

ATIVIDADE DIREITO DE PROPRIEDADE

SEGUE ABAIXO OS SEGUINTEs QUESTIONAMENTOS PARA RESPONDER JUNTO COM AS LEITURAS DAS PÁGINAS A SEGUIR -Exercícios - Prova 3

1. **(Spontaneous Deregulation - artigo - Desregulamentação espontânea)** - O que é Desregulamentação espontânea? Qual é o link desse termo com o que foi exposto na aula do Direito de Propriedade sob a ótica do controle e direito residual (Milgrom & Roberts, Capítulo 9)?
2. **(Spontaneous Deregulation - artigo)** - Quais são os principais questionamentos para saber se uma indústria ou setor pode sofrer com a desregulamentação espontânea? Cite uma empresa ou setor que está passando por uma desregulamentação espontânea.
3. **(Spontaneous Deregulation - artigo)** -- Cite duas desvantagens da desregulamentação espontânea? Qual setor pode estar passando por isso e está apresentando tais desvantagens?
4. **Spontaneous Deregulation - artigo** - Quais opções para uma empresa enfrentar a desregulamentação espontânea? Cite caso de empresas/setores que podem estar ou vão enfrentar a desregulamentação espontânea?
5. **LAND REFORM (artigo Land reform Who owns what?)** – Qual é a importância da instituição dos direitos de propriedade no desenvolvimento de um país? Faça um contraponto com a discussão da legalização (regularização) de terras no Brasil?
6. **TAKE CONTROL & DESREGULAÇÃO (artigo Take back control - How digital devices challenge the nature of ownership)**– A era digital desafia a instituição dos direitos de propriedade? Quais os desafios?
7. **REFLEXÃO GERAL** - Flexibilizar ou assegurar os direitos de propriedade? Qual é a melhor forma de avançar nos incentivos de capturar os resíduos do direito de propriedade com as novas tecnologias disruptivas?
8. **REFLEXÃO GERAL** - Faça um contraponto entre os INCENTIVOS importantes de assegurar o direito de propriedade discutido em aula em relação (a mais forte das instituições econômicas, segundo a aula) com a ideia de disrupção tecnológica que pode quebrar leis/regulamentos para refletir as novas realidades habilitadas pela tecnologia.

Spontaneous Deregulation

How to compete with platforms that ignore the rules

BY BENJAMIN EDELMAN AND DAMIEN GERADIN



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any successful platform businesses—think Airbnb, Uber, and YouTube—ignore laws and regulations that appear to preclude their approach. Caught up, perhaps, by enthusiasm for their model and a belief in its utility for customers, the founders and managers of these companies seem to see many of the existing rules as unwanted holdovers from a bygone era not yet ready for their innovations. In this worldview, the laws and regulations need to be changed to reflect new tech-enabled realities. Perhaps the rule breakers also remember the maxim credited to Grace Murray Hopper, a pioneering

naval officer and computer programmer: It's easier to ask for forgiveness than to get permission.

This rule flouting is a phenomenon we call “spontaneous private deregulation,” and it is not new. Innovation has often rendered laws and regulations obsolete. As the sidebar “Spontaneous Deregulation in an Earlier Era” explains, the budding automobile and aviation industries faced similar challenges. Of course, laws are often necessary and appropriate, and spontaneous deregulation can sometimes be problematic. Many people with disabilities can't use Uber or Lyft because those services do not have to guarantee wheelchair accessibility, unlike taxi fleet firms in most U.S. jurisdictions. And as one of us (Edelman) found in a recent study with Michael Luca and Daniel Svirsky, some customers in the Airbnb world are more equal than others. (See the sidebar “More Downsides to Deregulation.”)

Benign or otherwise, spontaneous deregulation is happening increasingly rapidly and in ever more industries. A decade ago, new software start-ups like Napster and YouTube ushered in a wave of piracy that rendered copyright laws effectively irrelevant and drove media companies closer to the brink of failure. Today platforms such as Uber launch new transportation services with or without licenses, while Airbnb hosts skip the taxes, zoning, and safety protections that add complexity and expense to the hotel business. Other new platforms offer prepared foods without meeting the requirements that apply to restaurants regarding health inspections, food safety training, zoning, and taxation. As all these platforms reshape markets, the scope of activity subject to regulation tends to decrease, and various forms of protection disappear.

In this environment, managers in a range of industries need to assess the threat of spontaneous private deregulation. Forward-thinking leaders should plan their responses—an exercise bound to be challenging as they consider ignoring laws they have spent decades learning to follow.

You May Be More Vulnerable Than You Think

A striking variety of firms face potential threats from spontaneous private deregulation. For example, many lawyers perform services that don't really require the personal engagement of an expensive trained professional. Consider routine real estate transactions, uncontested divorces, and

small-business contracts. (In fact, in most law firms these matters are already handled largely by paralegals, but at prices that include attorney overhead.) Similarly, investment bankers may become less important as web-based platforms enable entrepreneurs to sell equity directly to both individual and institutional investors.

In many situations the threat comes from innovators that find ways to leverage the underused capabilities or assets of private individuals, realizing both lower costs and greater flexibility. Previously, successful companies could satisfy customers by combining specialized equipment with staff trained and supervised in the use of that equipment. But many private individuals also have assets—think cars and spare rooms—with excess capacity that can be profitably deployed through tech-enabled platforms like Uber and Airbnb. And such casual providers may not consider it a hardship to work nights and weekends, when established companies ordinarily need to pay premium wages. At the same time, many of the skills traditionally learned from employers can now be taught through software, supplemented when needed with training videos and other limited guidance. Finally, private individuals can more easily avoid regulations that constrain established commercial providers: For example, taxis have to wait in a queue at most airports, but Uber cars cut the line.

