.

The potential misuse of data does not include data breaches, which has already cost the company close to $150 million in aggregate settlements with regulators in the United States, United Kingdom, Netherlands, and France.[164] Regulators have addressed cybersecurity concerns across the board in order to increase app users data protection with the EU's General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), Brazil's General Data Protection Law (Lei Geral de Proteção de Dados Pessaoais or

158. Jared Malsin, *Egyptian Ride-Hailing Bill Spurs Surveillance Concerns*, WALL ST. J., May 7, 2018, at A9 (an executive who declined to be identified did state that if the law were amended to look like its original draft version (87/2018), it would raise concerns).

159. Declan Walsh, *Sisi Extends His Grip to the Plots of Egyptian Soap Operas*, N.Y. TIMES, Apr. 4, 2019, A6 N; *see also* 2019 Annual Report, *supra* note 3, at 38 (Uber's failure to share personal data with government authorities may result in an assessment of significant fines or penalties against the company or shutting down Uber or Careem in Egypt either temporarily or indefinitely).

160. Andrews Boyles Petersen, *Scoot over Smart Devices: The Invisible Costs of Rental Scooters*, 17 SURVEILLANCE & SOC'Y 191, 194 (2019).

161. *Egypt Passes Law Regulating Uber, Careem Ride-Sharing Service*, REUTERS (May 7, 2018, 9:33 AM), https://www.reuters.com/article/us-egypt-uberidUSKBN1I81VG.

162. A vehicle for hire company based in Dubai. *Uber Completes Acquisition of Careem*, UBER (Jan. 2, 2020), https://investor.uber.com/news-events/news/press-release-details/2020/Uber-Completes-Acquisition-of-Careem/default.aspx.

163. *Id.*

164. 2019 Annual Report, *supra* note 3, at 42 (failure to report the 2016 breach cost $148 million total to the Attorneys General of all fifty U.S. states and the District of Columbia, $1.6 million to the aforementioned European regulators, in additional to "costly and time-consuming regulatory investigations and litigation form other government entities;" Uber's recent acquisition of Careem, which publicly disclosed a data security breach in April 2018, may result in additional liabilities to the company).

LGPD).[165] Non-compliance with the GDPR's heightened consent standards, disclosures, and personal data rights could cost a company four percent of its total worldwide revenue (not including compliance costs with any individual EU Member State's regulations).[166] Brazil's LGPD includes strict requirements for processing sensitive personal data related to children and adolescents[167] and creates the National Data Protection Authority (ANPD) to monitor compliance with the law.[168] A party that violates the LGPD may be fined up to two percent of its annual revenue in Brazil or prohibited from exercising data processing activities; sanctions are determined by the peculiarities of the case and consider the offender's cooperation, its economic condition, and the level of damage.[169] In terms of their personal information, Californians enjoy the right to know who collects their data and how it is used, to delete certain information and to opt-out of its sale, and the right to non-discrimination in exercising their CCPA rights.[170] The more the internet becomes integral to every aspect of daily life, the more each of these regulations will be intended to protect citizens whose data privacy increasingly depends on an understanding of a given website or apps' terms and conditions.

The data protection regulations in place are promising safeguards to prevent Uber's misuse of customer data and to protect against other breaches of the company's security system. Alongside the need to regulate the innovative technology developed each year, the data used in its operations must also be protected, even if it only holds companies liable for their failure to protect it. Data protection schemes may still be in their early stages of development, but those with access to the data must uphold the duty, as a company or as required by law, to ensure data safety internally and to ensure its freedom from misappropriation externally.

165. *Id.*

166. *Id.*

167. Lei No. 13.709, arts. 11, 14, de 14 de Agosto de 2018, Diário Oficial da União [D.O.U.] de 15.8.2018.

168. *Id.* arts. 55-A, 55-J

169. *Id.* art. 52

170. California Consumer Privacy Act of 2018, CAL. CIV. CODE § 1798.155(b) (West 2021) (fines range from $2,500 to $7,500 per violation depending on the offender's volition).

