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DIRECT ELECTRONIC MARKETING OPPORTUNITIES FOR SMEs

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Abstract. The paper deals with an analysis of direct electronic marketing as an important marketing channel for SMEs primarily focusing on the identification of its advantages and disadvantages as well as efficient best practices for SMEs. Available direct electronic marketing statistics, cost-benefit analysis, business and consumer value, and regulatory mechanisms are investigated in the international as well as in the Lithuanian context. The present research focuses on the analysis of the balance of private and entrepreneurial interests and identification of the efficiency and acceptability criteria in regulating and adopting direct electronic marketing. The paper concludes that direct electronic marketing is very advantageous to local businesses and especially to SMEs. Unfortunately, the common perception of direct marketing and especially electronic direct marketing is negative, since it may compromise personal privacy. Analysis of the U.S. business experience shows that direct marketing is among the most efficient marketing channels. Analysis of the Lithuanian experience demonstrates that the advantages of direct electronic marketing are not considered and negative perceptions and strict regulation prevent businesses from employing direct electronic marketing. The paper summarizes the best practices in applying direct electronic marketing principles in order to consolidate privacy interests with economic interests, suggests amendments to the regulations, and encourages a wider acceptance of business self-regulation.

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Keywords: direct marketing, direct electronic marketing, e-mail marketing, SME, privacy.
Reikšminiai žodžiai: tiesioginė rinkodara, tiesioginė elektroninė rinkodara, MVĮ, privatumas.

Introduction

During the last decade the significance and the scope of electronic marketing has drastically grown all over the world. Such trends are primarily conditioned by an enormous growth of electronic communication. The Internet, i.e. the medium of electronic communication, is the most speedily developing new technology among households. Technological progress leads to an increase in the complexity of the Internet, a growth in the number of communication channels, an increase in the amount and quality of transferred information, an improvement of the possibilities to use the Internet, a notably easy access to and easy use of electronic communication by all groups of the population. Due to these reasons, both business and consumers are getting more and more active in cyberspace. Cyberspace becomes a usual business marketing instrument, means of communication of the public authorities and interest groups with the public.

The development of the Internet is also followed by an immensely rapid development of electronic communication. The Internet medium may be used for unilateral communication (to send electronic messages, read information in the websites) as well as for multi-communication (when users actively share information in various forums, social websites, news groups, blogs, etc.). Ultimately, cyberspace may also be used for direct interactive communication in virtual work groups, collaboration media,

chat rooms, etc. Such technical possibilities provide unprecedented space for marketing communication, including communication orientated to a particular user and his needs, i.e. direct electronic marketing. Completely new forms of marketing have emerged in the Internet, e.g. search marketing or virus marketing, which in the traditional media would be unthinkable. If one is searching for more effective marketing channels and forms, electronic marketing may seem in many aspects very attractive (Hanson, Kalyanam, 2006).

It should be noted that cyberspace actually has neither physical nor legal boundaries, nor any "central authority" which would determine the circulation of information in the Internet, namely, the information placed in cyberspace immediately becomes universally accessible all over the world; moreover, it can be accessed by all interested users simultaneously. Therefore, the costs of access to information and the distribution of information in cyberspace are very low, particularly in comparison with other means of information distribution (e.g. printed mass media). Such factors are extremely important for marketing communication. Basically, cyberspace provided new exceptional opportunities for business and consumers to engage in marketing communication relevant to them, to offer and buy products and services.

The use of the Internet in economic activity and, in particular, for marketing started in the ninth decade of the 20th century. During the last five years (2003 – 2008, at the end of the so-called .com crisis) the market for electronic advertising, i.e. marketing in the Internet, has been growing by about 10% per year and has been replacing traditional marketing channels, i.e. printed mass media, radio and television. In 2008 electronic marketing comprised almost 9% of the U.S. advertising market and surpassed the share of marketing attributed to radio and newspapers (Holahan, 2006).

Obviously, such rapid development has lead to certain social pressures. Possibilities of the Internet and cyberspace to reach an individual user have automatically determined the fact that the major part of electronic marketing is direct marketing, i.e. marketing directed at a particular person defined by individual characteristics. Therefore, the development of electronic marketing (e.g. Gmail marketing model or Facebook marketing model) is constantly accompanied by controversy and privacy concerns. Direct electronic marketing or, in other words, marketing through electronic communication is forthrightly associated with its illegal forms, i.e. spam.

Unfortunately, there is a lack of scientific research into the topic of direct electronic marketing in Lithuania. Most commonly direct electronic marketing is identified as a subtype of direct marketing, which, in turn, is given relatively little attention within the area of marketing research.