High-end incumbents often believe that they occupy a relatively safe niche, but they are threatened too. Black-car service may be superior to Uber because it allows customers to make advance reservations, but if you need a car on short notice,

As platforms reshape markets, the scope of activity subject to regulation tends to decrease, and various forms of protection disappear.

Idea in Brief

THE PROBLEM

In more and more industries, innovative new platforms sidestep regulations that load costs onto incumbent players and restrict their ability to compete.

WHY IT HAPPENS

Regulations may be excessive or obsolete, protecting consumers against low-probability risks. In such situations, the case for respecting the rules is weakened. Another factor is that the authorities may be slow to enforce regulations, leaving incumbents subject to rules that entrants avoid.

THE RESPONSE

Incumbent firms have four options. They can take legal action to try to get the current laws enforced. Alternatively, they can embrace aspects of the new entrant's model or look for ways to leverage what they do best. As a last resort, incumbents may have little choice but to bow gracefully out of business.

Uber probably has one in your area—perhaps even a luxury car. In the hotel industry, secure market positions are equally uncertain. Four Seasons might think it's in a different league from properties on Airbnb, but Airbnb now offers a remarkable array of deluxe options. In New York City alone, it has several hundred listings priced above \$500 per night, including penthouse suites that easily match luxury hotel accommodations.

To figure out whether your industry and company are vulnerable, ask yourself the following questions.

Are Consumers Being Unnecessarily Protected?

Many industries require that providers be licensed to operate. In most cases these requirements are intended to safeguard consumers by providing some degree of quality assurance, even if they also end up shielding incumbents from competition. But many successful new platforms simply ignore the legal requirements. How do they get away with it? A common defense is to claim that consumers can dispense with traditional protections because the platform offers an alternative, possibly superior protection mechanism.

This mechanism is often an online reputation system. For example, passengers can rate Uber's drivers, and customers can check a driver's rating before accepting service. Meanwhile, drivers are operating their own vehicles and thus have a direct incentive to keep them in good condition. Furthermore, passengers might notice serious safety shortfalls and alert others through an unfavorable rating. Perhaps Uber's approach is imperfect, but licensing isn't necessarily more reassuring. After riding in a less-than-sparkling taxicab, a passenger can't help wondering what corners taxis might cut in vehicle maintenance as well as cleanliness. Combine the questionable

effectiveness of government oversight with platforms' incentives for good performance, and it's arguable that compliance functions are best left to the likes of Uber, Airbnb, and their decentralized service providers, rather than to the government.

Formal regulation of many other service providers—from tax advisers to real estate agents to venture capitalists—may be equally unnecessary. The public's comfort in using unlicensed competitors depends on consumers' ability to detect substandard service and their willingness to bear the costs if the service disappoints. Few people would accept heart surgery from an unqualified practitioner, but the risk of an unsafe vehicle seems modest in most American cities. To be sure, serious problems have been reported with some Uber drivers and Airbnb hosts, including physical and sexual assaults, but dangers can also exist in taxis and hotels, and a thoughtful consumer would struggle to figure out where the risk is greatest.

With limited information, consumer beliefs and attitudes play an important role. An anxious first-time home buyer may be willing to pay for a lawyer to manage a title transfer in order to have peace of mind; an experienced property investor might prefer to save on the fees. Tired business travelers may want the comfort of knowing what to expect at check-in—a standard room and services, with someone ready to greet them no matter what time they arrive. However, a globe-trotting extrovert might relish the adventure of staying in a host's spare room.

If the need for protection is relatively low and customers can easily acquire any relevant knowledge, then the industry is vulnerable to a platform that pushes past regulation. The vulnerability is particularly acute if (as is often the case) the regulatory system has created an oligopoly, protecting license holders from price competition and the need to be

responsive to certain customer concerns. Indeed, the success of Uber owes much to the fact that many cities restricted the number of taxi licenses, creating a shortage of vehicles and reducing the interest of license holders in investing to improve their service. That created an opening for Uber drivers, who have a personal stake in important aspects of quality because they drive their own cars, and who provide customers with easier access to rides at peak times because there are no controls on the supply of vehicles.

Can Your Business Practices Be Codified?

Incumbent firms typically have processes for assuring quality, most notably through the selection and training of employees. For example, hotel chains ensure that rooms are clean by training and supervising the housekeeping staff. In many cases, the law mandates that workers complete certain courses and demonstrate certain competencies. Most states, for instance, require real estate professionals to pass exams about the home-buying process and property regulations, and aspiring plumbers, electricians, cooks, and myriad other service providers must also satisfy state standards.

Of course, much of the knowledge involved in this training can be and is codified. As more people get access to this information, ordinary consumers are increasingly able to perform many of the routine practices that were previously reserved for regulated firms and specialists. This advance draws partly on a culture of self-help: Why call a registered plumber to fix your water purifier if you can watch a free online video and do it yourself—or have a handy friend take care of it for far less than the plumber would charge?

The threat of spontaneous deregulation is compounded when software platforms reduce the quality and reliability gap between casual providers and firms employing licensed professionals. London's famous black-cab taxi drivers previously boasted an unrivaled command of the city's geography; acquiring that in-depth knowledge required intensive training and examination. Now anyone with Google Maps can take you from Piccadilly to Putney. Similarly, some consumers and small businesses have found that tools like QuickBooks and TurboTax offer an attractive substitute for formal accounting training. Routine legal transactions are likewise becoming manageable without three years of law school, thanks to digital tools.

At the same time, online platforms make it easy to dispatch the growing number of semi-specialists who have a bit of experience albeit perhaps no official certification. Services that might formerly have seemed “marginal” increasingly seem “good enough.” Thus to meet ordinary needs, specialized training may become difficult to justify, as software platforms deliver a phalanx of casual competitors with sufficient quality and a systematic cost advantage.

