

Economic and Legal Conceptual Framework of Viral Marketing

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Abstract: Electronic and online communications are modern, and perhaps the most common form of communication between individuals and legal entities, and thus have become one of the most used ways of market communication. Viral marketing is evolving into the dominant form of marketing and exchange of information for the purpose of advertising, promoting, or achieving other goals. In this paper we present and analyse the phenomenon of viral marketing—its purpose, effects, and power of influence, and discuss it in terms of ethical and legal standards. Special emphasis is placed on the right to privacy and personal data protection, harassment, acting in good faith and in accordance with good business practices, the presentation of false or fraudulent information. The advantages and disadvantages of this type of marketing activity have been observed.

Keywords: viral marketing, electronic and market communication, right to privacy and data protection, codes of ethics

INTRODUCTION

Communication is essential for the establishment and maintenance of interpersonal relations and relations between business entities. One of the most important spheres of contemporary relations refers to market relations. It can be concluded, therefore, that the importance of market communications is high and irrefutable. What is more, their effects are not only economic, but also touch on the sphere of ethics and law.

Market communication is based on the exchange of information (in person or indirectly) between the market actors, in order to establish and maintain good business relations (Jovičić, 2009). The essence of modern marketing and business is to create and deliver value for consumers, that is consistent with their expectations and preferences (Maričić et al., 2012). Viral marketing is one of the modern and cost-effective forms of marketing and exchange of information in order to publicise something, i.e. advertise or promote.

According to traditional definition and understanding, viral marketing rests on marketing strategies and techniques that use pre-existing social networks, blogs, and e-mails in order to achieve specific marketing objectives (Brkić, 2012). But, is its effect limited only to the marketing objectives or its purpose may have other connotations? Through viral marketing, advertising and promotion of a product or service, i.e. the transfer of some other desired message (Tomše & Snoj, 2014), is carried out with the help of their consumers. The information (in other words, advertisement) is marketed and distributed through the chain of processes in which the users spread it independently and voluntarily—to their friends, acquaintances, colleagues, or anyone who is in some way “available” to them. Everything happens in the virtual world, in which everyone communicates with everyone (Dimitrijević, 2009). Dissemination of information via viral marketing is compared to the spread of computer viruses (Helm, 2000). So, is it just about the comparison in terms of speed, mode, cost-effectiveness, and efficiency of spreading, or are there some negative characteristics that these two phenomena have in common and that bring them in connection when compared? Be that as it may, many things point to the fact that viral marketing is nowadays one of the favourite means of advertising within existing market communications.

1. THE CONCEPT OF VIRAL MARKETING

Since it appeared seventeen years ago until today, the term viral marketing has been understood and used widely, to explain the process of transmitting information using digital technology by product users themselves. The acceptance and use of new information technologies, which fits perfectly into the concept of Web 2.0, has enabled interactive communication with the audience, whose appropriateness is largely determined by the speed and breadth of transmitting the desired information (Sudarević, 2011). Communication of all subjects on the market has been accelerated and facilitated by the Internet, because no matter where they are, everyone is just one click away from the rest of the world. Never before in the history of mankind such closeness was achieved, which shows probably the biggest contribution that the Internet, as the technology, has brought to the world (Stojković, 2013). It has been identified with the terms “buzz marketing”, “word of mouse marketing”, “e-word of mouth marketing”, “network marketing”.

Judging by its concept, viral marketing is identical to the word of mouth communication and relationship marketing. However, more detailed insight and analysis imply that viral marketing integrates the concepts of word of mouth communication and relationship marketing, thus creating a much more effective and powerful online marketing tool (Tang, 2014). Therefore, it can be concluded that viral marketing unites effects offered by word of mouth communication, or, in the case of the application of modern information technology, word of mouse communication, as well as consumer relationship marketing management. Successful viral marketing campaign is not only based on the fact that it is very fast and cost-effective, but also that it is essential to establish relationships with potential consumers and offer them value-added products or services.

According to some authors, the term viral marketing was coined by Steve Jurvetson in 1997, to describe a marketing strategy that helped Hotmail gain 10 million users in seven months. This expression can be described as “any marketing activity that accelerates word of mouth in the digital domain” (Kirby, 2012).

Frith and Mueller find that viral marketing is “any strategy that encourages subscribers to pass on messages, thus creating the potential for exponential growth in the message’s exposure and influence” (Frith & Mueller, 2010).