The aim of this article is to analyse the value of direct electronic marketing via electronic communication (e-mail) for SMEs. The article is aimed at identifying the negative and positive aspects of direct electronic marketing, analyzing the legal environment in Lithuania, as well as proposing best practice guidelines for acceptable direct electronic marketing regulation and use by the SMEs. The article employs the methods of systemic, historical and comparative analysis, cost-benefit analysis, non-interventional qualitative research. With reference to a survey of the international and Lithuanian experience, it deals with the existing statistics on direct electronic marketing, regulatory environment and practice as well as their efficiency. Both the current situation and historical perspective are discussed.

The Definition, the Advantages and Drawbacks of Electronic Marketing

In most general terms, any marketing in the Internet should be considered electronic marketing. As it has been mentioned, due to the technical peculiarities of the Internet, almost all forms of electronic marketing have certain features of direct marketing (Stone, 2007). The main forms of electronic marketing are as follows:

- Electronic marketing (marketing by e-mail);
- Search marketing (marketing related to the Internet search results);
- Marketing websites, links and banners;
- Marketing in social networks;
- Alternative electronic marketing (e.g. viral marketing).

It should be noted that marketing by e-mail is not a predominant form of electronic marketing. Presently, search marketing and, in Lithuania, marketing of advertising websites, fields and headlines can be considered the predominant forms. On the other hand, marketing by e-mail has the notably expressed advantages of electronic marketing, i.e. apart from businessmen's own websites, marketing by e-mail is the cheapest and the most accessible (Tapp, 2009). Very often marketing by e-mail is identified with a socially undesirable or even negative marketing, spam, since social challenges raised by electronic marketing manifest themselves in its form rather dis-

tinctly. Due to the abovementioned reasons, in this article marketing by e-mail is regarded as the fair representative of all types of direct electronic marketing.

Cases when marketing by e-mail is implemented by addressing it to a particular user are extremely controversial. As mentioned before, other forms of electronic marketing (e.g. search marketing) are also very often realised as direct marketing (addressed to a particular user); however, in these cases less personal data are dealt with and, therefore, less controversy arises.

At the macroeconomic level, the attractiveness of electronic marketing (and, in particular, direct electronic marketing) is determined by the following two basic macro factors (Arens, 2006):

- Firstly, in the present-day business the use of mass marketing is constantly decreasing, in general. In small, clearly defined markets more and more special marketing means are used to establish and maintain close contacts with consumers.
- Secondly, the development of information technologies and the Internet stimulates orientation towards marketing segmentation. Mass marketing is replaced by marketing orientated to a particular user or a group of users.

Micro-level factors are even more significant in determining the attractiveness of electronic marketing:

- Firstly, electronic marketing offers a significant economy of business resources in comparison with the traditional marketing channels. Most of the small and medium enterprises cannot afford a big marketing budget (especially at the time of economic recession), human resources and their time resources are limited too. Electronic marketing is significantly cheaper, besides, fixed costs related to it are also minimum: several or even several tens of times lower than, for example, those of TV marketing. Electronic marketing may be subject to an extremely precise dosing in terms of the marketing resources available in the company at a particular time, i.e. it is scalable and its overhead costs (costs incurred in increasing the audience of marketing) are rather low (Strauss, Frost, 2008).
- Secondly, electronic marketing and, in particular, direct electronic marketing provides unique segmentation opportunities; electronic marketing allows an easy and rather cheap (or even free of charge) segmentation of consumers according to the geographical criteria, interests, sales history, etc. (Stone, 2007).
- Thirdly, differently from the traditional marketing forms, electronic marketing allows to fix its efficiency, i.e. conversion into sales; in most cases it is necessary to pay for electronic marketing only if a consumer responses to the marketing communication (e.g. reads the marketing message, clicks on the link of the marketing client, etc.) (Tapp, 2009).
- Fourthly, electronic marketing allows to establish a direct contact with a client or a potential client; present-day technical possibilities allow immediate interactive communication with a consumer responding to the marketing.
- Fifthly, electronic marketing, in essence, is global, i.e. it allows to reach a global consumer with minimum efforts and costs; most marketing means are global, suppliers of marketing services (e.g. Google or Facebook) offer substantially unified and universal marketing instruments for any market or consumer segment (Theodosiou, 2006).

Every company, irrespective of its size, may take advantage of the majority of the abovementioned factors; therefore, electronic marketing is especially attractive to SMEs.

All the abovementioned advantages can also be observed while analysing electronic marketing (marketing by e-mail) or direct electronic marketing, as it referred to in this article. The efficiency of direct electronic communication by e-mail, i.e. the reaction of consumers to a marketing message, is below 1%; however, due to significantly low costs of such marketing, its economic efficiency (determined through the evaluation of investments or return on investment) is almost twice or even thrice higher than that of such traditional marketing means as television or radio (Diakova, 2006).

