Online upstarts rattling established industries

October 16 2013, by Ameet Sachdev

Traveling to New York for a few days but don't want to stay at an expensive hotel? The online service Airbnb can find you a room to rent in a private home.

At a bar at 2 a.m. on a Saturday in January but don't want to go outside and wait for a cab? Uber's mobile car-service application will send a limo to you within minutes.

Want to watch the local news live while you're on the train home from work? Aereo has an app that streams local-TV signals over the Web.

Consumers love the convenience and efficiency of these apps. The problem is all of them may be illegal.

The digital era has redefined how consumers shop, travel and watch TV, a stunning pace of innovation that has improved the quality, price and variety of products and services available on the market. But regulating in a time of such rapid change has been challenging.

New mobile platforms that facilitate consumer services in long-established industries have brought the tension at the intersection of law and technology into sharp relief. The new tech companies describe their business models in revolutionary terms, calling themselves the leaders of a new movement known as the "sharing economy."

They often shoot first and ask questions later. They hope their platforms will become so popular that regulators will leave them alone, or at least do no harm.

But history shows that upstarts often face opposition when the established order is threatened, and that is no different here. Entrenched competitors have filed lawsuits and promoted their interests through proposed legislation.

Policymakers have a tricky balance, trying to encourage innovation and entrepreneurship while also supporting businesses that are the bedrocks of their economy, contributing jobs and much-needed tax revenues.

"The regulations were designed for the analog world," said Arun Sundararajan, a professor at New York University who studies digital economies. "Now there are digital ways of providing these services that have created new forms of consumption. The conflict is natural."

In Chicago, Uber ruffled the feathers of the taxicab industry when it entered the city in 2011. Its on-demand limo-style car service shook up the notion that black cars were only for special occasions or for the wealthy. After a customer orders a ride via Uber's app, drivers use Uber to calculate fares based on the time and length of the trip, much like a taxi. Instead of a meter, though, drivers use a GPS-enabled smartphone to measure the length of trip. Uber has expanded its business to include taxis and ride-sharing, which connects passengers to drivers who use their own vehicles and currently aren't commercially licensed.

In October of last year, a group of taxi and livery companies in Chicago sued Uber, accusing the San Francisco-based company of violating multiple local laws designed to protect public safety and ensure fair competition. The taxi and limo operators challenged Uber's right to operate in several ways, including the claim that regulations prohibit limos from charging fares based on mileage. Uber has said that its technology is legal and that the company gives customers and drivers another option.

The taxi industry, which has labeled companies like Uber a rogue app, also lobbied City Hall for help. The consumer affairs department proposed a rule that would have banned livery vehicles from using devices like smartphones to calculate fares based on distance, which would have shut down Uber.

A year after the rule was drafted, it is gathering dust. David Spielfogel, Mayor Rahm Emanuel's policy chief, said the proposal is on hold pending the outcome of the federal lawsuit.

Uber and other new software apps geared toward consumers have to navigate a maze of city and state regulations. Slight differences between jurisdictions make for a legal nightmare and may help explain why startups often forge ahead without asking for permission.

Square, a San Francisco-based mobile payments company, got into regulatory hot water in Illinois earlier this year for operating without a money transmission license. The cease-and-desist order is still pending, and the company recently resolved a similar complaint in Florida by paying a $507,000 fine. Square has argued that it is only facilitating transactions handled by banks or credit card companies, yet their competitors like PayPal and Google are licensed in Illinois.

Airbnb members have come under fire for allegedly violating residential zoning laws in some cities that prohibit rentals shorter than 30 days. A New York man was fined $2,400 for renting a room in an apartment, but the city later reversed the penalty. A law in New York makes it illegal to rent an apartment for less than 30 days if the owner is not around.

Airbnb said the vast majority of its "hosts" in New York are everyday people who occasionally rent out the homes that they live in, not landlords trying to make a quick buck with short-term rentals. More important, the company said it has made the exchange, which has been going on for years on websites like Craigslist, open and transparent.

Yet New York state's attorney general earlier this month demanded data about Airbnb's members in the city.

Web TV startup Aereo also has faced massive resistance. Major TV broadcasters, including Chicago Tribune owner Tribune Co., have gone to court to block the company from streaming their local-TV signals without their permission. Broadcasters earn big fees selling carriage rights to pay-TV operators.

Last week, the four major TV networks took their complaint to the Supreme Court, hoping to shut down Aereo while litigation continues.

The incumbents in these industries protest that the startups are operating outside the regulatory framework and undermining their businesses. But their resistance to change is an old story, regulators say.

When Apple initiated conversations in the music industry about selling individual songs for 99 cents, producers howled that consumers would buy only popular songs, and they wouldn't earn a return on the other titles that typically fill an album.

Rental car companies opposed car-sharing services like Zipcar on consumer safety grounds. There's a long list of companies that have fought progress that have ended up on the wrong side of history.

California became the first state to regulate the fast-growing ride-sharing companies, requiring, among other rules, that drivers undergo criminal background checks and carry insurance. The online companies also contend that there is inherent consumer safety built into their systems. Passengers have their credit cards on file and trips are tracked via GPS.

Other localities that have not greeted Uber and other car-service apps so warmly have received input from a powerful regulator.

The Federal Trade Commission has advocated through letters and comments for local transportation regulations that promote healthy competition instead of protecting current business models.

At a conference of the International Association of Transportation Regulators last month, Andrew Gavil, a director in the FTC's office of policy planning, seemingly sent a warning shot. His presentation highlighted current chatter in the taxicab industry, such as: "It will take all of us working together to eliminate this threat."

Gavil said the dialogue should warrant concern for regulators because it sounds like "an invitation to collude."

NYU's Sundararajan said consumers have clearly seen value in online services like Airbnb and Uber and regulators should create space for them.

"I'm not arguing that we should not have any regulation at all," he said. " But these are clearly things that people want and things that aren't inherently unsafe. So let's create a simple framework."