Chaarlas and Raykumar define viral marketing as a marketing practice that supports the spreading of an

individual idea or perception over the Internet. Viral marketing as a concept and practice is very common and popular today due to the following reasons:

- 1) The entire web space is occupied by social networks,
- 2) Browsing the Internet and social networks has become unimaginably cheap or free of all fees,
- 3) The Internet has become an integral part of life, especially young people, around the world (Chaarles & Rajkumar, 2014).

The originator of the concept of viral marketing could be Jeffrey Rayport, who in 1996 in Fast Company published an article in which he pointed out that “when it comes to getting a message out with little time, minimal budgets, and maximum effect, nothing on earth beats a virus” (Rayport, 1996).

The reasons for the emergence of viral marketing should be sought in the fact that consumers are becoming increasingly distrustful of the advertising techniques (traditional or digital), and that they are willing to trust their friends’ recommendations. The supply has realised the advantages offered by modern technologies, which are primarily reflected in the speed of information transmission and low costs.

The existing traditional communication, initiated by the supply and spreading to the demand, was replaced by interactivity that is often initiated by the consumers themselves. Their influence and control of the content that is communicated become larger. All these changes have caused the emergence of relationship marketing which involves consumer management. In addition to creating and delivering value to the consumers, a new paradigm has emerged, involving active consumer relationship management, or CRM. Interactivity, as a basic feature of Internet marketing, has contributed to the establishment of new relationships, communication, and networking among consumers via social networks, as well as creating virtual communities. One of the reasons of its superiority over traditional marketing is the fact that it contributes to the speed of the spreading of ideas, self-selection of messages, wider reach, low cost, precise targeting (Goel & Devi, 2014).

2. CHRONOLOGICAL REVIEW OF THE DEVELOPMENT OF VIRAL MARKETING

Starting from the generally accepted concept of the marketing mix (product, price, place, promotion), re-

regardless of the changes that the IT revolution has brought at the level of marketing, marketing management framework, still valid in conditions of Internet marketing, can be set. Without diminishing the importance that the application of the Internet has brought, reflected in the appearance of new digital products and e-services, new pricing strategies, using the Internet as the sales and distribution channel, we believe that the greatest changes have occurred in the area of promotion, i.e. communication. The emergence of social networks, blogs, forums, wiki pages, web pages, photo and video materials, has provided consumers with a better insight and faster access to the information they are interested in.

The features of Internet marketing that distinguish it from the traditional marketing, in terms of interactivity that allows two-way communication between participants, a direct response to almost all forms of marketing activities, establishment of consumer databases, as well as the possibility of measuring the efficiency of the activities carried out in the environment, contribute to a better understanding of consumers and the creation and management of value for consumers and consumer relationships.

Varadayan and Yadav offer a definition, according to which “interactive marketing refers to the use of an information infrastructure network and devices connected to the network for mediating interactions between an organisation and its customers in the context of activities and processes employed by the organisation for creating, communicating, and delivering products that offer value to customers in an exchange” (Varadayan & Yadav, 2009).

The users can search the Internet content for information and entertainment, use digital devices, exchange digital content, join virtual communities, and create and share fun and creative content. The last described activity belongs to the field of viral marketing, and organisations either create fun and creative content, or support their creation by the users (Deighton & Kornfeld, 2009).

Reynolds divided forms of marketing communications via the Internet into those of the first generation, such as Internet advertising, direct e-mail, and search engine marketing, and those of the second generation, such as the use of social networks and viral marketing (Reynolds, 2010).

Chronologically speaking, the development and use of viral marketing was pioneered by Hotmail. Specifically, in 1996, every Hotmail user, after a sent message, got the following message at the bottom of the page: Get your private and free email. At that time,

it stood for an innovative method of promotion that began to spread like a virus. The emergence of social networks strengthened viral marketing even more.

In 1996, viral marketing was identified, and Ask.com was founded.

In 1998, browsers MSN Search and Google were launched.

In 1999 the website Opinions was established, focusing on opinions and attitudes of the consumers.

In 2002, Smug Mug website for photo sharing prepared the ground for the later websites of that kind, Flickr and Photobucket.

In 2003, MySpace was started.

In 2004 Facebook and Digg were launched.

In 2005, Vimeo and YouTube were launched.

In 2006, Twitter was founded (Jevremović & Cerić, 2012).

All the above-mentioned websites and social networks represent a tool by means of which “infected” users of digital content pass on the information about the product or service. Video games are also widely used for the further transfer of desired information.