Table 1 compares the costs and efficiency of direct electronic marketing (e-mail marketing) and traditional media channels (DMA, 2004):

Table 1. Comparig costs and efficiency of direct electronic marketing and marketing through traditional media channels

Average cost and efficiency of different marketing channels			
	Comparative costs per contact	Response rate (efficiency)	ROI
Direct mail communication	0.55	1.61	7.2
Direct electronic marketing by e-mail	0.09	0.99	14.2
Newspapers and magazines	0.35	0.14	2.1
TV	0.16	0.27	8.4
Radio	0.74	0.38	5.1

The cost of direct electronic marketing (electronic marketing by e-mail) does not comprise a large share of the marketing budget of business companies; however, it generates a rather significant income. Moreover, a considerably high return on investment of direct electronic marketing determines its increasing attractiveness at the time of economic recession, which is illustrated in Table 2 below (Grau, 2009).

Table 2. Direct electronic marketing (e-mail) vs. electronic marketing in general (U.S. companies)

	Electronic marketing in general	Direct electronic marketing (e-mail)	Percentage of direct electronic marketing (e-mail)
Sales (U.S.$ bn)	2,149.6	32.6	1.5%
Marketing budget (U.S.$ bn)	183.1	0.7	0.4%
ROI	11.74	43.52	

The Usefulness of Direct Electronic Marketing for SMEs

As it has been discussed in the introduction, direct marketing first of all is related to direct (electronic and non-electronic) communication with a consumer, while most consumers associate direct electronic marketing primarily with spam, i.e. unlawful direct electronic marketing. There has been little research into direct marketing and, in particular, direct electronic marketing in Lithuania. Moreover, the investigations usually deal with the negative aspects and the restrictions of direct marketing.

In general, direct marketing is understood as marketing carried out by employing various means facilitating the establishment of a direct contact with consumers by mail, telephone, the Internet and usually aimed at getting direct response from consumers. In direct marketing the buyer usually does not meet the seller, as the aim is distant selling. Using various databases of consumers, direct marketing specialists create specialised offers and marketing messages, meeting the needs of a particular segment of consumers or even individual persons to which a commercial offer is targeted. As a rule, direct marketing is aimed not at forming an image of a supplier of a product or service (or a product or service itself), but rather at obtaining a direct, immediate and measurable reaction of consumers (Tapp, 2009).

The process of direct marketing (and direct electronic marketing) is comprised of the following five basic stages (Strauss, Frost, 2008):

- Adoption of strategic decisions (segmentation, market research);
- Communication between the buyer and the seller;
- Order (or other response of a buyer);
- Fulfilment of orders;
- Further maintaining relations with a client.

Direct electronic marketing is advantageous not only to business but also to their clients.

First of all, it is convenient. Buyers do not need to waste time in search of the desired product in traditional shops. Instead, a consumer receives a concrete offer and may purchase the desired product through the medium convenient to him. A consumer

may use direct electronic marketing at any time; the possibilities to get full information about an offer are considerably wide (in comparison with the information which could be provided by the seller through the traditional medium), a consumer may easily compare different offers. What is more, direct electronic marketing is interactive and instantaneous.

Products and services sold by using direct electronic marketing may be much cheaper than those sold from the shelves of stores, because a businessman does not need to pay for the trade premises, utility fees, hire sales personnel, i.e. the costs of business carried out by means of direct electronic marketing are significantly lower than those of the traditional business. All this leads to an increase in the number of sellers (through minimizing barriers to market access) and opportunities to launch new products, which stimulates competition and causes reduction of consumer prices.

Obviously, direct electronic marketing often is the most effective and the fastest way of providing consumers with the information about new products and services or other information relevant to the consumers (e.g. about discounts or special prices). Besides, through direct electronic marketing favourable conditions for the sale of personalised or even unique products or services are established.

Since in present times consumers are surrounded by an extremely large and sometimes "noisy" marketing communication flow, its major part may remain unnoticed. Abundant marketing through traditional marketing channels often puts its content into the shade. Enormous amount of information received daily prevents a consumer from memorising either the name of the promoted product or its advantages enumerated in the advertisement. Such disability of a consumer to perceive information is conditioned not only by its abundance, but also by impersonalised presentation of marketing. In this situation individualisation of direct electronic marketing helps to attract the consumer's attention and provides business with the possibilities to show exceptional attention or present a special offer to a loyal client. Exceptional attention to a client results in his loyalty and a positive opinion about the company (Stone, 2007).

Direct marketing has certain drawbacks, too, and raises serious social tensions, namely:

- Firstly, direct marketing always involves private information of the consumers and raises issues of personal data processing. This challenge is particularly relevant to direct electronic marketing, because electronic and automatic processing of personal data may cause increased security risks and unauthorised use of personal data.
- Secondly, direct electronic marketing, usually undesired or unlawful, significantly burdens the infrastructure of electronic communications. In 2007 – 2008 undesired or unlawful direct electronic marketing, spam, comprised almost 80% of the entire e-mail communication.
- Thirdly, direct electronic marketing is an impediment to usual activity, particularly in the cases when a consumer does not wish to receive any advertisements, is unable or unwilling to make use of it.