The more readily a business's methods can be codified, and the more readily its benefits can be provided by self-trained or tech-enabled enthusiasts, the more vulnerable that business is to low-cost competition from spontaneous private deregulation.

Do the Regulations Protect Third Parties?

Many regulations are imposed on businesses to ensure the welfare of other parties besides customers. Automobile safety requirements protect not just the people using the cars but also bystanders who might be injured by catastrophic failures. Power companies have to avoid excessive pollution not solely for the good of their customers but also because air quality affects everyone.

Typically, the cost of meeting regulations gets passed on to each firm's respective customers. But companies that are subject to those regulations are vulnerable to competition from platforms that facilitate less-accountable relationships. Often, when a platform coordinates hundreds or thousands of casual providers, it becomes unclear just who is harming the third parties or how existing rules apply to the web of relationships.

For example, a city may require special fire-safety equipment for commercial real estate and short-term rentals. Who is responsible for ensuring the installation of such equipment—Airbnb, its hosts,

Platforms make it easy to dispatch semi-specialists who have experience but no official certification.

Spontaneous Deregulation in an Earlier Era

Rapid technological change forces us to reevaluate which laws are still needed. That was as true decades ago as it is now.

both, or neither? This ambiguity enables both parties to avoid investing in the fire-safety measures and to pass on their savings to customers via lower prices. Plenty of customers are happy to accept this trade-off, but third parties who might be affected by a fire aren't in a position to make the choice. And if some properties (such as those that brand themselves hotels) are rigorously inspected and others (Airbnb accommodations) are not, the former will find themselves at a cost disadvantage.

Crafting a Response

The businesses at greatest risk of spontaneous private deregulation are those that answer yes to all three questions: Are consumers being unnecessarily protected? Can business practices be codified? Are third parties being protected? Often regulators themselves worry that some rules may be excessive, or at least ineffective. When private individuals begin to provide services, they usually fly under the regulatory radar at first, making it especially easy for them to find footholds. As they gain popularity, they may seem virtually unstoppable and even praiseworthy—all the more so when harmed parties, such as noncustomer third parties, have little ability or incentive to speak up.

An incumbent might consider acquiring a threatening entrant. But if the entrant's value grows as rapidly as we have seen with Airbnb and Uber, this quickly becomes unrealistic. And incumbents could hardly claim the regulatory high ground if their response to allegedly illegal entry was to acquire the entrant and embrace the same methods.

So let's turn now to the strategic options that are open to businesses at risk of experiencing spontaneous private deregulation—or already facing the threat.

OPTION 1

Call Your Lawyer

When a competitor enters the market and ignores key regulations, it is natural to seek legal assistance—perhaps through private litigation or by urging a regulator to take action. When violations are clear-cut, this strategy can be effective, if the incumbents and those protected by the regulations unite behind it. For example, in 1999, copyright holders began to sue software companies that were facilitating copyright infringement, and their litigation successes compelled the shutdown of Napster's file-sharing service (among others).

Automobiles. At the dawn of mechanized transportation, the British Parliament's Locomotive Acts established onerous requirements for all mechanically propelled vehicles. In 1865, vehicles were limited to traveling two miles per hour in cities, towns, and villages, and four miles per hour elsewhere. Vehicle operators particularly disliked the requirement that three people attend the vehicle at all times, with one of them assigned to carry a red flag at least 60 yards ahead of it to warn approaching horseback riders and horse-drawn carriages.

A few drivers flouted the law, risking fines as large as £10 (equivalent to more than \$1,100 in 2015). Over time, as more people became aware of the benefits of automobiles and as fears proved overblown, support for the Locomotive Acts waned, and the rules were significantly loosened in 1896.

Airplanes. Regulatory questions also arose at the dawn of aviation a few decades later. The Romans had held that a landowner's property extended "from the bowels of the earth to the heavens above." British and American law copied that approach. But in the 1900s, anyone piloting a plane would necessarily pass over thousands of parcels with diverse ownership. Aviation would collapse under the administrative burden of negotiating flying rights with every landowner. Fortunately Congress recognized the problem, and in 1940 it declared "navigable airspace" to be free for everyone to use, with no permission required from landowners below. Here, at least, legal rules imposed little real barrier to transportation innovation.

Yet this strategy has important limitations. Legal action can be slow, costly, and unpredictable. Moreover, courts often take a dim view of competitors seeking to enforce regulations, finding that only regulators have the authority to do so. More than a dozen taxi associations, fleet owners, and operators have sued Uber in the United States, but almost all the cases have been dismissed as invalid on procedural grounds. Uber's critics have had more success outside the United States, especially in Western Europe, but some people have attributed the rulings against Uber to anti-American sentiment and to incumbents' co-opting of the regulators. On the whole, Uber's approach has prevailed in most regions worldwide.

There is another key drawback to filing suit. Legal action assumes that laws will remain as they are. But if consumers embrace an entrant's approach, laws may change—sometimes rapidly. Upstarts have discovered the power of mobilizing their users to influence regulators. For example, Uber has encouraged its passengers to contact regulators in cities where its service has been banned or is at risk of being banned. In contrast, an incumbent usually lacks popular support when seeking to maintain the status quo. Any lawsuit is vulnerable to ever-shifting political debates, which in turn influence legal requirements.

More Downsides to Deregulation

An incumbent who sues may look like a sore loser in the public's eye—and may be a loser in court as well, if legal rules shift or an unsympathetic legal system undermines the suit.