3. FUNCTIONING AND PRINCIPLES OF VIRAL MARKETING

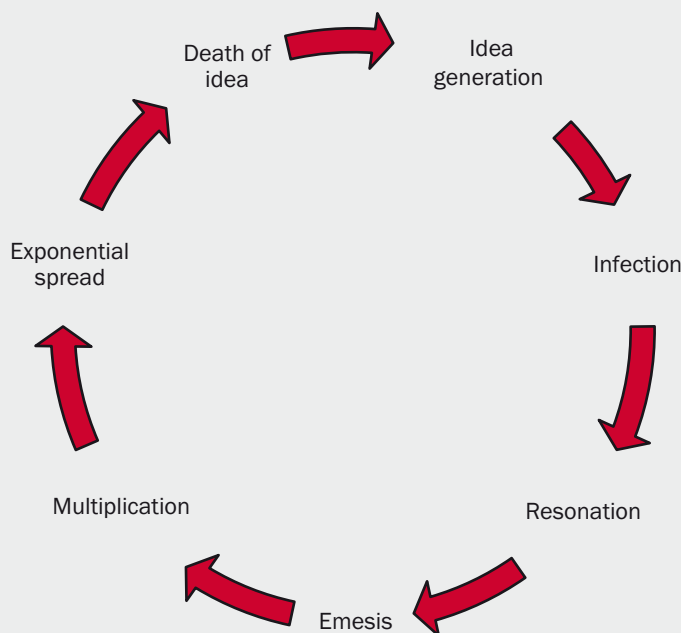
Modern tendencies of spreading ideas through social networks and other digital marketing tools, which have replaced the traditional word of mouth, can be identified as word of mouse. Successful communication requires the satisfaction of the following three criteria: “Giving the right message to the right messengers in the right environment” (Kaplan & Haenlein, 2011).

The right message is considered to be a message that will interest and delight the messenger. Only a message that is worth memorising and interesting enough to be forwarded has the potential to encourage viral marketing communication. The right messenger is a person who is a market expert, in the centre of social events, and a person who makes the message more convincing and precise, and sends it into a social network for further distribution. The right environment is the essence of a good viral marketing, because the slightest changes cause large effects.

Like all other marketing campaigns, viral marketing campaign is carried out in several stages:

- 1) Setting up and analysing the goals of the company,
- 2) Identifying the target market,
- 3) Developing the message,

FIGURE 1. Life cycle of the viral idea



SOURCE: Shukla & Shukla, 2014, str. 191

- 4) Selecting the messenger,
- 5) Seeding the idea,
- 6) Automatic spreading of the idea (Shukla & Shukla, 2014).

Figure 1 shows the life cycle of the viral idea. During the viral spread of the idea, it goes through several phases: idea generation, infection, resonation, emesis, multiplication, exponential growth, death of idea. The effective viral marketing campaign is based on the following elements:

- 1) Social profile gathering,
- 2) Proximity market analysis,
- 3) Real-time key word density analysis (Parinas, 2011).

To make it easier to attract the attention of users, one can use viral video, e-mail, blog, social networks, SMS, electoral services, call centre services. The role of marketing agencies has changed as well. Besides traditional services, contemporary marketing agencies offer their clients the services of virtual marketing campaign management and online communication with clients via IM-SMS, chat, user generated content, e-mail, IM support for web design and development (IM – Instant Messaging – sending messages via Internet in real time)¹. The principles of viral marketing are as follows (Wilson):

¹ We Provide End User Support Services, Available at: www.newmediaservices.com.au, Accessed on: July 9th 2014

- Gives away products or services
- Provides for effortless transfer to others
- Scales easily from small to very large
- Exploits common motivations and behaviours
- Utilises existing communication networks
- Takes advantage of others' resources.

It is not necessary that every marketing strategy takes into account all the principles, but it will be more effective if it takes advantage of as many of them as possible.

4. ETHICAL AND LEGAL ASPECTS OF VIRAL MARKETING

In a consumer society, where all sorts of things are traded and sold, it is clear that marketing is the primary tool for market penetration and profit generation. The presence of marketing and its impact on the formation of awareness and consumer decisions are some of the main characteristics of modern life. In combination with modern technologies, especially the Internet, computers, and mobile phones, advertising of products, services, personalities, ideas, and even ideologies has also become part of everyday life. Advertising is done in the form of messages, texts (blogs, email, etc.), photos, or video clips that are extremely creative, imaginative, persuasive, thought-provoking, and enjoyable to read or watch. This attracts the attention

of the wider public, not just those specifically interested, but also all those who just like the information or advertisement.