Despite such drawbacks, for SMEs direct electronic marketing is the most accessible and often the only channel of communication with consumers. Consequently, the balance between commercial activity and consumer's privacy may be disturbed. Due to its accessibility and attractiveness, direct electronic marketing of SMEs is important to regional development and overall business spirit.

Due to particularly conspicuous negative attitudes and mass proliferation, undesired electronic communication (spam) has become a synonym of direct electronic marketing. Besides, increasing interference with a person's privacy can also be seen in direct electronic marketing carried out through search websites, social network websites, etc. (Kiškis et al., 2006). All this has caused an unfavourable attitude towards direct marketing resulting in its strict legal regulation. Consequently, without the possibilities to make use of the advantages of direct marketing, socio-economic development is prevented.

Undesirable or even unlawful form of direct electronic marketing is spam or e-mail trash. The unacceptability of spam is determined by its total ignorance of the privacy interests of the recipient. Spam has become a mass phenomenon; however, almost always it is undesirable as the promoted products and services usually are very doubtful and, in most cases, unnecessary (marginal) to consumers. Marketing through spam is usually intrusive or even deceptive; the consumer gets offers at a time inconvenient for him. Moreover, spam is often used for the distribution of computer viruses, electronic worms and privacy-invasive software as well as for electronic fraud. A high volume of spam may hinder the operation of information systems; an internet user, swamped with spam, may lose personal messages addressed directly to him. A consumer is not only forced to waste time deleting undesirable letters, but also is at risk to suffer financial or other losses (e.g. e-mail letters called "phishing" are aimed at obtai-

ning important personal data, such as bank account details; e-mails offering jobs may be sent in order to make use of another person's bank accounts for money laundering). Merely opening spam messages (and especially attachments) can result in an exposure to computer virus risk.

Spam is increasingly proliferating both globally and in Lithuania. According to Google and Symantec, in 2008 the amount of spam increased by 25% in comparison with 2007. In 2008 an average user (in absence of security systems) would have received about 45000 spam messages (in comparison with 36000 spam messages in 2007), while presently the total amount of spam in the overall e-mail communication flow makes up about 80% (Kleha, 2009). Besides, Europe has become the major source of spam in the world. Presently, about 44% of the overall amount of spam is distributed from workstations registered in Europe (Symantec, 2008).

In Lithuania only limited statistical data on spam is available. A quantitative research (a poll of consumers) performed upon an order of the Communications Regulatory Authority shows that in Lithuania in 2008 the number of Internet users which received undesirable marketing letters increased by 8% in comparison with 2007. In 2008 undesirable e-mails were received by 65% of the Internet users and 75% of the companies surveyed. According to the data of the survey, spam is the most frequent cause of network security incidents, while computer viruses rank second.

Due to the above reasons in most states, including the EU, spam is regulated or even prohibited by law, and consumers and Internet service providers actively install spam filtration tools. Thus, due to a frequent identification of direct electronic marketing with spam, direct electronic marketing channel is rather limited.

Legal Aspects of Direct Electronic Marketing in Lithuania

In the European Union direct marketing and processing of personal data for the purposes of direct marketing is regulated by the Recommendation No. R(85)20 adopted by the EU Committee of Ministers in as early as 1985. It contains the provisions regarding the right to use personal data for the purposes of marketing (data collected from public sources, such as public registers, telephone and address directories, and under special conditions, even from other undertakings and recipients of advertising themselves). It should be noted that the same provisions are present in the European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The above EU Recommendation, although not mandatory, has been implemented in the Scandinavian states (e.g. Finland or Sweden) taking into account the positive aspects of direct marketing. The principles defined in the Recommendation as early as 20 years ago, establish a certain balance between personal privacy, social and business interests.

Direct marketing (and, accordingly, direct electronic marketing) in Lithuania is regulated by the Law of the Republic of Lithuania on Advertising, the Law of the Republic of Lithuania on Legal Protection of Personal Data and the Law of the Republic of Lithuania on Electronic Communications. It should be noted that these laws are harmonised with the European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and with the European Parliament and Council Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector. However, the Recommendation No. R(85)20 of the EU Committee of Ministers is not considered when regulating direct electronic marketing in Lithuania.

Unfortunately, legal restrictions on direct marketing (and, accordingly, direct electronic marketing) are unreasonably strict; almost in all cases a consent of the recipient of advertising is required thus actually eliminating the possibilities to use any data of the clients (collected from public sources or other undertakings) for marketing purposes. Moreover, legal provisions are inadequate and set a real legal trap.

In paragraph 12 of Article 2 of the Law of the Republic of Lithuania on Legal Protection of Personal Data direct marketing is defined as an activity intended for offering goods or services to individuals by post, telephone or any other direct means and/or inquiring their opinion about the offered goods or services. This definition is rather limited (it does not include marketing meant for promotion of a trade mark or a company, also marketing without offering goods or services for payment), yet confusing and abstruse for persons with no legal knowledge.