D. Sexual Misconduct and Sexual Assault

Between 2017 and 2018, Uber cataloged 5,981 sexual assaults ranging from unwanted kissing to rape.[171] Continuous background checks and rating systems for both drivers and riders appear to be the only explicit means of regulation in this area, but Uber has taken it upon itself to address the protection of those within its company, its users, and its riders. Uber's 2017-2018 U.S. Safety Report, in partnership with various experts, including the National Sexual Violence Resource Center (NSVRC), detailed procedures to combat sexual misconduct and sexual assault.[172] Although the number of reported assaults meant that 99.9% of rides were safe,[173] Uber nevertheless implemented changes to protect both its riders and drivers—individual claims of sexual assault or sexual harassment by Uber riders, drivers, or employees no longer mandate arbitration, and survivors may settle claims without a confidentiality provision. Additionally, Uber committed to publishing a safety transparency report with "data on sexual assaults and other incidents that occur on the platform."[174]

The company's efforts to protect riders and drivers from sexual assaults are commendable despite losing an estimated $1 billion from its market cap following the 2017-2018 U.S. Safety Report.[175] In response to the users' and

171. Kate Conger, *Uber Says 3,045 Sexual Assaults Were Reported in U.S. Rides Last Year*, N.Y. TIMES (Dec. 5, 2019), https://www.nytimes.com/2019/12/05/technology/uber-sexual-assaults-murders-deaths-safety.html (data only covers the United States; Uber did not provide data on countries outside the United States). Uber's Chief Legal Officer at the time wrote that "every form of transportation is impacted by this issue," Tony West, *Uber Delivers U.S. Safety Report*, UBER: NEWSROOM (Dec. 6, 2019), https://www.uber.com/en-GB/newsroom/2019-us-safety-report/, noting that in the same years covered by Uber's Safety Report, the New York Police Department (NYPD) reported 1,125 sex offenses in the transit system. *Id.*; N.Y. POLICE DEP'T, COMPLAINTS FOR OFFENSES DESCRIBED IN ADMINISTRATIVE CODE 14-150(D) OCCURRING IN TRANSIT JURISDICTION CALENDAR YEAR 2018 (2018), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/transit-bus-crime-reports/2018/complaints-in-transit-report-cy-2018.pdf; N.Y. POLICE DEP'T, COMPLAINTS FOR OFFENSES DESCRIBED IN ADMINISTRATIVE CODE 14-150(D) OCCURRING IN TRANSIT JURISDICTION CALENDAR YEAR 2017 (2017), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/transit-bus-crime-reports/2017/complaints-in-transit-report-cy-2017.pdf.

172. UBER, 2017-2018 U.S. SAFETY REPORT app. IV (2019), https://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf?uclick_id=7c46110e-12bf-4035-a87f-b22fc5921bdd (sexual misconduct ranging by severity "staring or leering" to "verbal threat of sexual assault").

173. Conger, *supra* note 171.

174. Tony West, *Turning the Lights On*, UBER NEWSROOM, (May 15, 2018) https://www.uber.com/newsroom/turning-the-lights-on/.

175. 2017-2018 U.S. SAFETY REPORT, *supra* note 172 at 61 ("In reality, riders account for nearly half of the accused parties across the 5 most serious sexual assault categories."); Yusuf

regulators' demands, Uber has made progress in protecting individual autonomy. The in-app features of the 2018 "Safety Toolkit" allow drivers and riders to share their ongoing trips, access the emergency button to connect with 911 in under a minute, and to access RideCheck, which "leverages technology in the driver's smartphone to detect potential motor vehicle crashes" or suspicious activity by notifying users to ensure their safety.[176] In Brazil, the app also includes inappropriate message detection and audio recording on a trip.[177] The protections available are clearly better than none at all, but they do not provide a comprehensive solution, beyond driver and rider screening, that preemptively avoids violations of users' individual autonomy. Perhaps if Uber were held fully liable to its end-users in all areas of safety and responsibility, it would focus less on expansion and more on safety of the millions who already use the app.

V. MANAGE TRAFFIC CONGESTION AND MAINTAIN PUBLIC INFRASTRUCTURE

It is difficult to deny that Uber puts more cars on the road, which is neither as efficient nor environmentally friendly as a public transit system. Many cities with dependable public transportation already seek to restrict additional cars on the road, which becomes increasingly difficult with Uber in the market.[178] Effective use of public utilities could help serve overcrowded metropolitan areas as well as the first regulatory goal, if the number of ride-hail vehicles and taxis began to overlap; thus, limiting the number of cars on the road in favor of public transit. The final goal is stated broadly, since it encompasses aspects of the previously stated goals and those lightly touched on here, such as environmental and economic impact.[179]

Khan, *Uber Is Set to Lose $1 Billion in Market Value After It Reported 6,000 Sex Assault Cases (UBER)*, MKTS. INSIDER (Dec. 6, 2019, 11:21 AM), https://markets.businessinsider.com/news/stocks/uber-stock-price-1-billion-to-get-wiped-from-market-cap-on-sex-assaults-2019-12-1028743506.

176. 2017-2018 U.S. SAFETY REPORT, *supra* note 172, at 22-24.

