Regulations Need Not Stifle Innovation

Regulators and innovators face off: preservation versus progress.

Charley Moore, Law Technology News

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How will the consumer legal tech landscape change in 2015? Heck, who knows for certain? Still, it sure is fun to imagine the progress we can make, with the optimism of a new year. So, here goes.

2014 saw consumers increasingly embrace new ways to travel (Uber), pay (Bitcoin) and entertain themselves (Aereo, " The Interview"). All of these exemplify traditional and fundamental services being reconstructed by consumer demand for more-convenient and typically-lower cost options. For the most part, regulators have been caught flat-footed, playing catch-up.

Regulators and innovators face a timeless dilemma: preservation versus progress. This year marks the 800th anniversary of the Magna Carta. That ancient document limited the power of the King of England, for the first time subjecting the monarch to civil law.While it is understandable that kings, monopolies and other powerful interests lean toward the status quo, as a much later King noted, "the arc of the moral universe is long, but it bends toward justice" (Martin Luther King Jr.).

Assuming that our legal universe will progress toward greater access to justice via technology, will it happen collaboratively or adversarially?

The American Bar Association and state and local bar associations began setting the stage for a collaborative approach to innovation. As LTN's Monica Bay wrote in October: "After years of outright hostility, the organized bar is ... acknowledging the role of Web-based self-help, lawyer referral services and lawyer marketing."

While the "move fast and break things" approach might work for startups hacking social media sites, it's far less attractive for services that impact public safety, financial transactions, law and government.

For example, ride-sharing services, Uber and Lyft are exposing millions of travelers to vehicles driven by quasi-professionals who are less regulated than traditional taxi operators.

To date, ride sharing has grown exponentially, within a confusing and contradictory regulatory environment.

Two things come into focus in the haze: 1) consumers flock to services they want, even if regulations are murky or non-existent; and 2) where regulators adopt collaborative process, consumers benefit from greater protection, and innovation continues.

Take the difference between the California Public Utilities Commission's approach to Uber, Lyft, et al, and

that of district attorneys in San Francisco and Los Angeles. The CPUC proactively defined a new class of common carriers, for regulatory purposes: Transportation Network Companies. Then the CPUC entered the breach and brought some order to the Wild West of ride sharing.

On the other hand, the district attorneys (and regulators in many places around the world) are suing. Who thinks multiyear, multimillion-dollar lawsuits will really be the answer?

Similarly, the rule-making versus litigation approach to regulation can be seen as the cities of San Francisco and New York appear to be taking divergent paths to home sharing. San Francisco passed its "AirBnB law," offering parameters for compliant rentals, while identifying outside-the-lines behavior and penalties. In contrast, NYC began filing lawsuits against allegedly illegal apartment renters in October.

Among many virtues, the rule making approach encourages continued delivery of innovative services consumers need. None of the emerging sharing economy companies and online marketplaces would survive, let alone grow at astronomical rates, if they were not meeting consumer demand for cost and convenience. Regulators are absolutely right to call for safety and fair dealing, as well.

But, as the examples above illustrate, proactive, collaborative compliance serves the market far more efficiently than slow, expensive and adversarial litigation.

Certainly, the legal industry, populated by the very professionals charged with regulating others, should lead the way in terms of regulating itself.

There are hopeful signs, like the ABA's Legal Service Initative and the stated objectives of the State Bar of California's budding correlation between access to information technology and access to justice.

As we begin 2015, there appears to be growing acknowledgment about the role that connected devices and cloud-based services will play in satisfying the significant and growing unmet demand for legal help.

While an adversarial approach to legal innovators hinders upstarts, it certainly doesn't help solve the access problem described above.

So, 2015 will be a pivotal year. The stage is set for collective action—and why not? After all, the stated missions of bar associations and legal service providers mirror each other: increasing access to the legal system for all.

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