

# Analysis and Solution of the Governance Dilemma of Infringement of Car-Hailing Platforms under Sharing Economy

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**Abstract:** In the current era of rapid development of the Internet, the sharing economy based on the Internet, which combines individual idle resources through the "P2P" mode with the demand side, has emerged at the historic moment and caused various commercial activities. As the leading industry in the sharing economy, online ride-hailing not only mobilizes the social transport capacity and maximizes the economic dividend, but also causes many legal problems due to the lag of laws and regulations. This paper takes the basic legal relationship of online ride-hailing as the starting point, analyzes the infringement disputes arising in the supervision, and puts forward some suggestions for improving online ride-hailing from the relief system and the distribution of legal responsibilities.

**Keywords:** Sharing economy, Online car-hailing, Tortious liability.

## 1. Interpretation of the Connotation of Sharing Economy and the Overview of Legal Regulation

### 1.1. Definition and Legal Relationship of the Sharing Economy

Sharing economy is a new form of economy based on the acquisition of certain interests, based on others and the temporary transfer of property ownership. Its essence is the effective integration of idle goods, labor force and educational resources. "Collaborative consumption" is the first time that the concept of sharing economy was proposed by American sociologist Marcos Fairson and Joan Speth in their *Community Structure and Collaborative Consumption* published by American Behavioral Scientists in 1978. It provides a systematic interpretation of the sharing economy from a customary point of view [1].

To understand the legal relationship of the sharing economy, we need to start from both internal and external aspects: first, from the internal legal relationship. Sharing economy is different from the traditional economic model, that is, the buyer and the seller agree on a contract through the expression of intention, and the buyer has a stronger subjective initiative in order to make better profits. In the sharing economy, although the supply and demand are mediated through a sharing platform, the essence of this activity is that the supply and demand for resources is still an agreement for one party to provide the corresponding resources to the other party, so it still constitutes a contractual relationship. This new sharing economy model and the intermediary contract in the civil law [2]. There are similarities, but there are still differences between the two parties. First, according to the Contract Law, the obligation of the intermediary is only to inform the client of the opportunity to conclude the contract or provide the media to conclude the contract, and at the same time to guarantee the authenticity and reliability of the media and whether the client concludes a contract with a third party. Not to do with the intermediary. Under the sharing economy model, when the platform provides media for the supply and

demand parties, it should not only ensure the authenticity and reliability of the media, but also formulate a series of rules, including how to perform the contract and the consequences of breach of contract. In addition, after the conclusion of the contract, the sharing platform will still supervise the transaction between the supply and demand parties until the contract is completed, which is not consistent with the rights and obligations of the intermediary. Secondly, in the traditional intermediary contract, the intermediary also has the right to claim the remuneration of the intermediary, that is, the intermediary reports the opportunity to contract to the client and has no relationship with the client's counterpart to get the remuneration. In the sharing economy, the platform can only receive remuneration when the contract between the two parties is fulfilled. Finally, there are different rules for fees. In the traditional intermediary contract, the remuneration of the intermediary is agreed by the parties, and cannot exceed the highest standard stipulated by the state. However, the income of the instant platform of the "intermediary" in the sharing platform is drawn up by the platform, and the user has no right to say. Therefore, the existence of the sharing platform makes the legal relationship between the participants of the sharing economy constitute a heterogeneous intermediary contract relationship [3].

Secondly, the external legal relationship of the sharing economy is mainly reflected in the competitive relationship with other sharing platforms in the same industry, the interest struggle of the operators of the traditional economy in the same industry, as well as the regulatory relationship between the sharing economy and the relevant administrative regulatory departments [4].

### 1.2. Operation Mode and Legalization Process of Online Ride-Hailing Vehicles

#### 1.2.1. Operation Mode of Online Ride-Hailing Service

##### (1) Self-owned vehicle mode

This model is a simple merger of the Internet and car rental, and the vehicles used by the online car rental service are owned by the online car rental platform. Drivers are recruited through social recruitment and training examinations, and a

formal labor relationship is formed between drivers and the platform.

#### (2) Quartet agreement mode

This mode is the mode of "car rental + driver driving", and the "four-party agreement" refers to the signing of contracts by passengers, online ride-hailing platforms, car rental companies and labor service companies [5]. Specifically, passengers submit car orders to the online taxi platform through a mobile app, and the platform sends the orders to the rental and work companies that provide services according to the user's needs. Passengers will pay the fare after arriving at the corresponding place, and the fare will be shared by the platform, the driver, the rental company and the labor service company according to the proportion.

#### (3) Four-party agreement affiliation mode

The four-party affiliation agreement mode refers to private owners sign private agreements with leasing companies and labor service companies to avoid the risk of illegal operation. In form, the private car owner establishes an employment relationship with the leasing company and connects the vehicle owned by the owner to the leasing company. This mode of attachment does not require driver training, the quality of the drivers are low. Therefore, safety risks often occur.