OPTION 2

Embrace Aspects of the New Model

For an incumbent facing a creative entrant, a natural starting point is to adopt the best aspects of the competitor's approach. This is a promising way to neutralize new rivals and remain viable. For example, Napster came on the scene with music that was usually copyright-infringing, but the service's real value lay in its ability to provide songs nearly instantly to any device. In contrast, early online music sales platforms asked users to navigate a multistep purchase process and then delivered files encrypted with digital rights management (DRM) technology. This meant the files could be played only on a limited set of compatible devices, and the music was often difficult to transfer if a consumer changed devices.

Of course, music sellers had every reason to fear piracy. But locking their content behind DRM probably pushed consumers into piracy more than it increased sales. Facing competition from copyright infringement and pressure from e-retailers, music sellers ultimately embraced unencrypted files that widened consumers' options. Legal music sales might have taken off faster, and piracy might have been correspondingly reduced, had rights holders recognized that Napster owed its success as much to its convenience as to the fact that it was free.

Similarly, Uber and Lyft attracted customers with user-friendly platforms providing quick and reliable service. Customers also relished the opportunity to rate drivers, yielding incentives for safe and polite service. To stay in the game, taxi operators in most cities launched their own applications and made efforts to improve service quality. Many passengers think arranging a cab ride means a phone call to a grumpy dispatcher, but taxi companies now widely offer web- and app-based ordering, through a customer interface not unlike Uber's (in fact, some taxi fleets offered web-based booking years before Uber). Even vehicle-en-route tracking has been around for years. If a taxi fleet operator complains about Uber but fails to offer these services, it's hard to feel much sympathy.

Nonetheless, copying the entrant's strategy can be tough to put into practice. For one thing, most

Spontaneous private deregulation tends to give consumers more choices. But it's difficult to celebrate some other effects.

Discrimination. Laws (at least in the United States) require equal treatment of all guests, regardless of race, who book at hotel websites or through travel agents. But it is unclear whether or how this requirement applies to less-regulated platforms like Airbnb. In a field experiment, one of us (Edelman, with Mike Luca and Dan Svirsky) found that Airbnb hosts were 16% less likely to accept a reservation request if the guest's name suggested black rather than white ethnicity. (All requests were fictitious; the team created identical profiles for would-be guests but attached names that census records and survey data showed were disproportionately associated with particular races.)

Tax avoidance. Commercial vehicles usually pay higher fees for registration, tolls, and the like than do the owners of private cars participating in platforms such as Uber. Similarly, hotel rooms tend to be highly taxed, whereas rooms booked through Airbnb and other platforms usually go untaxed. Governments need revenue, and it's hard to see why some providers should contribute while others are exempt. That said, modern platforms create an electronic record of every transaction, facilitating tax collection in sectors like taxis, where cash payments previously invited tax evasion.

incumbents build up capabilities that are not useful in the new entrants' models. Consider the skills required to run a national hotel chain—attracting and supervising franchisees, coordinating marketing efforts, booking conferences and events. It's unlikely that these skills translate to success in a world where short-term accommodations follow Airbnb's model. In fact, staff trained in the old way may resist the changes, or at least struggle to implement them.

Moreover, incomplete efforts to adopt a new model may be tragically ineffective. Consider a taxi fleet operator concerned about competition from app-based transportation services. Uber claims important cost advantages: It doesn't buy medallions (operating licenses), forgoes commercial vehicle registration and insurance, and sidesteps the driver verification that many cities require of taxis. Woe to the fleet operator who expects an online booking feature to overcome that cost gap. When Hailo tried to organize New York taxis via a modern app, its prices were always higher than Uber's—predictably disappointing the customers concerned about the cost of a ride.

OPTION 3

Play to Your Strengths

New platforms typically offer some benefits, but there are usually also downsides. Novice Uber drivers, for example, won't know shortcuts commonly used by experienced taxi drivers. And an Airbnb

stay may give travelers an “authentic” taste of the local culture, but if a delayed flight complicates meeting the host, the guest will surely miss the convenience of a front desk open around the clock. Incumbents should remind consumers of the advantages they offer; for the right customers in the right circumstances, the message may resonate.

For example, forward-thinking hotel operators are playing to their strengths as they adjust their offerings in the face of competition from Airbnb. New “pod”-style hotels forgo oversized guest rooms and deluxe furniture. Yet by gathering a group of travelers in a single building with comfortable common areas, they create social environments that scattered Airbnb properties can’t match. And with smaller rooms and basic fixtures, their costs may approach or even beat those of informal competitors. CitizenM, the Pod Hotel, and Yotel are testing this model in New York City and several cities in Europe, and it seems to be gaining traction.

A big challenge for many incumbents is that when customers assess available options, they often pay no attention to the potential for unanticipated problems. To be sure, the consequences of not having a fire escape in your Airbnb room or being driven by a bad Uber driver can be severe—indeed, deadly. But rare is the consumer who actually considers the probabilities, let alone the possibilities. Perhaps a safer room or a professional driver transforms a one-in-10-million risk into one in 20 million. At \$20 extra, is that a good deal? Most of us could run the analysis if the numbers were known, but these risks tend to be uncertain and difficult to measure.

OPTION 4

Bow to the Inevitable

Google’s widely used YouTube video service began as a classic example of spontaneous private

Forward-thinking hotel operators are adjusting their offerings in the face of competition from Airbnb.

deregulation. It hosted copyright-infringing videos uploaded by the service’s users (and sometimes by its founders). Fast-forward a few years, and record company executives found themselves up against a wall in their negotiations with YouTube. They ultimately accepted modest royalties because the only apparent alternative was piracy, which paid them nothing at all. No one faults them for choosing the former, but it was a painful outcome for record companies, as it left them with a small fraction of their prior revenue. Their experience illustrates the potential for losses when firms are too slow to respond to changing conditions, both in law and in practice.