177. *Driver Safety, Brazil*, UBER, https://www.uber.com/br/en/drive/safety/ (last visited Dec. 20, 2020); *Elas na direção: mulheres dirigindo suas vidas*, UBER (Oct. 22, 2019), https://www.uber.com/pt-BR/blog/mulheres-na-direcao/.

178. *See generally ViaVan and BVG Launch BerlKönig in Berlin*, VIA VAN (Sept. 7, 2018), https://www.viavan.com/berlin-launch/ (companies like Via are working to create public ride-hail services, it also partnered with Berlin's public transit authority to offer an on-demand shuttle service).

179. See Gregory D. Erhardt et al., *Do Transportation Network Companies Decrease or Increase Congestion*, SCIENCE ADVANCES 1 (2019), for consideration of the environmental impact of the time drivers spend on the road without passengers ("deadheading"), idle waiting for a trip, or the time spent traveling to pick up a passenger.

According to various studies conducted in the United States, ride-hail firms' impact on municipal infrastructure, traffic, and public transportation correlates with their expansion and pricing. The U.S. Energy Efficient Mobility Systems 2019 Annual Report[180] presents a few conclusions based on TNC simulations which explore "the future impacts of emerging technologies on urban mobility."[181] Not surprisingly, these findings have their limitations, but simulated TNC operations based on supply, demand, and network congestion illustrated that, at the lowest simulated price, ride-hailing is sufficiently inexpensive to replace mass transit for regular commutes completely.[182] Moreover, increasing market penetration of the TNC vehicles deteriorates traffic performance by increasing the total time spent on the road and decreasing the harmonic mean speed for road segments of parking, or stagnation in traffic flow resulting from drivers exiting and reentering traffic during pickups and drop-offs..[183] Finally, "[a]s more customers seek pooled rides, the wait times and overall travel delays increase, which limits uptake by other customers. In addition, empty vehicle miles traveled also increase which counteract the benefits of pooling."[184]

The impact of ride-hail services in cities with prominent public transportation, or with congested roads, is clear, but Uber may have already thought of this. Uber has acquired various companies in support of Uber Transit, which seeks to provide access to public transportation.[185] Interestingly, Uber CEO Dara Khosrowshahi stated that the company's goal was to replace personal car ownership as "the cities of the world don't need

180. U.S. DEP'T. OF ENERGY, OFF. OF ENERGY EFFICIENT & RENEWABLE ENERGY (EERE), VEHICLE TECH. OFF., DOE/EE-1988 8199, FY2019 ENERGY EFFICIENT MOBILITY SYSTEMS ANNUAL PROGRESS REPORT (2019) [hereinafter VTO 2019 PROGRESS REPORT], https://www.energy.gov/sites/prod/files/2020/06/f76/VTO_2019_APR_EEMS_COMPILED_REPORT_FINAL_compliant_.pdf*; see also* MICHAEL J. SPRUNG ET AL., U.S. DEP'T. OF TRANSP., BUREAU OF TRANSP. STATS., TRANSPORTATION STATISTICS ANNUAL REPORT 2018 (2018) [hereinafter DOT 2018 ANNUAL REPORT], https://doi.org/10.21949/1502596.

181. DOT 2018 ANNUAL REPORT, s*upra* note 180, at 328.

182. VTO 2019 PROGRESS REPORT, *supra* note 180, 158-59 ("[A] moderate price drop, ride-hailing is not affordable enough to take regularly for the full commute, but rather it serves as a first/last-mile link to a mass transit stop...This result is robust to account for actual mass transit use, suggesting that this complementarity is not just driven by non-users of mass transit who do not have experience using mass transit...").

183. *Id.* at 303 (parking algorithm is randomly selected and does not account for double parking, which disrupts the traffic flow like a temporary lane reduction).

184. *See* VTO 2019 PROGRESS REPORT, *supra* note 180.

185. *Uber Transit*, UBER, https://www.uber.com/us/en/transit/ (last visited Feb. 21, 2022); David Reich, *Uber is Acquiring Routematch to Support Cities in Providing More Accessible Public Transportation*, *Newsroom*, UBER (July 16, 2020), https://www.uber.com/newsroom/uber-routematch/.

more cars in them."[186] Uber's effort to redefine itself as a feeder system for public transit is dubious. If Uber truly intended to replace personal car ownership in favor of a less congested and more efficient transportation system, it would be impressive and helpful to the environment. However, it is difficult to believe that was its main purpose if one considers where Uber derives its revenue from—drivers' service fees.