One of the basic functions of Internet marketing is the collection of information about users, i.e. the creation of a database that becomes very useful when creating any future marketing campaigns. It is necessary to ask the question: "When is the collected information really useful marketing data, and when does it begin to encroach on the privacy of users?" Because of the very easy filing, monitoring, recording, and processing of all information accessed by the Internet users, it is easily possible to exceed the limit of ethics and jeopardise the consumer's right to privacy and data protection.

The best-known technology that provides insight into the interests of potential users refers to cookies. These are tools used by websites in order to store data about the user for later use. They stand for small text files, stored into the user's computer. They contain basic information about the user and the user's computer, for recognition in subsequent connections (Milosavljević & Mišković, 2011).

Through the formation of databases on certain web pages that the users searched and on the user's behaviour during the search, the visitor of that site ceases to be an unidentified user, but a potential consumer, on whom the database has accurate data. However, all this raises the question of privacy and the exposure of users on the Internet. For these reasons, various organisations are formed globally, which coordinate the connection of large public networks in the world. The most important is the Internet Corporation for Assigned Names and Numbers (ICANN, www.icann.org), a non-profit organisation that is responsible for administering the Internet Protocol (IP), domain space, and addressing provider. World Wide Web Consortium (W3C, www.w3c.org) is an international consortium that sets standards for the World Wide Web (Škare, 2013). The actions of these two organisations are very important for the functioning and further development of Internet marketing.

Freedom of expression and creativity, combined with a competitive market in which the focus is on winning the largest possible number of clients or customers in order to increase profits, evidently points to the possibility that the released information and content go beyond the scope of moral, ethical, and even legal behaviour.

5. THE ROLE AND IMPORTANCE OF CODES OF ETHICS IN MARKETING

Due to such a high degree of presence, importance, and influence of marketing in contemporary society and global processes, the question that arises refers to its regulation in order to ensure a minimum of moral, honest and fair relations, i.e. to protect the rights of all participants. In addition to the legal framework governing market communications, the codes of ethics at the level of trade associations or companies themselves are adopted (Etički kodeksi u oglašavanju, 2014), in order to strengthen the framework of allowed, high-quality, and socially desirable marketing activities.

In 2006, Serbia adopted the Consolidated ICC Code on Marketing and Advertising Communication of the International Chamber of Commerce², which, in addition to establishing high ethical standards in marketing (from the rules on advertising on the Internet to standards of what is and what is not allowed to communicate to children), provides guidelines for further development of the legal and regulatory initiatives in the field of marketing and consumer protection. The authors argue that in the drafting of the Code they took care of the consumers' interests and needs for security, i.e. for being protected from the lies and deception in advertisements and misuse of personal data they give to the companies. Certain rules of this Code govern certain matters more stringently than the law itself, such as, for example, the fact that "every scientific statement in an advertisement must be based on sound scientific research and data that are at hand and that can be reviewed", or the requirement that "all market participants who collect personal information guard it and keep it only for a limited period of time before it is completely destroyed" (ICC, 2006).

In addition to the basic principles of advertising and marketing communications, as prescribed in Article 1, which states: "All marketing communication should be legal, decent, honest, and truthful... prepared with a due sense of social and professional responsibility, and should conform to the principles of fair competition, as generally accepted in business... should be such so as not to impair public confidence in marketing, "The Consolidated ICC Code on Ad-

² International Chamber of Commerce (ICC) is the world's largest business organisation that brings together companies from all sectors and all parts of the world, established to provide a contribution to the development trends of marketing and advertising in the world. It adopted the first Code on Advertising back in 1937. In 2006, it adopted "The Consolidated ICC Code on Marketing and Advertising Communication of the International Chamber of Commerce"

vertising and Marketing Communication lays down other general provisions regarding advertising and marketing communication, which in Articles 2-26 define ethical standards in terms of values and rights such as decency, honesty, social responsibility, truthfulness, use of the terms “free” and “guaranteed”, substantiation, identification, identity, denigration, exploitation of goodwill, safety and health, children and young people, data protection and privacy, and so on.

Given that this Code has been adopted with the aim of adjusting ethical standards in marketing to modern challenges and new technologies, its special chapter D is dedicated to “Advertising and Marketing Communication Using Electronic Media and the Telephone”, in order to promote any product or service. The term “electronic media” includes every medium through which one can establish and maintain “electronic, interactive communication, such as the Internet, online services and/or electronic and communication networks, including the telephone”. It clearly states that all activities of marketing communications and advertising via electronic media and telephone are subject to the legal regulations of the country of origin of the products and/or services, or, in special cases, to the regulations of the state that the market participants determined. The legal framework that governs the issue of electronic communications in Serbia and the challenge of data protection and privacy rights, as well as other challenges, such as protection from harassment or slander, shall be discussed later.