Still, if spontaneous private deregulation is unavoidable and the prior options offer little promise, the best response may well be an early, voluntary dissolution, expensive as that can be. If you were holding taxi medallions, for example, you might prefer to sell them and cut your losses, accepting a price well below the recent peak, because the alternative could be still worse. Indeed, several taxi fleets attributed their recent bankruptcies to competition from Uber. Ceasing operation is obviously not an incumbent’s preferred strategy; it’s far better for threatened companies to address their vulnerabilities early on. But accepting and planning for the inevitable may be the best and least expensive response in an industry whose changing norms and sources of competitive advantage have made a company’s assets and capabilities largely redundant.

Looking Forward

While incumbents often find it tempting to accuse platform-based companies of unfair play, there is little doubt that these platforms are here to stay—and grow. Technological innovation makes it possible for software applications to carry out increasingly complex tasks, and two-sided platforms that connect casual providers with customers are well-positioned to leapfrog traditional firms. To survive, incumbents in industries that are vulnerable to software platforms must themselves adopt modern tools but also play to their strengths. In many ways, Uber and Airbnb seduced consumers who were disenchanted with the services provided by taxicabs and hotel chains. With diligence and foresight, other established providers can avoid a similar loss of customers. ▣

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Take back control

How digital devices challenge the nature of ownership

And threaten property rights in the digital age



Sep 30th 2017



OWNERSHIP used to be about as straightforward as writing a cheque. If you bought something, you owned it. If it broke, you fixed it. If you no longer wanted it, you sold it or chucked it away. Some firms found tricks to muscle in on the aftermarket, using warranties, authorised repair shops, and strategies such as selling cheap printers and expensive ink. But these ways of squeezing out more profit did not challenge the nature of what it means to be an owner.

In the digital age ownership has become more slippery. Just ask Tesla drivers, who have learned that Elon Musk forbids them from using their electric vehicles to work

interior that can then be sold on to advertisers (though the manufacturer says it has no intention of doing so). After hackers discovered that a connected vibrator, called We-Vibe, was recording highly personal information about its owners, its maker, Standard Innovation, agreed in a settlement to pay customers and their lawyers up to \$3.2m, with a maximum of \$127 for each claim. And farmers complain that, if crisis strikes at the wrong time, John Deere's requirement that they use only authorised software, which funnels them to repair shops that may be miles away, can be commercially devastating. Some are sidestepping the curbs with hacked software from eastern Europe.

Such intrusions should remind people how jealously they ought to protect their property rights. They should fight for the right to tinker with their own property, modify it if they wish and control who uses the data that it hoovers up. In America this idea has already taken root in the "right to repair" movement; legislatures in a dozen states are considering enshrining this in law. The European Parliament wants manufacturers to make goods, such as washing machines, more fixable. In France appliance-makers must tell buyers how long a device is likely to last—a sign of how repairable it is. Regulators should foster competition by, for instance, insisting that independent repair shops have the same access to product information, spare parts and repair tools as manufacturer-owned ones—rules that are already standard in the car industry.

Ownership is not about to go away, but its meaning is changing. This requires careful scrutiny. Gadgets, by and large, are sold on the basis that they empower people to do what they want. To the extent they are controlled by somebody else, that freedom is compromised.

Corrections (September 28th and 29th, 2017): The original version of this article stated that the courts ordered Standard Innovation to pay customers \$10,000 each. The article has been corrected to report that the company in fact settled for up to \$127 each and a total maximum of \$3.2m. The article also contains a reference to iRobot, a robotic vacuum cleaner that creates a digital map of a home's interior. We have clarified in the text that the manufacturer has no intention of selling this map to advertisers



'Robô Alexa' pode virar um espião dentro de casa e levanta questões de privacidade

Documentos obtidos pela revista Vice indicaram que o Astro tem sistema invasivo e funcionários acreditam que aparelho não é confiável

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Funcionários demonstraram preocupação com a relação desse sistema e o que eles identificaram como uma falha de efetividade no reconhecimento facial

O Astro, novo robô doméstico da Amazon, foi apresentado nesta terça-feira, 28, em um evento online da empresa. Mas o dispositivo mal chegou ao mundo e já despertou a atenção de quem

se preocupa com privacidade. As preocupações começaram a ganhar força depois de um documento vazado da companhia afirmar que o aparelho foi programado para monitorar barulhos e todas as pessoas dentro de casa, por meio de um sistema chamado Sentry.

A informação, publicada pela revista americana *Vice*, conta que nos documentos internos, o Astro é chamado de “Vesta”, em uma espécie de codinome para o robô, e possui um sistema (Sentry) que é habilitado para “investigar” barulhos e pessoas desconhecidas. O que deveria ser, então, um dispositivo de segurança, como foi apresentado pela empresa, passa a ser um espião dentro da própria casa, afirma o site.

O Sentry foi programado para aprender expressões e sons para tornar o Astro um patrulheiro doméstico. O funcionamento desse sistema requer um mecanismo de reconhecimento facial e toda vez que um rosto não é identificado como parte da família por 30 segundos, o Sentry ordena ao Astro que siga imediatamente todos os passos do ‘invasor’, até que o sistema seja desligado.

A função é uma opção que precisa ser habilitada, mas, uma vez ativa, é uma autorização para que o Astro siga a pessoa desconhecida e grave sons e imagens enquanto faz a patrulha. A [Amazon](#) não especificou se essas informações são processadas em nuvem ou no próprio aparelho, mas elas podem ser enviadas para o aplicativo no celular do dono do robô – ou seja, existe a possibilidade da transferência dessas informações.

Funcionários demonstraram preocupação com a relação desse sistema e o que eles identificaram como uma falha de efetividade no reconhecimento facial. De acordo com as fontes ouvidas pela *Vice*, o sistema de identificação não funciona corretamente.

Além disso, pessoas que trabalharam com o dispositivo afirmam que o produto não é tão eficiente quanto a Amazon apresentou, em termos de durabilidade de segurança.