In its move to become a wider transportation platform, Uber has not created a more efficient system, but instead broadened its revenue streams to micromobility, i.e., electric bikes and scooters, and even to public transit.[187] Some could see this as a private company stepping in for the logical participant, public transit entities themselves, to provide access to these transportation systems via their popular and user-friendly app when the agencies themselves could not. This seems just as conceivable a scenario as one that considers Uber's monetary motivation to increase its own visibility across as many means of transportation as possible. Consider Berlin's public transit authority, Berliner Verkehrsbetriebe (BVG), which developed its own app to promote the use of public resources.[188] Jelbi is a route builder app that connects users with all possible means of travel, whether it be train, bus, bike/scooter rental, rideshare, or taxi.[189] In practice, the differences between the two seem minimal. However, when looked at through the lens of global expansion—as of Q3 2020, Uber has expanded UberTransit into ten new cities worldwide—it is difficult to decide whether Uber is focused on "potentially reducing city emissions and congestion" or whether it is only a *potential* positive side effect.[190]

Regardless of Uber's intentions, increasing accessibility to public transportation is proving beneficial to the extent that users may now consider it as an option alongside ride-hailing services. In San Francisco, which has many transit options within the city and surrounding areas, over ten million

186. Mike Cherney & Newly Purnell, *Uber Readies Services to Mass-Transit Hubs*, WALL ST. J., Jan. 30, 2019, at B2.

187. *Id.*; *New Mobility Supply Chain Meet the Leader*, UBER (Dec. 4, 2019), https://www.uber.com/blog/new-mobility-supply-chain-meet-the-leader jeffrey/#:~:text=New%20Mobility%20is%20rapidly%20expanding,to%20point%20B%20more%20efficiently.

188. *Jelbi App*, JELBI, https://www.jelbi.de/en/jelbi-app-2/ (last visited Oct. 15, 2021). Los Angeles also developed a public ride-hail system as of June 2021. For a discussion on key differences between this new program and private ride-hailing, see Madalyn Amato, *Need a Ride? Metro Micro Offers $1 Rideshares Around L.A.*, L.A. TIMES (June 30, 2021, 3:26 PM), https://www.latimes.com/california/story/2021-06-30/metro-micro-1-dollar-rides-los-angeles.

189. *Id.*

190. Uber 2020 Current Report, Form 8-K (Feb. 10, 2021), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001543151/78add76d-5381-403e-b6cd-12fd6ace3269.pdf.

people per week used the Municipal Railway (Muni) system and Bay Area Rapid Transit (BART) before the COVID-19 pandemic.[191] With Uber Transit, users may review nearby public transportation when planning a trip.[192] Alongside Uber's traditional ride-hail offerings, this transit option lists the distance from the nearest station (and an Uber ride to get there if need be), the cost of a ticket, a number of transfers you needed to complete the trip, and how soon one can arrive at the destination.

This is an important step for Uber. The environmental and congestion concerns of cities, like Los Angeles, were worsened when more drivers hit the road. The move towards an all-encompassing transportation company, whether of a person or goods via UberEats, requires a delicate balance between dominating an industry and widening access to other means of transportation to benefit cities and their residents. Uber was based on the sharing economy concept whereby the sharing took place between drivers and riders. Uber itself works toward self-regulation by expanding this sharing principle to the relationship between riders and municipal public transportation infrastructures.

This goal, again, managing traffic congestions and maintaining public infrastructure, has an environmental impact as much as it allows for efficient use of existing means of transport. Studies have shown that, despite ride-hailing companies' visions, they do not lessen traffic congestion[193] or emissions.[194] Following Proposition 22, Uber is not incentivized to reduce the number of drivers on the road, because it does not compensate for unengaged time.[195] More cars on the road may equate to reduced wait times

191. *Muni Ridership*, https://www.sfmta.com/reports/muni-ridership; *Ridership*, https://www.bart.gov/about/reports/ridership; *Interactive Estimated Ridership Stats*, LA METRO, https://isotp.metro.net/MetroRidership/Index.aspx (numbers based on the February 2020 total average weekly boardings between Muni and BART; for the sake of comparison, in February 2019, the year Uber Transit launched, there were 475,047 fewer total average weekly boardings).

192. *Partnering with Transit Systems*, UBER (May 20, 2016), https://www.uber.com/us/en/community/supporting-cities/transit/.

193. *Ride-Hailing's Climate Risks: Steering a Growing Industry Toward a Clean Transportation Future*, UNION OF CONCERNED SCIENTISTS (Feb. 2020), https://www.ucsusa.org/sites/default/files/2020-02/Ride-Hailing%27s-Climate-Risks.pdf ("A typical ride-hailing trip is about 69% more polluting than the trip it replaces, and can increase congestion during peak periods…[I]f ride-hailing companies increase pooling to 50% and convert to electric vehicles, they can reduce emissions by about 52% compared with the displaced trips").

