

# Reasonable Regulation on Identifiability of Online Video Implantable Advertising

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**Abstract.** Due to its low identifiability, online video implantable advertising affects the consumer's right to know, especially the implicit implantable advertising. To better protect the consumer's right to know, online video implantable advertising needs to be identified and its identifiability needs to be reasonably regulated. By observing the advertising release of three typical players and their webpage online videos, drawing lessons from some professionals' perspectives, this paper proposes the criterion of identification, the identification method and the reasonable regulation of the online video implantable advertising.

## Introduction

Online video implantable advertising is an advertising form that advertisers organically integrate goods, brands, trademarks or other representative signs, services with online videos to carry out advertising and achieve marketing purposes. In September 2017, iQIYI, Tencent Video and Youku ranked to the tops on the online video platform with 480 million, 470 million and 330 million monthly active users respectively. By observing the advertising release of the three players and their webpage online videos, it was found that online video implantable advertising can be divided into two types: explicit implantable advertising with high identification and complete separation from video content, and implicit implantable advertising with lower identification and complete integration into video content.

## Online Video Implantable Advertising's Low Identifiability Affects the Consumer's Right to Know

Online video implantable advertising, especially the implicit implantable advertising, has low identifiability, and its increasing number affects the consumer's right to know.

Article 14 of the Advertising Law stipulates: "Advertising should have identifiability and enable consumers to identify it as advertising." The identifiability of advertising is closely related to the consumer's right to know. According to the "Interpretation of the Advertising Law", the minimum standard of identifiability of advertising is that it enables consumers to identify it as advertising. To be specific, it has the characteristics of making consumers know that it is an advertisement at a glance, ranging from the formal requirement, the content to the publish method. For example, when using television and newspapers to publish advertisements, there should be special prompts or obvious characteristics in terms of time and layout.

Knowing that it is an advertisement is the consumer's right to know. Consumers have the freedom to accept or not accept goods or services, and the premise of exercising such freedom is that consumers have the possibility to judge the goods or services, which comes from consumers' understanding of the goods or services, that is, the consumer's right to know. For online video, consumers are free to select continue or stop watching videos according to their own consciousness if they know enough to clearly identify that the video content contains a certain implantable advertising; on the contrary, if it is not clearly identifiable, or even indistinguishable, it is easier for consumers to reject the real selection, and even choose to accept implantable advertising without

realizing that they are in violation of their true intentions. From this point of view, implantable advertising with low identifiability violate the consumer's right to know by affecting their degree of identification.

Explicit implantable advertising with high identification and complete separation from video content has less impact on the consumer's right to know because it is easily identified by consumers; while implicit implantable advertising with lower identification and complete integration into video content, which is easily mistaken as a part of the video plot, has greater impact on the consumer's right to know because it is difficultly identified by consumers. Therefore, it is necessary to reasonably regulate online video implantable advertising, especially implicit implantable advertising.

### **Identification of Online Video Implantable Advertising**

The consumer's right to know is closely related to the identifiability of advertising. In order to protect the consumer's right to know, the identifiability of online video implantable advertising must be reasonably regulated.

#### **Criterion of Identification**

Implantable advertising is in line with the definition of advertising in Advertising Law. Commercial advertising is a form of information communication between producers and consumers, with its essence of a way for producers to spread information such as goods and services. Article 2 of "Advertising Law" stipulates that "In the territory of the People's Republic of China, this Law shall apply to commercial advertising activities in which commodity operators or service providers directly or indirectly introduce the goods or services they promote through certain media and forms." In accordance with the definition of advertising in this Article, the characteristics of commercial advertising are: first, the purpose of advertising is to introduce the goods or services being promoted and the method of introduction can be direct or indirect, which is the essential characteristic of commercial advertising; Second, through a certain medium or form to introduce the goods or services being promoted and conduct advertising. Implantable advertising as an advertising form, in which advertisers sell goods and services to consumers through the communication media to complete advertising for marketing purposes, conforms to the essence of commercial advertising to promote goods or provide services. Therefore, implantable advertising conforms to the definition of advertising in Advertising Law and should be regulated by the Advertising Law and the criterion of identification of implantable advertising mainly lies in whether the purpose is to promote goods or provide services.

#### **Identification Method**

As mentioned above, the main judgment for implantable advertising is whether it is aimed at promoting goods or providing services. Relatively speaking, explicit implantable advertising is easy to be identified because it is completely separated from video content; while implicit implantable advertising is difficult to be identified because it is integrated with video content. The identification of implicit implantable advertising is the key to solve the problem of identifiability of online video implantable advertising.

Judging the purpose of promoting goods or providing services is a subjective judgment; judging the subjective state itself through objective external performance has certain uncertainty. The content of online video is bound to use a variety of goods or services due to the need to present various specific scenarios. Therefore, online video implicit implantable advertisements are also available in a variety of forms, including lines implanting, props implanting, scene implanting, close-up implanting, etc. The difficulty of identifying online video implicit implantable advertising lies in how to determine whether specific forms such as lines, props, and scenes are part of the design of video content or part of the implantable advertising.