“O Astro é terrível e quase certamente se jogará escada abaixo se tiver a oportunidade. A detecção de pessoas não é confiável, na melhor das hipóteses, tornando a proposta de segurança interna ridícula”, disse uma fonte que trabalhou no projeto. “O aparelho parece frágil para algo com um custo absurdo. A haste (que sustenta a câmera) quebrou em vários aparelhos, travando na posição estendida ou retraída, e não há como devolver o robô para a Amazon quando isso acontecer”.

Outros funcionários ouvidos pela *Vice* revelaram a mesma preocupação com a qualidade material do robô e questionaram se o projeto estava mesmo pronto para ir à público. Segundo uma fonte que também trabalhou no projeto, a navegação não é o ponto forte do aparelho.

“Quanto às minhas opiniões pessoais sobre o dispositivo, é um desastre que não está pronto para ser lançado”, disse. “Eles se quebram e, também (na minha opinião), são um pesadelo que se torna um indício ruim da nossa sociedade e como trocamos privacidade por conveniência com dispositivos como o Vesta”.

Em resposta à *Vice*, Kristy Schmidt, gerente sênior de relações públicas para dispositivos e serviços da Amazon, afirmou que o robô passou por testes e por estudos de universidades americanas, com profissionais de computação e com especialistas em algoritmos.

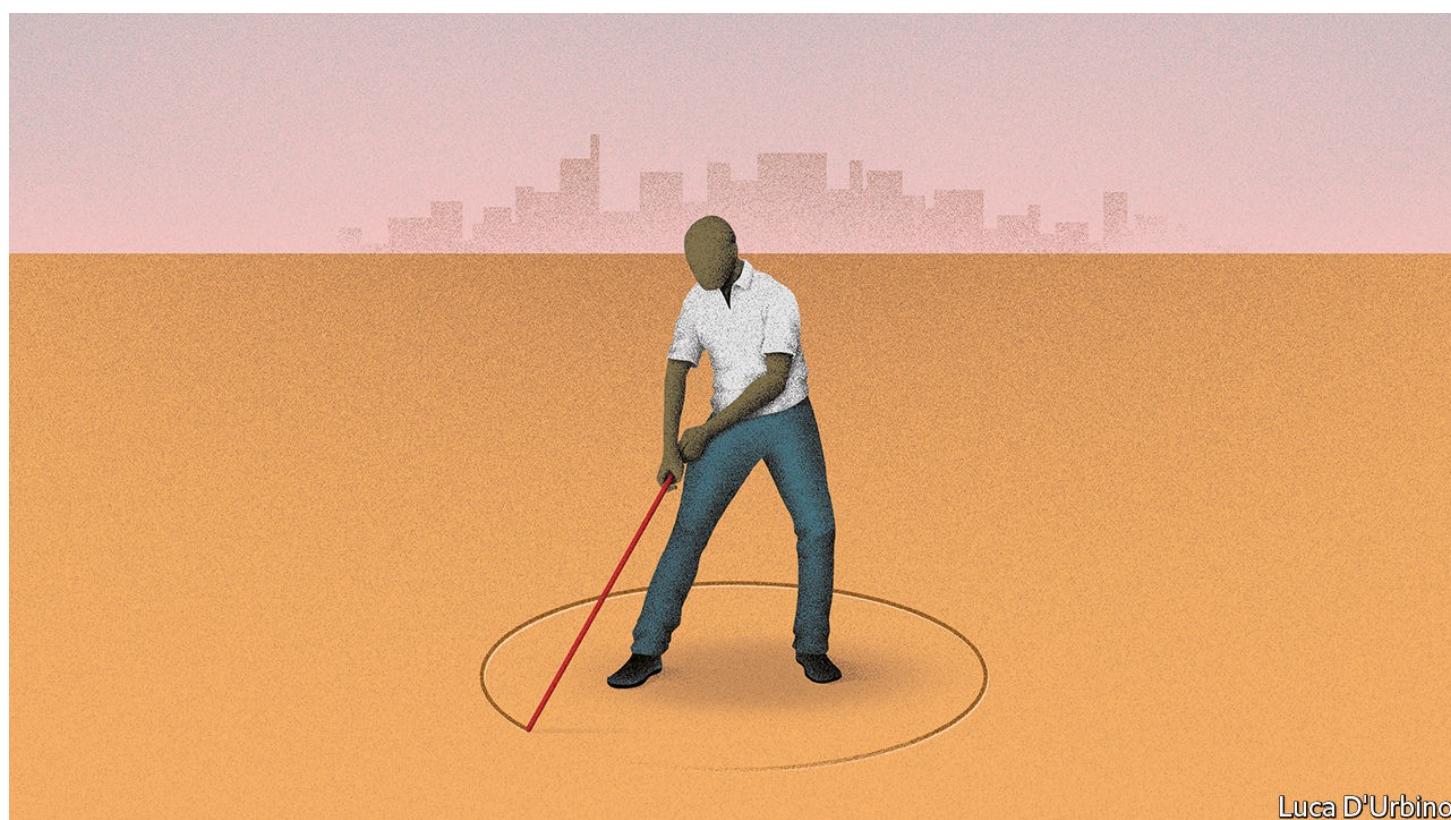
“Essas caracterizações de desempenho, haste de câmera e sistemas de segurança do Astro são simplesmente imprecisas. O Astro passou por testes rigorosos de qualidade e segurança,

incluindo dezenas de milhares de horas de testes com participantes beta. Isso inclui testes abrangentes no sistema de segurança avançado do Astro, que foi projetado para evitar objetos, detectar escadas e parar o dispositivo onde e quando necessário”, explicou Kristy em um e-mail.

Land reform

Who owns what?