The historically earliest regulations of direct marketing activity in Lithuania were introduced in the Law of the Republic of Lithuania on Advertising. Paragraph 1 of Article 13 of this law prohibits direct marketing by telephone, fax, telex and e-mail without the consent of the person for whom the mar-

keting communication is intended, i.e. it establishes the so-called opt-in principle. The opt-in principle means that marketing may be directed to a particular person and his or her personal data may be processed only if a prior consent is given. On the contrary, Paragraph 2 of Article 13 of this law prohibits marketing directed to a particular person only in a situation when a direct refusal of consent is expressed by that person, i.e. it establishes the so-called opt-out principle. An opt-out principle was also established in the Law of the Republic of Lithuania on Legal Protection of Personal Data which remained valid until 1 July 2003. The opt-out principle means that marketing may be directed to a particular person and his or her personal data may be processed as long as a refusal of consent for personal data processing is expressed.

In the wording of the Law of the Republic of Lithuania on Legal Protection of Personal Data which came into effect on 1 July 2003 the opt-out principle was replaced by the opt-in principle. In Paragraph 2 of Article 14 of the law it was established point-blank that personal data may be processed for the purposes of direct marketing if a person to whom the marketing is directed (i.e. the personal data subject) gives his consent. The above provisions of the Law of the Republic of Lithuania on Advertising, which establish the opt-in principle for direct electronic marketing and the opt-out principle for direct marketing through non-electronic channels, were not amended; therefore, the contradictory provisions caused much confusion and led to frequent application of administrative liability for marketing directed to a particular person.

The provisions of the Law of the Republic of Lithuania on Legal Protection of Personal Data must be followed in carrying out direct marketing activities, because direct marketing involves the use of certain personal data. The opt-in principle established in this law implies that in all cases a voluntary consent of a data subject needs to be obtained prior to using the personal data for the purpose of direct marketing.

Attention must be drawn to the fact that the use of personal data for the purpose of direct marketing should not be excessive. Item 4 of paragraph 1 of Article 3 of the Law of the Republic of Lithuania on Legal Protection of Personal Data sets forth that personal data must be identical, adequate and not excessive in relation to the purposes for which they are collected and processed. According to the State Data Protection Inspectorate, which supervises the observance of the Law of the Republic of Lithuania on Legal Protection of Personal Data, a personal code is excessive data for direct marketing because less specific data (e.g. name, surname, date of birth, place of residence) may be sufficient to identify a person. Therefore, using personal codes for the purpose of direct marketing is a violation of item 4 of paragraph 1 of Article 3 of the Law of the Republic of Lithuania on Legal Protection of Personal Data.

Besides, a business entity intending to process personal data for the purpose of direct marketing must determine the period for the storage of personal data (paragraph 1 of Article 14 of the Law of the Republic of Lithuania on Legal Protection of Personal Data). Usually the period for the storage of personal data for the purpose of direct marketing should be specified in internal documentation of a company. In practice the period for the storage of personal data is defined in terms of time or the existence of certain circumstances. Although it is not legally regulated, the State Data Protection Inspectorate is of the opinion that for the purpose of direct marketing personal data should be stored for as short period of time as possible; what is more, in the case of a consumer's (data subject's) refusal of consent the storage of personal data must immediately be terminated.

When using personal data in direct marketing, it is also important to take into consideration the statutory duty of a marketing provider (businessman) to make a person (data subject) familiar with his right to refuse consent to his data processing for the purpose of direct marketing. A person may, without indicating reasons, refuse consent to his data processing for the purpose of direct marketing in any form acceptable to him, i.e. either orally or in writing. When a data subject expresses refusal of consent, the data controller (businessman) must terminate personal data processing immediately and without payment, and inform other persons to whom the respective user's personal data were transferred. Moreover, a businessman processing personal data for the purpose of direct marketing also needs to respect other rights of the consumer (data subject), including the right to be aware (be informed) of his personal data processing, the right to get access to his data being processed and be aware of the method of processing, the right to request correction or cancellation of his personal data or the right to request to stop processing his personal data.

Under the provisions of paragraph 2 of Article 14 of the Law of the Republic of Lithuania on Legal Protection of Personal Data, a business subject (data controller) must provide the consumer (data subject), whose personal data are being collected directly from him, with the following information, unless the consumer (data subject) already has such information:

1) information about its own (data controller's) identity and the identity of its representative, if any, and the place of residence (if the data controller or its representative is a natural person) or the requisites and the registered office (if the data controller or its representative is a legal person);

2) purposes for which the personal data of the data subject are processed;

3) other additional information (to whom and for which purposes the personal data of the data subject are provided; the personal data which must be provided by the data subject and legal consequences of non-provision of data; information about the data subject's right to get access to his personal data and the right to require to correct erroneous, incomplete, imprecise personal data), required to ensure proper processing of personal data without violating the rights of the data subject.

