CORRECTING THE RECORD:

POPULIST PROPOSALS WOULD CUT THE LIFELINE FOR RESTAURANTS

NetChoice

It seems that despite the sharing economy's best efforts, its policies and best practices are still misrepresented. Take the American Economics Liberty Project's latest piece on innovation and entrepreneurship, *Rescuing Restaurants: How to Protect Restaurants, Workers, and Communities from Predatory Delivery App Corporations*. It fails to accurately describe the peer-to-peer economy. But, the very same food delivery apps the report's author bemoans empowered our communities and restaurants with business-saving options during this unprecedented COVID-19 pandemic.

Many restaurants can turn to these delivery apps to gain exposure and make their model more efficient during this pandemic while not having to worry about the various costs and requirements of food delivery.

As we outline below, the American Economic Liberty Project unfortunately misleads its audience with a report that perpetuates falsehoods. The following is a discussion of some of these inaccuracies and how we can better explain the sharing economy's structure, purpose, and practices.

Restaurants are essentially required to use these delivery services.

FALSE

For decades, restaurants have successfully run delivery operations by themselves. But as the dining industry grows and faces the many challenges presented by COVID-19, many restaurants want increased exposure and a way to make their business model more efficient to stay competitive. New delivery apps manage all the various costs and requirements of food delivery, allowing restaurants to choice to grow their audience and their income far easier than ever before.

Many businesses continue to successfully offer delivery in-house, but the quality and effectiveness of new apps like Doordash have enabled restaurants to reach new customers like never before.

Restaurants served on a delivery platform that do not have a formal relationship are at a complete loss and there is a violation of intellectual property law.

MISLEADING

When a delivery platform services a restaurant without a contract, the restaurant pays no fees to the platform (a chief complaint of the author). Likewise, unless the menu is copied in an exact format, there is little claim for copyright violation. You can't copyright a normal meatball sandwich, so unless the restaurant registered its name with the Patent Trademark Office, there is no trademark violation. And if these violations do occur, the restaurant can get injunctive relief and damages.

"Fees virtually guarantee that all orders placed to independent restaurants over delivery apps are unprofitable for the restaurants."

MISLEADING

Restaurants have the power to choose between whether an app, multiple apps, or no app makes the most sense for their business. In order to attract restaurants to their platform, delivery apps regularly lower fees or offer promotional deals to be competitive.

Some restaurants also choose to use these apps even if they don't make money as first, as the extra exposure to new customers, and turning them into repeat customers, is worth paying for.

But for businesses that don't find delivery apps valuable or worthwhile don't need to use them. Restaurants can choose to set up their own in-house delivery and marketing solutions, and some restaurants don't do delivery at all. All delivery apps do is provide another option to America's dining entrepreneurs.

"The local independent restaurant association began pleading with the apps for a 50% break on commissions...[b]ut the corporations refused."

FALSE

Delivery platforms like Doordash *did and do* provide a 50% break on commissions to restaurants so long as they have less than six locations. In fact, Doordash has pledged $100 million of its revenue to assist restaurants during the coronavirus pandemic.

Wages for drivers “fell by some estimates dramatically short of the minimum wage.”

FALSE

This report’s data cites a false average wage calculated by taking the total hourly wage minus taxes and expenses. Wages though are calculated by looking at the salary base, the amount paid to the worker before taxes. That very same data shows an average wage of $15.76/hr (above the federal minimum wage and the “fight for $15” minimum).

By lowering the taxes so that all workers, including minimum wage ones, get more take home pay, we can better solve this issue for millions of Americans.

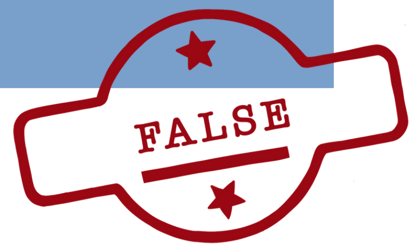
"DoorDash, Postmates and Grubhub blanketed each market ...with the intention of misclassifying their workers as 'independent contractors,' exploiting a loophole in labor law that allows corporations to avoid [sic] the legal responsibilities of hiring employees simply by calling those workers contractors.”

MISLEADING

Independent contractors are the backbone of the restaurant economy as a whole. A reclassification of independent contractors as employees would likely be a death sentence to the independent restaurant industry.

