

Viral advertising – social media and neuroscience

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Priming

- Pick a word:
 - Good
 - Great
 - Excellent
 - Fantastic
 - Outstanding

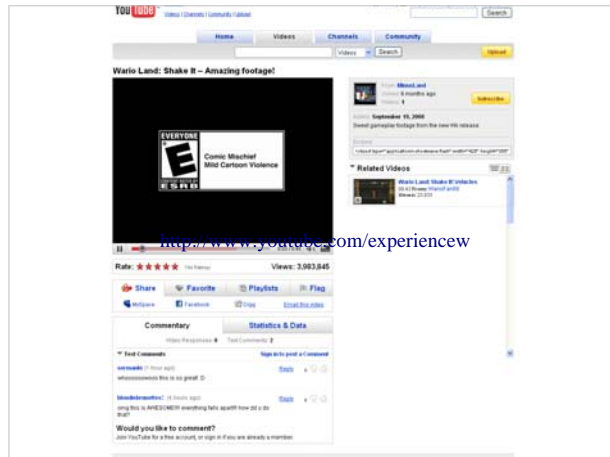


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Viral advertising

- Legal issues
 - [Privacy]
 - Identification
 - Spam
 - Buzzing
 - [International issues]
- Policy issues
 - Who should be regulated?
 - What is »unfair«?
- Consider »best case scenario«



<http://www.youtube.com/experiencew>

User generated advertising

- Viral advertising
 - Enthusiastic fanbase
 - Communities (e.g. Facebook)
 - LEGO Ambassador Program
- But why?
 - Entertained users?
 - Status seeking users?
 - Dopamine?
 - Payment, endorsement, benefits?

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Non-commercial activities

- What is a commercial activity?
 - Approaches
 - Sender, content and context/framework
 - Adopt, endorse or sponsor
- Should it be regulated?
 - Free speech vs unfair practices
 - Commercial vs non-commercial speech
 - Degree/nature of encouragement
 - Who is responsible?

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Examples

- Tobacco directive (2003/33)
 - Private or public sponsorship
- Audiovisual Media Services Directive (2007/65)
 - Surreptitious audiovisual commercial communication is prohibited
 - »intended by the media service provider to serve as advertising«
 - In particular if consideration

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The EU regulatory framework

- Unfair commercial practices directive (2005/29)
 - The Internal Market
 - Legal standard
 - Contrary to professional diligence
 - Likely to *distort economic behavior* materially
 - Misleading and aggressive practices
 - Blacklisted commercial practices
- Misleading and comparative advertising directive (2006/114)



Identification of advertising

- Misleading omission not to identify commercial intent
 - 11) Advertorial (also blogs etc.?)
 - Product placement
- Undue influence («aggressive»)
- Identification of the advertiser
 - E-commerce and invitation to purchase

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Unsolicited advertising

- E-privacy directive (2002/58)
 - What is «electronic mail»?
 - »Public communication Network«
 - Messages and applications on Facebook
 - Sent by who?
 - »Use of ... purposes of direct marketing ... «
 - Concealing the identity
 - Omit reply address
- Aggressive commercial practice
 - 26) persistent and unwanted solicitations



(Ab)use of social relations

- Buzzing
- ICC code
 - »... factors likely to affect consumers' decisions ... communicated in such a way and at such a time that consumers can take them into account.«
 - Children: »not undermine positive social behaviour, lifestyles and attitudes« and »not exploit inexperience or credulity«
 - »... not suggest that possession or use ... will give ... physical, psychological or social advantages ...«



Neuroresearch in advertising law

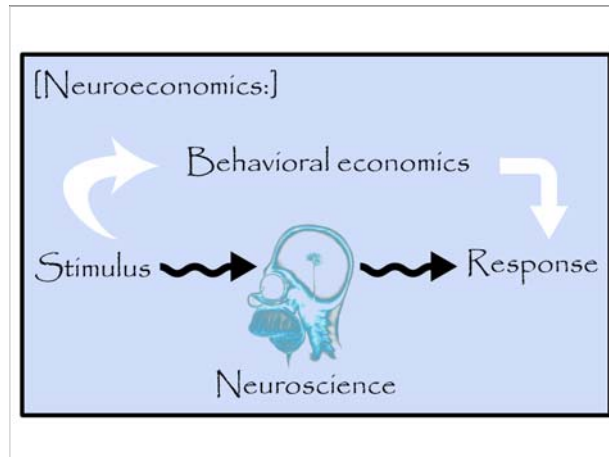
- Misleading advertising
 - Gut Springenheide (C-210/96)
 - »... presumed expectations which it evokes in an average consumer ...«
 - Does not preclude consumer poll or *expert's report* as guidance for judgment
- Unfair commercial practices
 - Undue influence: exploit power ... limits ability to make an informed decision

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Developments in advertising law

- Informational advertising
 - Price indication
 - Misleading advertising
 - Comparative advertising
- Image and lifestyle advertising (emotions)
 - »Signaling theory« (investment)
 - Unfair commercial practices
- Consumer interaction (2.0)
 - No (commercial) »signaling«



What we can learn from neuroscience

- How do we make choices?
- What is unfair?
 - Distort economic behavior materially
 - Misleading or likely to mislead
 - What about emotions?
 - What kind of [ir]rationality?
 - Goals are about what we value
 - The brain is build for survival
 - How does it cope with symbolic values?
 - Is it unfair to earn money?

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Dopamine

- »Reward prediction error«
 - Dopamine plays an important role in our valuation system
 - Addictions
 - Drugs, gambling, shopping etc.
- May be the new utility
 - Advertising
 - Brands influence the reward
 - The nervous system can simulate experiments

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The greatest city in the world



Thank you for your attention

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