In order to protect interests of a person whose data are processed for the purpose of direct marketing, the Law of the Republic of Lithuania on Legal Protection of Personal Data stipulates the duty of the data controller, prior to providing personal data to any third parties (i.e. other business subjects), to inform the person about the third parties to which his personal data will be disclosed and for what purposes.

When processing personal data for the purpose of direct marketing, the required technical and organisational measures to ensure security and confidentiality of the data should be undertaken. The company's personnel should be constantly informed about such measures and the necessity to comply with them.

As stipulated in Articles 214^{14}-214^{17} of the Code of Administrative Law Violations of the Republic of Lithuania, a company may be held liable for unlawful processing of personal data for the purpose of direct marketing. In practice administrative liability is applied rather actively; it is one of the most frequent violations of the rules on processing of personal data. According to Article 214^{23} of the Code of Administrative Law Violations of the Republic of Lithuania, liability is established for the violation of the procedure for processing personal data and the protection of privacy, stipulated in the Law of the Republic of Lithuania on Electronic Communications (see explanation below). Under the provisions of the Law of the Republic of Lithuania on Advertising, direct electronic marketing, when used without a consumer's consent, may incur a monetary penalty. Violations of this law are prosecuted by the State Consumer Rights Protection Authority. Moreover, general civil liability is applied for damage caused by unlawful marketing communicationYet another regulation related to direct marketing through electronic communication channels (direct electronic marketing) until 1 January 2009 was stipulated in paragraph 2 of Article 68 of the Law of the Republic of Lithuania on Electronic Communications: the use of the data of the undertakings' clients for the marketing of the same undertaking's products or services without a prior consumer's consent was allowed. Until 1 January 2009 different regulations regarding non-electronic direct marketing and electronic direct marketing existed: in the first case the right to provide marketing material to the existing clients and process their personal data for that purpose was not established.

Article 68 of the Law of the Republic of Lithuania on Electronic Communications sets fort that the use of electronic communication services, including sending of e-mail messages, for the purpose of direct marketing is allowed only if a prior consent of a subscriber is given. It should be noted that, differently from the Law of the Republic of Lithuania on Legal Protection of Personal Data, the Law of the Republic of Lithuania on Electronic Communications regulates direct marketing in respect of both natural and legal persons. The law does not specify how a prior consent of a subscriber (both natural and legal person) needs to be obtained; however, it sets forth that a sender (doing it on his own initiative or upon the instructions of other persons) is responsible for the compliance with the above provision, and in case of its violation administrative liability for unlawful use of electronic communications services (e.g. sending spam) applies to the sender.

Although the primary focus of the abovementioned laws is on the legal regulation of spam, they stipulate the prohibition of the use of e-mail messages, short messages (SMS), automated calling systems without human intervention (automatic calling machines), and facsimile machines (fax) for the purpose of direct marketing.

Paragraph 2 of Article 68 of the Law of the Republic of Lithuania on Electronic Communications is exceptionally devoted to the regulation of electronic direct marketing through e-mail messages, which is extremely significant. Until 1 January 2009 more preference was given to electronic direct marketing in comparison with non-electronic direct marketing. It stipulates that a person who obtains from its customers their electronic contact details for electronic mail, in the context of the sale of a product or a service, in accordance with the procedure and conditions set out in the Law of the Republic of Lithuania on Legal Protection of Personal Data, may use these

electronic contact details for marketing of its own similar products or services under the following two conditions:

1) customers clearly and distinctly are given the opportunity to refuse consent, free of charge and in an easy manner, to such use of electronic contact details for the above purposes when they are collected; and

2) on the occasion of each message, in case the customer has not initially objected to such use of the data.

It is prohibited to send e-mail messages for the purpose of direct marketing if:

1) the identity of the sender in whose name the information is sent is concealed, or

2) the valid address to which the recipient could send a request to terminate sending such information is not indicated.

From 1 January 2009 analogous provisions were transferred to the Law of the Republic of Lithuania on Legal Protection of Personal Data, thereby somewhat unifying the legal regulations of electronic and non-electronic direct marketing.