#### (4) Private car intervention platform mode

In this mode, private car owners own idle vehicles and want to use the role of drivers through the platform to provide online ride-hailing services and earn benefits. At this time, the online ride-hailing platform plays the role of providing information. At present, most of the online car hailing, express cars adopt this model. In Didi, for example, drivers only need to provide their basic personal information and vehicle information and review them. This mode reflects the advantages of the sharing economy to the greatest extent, that is, the integration of idle resources and the business thinking in the "Internet +" era.

## 2. Analysis of the Tort Liability of Online Ride-Hailing Services

The sharing economy maximizes the reuse of idle resources. However, in this sharing mode, different from the picking and selling in the past, the supply and demand parties are not familiar with each other. Due to the large gap between the two, many kinds of infringement are involved. Taking online car hailing as an example, in the actual process of determining tort liability, the analysis should be combined with different types.

### 2.1. Identification of the Infringement Subject of Online Ride-Hailing Vehicles

First of all, the infringement of the network taxi operation, legally speaking, can be divided into civil and criminal two types. Criminal infringement is an act that constitutes a minor injury to the passenger. The passenger may, upon requesting the offender, file a criminal incidental civil action to claim compensation. If the tort has not yet reached the criminal level, the tort liability can be determined according to the Road Traffic Safety Law, the Tort Liability Law and other laws. However, there are still gaps for the subject of infringement and the division of tort liability, and the relevant legal provisions have not been adopted.

The diversification of the legal relationship of network taxi is the reason for the diversification and complexity of the

legal relationship. There is no clear stipulation on the identification of tort liability in the current law. At present, the most popular criteria are "monism" and "dualism", that is, the attribution of "operational dominance" and "operational interests". [6]"Monism" is only based on "operation control", that is, the subject with the right to control the motor vehicle should bear the tort liability. "Dualism" is the combination of "operation control" and "operation interest", that is, the subject who controls the operation of the motor vehicle and actually enjoys the operation interest in the process of operation should bear the tort liability. This paper determines the infringement of each operation mode according to the dualism.

#### 2.1.1. Identification of Tort Liability under the Self-Owned Vehicle Mode

In the network company's own car model, according to the above theory, the company is a platform of private cars, is the platform and the labor contract between the driver, and ultimately the platform in the transportation of actual benefits, if the driver in the business damage other operators or the third party life property, so, the platform should be to the negligence compensation. China's Tort Liability Law and Interim Management Measures for Online ride-hailing provide sufficient theoretical basis for this. Therefore, in the case of infringement problems, the online ride-hailing platform should bear the tort liability.

#### 2.1.2. Identification of Tort Liability under the Four-Party Agreement

Four agreement mode, the driver has higher control over the vehicle, although the platform after the driver form service order the proportional extraction of information share, and through the advertising revenue, but the overall situation, the driver in the process of the operation risk and line independently, so have actual control or the driver. Although under the four-party agreement, the car rental company and the car-hailing company do, according to the Contract Law, the lessor will not be liable if the rental property causes damage. Therefore, the auto rental company is not liable for the driver's infringement, and the platform has reason to become the subject of liability for the infringement accident.

#### 2.1.3. Identification of Tort Liability under the Four-Party Agreement

Similar to the "four-party agreement" model, the driver is not only the driver, but also the owner and user of the car, with actual operational control and operational benefits, so the driver should bear joint and several civil liability. However, the four agreement also has a kind of attachment, that is, the owner will register their vehicles to the rental company. According to the Supreme People's Court on road traffic accident damage compensation cases, the interpretation of some issues of applicable law article 3 " engaged in the activities of road transport in the form of affiliated motor vehicle traffic accident damage, belongs to the motor vehicle party responsibility, the parties request by the affiliated and the affiliated joint and several liability, the people's court shall support [7]. Accordingly, the affiliated car rental company can be requested to assume joint and several liability for the debts of the online ride-hailing driver [8]. Based to the relevant provisions of Article 34 of the Tort Liability Law, if the labor dispatch company fails to fulfill the corresponding obligations and makes mistakes in the selection, training and supervision of online ride-hailing drivers, it shall bear the corresponding supplementary responsibilities [9]. To sum up,

under the four-party agreement affiliation mode, private car owners, car rental companies and online ride-hailing platforms can all bear the tort liability.

## **2.2. Practice-oriented Analysis of Infringement Problems**

### **2.2.1. Problems Existing in Practice**

In real life, the illegal problems of online taxi constantly emerge, such as the driver's injury to passengers, and the adverse consequences to the infringed; or if a traffic accident leads to the loss of other users, the platform will not be responsible for this.

In the field of road traffic safety cases, accident liability is to confirm whether the parties need to be liable for compensation, and the important source of share of liability for compensation, but in the responsibility of the judicial practice about the main body is generally the drivers, so for network about car platform need to liability, responsible for the specific circumstances of how all need to be further determined.

From the current judicial cases, most judges ignore the existence of online ride-hailing platforms and treat the infringement cases of online ride-hailing services as ordinary traffic cases. This shows that the judgment platform lacks the identification of the obligations of the online ride-hailing platform. It should be clarified the criteria of liability and compensation for online ride-hailing platforms should be borne.