Examples of good practice, in terms of modern codes of ethics in marketing, can be found in our immediate environment, in Croatia. In 2005, Croatian Chamber of Commerce adopted a Code of Business Ethics, which ensures observance of good business practices. Business in accordance with the principles of good faith, loyalty, and accuracy is encouraged, through the regulation of important issues, such as competition rules, security of transactions in electronic commerce, providing false information, obtaining information about the competition, product label, etc. Croatian group of producers of beer, malt, and barley has adopted a special ethical Code of responsible marketing communications, which establishes the obligation to respect the fundamental principles of morality, human dignity, and integrity in marketing communications³.

³ For example, the Code allows the circulation of advertisements for beer exclusively to adults, with advocacy of moderate beer consumption, prohibits the participation of minors in these messages and any type of content that suggests violence, aggression, or degrading behaviour. See: <http://reklamiranje.net/eticki-kodeksi-oglasavanju/>, Accessed on 8 July 2014

6. VIOLATION OF ETHICAL NORMS – WITH SPECIAL REFERENCE TO VIRAL MARKETING

The main issues of concern to the broad population with regard to viral marketing and electronic marketing communications are: the right to privacy and personal data protection, abuse of trust, the so-called “e-mail pyramid”, harassment and “loading” a large number of spam messages/information, erroneous and false information that spreads quickly (James, 2002).

In respect of the concerns of consumers and the general public regarding the right to privacy and personal data protection, it is mainly reflected in the fact that people want to know what the companies that are in the possession of their data will do with it. A number of people, in addition to the usual concerns about the personal data, feel concern that this could make them become “victims” of spammers and recipients of spam messages⁴. To encourage potential customers and give them a sense of security, companies create and publish their “privacy policies” on their websites and email messages. Privacy policies explicitly explain how the collected information on personal data will be used, i.e. that the company will not sell it or otherwise make it available to third parties (Ezor, 2009). The protection from sale or transfer of personal data is achieved by forming special mailing lists. However, there are great possibilities of their misuse, resulting from their unauthorised disposal, which will be discussed later.

The issue that is thematically linked to the previous one is the problem of harassment and “loading” a large number of spam messages/information. The main message and the best advice for protection from unwanted information and advertisements, is to take care of where and to whom data is left, primarily phone numbers and email addresses. Almost all social networks and portals, including a number of companies, require this information. It is encouraging that the public is becoming more cautious, or at least saturated with various offerings, advertisements, information, so that a number of those who do not want to

⁴ “Spam is anonymous, unexpected, mass electronic mail, e-mail, equivalent to the mail we receive ‘at the door’, which we do not expect, and that is completely worthless. This email is sent in huge quantities by spammers who make money from a small percentage of recipients who buy a product that is advertised in spam messages”, Source: Website „Informacija – saznajte više o računarskoj bezbednosti“, Available at: <http://www.informacija.rs/Anti-spam/Sta-je-spam-i-kako-se-zastititi-od-njega.html> , Accessed on 9 July 2014

leave information if they are not offered something in return is growing (Hagel & Rayport, 1997).

One common strategy of viral marketing is the use of human motivation and behaviour. Bearing in mind the power of interpersonal relationships and communication, viral marketing uses them. Unfortunately, when the principles of ethical and moral behaviour are overlooked or deliberately removed from sight, then this use becomes abuse. The subject of abuse is the possibility that certain information or advertisement is fast and freely communicated by one person to their friends and colleagues.

We have previously mentioned that mailing lists that companies form on the basis of data that their clients/consumers give them with confidence are the special form of protection from further sale or transfer. Specifically, the so-called "email pyramid" is a common strategy of viral marketing. In this way, offers are sent quickly and in detail to a large number of people, with great certainty that the desired message will be read or noticed within a short period of time. On the other hand, the misuse of these lists may also cause the problem.

Finally, another striking violation of ethical norms is reflected in the possibility of placing false or erroneous information, which is, thanks to modern electronic media, spread quickly. Deliberate placing of such information usually comes from competition, which often ruins its own reputation in this way and declares itself as an entity that does not operate in accordance with good business practice and will (James, 2002).