To summarize, in accordance with the laws of the Republic of Lithuania (valid from 1 January 2009), electronic direct marketing is allowed only if a prior consent of a consumer is obtained (opt-in), except for the only case when it is carried out for marketing of a company's similar products or services to the already existing clients. The conflicting provisions still remain in the Law of the Republic of Lithuania on Advertising, which recently became a basis for controversial sanctions against e-marketers (e.g. the decision of the Vilnius District Administrative Court of April 6th, 2009 in the Administrative Case No. I-679-473/2009). Although the EU law leaves full discretion to national regulation and even recommends a more liberal approach to direct marketing, the regulations established in Lithuania are among the most stringent in the EU, and the supervision of the application of the regulations by the State Data Protection Inspectorate and the State Consumer Rights Protection Authority is extremely strict. All this hardly corresponds to the actual situation in the Lithuanian economy and the issues of competition and business development. Bearing in mind a relatively small proliferation of SMEs in Lithuania and the entrepreneurship rates which are among the lowest in the EU, it is easy to assume that opportunities and advantages of direct electronic marketing must be taken into consideration. Legally, direct electronic marketing in Lithuania is almost identified with spam and is significantly restricted. Legal regulations correspond neither to the interests of business nor to the interests of Lithuanian consumers to get relevant information (e.g. regarding discounts, prices, etc.) and are an obvious obstacle to the development of SMEs and an adequate informing of the public.

According to the State Data Protection Inspectorate, the above regulation of direct marketing is aimed at fighting spam and other undesirable direct marketing; however, it is not efficient enough, as sanctions for the violation of direct marketing rules are relatively mild, while the efficiency of such marketing and return on investment is high and compensates for direct risk. Moreover, strict legal regulation does not safeguard at all against direct electronic marketing originating from abroad. From the social-economic point it is also important because foreign entities (e.g. business in Scandinavian states) are successfully taking advantage of a more favourable legal framework regarding direct marketing and, therefore, have an advantage over Lithuanian business.

In conclusion, a strict and complex legal regulation of electronic marketing comes nowhere near eliminating the negative aspects of electronic marketing; rather it deprives SMEs of the possibility to take full advantage of the beneficial direct electronic marketing and undermines competition.

Best Practices for Using Direct Electronic Marketing by SMEs: How to Overcome Negativity?

The analysis of the Lithuanian legal regulations pertaining to electronic direct marketing shows that there have been no attempts to take into account the interests of SMEs. The unconditional requirement of a consumer's prior consent leaves no space for business interests and particularly for SMEs' interests, because the obtainment of such consent may be expensive and complicated (i.e. possible benefit from direct electronic marketing is largely outweighed) or even impossible (if a consumer does not realise the benefit he could derive from direct electronic marketing, i.e. does not see the marketing itself, the individualised offers, discounts, etc.).

Even if considering marketing directed to the existing clients of certain companies, only their own similar products and services can be advertised, thus restricting the marketing of business entities of the same group (which may be established exclusively for the purpose of business risk management), and the marketing of different products and services provided by the same business entity (even if they are complementary).

In the Lithuanian legislation direct marketing is treated as a business interest. A business or economic

interest may not be single-sided: on the one side, the seller wishes to sell what he has, on the other side, the buyer wishes to buy what he needs (Steponavičienė, 2006). As it has been already mentioned, while seeking to balance business and consumer interests in direct electronic marketing, it is impossible to avoid a clash between the advantages of direct electronic marketing to business and the possible abuse of it, likewise between a consumer's need for information and need for privacy. These needs must be balanced. It is also necessary to realise that pressure arises not due to the clash between privacy or personal data protection (as formal social values) and a possibility to provide/receive marketing communication (as an economic value). The social pressure is mainly caused by excessive and unlawful direct electronic marketing, spam, as well as by total disregard for person's privacy. Solely due to extreme frequency and social resonance of such phenomena we tend to impose tight restrictions on any direct marketing, including direct electronic marketing.

A balance is necessary at the level of personal interests, i.e. the same person wishes to receive information, to protect his privacy and to provide information about his products and services to others. When business does not have the possibility to provide and does not receive the required information, products and services are of lower quality, while their prices are higher. If legal risks in the processes providing and obtaining information are not reduced, the cost of products and services will become substantially higher, i.e. the risks will be shifted to consumers.

In most European states, including the Scandinavian states, direct marketing, as well as direct electronic marketing, is regulated in a much more liberal manner seeking to leave a possibility for both business and consumers to make use of the advantages of direct electronic marketing. The main regulation measures are the following:

- Regulation of direct marketing according to the opt-out principle (e.g. Sweden). In order to avoid the abuse of direct electronic marketing, opt-out registers of all consumers not wishing to receive direct electronic marketing messages may be compiled. Sending direct electronic marketing messages to a consumer registered in such a register is treated as a violation of law; however, sending direct marketing messages to the remaining part of consumers is allowed.
- More liberal regulations regarding the consumers' consent. It should be a legally unrestricted consumer prerogative to determine a balance between his economic and privacy interests. Therefore, it is expedient to unify the ways of possible refusal of consent in future (taking into account the fact that it might be difficult for a consumer to find a business subject to which his consent was previously given and contact it). State interference would both ensure protection of consumers' interest and provide transparency to business units.
- Self-regulation and codes of ethics are means of non-state social regulation which may be applied not only to direct marketing. The establishment of self-regulation and codes of ethics in direct marketing was proposed in 1985 in the Recommendation No. R(85)20 of the EU Committee of Ministers. Self-regulation would provide businessmen with a possibility to determine acceptable rules for the combination of the interests of both business and consumers. The abovementioned factors regarding the efficiency of direct electronic marketing and its acceptability to consumers could serve as a point of reference for creating such rules.
- Business-consumer partnership and active collaboration in respect of undesired direct electronic marketing, identification of abuse, ascribing certain privacy quality seals for suppliers of direct electronic marketing which comply with the codes of ethics.