Enforceable property rights are still far too rare in poor countries



Sep 12th 2020



TWENTY YEARS ago a Peruvian economist made a startling observation. People in poor countries are not as poor as they seem. They have assets—lots of them. But they cannot prove that they own them, so they cannot use them as collateral. Hernando de Soto estimated that the total value of informally owned land, homes and other fixed assets was a whopping \$9.3trn in 2000 (\$13.5trn in today's money). That was more than 20 times the total of foreign direct investment into developing countries over the preceding decade. If small farmers and shantytown-dwellers had clear, legal title to their property, they could borrow money more easily to buy better

In many countries transactions are painfully slow. Registering a property takes an average of 108 days in South Asia and 64 in Latin America, as against just 24 days in OECD countries. In India two-thirds of civil-court cases are land disputes, which take an average of 20 years to resolve. New software platforms that make

transactions and mediation easier should help. But technology can do only so much.

Other laws often undermine property rights. In more than 30 countries daughters and widows do not have the same land-inheritance rights as sons or widowers. In dozens more women find it hard to own land because of customary law, which is unwritten but vigorously enforced in many villages. Mining and forestry laws may override land laws, as in Mozambique. Ethiopia's registering of millions of land parcels in the 2000s was undermined by restrictions on their use as collateral.

Restrictive planning laws make matters worse. In South Asia, where 130m people live in slums, zoning rules and land-hoarding by government agencies make it harder and costlier for people to buy formal property. And where title is insecure, land is less likely to be developed. Instead, people are pushed into low-rise slums far from the centre: the resulting sprawl means South Asian cities are growing twice as fast in area as in population. In Anglophone Africa some planning laws draw on colonial-era statutes designed for spacious English suburbs. In Dar es Salaam in Tanzania, the minimum plot size for a formal dwelling is 400 square metres. A slum home is perhaps one-fortieth of that.

One reason why reform is hard is that politicians often have a strong incentive to oppose it. In much of the developing world, the power to allocate land—or to decide who does so—is extremely lucrative. Politicians are often the worst land-grabbers, in order to enrich themselves and to reward supporters. Stronger property rights for the little guy would make such looting harder.

Ruling parties often ally with rural traditional leaders to thwart change. Globally 2.5bn-3bn people live on some 6bn hectares of communal land (or three Russias and a Brazil). In Africa more than 50% of people do. Since 1990, 39 of Africa's 54 countries have passed land laws to give people on communal land stronger ownership rights. Yet in some countries, such as Malawi and Zambia, chiefs have blocked reforms. In others toxic deals between urban and rural bigwigs deprive poor people of rights to their own land. This is an acute problem in South Africa's "former homelands", where many black people were consigned during apartheid and where one-third of South Africans still live, with minimal property rights.

example. One study of African and Asian laws found that only half required compensation in the case of state-led expropriation. Some governments simply ignore the law. Officials in Brazil, Colombia and Kenya have thrown slum-dwellers out of their shacks or bulldozed rural people's ancestral land. In Niger, Indonesia

and the Philippines land-rights activists have been locked up or intimidated. Property rights cannot work unless the law applies to everyone.

Land is an emotive issue, especially where memories of colonial expropriation still linger. In parts of southern Africa, when a baby is born, its umbilical cord is buried in the ground. The introduction of modern, legally enforceable property rights will always be politically fraught. Nonetheless, reformers must keep up the long, hard slog of recording who owns what, cementing individual property rights in law and building the institutions to uphold them. As Mr de Soto argued, capitalism should be for the many, not just the few. ■

OPCIONAL

Business Law

Uber Can't Be Fixed — It's Time for Regulators to Shut It Down

by Benjamin Edelman

June 21, 2017



Summary. The problem at Uber goes beyond a culture created by toxic leadership. The company's cultural dysfunction, it seems to me, stems from the very nature of the company's competitive advantage: Uber's business model is predicated on breaking the law. And... [more](#)

Ler em português

From many passengers' perspective, Uber is a godsend — lower fares than taxis, clean vehicles, courteous drivers, easy electronic payments. Yet the company's mounting scandals reveal something

seriously amiss, culminating in last week's stern report from former U.S. Attorney General Eric Holder.

Some people attribute the company's missteps to the personal failings of founder-CEO Travis Kalanick. These have certainly contributed to the company's problems, and his resignation is probably appropriate. Kalanick and other top executives signal by example what is and is not acceptable behavior, and they are clearly responsible for the company's ethically and legally questionable decisions and practices.

But I suggest that the problem at Uber goes beyond a culture created by toxic leadership. The company's cultural dysfunction, it seems to me, stems from the very nature of the company's competitive advantage: Uber's business model is predicated on lawbreaking. And having grown through intentional illegality, Uber can't easily pivot toward following the rules.

Uber's Fundamental Illegality

Uber brought some important improvements to the taxi business, which are at this point well known. But by the company's launch, in 2010, most urban taxi fleets used modern dispatch with GPS, plus custom hardware and software. In those respects, Uber was much like what incumbents had and where they were headed.

Nor was Uber alone in realizing that expensive taxi medallions were unnecessary for prebooked trips — a tactic already used by other entrepreneurs in many cities. Uber was wise to use smartphone apps (not telephone calls) to let passengers request vehicles, and it found major cost savings in equipping drivers with standard phones (not specialized hardware). But others did this, too. Ultimately, most of Uber's technical advances were ideas that competitors would have devised in short order.

Uber's biggest advantage over incumbents was in using ordinary vehicles with no special licensing or other formalities. With regular noncommercial cars, Uber and its drivers avoided commercial insurance, commercial registration, commercial plates, special driver's licenses, background checks, rigorous commercial vehicle inspections, and countless other expenses. With these savings, Uber

seized a huge cost advantage over taxis and traditional car services. Uber's lower costs brought lower prices to consumers, with resulting popularity and growth. But this use of noncommercial cars was unlawful from the start. In most jurisdictions, longstanding rules required all the protections described above, and no exception allowed what Uber envisioned. (To be fair, Uber didn't start it — Lyft did. More on that later on.)