7. POSSIBLE LEGAL CONSEQUENCES OF VIRAL MARKETING

Despite the undeniable positive economic effects of viral marketing (cheap and fast transmission of information), some possible legal consequences of such actions challenge its absolute glorification. These effects are manifested as: a potential threat to the right to privacy and security of data protection, disclosure of false or misleading information which often has the character of slandering competition or deceiving consumers (Delgado, 2014). In terms of advertising and marketing activities through social networks, electronic mail, blogs, and the like, the same legal framework that regulates traditional advertising and marketing communications generally applies (Steinman & Hawkins, 2010), although in recent years special laws have been adopted that explicitly regulate electronic communications (Official Gazette, 2010).

The issue of right to privacy and personal data protection, as basic human rights, is the issue that the expansion of electronic communications has brought to the fore (Lilić, 2006). The right to privacy protects three types of human needs: a) making independent decisions about intimate and personal matters; b) protection against disclosure of personal matters; c) protection against groundless surveillance by the authorities. Therefore, in accordance with its obligation to protect, the law must find mechanisms to "guarantee legal control over personal information" (Dimitrijević, 2011) to individuals. A men's right is to know and control who, when, and for what purpose uses information about them. In Serbia, the right to privacy and personal data protection is primarily provided within the framework of the Law on Personal Data Protection (Official Gazette, 2008/09) and the Law on Electronic Communications, and, like all over the world, in our country as well, companies ensure protection of these rights through the previously mentioned privacy policies (while at the same time protecting themselves from responsibility for violating these rights).

In respect of another common legal consequence of viral advertising, disclosure of false or misleading information which often has the character of slandering competition or deceiving consumers, generally speaking, the law treats it by defining the basic responsibilities of advertisers (whether using traditional or viral marketing strategies). It is the obligation of the advertiser to: a) guarantee that the information being advertised is true and accurate, and b) obviously and clearly indicate all essential information in the advertisement (or material defects), in relation to their offer (Steinman & Hawkins, 2010).

CONCLUSION

The emergence and increasingly intensive use of the Internet have caused the development of modern forms of advertising and transmission of information through new channels of communication. Lack of trust in traditional forms of promotion and saturation of consumers with a plethora of information led to the creation of viral marketing. The basis of this marketing is the transmission of information by word of mouth, or in the digital environment, as well as creating and managing consumer relationships. Speed of information transmission, wide reach, and precise targeting of the target audience are the main features of this type of marketing campaigns that companies on the supply

side find very cost-effective because they are free of almost all costs.

Viral marketing establishes a synchronized link between the word of mouth marketing and relationship marketing, in order to provide value-added products and services for consumers. The use of viral marketing accelerates the process of information transmission from mouth to mouth in virtual environment. The exchange of information through social networks, blogs, vlogs, forums has provided consumers with the possibilities of becoming active participants and creators of promotional activities.

Every viral campaign starts with setting up and analyzing the aims, identifying the target market and developing the idea which needs to be spread. In that process it is very important to lay down the le-

gal framework, as well as the ethics norm, in order to enhance marketing activities which have to be ethical and useful for the society.

The Consolidated ICC Code on Advertising and Marketing Communication establishes the high ethical standards in marketing, as well as the obligation to respect the fundamental principles of morality and integrity. The Law on Personal Data Protection and the Law on Electronic Communication provide the rights to privacy and personal data protection. The implementation of these legal acts gives consumers a sense of security. However, the significant growth in the use of modern technology for marketing activities may offer numerous possibilities for data misuse and harassment.

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Apstrakt:

Ekonomski i pravni konceptualni okvir viralnog marketinga

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Elektronske i Internet komunikacije su savremeni i verovatno najčešći vid komuniciranja između pojedinaca i pravnih lica, a istovremeno su postale jedan od najviše korišćenih vidova marketing komunikacije. Viralni marketing se razvija u dominantni oblik marketinga i razmene informacija u svrhe promocije ili ostvarivanja drugih ciljeva. U ovom radu autori predstavljaju analizu fenomenena viralnog marketinga – njegovu svrhu, efekte, snagu i uticaj, a takođe i razmatraju njegove etičke i pravne aspe-

kte. Poseban naglasak je na pravu na privatnost i zaštitu podataka o ličnosti, uznemiravanju, delovanju u „dobro veru“ u skladu sa dobrom poslovnom praksom, prezentovanju netačnih i lažnih informacija. Autori posmatraju prednosti i nedostatke ovog oblika marketing komuniciranja.

Ključne reči: viralni marketing, elektronske i marketing komunikacije, pravo na privatnost, zaštita podataka o ličnosti, etički kodeks

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