It should be mentioned that the acceptability of electronic direct marketing is proportional to the extent of privacy invasion. The more forthright and personal direct electronic marketing is, the less it is acceptable, e.g. marketing by SMS messages or pop-up marketing is identified as extremely invasive and unacceptable, while direct electronic marketing by e-mail messages (in cases when a consumer has expressed his wish to receive them) is more acceptable to consumers (Elkelä, 2005).

Efficiency and acceptability of electronic direct marketing may be influenced by the following factors (Stone, 2007; Tapp, 2009):

- A consumer wishes to get marketing messages about products or services (e.g. for special discounts);
- Products or services offered are valuable or useful to a consumer;
- A consumer wishes to get products or services at a particular moment;
- A consumer receives marketing messages about the intended service in a convenient and unobtrusive form;

- Marketing is as less invasive as possible, e.g. a consumer is not required to react immediately, it does not invade his privacy (e.g. the consumer's desktop or operation system);
- The amount of marketing must not go beyond the limits of common sense (not more than 1 message per several days).

These factors should be the starting point for any successful electronic marketing campaign. Following such best practice would also help in reshaping the negative image of direct electronic marketing, which is currently overshadowed by spam.

The abovementioned measures and acceptability factors should be considered in order to create the possibilities for SMEs to take advantage of direct electronic marketing in Lithuania.

Conclusions

Summarizing the analysis, the following conclusions can be drawn:

1. Direct marketing has considerable economic value for businesses and particularly for SMEs. It is also beneficial to consumers and competition; however, simultaneously may affect personal privacy.

2. The analysis of the U.S. business experience shows that direct marketing is among the most efficient marketing channels; however, the analysis of the Lithuanian experience demonstrates that the advantages of direct electronic marketing are not considered while establishing the regulatory business environment and negative perceptions and strict regulations deprive the businesses of the possibility to take advantage of direct electronic marketing. Such a situation in Lithuania may negatively impact entrepreneurship, business environment, competition and juxtapose business against the public.

3. Best practice principles for acceptable direct electronic marketing focusing on consumer interests and convenience may both increase the benefit of such marketing to consumers and overcome negative perceptions. SMEs adopting these principles may uncover the value of the direct electronic marketing and minimise social risks.

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MAŽŲ IR VIDUTINIŲ ĮMONIŲ TIESIOGINĖS ELEKTRONINĖS RINKODAROS GALIMYBĖS

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Santrauka. Straipsnyje nagrinėjama elektroninė tiesioginė rinkodara, ypač jos taikymas mažose ir vidutinėse verslo įmonėse (MVĮ). Analizuojami tiesioginės elektroninės rinkodaros pranašumai ir neigiami aspektai, statistika, pateikiama išlaidų ir pelno analizė, ypač daug dėmesio skiriant jos potencialui ir galimam panaudojimui MVĮ. Aptariamos galimybės subalansuoti asmeninius privatumo ir ekonominius verslo interesus, taip pat identifikuoti galimybes tinkamiausiai panaudoti tiesioginės rinkodaros instrumentus MVĮ.

Nors tiesioginė rinkodara ekonomiškai naudinga ir verslui, ypač MVĮ, ir vartotojams, tačiau gali pažeisti asmens privatumą. Deja, dėl galimų privatumo pažeidimų dažniausiai visa tiesioginė elektroninė rinkodara yra tapatinama su neigiamais ir nepriimtinais socialiniais reiškiniais. JAV įmonių patirties analizė byloja, kad tiesioginė elektroninė rinkodara yra vienas efektyviausių verslo rinkodaros būdų, tačiau Lietuvos patirtis rodo, kad jos pranašumai nėra įvertinti ir neigiamas įvaizdis bei nepalanki teisinė aplinka trukdo jos plėtrai.

Straipsnyje apibendrinama geriausia praktika siekiant suderinti asmeninius privatumo ir ekonominius verslo interesus, sumažinti tiesioginės elektroninės rinkodaros rizikas. Siūlomi kriterijai, didinantys tiesioginės elektroninės rinkodaros efektyvumą MVĮ ir priimtinumą vartotojams, taip pat verslo aplinkos patobulinimai, pabrėžiantys verslo, taikančio tiesioginę elektroninę rinkodarą, savireguliacijos svarbą.

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