194. Erhardt et al., *supra* note 179 (contrary to TNC's vision of reducing congestion in major cities, the research found that they are the biggest contributor to growing traffic congestion in San Francisco).

195. Adam Stocker, *Op-Ed: California's Prop 22 Is Not Only Bad for Drivers, It's Bad for Traffic and the Environment*, CAL. STREETS BLOG (Oct. 5, 2020), https://cal.streetsblog.org/2020/10/05/op-ed-californias-prop-22-is-not-only-bad-for-drivers-its-

for customers, in exchange, however, for increased traffic and emissions while drivers wait for their rides,[196] also known as "deadhailing."[197]

A few regulatory schemes consider this goal. New York City enacted measures that limit the number of drivers that can be logged on to the app at a given time or in an area.[198] San Francisco recently passed the legislation which taxes ride-hailing services 3.25% for single rides and 1.5% for shared rides.[199] The taxes are put towards the city's "Muni" public transit system to address its chronic shortage of drivers.[200] These regulatory steps acknowledge the concerns of an oversupply of transportation means and waste of public infrastructure in San Francisco.

Unlike its neighbor Sao Paulo, Brasilia, Brazil's capital, enacted its own regulation, which deepened ride-hail drivers' effect without solving any of the regulatory concerns previously mentioned. Brasilia's Article 3 of the Projeto de Lei 777/2015 prohibits drivers from stopping "at places specially set for taxis or at bus stops."[201] This regulation also fails to meet the first regulatory goal, which seeks to equate the treatment of taxis to Ubers. Areas reserved for taxis are not uncommon,[202] and keeping these areas limited to dense city centers would allow for taxi drivers and public transportation to maintain their stake in the urban transportation market. By keeping more cars off the streets, these regulations could limit the use of ride-hail services to less populated areas where taxis or public transportation may be less convenient or unavailable. This would not prevent Uber from tapping into a certain market, but it would prevent further congestion of areas with established and functioning passenger transport systems.

To tie these findings into the previous regulatory goals and Sao Paolo's kilometers credit system, consider ride-hail app firms' use via drivers of the public road and welfare system. As mentioned, Uber has no incentive to

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bad-for-traffic-and-the-environment/; *Together on the Road to Zero Emissions*, UBER, https://www.uber.com/us/en/drive/services/electric/ (this said, Uber does incentivize Californian's who drive with electric vehicles with a 5-percentage point reduction of their service fee) (last visited Dec. 20, 2020).

196. Stocker, *supra* note 195 (in light to COVID-19, more travelers may opt for ride-hailing apps in lieu of public transportation).

197. Erhardt et al., *supra* note 179.

198. *Important Changes to Driving in New York City*, UBER (Sept. 12, 2019), https://www.uber.com/blog/new-york-city/tlc-rule-changes/.

199. *San Francisco City Tax*, UBER, https://help.uber.com/riders/article/san-francisco-city-tax?nodeId=dc98da55-47d4-4adc-9b14-70338ee51bf4 (last visited Feb. 13, 2022).

200. *Id.*

201. Defossez, *supra* note 62, at 19 (*citing* Projeto de Lei 777/2015, de 19 Novembro de 2015 art. 3, https://legislacao.cl.df.gov.br/Legislacao/consultaProposicao-1!777!2015!visualizar.action (last visited Apr. 9, 2022)).

202. Doménech-Pascual & Soriano-Arnanz, *supra* note 8, at 358.

prevent drivers from logging in, as it only pays them for the completed work. Underpaid drivers are thus spending more time to seek a minimal wage job. As shown by the UC Santa Cruz research, those using app-work as a primary source of income may be unable to support themselves without welfare programs, which is concerning for both drivers and taxpayers. Further, to the extent the discriminatory treatment favors these app firms, conditions are worsened. Private car transportation should not be less expensive than public transit when ride-hailing takes a greater toll on the environment. It is a series of events, which when considered separately, may not have as significant impact on the communities, as when taken together. It is for these reasons well-designed regulations are needed.

VI. CONCLUSION

Uber's course of business has allowed it to avoid regulations imposed on other transportation companies, neglect worker and consumer protections, and further congest cities with established transportation systems. The schemes discussed here addressed some of the goals recommended at the start of this note. Approaches like those taken in Sao Paolo, consisting of creating a regulatory body and regulations which to some extent address each of these goals, are a feasible example of an adaptive and progressive approach to regulating Uber. In consideration of ride-hail and gig application's impact and disruption of traditional industries, regulators must find meaningful standards in their treatment of the ride-hailing apps as soon as possible.