## **3. Regulation and Improvement of Infringement of Network Platforms in the Development of Sharing Economy**

### **3.1. Legislation to Improve Regulation**

#### **3.1.1. New Targeted Provisions**

At present, China's legal positioning of the theme of idle resources in the sharing economy is not clear, which causes a series of legal problems. Such as network about car management "interim measures" mainly for the network about car platform, drivers and vehicles, for network about car management regulation only a belt, and for the violation of the liability for breach of contract punishment is still inherent form, there is no detailed provisions for passenger default, etc. As mentioned above, it is difficult for the sharing platform to implement the liability for breach of contract with the measures mentioned in the Contract Law. Therefore, the Interim Measures can formulate punitive measures when drivers' interests or infringe on their legitimate interests. At the same time, due to the instability of the sharing economy, provisions can also be added for the bottom line.

For the infringement in the sharing economy, the legal relationship between the idle resource providers and the sharing platform should be clarified [10], then cite the Tort Liability Law of the People's Republic of China to determine the responsibility of the unit with the obligation to protect the interests of the applicant. If the sharing platform does not supervise the provider of idle resources and infringes the rights of the claimant, the sharing platform shall take action to compensate for the loss caused by the claimant. For the legal loopholes existing in the current tort Liability Law in China, if the subject of tort liability is not clear, they can be made up on the basis of the original law. For example, the

relevant laws on online automobile platforms can fill the gaps in the Tort Liability Law, the Insurance Law of the People's Republic of China and some legal interpretations on the compensation for traffic accidents or personal injury damages.

### **3.1.2. Solve the Current Problems**

First, the government may consider connecting the sharing of bad information with the personal credit system to protect the interests of both supply and demand; second, the government should crack down on dishonest behavior. Finally, the government needs to unify the management standards and regulations of credit institutions and raise the credit access threshold. At the same time, the government should also guide consumers to improve their awareness of personal credit investigation and increase users' demand for credit on the sharing platform. For example, the sharing platform can increase the credit score system, the better the credit, the higher the score, and the credit rating will increase. So as to correctly guide the promotion of the shared market.

Departments should establish a rigorous and fair approval mechanism of sharing economy platform. To provide the basis for the implementation of the executing agency and the review agency. Before the formulation of laws, the relevant parties should carry out active investigation and have a deep understanding of its operation mode, operation mode, income, so as to pave the way for the formulation of laws and regulations. There is a lot of unfair competition in the current sharing market, and these unfair behaviors are based on information technology. In view of the monopoly phenomenon existing in some industries, punishment measures can be formulated to severely crack down on malicious pricing and infringe on the interests of customers. Through the establishment of a professional market supervision mechanism and trading mechanism, it can not only ensure the security of the users' information collected, but also effectively curb the unfair competition and promote the development of the sharing economy.

### **3.2. Multiple Coordination and Management Participation**

#### **3.2.1. Promote Government Innovation Supervision**

"On promoting the development of sharing economic guidance", jointly issued by the National Development and Reform Commission and other ministries, has been clear about the "platform of government, platform, industry associations, enterprises, enterprises, market main body, users and other main body of sharing economy coordinated governance mode", which points out the governance of sharing economic illegal chaos regulation. First of all, we should promote government innovation and supervision, focus on the nationwide and coordinated development of the sharing economy, break the regional restrictions of the sharing economy and the overcomplexity of departmental deployment, strengthen regional connectivity and overall coordination among departments, and keep inter-government concepts with The Times. We will improve the government's ability to act independent, emphasize supervision in advance and in the process, and be aware of danger in times of peace. At the same time, strengthen the bottom-line thinking, balance the relationship between the economic market and government supervision, and grasp the protection of personal rights and interests to promote the vigorous development of independent innovation. We will strengthen smart supervision, and actively use big data, blockchain and other new Internet technologies for timely supervision.

### 3.2.2. Promote Industry Self-Review

All industries of the sharing economy should set up unified industry norms and clearly define their own definitions. Since the frequent occurrence of tort liability and breach of contract is mostly caused by the low entry threshold, it is the top priority to raise the own entry threshold and establish the credit mechanism, and the suppliers of the sharing economy should do self-examination without government supervision.

### 3.2.3. Promote Endogenous Governance of Platforms

As an important network service center, the online ride-hailing platform is not only a center of transactions, but also an important place to communicate, supervise and protect the interests of users. At present, the sharing economy is a product under the hierarchical management, and its main body is the government's governance platform and platform to realize the control of users. Therefore, we should pay attention to the guidance of the standardized development of platform companies. In fact, in addition to innovating in the way of doing business, the sharing economy platform has also explored the formulation of governance rules, the formation of trust relations and the punishment for violating the rules [10]. In the future, the sharing economy should not only have an open and transparent credit evaluation system, but also raise the threshold for market access users, so as to promote the development of the whole platform to a more perfect direction.

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