As for the identification method, this paper agrees with the "reasonable use of standard" and

“intention standard” proposed by Xie Xiaoyao and Duan Yunlei in “Legal Reflection on Implantable Advertising”. The reasonable use of standard refers to whether time point, duration, frequency, relevance degree of advertising content and video content of online video implantable advertising are necessary for the video plot and whether the content is understood by consumers. In order to achieve the effect of advertising goods and services, implantable advertisements will surely try their best to increase the visibility of advertising content from the perspective of time, frequency, and show way. The requirement to show advertising content for the purpose of promoting goods and services is different from the requirement to show goods or services for the purpose of video plots. For the needs of the video plot, the presentation of lines, props, scenes, close-ups, etc. fully serves the video plot, not necessarily too obvious; while implantable advertising must increase the exposure of goods and services to promote goods and services, and its content will inevitably conflict with video content, or even obtrusive. Therefore, implicit implantable advertising should exist in the scenes, close-ups and obtrusive content that are frequently appeared in video and obviously beyond the reasonable degree. Intention standard focuses on distinguishing the operability of props, plots, etc. to distinguish whether real goods are inevitably objectively presented in film and television works, or are intentional results. The lower the controllability, the less likely the advertisement is to be intentional; the higher the controllability, the more likely it is to be used for advertising purposes. It is believed that the existence scope of online video implicit implantable advertising can be defined by the distinction of controllability: the probability of implantable advertising is higher in situations with higher controllability.

### **Reasonable Regulation on Identifiability of Online Video Implantable Advertising**

The key to regulating the identifiability of online video implantable advertising is to properly solve the disclosure problem of online video implicit implantable advertising. The identifiability of implantable advertising is closely related to the disclosure of advertising; the higher the disclosure, the higher the identifiability, and the consumer’s right to know can be better protected. Article 14 of Advertising Law stipulates that “The mass media shall not publish advertisements in the form of news reports. Advertisements published through the mass media shall be clearly marked as ‘Advertising’ to be distinguished from other non-advertising information and shall not mislead consumers.” By observing the release of online video advertisements on iQIYI, Tencent Video and Youku and their web pages, it was found that consumers were informed of the disclosure before the display of explicit implantable advertising, that is, in general, without affecting the premise of video playback, information such as prompts for advertisements and time will appear at the edge of the video screen. In this way, consumers clearly know that the content of the next period of time is advertising, and their right to know is maintained. However, the extent of disclosure of online video implicit implantable advertising is worrying, because there is almost no prompt or sign in the video content to clearly indicate that a specific plot is an advertisement. From this point of view, how to properly disclose implicit implantable advertising is an important issue to regulate the identifiability of online video implantable advertising.

To make consumers clearly know the existence of online video implicit implantable advertising, this type of advertising should be clearly marked with prompts or signs such as *advertising* or specific advertiser. However, if there is no reasonable regulation on the location, duration and frequency of relevant prompts or signs, the video screen must be filled with a large number of advertising prompts or signs, and even the content of the advertising prompts covers the video content. For example, the large number of barrage appeared in video display: the picture of video is completely submerged by the barrage, which certainly affects consumers’ sentiment. This means that it is necessary to reasonably regulate the location, duration and frequency of the prompts or signs of online video implicit implantable advertising.

The regulation of online video implicit implantable advertising can draw lessons from some existing regulation content such as Taiwan or foreign countries. For example, Han Xiaofei and Shao Jiawei introduced the regulation of implantable advertising in Taiwan in “Comparative Analysis of

Implanted Advertising in Mainland and Taiwanese TV Programs”: Based on the principle of “three not and one expose”, which are not to affect the independent production of the program, not to encourage the public to buy, not to over-present the product, and expose the name of the owner, the time of product placement shall not exceed 5% of the total duration of the program. Zhang Wenfeng introduced the EU’s “Audio-visual Media Service Directive” in his “Content Regulation of New Audio-visual Media in EU”, which stipulates: the audience should be well informed of the existence of sponsorship in programs; the editorial responsibility and independence of the program providers shall not be affected in television programs; the purchase and rental of a product or service shall not be directly encouraged; products shall not be over highlighted in programs. It can be seen that on the premise of ensuring that consumers clearly identify the existence of advertising, the regulation on implantable advertising mainly focus on the disclosure of advertiser’s information, advertising content, appearing time, duration, promoted goods or services, etc.; and the video production shall not be affected.

China’s video regulation can draw lessons from the above concentrated aspects of regulation. Article 14 of the Advertising Law stipulates: “When publishing advertisements, broadcasting stations and television stations shall abide by the provisions of the relevant departments of the State Council on the duration and manner of advertising, and shall give obvious indication to the duration of advertising.” The specific content of the disclosure of the online video implicit implantable advertising should be further specifically regulated, including advertising prompts or signs, specific information of advertisers, etc., the appearing time, duration, frequency, advertising degree, etc. of the online video implantable advertising should be quantified, and the specific degree of affecting the video production should be clearly regulated. Therefore, the consumer’s right to know can be effectively maintained.

## Summary

In conclusion, the consumer’s right to know of the consumer groups of online video about the implantable advertising can be effectively maintained through reasonable regulation of the identifiability of implantable advertising.

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