What's more, Uber's most distinctive capabilities focused on defending its illegality. Uber built up staff, procedures, and software systems whose purpose was to enable and mobilize passengers and drivers to lobby regulators and legislators — creating political disaster for anyone who questioned Uber's approach. The company's phalanx of attorneys brought arguments perfected from prior disputes, whereas each jurisdiction approached Uber independently and from a blank slate, usually with a modest litigation team. Uber publicists presented the company as the epitome of innovation, styling critics as incumbent puppets stuck in the past.

Through these tactics, Uber muddied the waters. Despite flouting straightforward, widely applicable law in most jurisdictions, Uber usually managed to slow or stop enforcement, in due course changing the law to allow its approach. As the company's vision became the new normal, it was easy to forget that the strategy was, at the outset, plainly illegal.

Rotten to the Core

Uber faced an important challenge in implementing this strategy: It isn't easy to get people to commit crimes. Indeed, employees at every turn faced personal and professional risks in defying the law; two European executives were indicted and arrested for operating without required permits. But Uber succeeded in making lawbreaking normal and routine by celebrating its subversion of the laws relating to taxi services. Look at the company's stated values — “super-pumped,” “always be hustlin’,” and “bold.” Respect for the law barely merits a footnote.

Uber's lawyers were complicit in building a culture of illegality. At normal companies, managers look to their attorneys to advise them on how to keep their business within the law. Not at Uber, whose legal team, led by Chief Legal Officer Salle Yoo, formerly its general counsel, approved its Greyball software (which concealed the company's practices from government investigators) and even reportedly participated in the hiring of a private investigator to interview friends and colleagues of litigation adversaries.

Having built a corporate culture that celebrates breaking the law, it is surely no accident that Uber then faced scandal after scandal. How is an Uber manager to know which laws should be followed and which ignored?

A Race to the Bottom

The 16th-century financier Sir Thomas Gresham famously observed that bad money drives out good. The same, I'd suggest, is true about illegal business models. If we allow an illegal business model to flourish in one sector, soon businesses in that sector and others will see that the shrewd strategy is to ignore the law, seek forgiveness rather than permission, and hope for the best.

It was Lyft that first invited drivers to provide transportation through their personal vehicles. Indeed, Uber initially provided service only through licensed black cars properly permitted for that purpose. But as Lyft began offering cheaper service with regular cars, Uber had to respond. In a remarkable April 2013 posting, Kalanick all but admitted that casual drivers were unlawful, calling Lyft's approach "quite aggressive" and "nonlicensed." (After I first flagged his posting, in 2015, Uber removed the document from its site. But Archive.org kept a copy. I also preserved a screenshot of the first screen of the document, a PDF of the full document, and a print-friendly PDF of the full document.) And in oral remarks at the Fortune Brainstorm Tech conference in June 2013, Kalanick said every Lyft trip with a casual driver was "a criminal misdemeanor," citing the lack of commercial licenses and commercial insurance.

GIVEN KALANICK'S statements, you might imagine that Uber would have filed a lawsuit or regulatory complaint, seeking to stop unfair competition from a firm whose advantage came from breaking the law. Instead, Uber adopted and extended Lyft's approach. Others learned and followed: Knowing that Uber would use unlicensed vehicles, competitors did so too, lest they be left behind. In normalizing violations, therefore, Uber has shifted the entire urban transport business and set an example for other sectors.

Fixing the Problem

It's certainly true that, in many cases, companies that have developed a dysfunctional management culture have changed by bringing in new leaders. One might think, for example, of the bribery scandals at Siemens, where by all indications new leaders restored the company to genuine innovation and competition on the merits.

But because Uber's problem is rooted in its business model, changing the leadership will not fix it. Unless the model itself is targeted and punished, law breaking will continue. The best way to do this is to punish Uber (and others using similar methods) for transgressions committed, strictly enforcing prevailing laws, and doing so with little forgiveness. Since its founding, Uber has offered literally billions of rides in thousands of jurisdictions, and fines and penalties could easily reach hundreds of dollars for each of these rides.

In most jurisdictions, the statute of limitations has not run out, so nothing prevents bringing claims on those prior violations. As a result, the company's total exposure far exceeds its cash on hand and even its book value. If a few cities pursued these claims with moderate success, the resulting judgments could bankrupt Uber and show a generation of entrepreneurs that their innovations must follow the law.

Uber fans might argue that shutting down the company would be throwing the baby out with the bathwater — with passengers and drivers losing out alongside Uber's shareholders. But there's strong evidence to the contrary.

Take the case of Napster. Napster was highly innovative, bringing every song to a listener's fingertips, eliminating stock-outs and trips to a physical record store. Yet Napster's overall approach was grounded in illegality, and the company's valuable innovations couldn't undo the fundamental intellectual property theft. Under pressure from artists and recording companies, Napster was eventually forced to close.

But Napster's demise did not doom musicians and listeners to return to life before its existence. Instead, we got iTunes, Pandora, and Spotify – businesses that retained what was great and lawful about Napster while operating within the confines of copyright law.

Like Napster, Uber gets credit for seeing fundamental inefficiencies that could be improved through smart deployment of modern IT. But that is not enough. Participation in the global community requires respect for and compliance with the law. It is tempting to discard those requirements when a company brings radically improved services, as many feel Uber did. But in declining to enforce clear-cut rules like commercial vehicle licensing, we reward lawbreaking and all its unsavory consequences. Uber's well-publicized shortcomings show all too clearly why we ought not do so.

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