

## Bird's the Word! The Next Generation of the Sharing Economy.

*By: Andrew L. Smith*

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At around 4 a.m. on Thursday, July 26, 2018, hundreds of electric scooters were dumped throughout downtown Cincinnati, Ohio. No notice to City regulators. No notice to anyone. The next day residents witnessed dozens of electric scooters buzzing around town and zipping down streets at upwards of 15 m.p.h. No regard for street signals. No regard for safety or training.

Where did these nifty electric scooters come from? As it turns out, the Birds had arrived overnight.

### What is Bird?

We are all familiar with ride-sharing companies like Uber and Lyft and home-sharing companies like Airbnb and VRBO. Well, the sharing economy is showing no signs of slowing down. The next layer of this modern, techy, millennial concept is none other than electric scooter-sharing.

The leading company, Bird, is indeed soaring – valued at \$2 billion and trending upward. Bird is app-based. By utilizing GPS, app users can locate scooters in their vicinity, use the app to unlock a desired scooter, pay a small fee (\$1 to unlock and \$0.15 per minute of use), and leave the scooter anywhere they choose when finished.

Birds can travel up to 15 miles on a single charge. At night, Bird employs a workforce called “Bird hunters” to collect, charge, and re-deploy the scooters. A clever process, requiring only an army of scooters and a smartphone app.

The Bird business model was created by former Lyft and Uber executive, Travis VanderZanden. The process combines the video game Pokémon Go with short-term, inexpensive transportation. “Right now, more than one-third of cars trips in the U.S. are less than two miles long, and Birds are perfect for those ‘last mile’ trips that are too long to walk, but too short to drive,” according to a spokesman for Bird. “Our mission is to get people out of their cars, reduce traffic and congestion, and cut carbon emissions.”

The business is also coming under attack for some of the same issues Uber faced in its early stages, including an “act first, think later” mentality.

### The Criticisms of Scooter-Sharing

Not everyone is a fan of Bird and similar companies, such as Lime. In February 2018, Bird agreed to pay \$300,000 in fines and penalties to the Santa Monica city attorney's office because the company began operating without city approval.

Because the scooters can be left anywhere, and they are not docked in an area like a bike rack, users tend to leave the scooters in very inconvenient locations. This has resulted in not only annoyances, but also safety concerns.

The scooters are overcrowding sidewalks and streets, alike. City infrastructure is not designed to handle such massive volumes of electric scooters capable of traveling throughout all forms of terrain.

## Bird's the Word! The Next Generation of the Sharing Economy. (Continued)

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The Bird website proudly states, “[w]e work closely with cities to help make transportation better & more environmentally friendly.” However, experiences in Cincinnati and a casual perusal of news articles around the country lead to the conclusion that this is simply not the case. Rather, Bird invades cities and then begs for mercy later.

This further begs the question – how will cities regulate the scooter craze? The scooters are not bicycles. They are not full-sized motorcycles. They are not mid-sized Vespa's. The Ohio Department of Public Safety does not currently have a designated category for Birds, making the product even more difficult to regulate. This new-found, in-between category is presenting a number of regulatory headaches.

It is unlikely cities and municipalities already have regulations and ordinances in place to regulate and police the use of electric scooters. Will regulation be as simple as requiring riders to wear a helmet? Will a license be required? Will there be age limitations? These are only a few questions needing to be sorted out.

Some cities are considering the scooters as litter and impounding every scooter city workers can find. Other cities are cooperating with Bird to quickly generate rules and regulations to mitigate the dangers and risks presented by companies, such as Bird. In Nashville, city officials started impounding scooters left in the public right-of-way. Likewise, in San Francisco, the scooters were banned while the city devised a permitting system.

Cincinnati quickly introduced rules for all forms of “shared active transportation” just two weeks after the Birds arrived. The City regulations require Bird to comply with the following.

- There must be a written agreement to operate in Cincinnati.
- An e-scooter company can operate with a provisional agreement for up to 60 days and must meet the City's insurance requirement.
- The company cannot operate more than 100 small vehicles at a time without City authorization.
- A 24/7 customer service line must be shared with local management and operation teams.
- The mobile app must warn users to wear a helmet and ride in the street.

Likewise, Bird users must obey certain rules.

- Riding in small vehicles like e-scooters is prohibited on pedestrian sidewalks, but riding on multi-use paths is allowed.
- Riders must obey all traffic laws.
- Only one person is allowed on an e-scooter at a time.
- An e-scooter must be parked on the sidewalk where it does not block sidewalk traffic.

And then there is the obvious concern of safety. Training is not required. Nor is the use of a helmet. The scooters have a powerful engine with instant torque, reaching speeds up to 15 or even 20 m.p.h. This is the perfect recipe for accidents. Birds vs. cars. Birds vs. Pedestrians. And Birds vs. just about every other obstacle throughout a city, including other Bird riders, can lead to serious injury for everyone involved.

## Bird's the Word! The Next Generation of the Sharing Economy. (Continued)

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As just one small example, a mother and her seven-year-old son were walking on a sidewalk on UCLA's campus when a Bird crashed into her. The impact knocked her unconscious. She heard the rider utter "my bad," before he rode away, never to be seen again. A doctor compared the force of the collision to being tackled in a football game.

What is clear is the Birds are flocking everywhere in the United States, as well as Parris, France. Bird is currently in operation in cities throughout Arizona, California, Colorado, Georgia, Maine, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Virginia, Wisconsin, and Washington, D.C. In Ohio, Birds are in place in both Columbus and Cincinnati.

### Legal Concerns

Bird specifies riders agree to use the scooters at their own risk and limits its own liability to \$100. However, this limitation of liability does not prevent claims for gross negligence. Moreover, it can be argued Bird's business model profits from an unsafe environment and enforcing any waivers or damage limitations is against public policy.

Bird provides no return location and encourages users to leave the scooters wherever so choose. Bird also tracks the scooters using GPS, so they have information regarding potentially troublesome locations of the scooters. These facts alone could create a strong argument for imposing direct liability against Bird for negligence in the event of a personal injury case caused by a user leaving a Bird in a dangerous location after a ride.

Bird riders can operate and rent a scooter without undergoing any formal training and without wearing a helmet. Indeed, a completely unqualified person is able to rent a Bird. Although Bird requires renters to scan a driver's license on the app, this certainly does not equate to being a fully qualified scooter rider. These facts again create strong arguments for imposing direct liability against Bird for negligent operation of a scooter.

Besides the possibility of direct liability against Bird, litigation among Bird riders, car drivers, and pedestrians will certainly be flying into courtrooms soon. Drivers are not accustomed to seeing electric scooters operate on roads. Sidewalks are generally not designed for electric scooters.

The possibilities of potential liability and likely personal injury litigation is truly limitless.

### Conclusion

Bird is the word! Has the electric scooter craze invaded your city? How will localities begin to regulate and police the use of electric scooters. How will courts and juries apportion fault and liability for personal injury cases involving Birds. Will Bird ever be held directly liable in litigation? These questions are just the tip of the iceberg regarding legal issues surrounding the next step in the sharing economy. So – are you for or against the Birds?

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