Delivery platforms use the same agreements as Domino’s and Pizza Hut use with their drivers. In fact, delivery people aren’t the only independent contractors in the restaurant business—just look at how many waiters, cooks, and cleaning personnel are not employees but instead independent contractors.

"Requirements that prices be fair across delivery, in-restaurant pickup, and apps are a bad thing. [I]f consumers could be sure prices would be the same regardless of which platform they ordered from, there was little incentive to offer restaurants lower commissions in the hope they would do more business over the platform, and at the same time price uniformity made it easier to sway customers with the use of special delivery discounts, rebates, loyalty clubs, and other promotions —for which the delivery apps could then in turn charge restaurants additional fees."



This price parity keeps prices consistent for consumers and forces delivery apps to compete by offering lower fees in order to entice restaurants. When such rules are not in place, like in the credit card market, we have seen manipulative store owners steer customers toward the best credit card for the store, not necessarily the best card for the customer.

Since the restaurants maintain the same prices across apps, the platforms will fight to service the restaurant with the most competitive rates—since the restaurant can always discontinue a contract if the fees are or become too high. This ensures that consumers use the best app for them without having to worry about comparing prices on other apps.

Postmates "flouted" new lower commission laws.

Postmates and many other businesses moved quickly to amend all their existing contracts with local restaurants to comply with newly created laws and safety guidelines.

All delivery app drivers want to be employees.

MISLEADING

A large number of delivery app drivers enjoy the freedom, flexibility, and higher take-home pay being an independent contractor brings. If forced into the employee category, these individuals lose the ability to make their own schedule and adjust at the drop of a hat.

Many delivery drivers also operate on multiple delivery apps simultaneously to maximize their time and achieve optimal revenue. This opportunity would likely disappear as employees cannot simultaneously work as employees for rivals.

Finally, consider weekend drivers who already have medical insurance from their primary employer. They would still lose wages for unneeded services if considered to be an "employee" for a delivery app.

[T]he delivery apps have established regional monopolies that effectively suppress competition."

FALSE

The author's cited data actually shows robust competition. Even using an incredibly narrow definition of the market, every major American city has at least 4 different major app-based delivery food options.

More than one-third of the market is up for grabs. And even in the "most concentrated markets," no platform is considered a monopoly under SCOTUS's informal definition of controlling 75% or more of the market share, and the DOJ's guideline of above-66% sustained market share. There is no real stickiness in these platforms and customers routinely move from one to another (especially because these apps compete on service and delivery fees).

ALTERNATIVE PROPOSALS TO HELP RESTAURANTS AND DRIVERS

Rather than enact policies whose only real beneficiaries are large restaurant chains and unions, the following policy proposals could provide immediate economic boons to restaurants as well as promote better training and health benefits for drivers and employees.

- **Lower business taxes for restaurants and remove taxes on equipment purchased for cooking.**
  Lowering taxes on restaurants is the difference between more usable capital to grow their business and less usable to survive off of. Removing unnecessary taxes will enable restaurants to have free capital for investment in cooks, equipment, and workers.

- **Remove taxes on food and food services.**

  With less consumer-side taxes, consumers will feel more comfortable spending money, especially because they'll be spending less. That means more paying customers in more restaurant seats.

  A proposal like this can be adjusted to be based on the size of the restaurant to encourage visiting small restaurants over larger and usually more corporate chains.

- **Protect drivers' status as independent contractors.**

  We need to ensure that drivers have the option to be independent contractors—to work for multiple delivery services, be available for other jobs, and not be beholden to the needs of restaurants but the needs of the drivers' family.

  Moreover, by these driver's being able to choose to be independent contractors, we allow them to not have to double pay for expenses and necessities they might get from another job, like healthcare. That would enable drivers to take home more pay.

- **Enable platforms to provide education, training, other benefits without becoming employees.**

  By making clear that the provision of these benefits to drivers allows the delivery platforms to compete on benefits for drivers, legislators can ensure a competitive marketplace that benefits the employees and the consumers.

- **Provide workers lower taxes.**

  Lower taxes means higher take-home pay as well as more sustainable income—a key complaint by the author of this paper. A large percentage of an employee's salary is taken by taxes, forcing employees to live under what they should expect from their wages.