

The Legal Side of Targeted Advertising **AND ZOMBIES**

Thomas Chow keeps advertising intelligence company [Exponential Interactive](#) on the right side of international laws

By Jeff Silver

Log onto any website and you may see targeted advertising customized to your personal interests and activities, but you probably don't think about the complexity of what it takes to make that banner ad or video appear: The site itself connects to an ad server. The server determines whether you are an appropriate target for the advertiser's content based on data that has been harvested about your web surfing patterns and interests. It then connects to another server where the content is communicated to the ad server, to the site, and to your screen. And there may be another dozen related interactions that all happen in microseconds, on a daily basis, billions of times around the globe.



Thomas Chow
Exponential
Interactive
General Counsel,
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Secretary

Exponential Interactive utilizes "advertising intelligence" to enable these types of interactions. Through its network of more than 2,000 websites, it uses cookies to gather user information, and combines that with third-party data and analytics to determine the client ads best suited to the viewer. Using this model, the company is active in twenty-two countries, posts annual revenue in excess of \$100 million annually, and in December of 2015 was rated by Comscore as the sixth-largest online advertising network.

With such huge volume and global reach, Exponential faces several key legal concerns, according to Thomas Chow, general counsel and chief compliance officer. The first concern stems from privacy issues related to the use of personal data and variations in privacy laws from one country to the next. Since tailoring practices and policies for each jurisdiction is nearly impossible, Chow and the product team follow blanket guidelines that comply with the strictest regulations. Similar steps are taken to address compliance with methods for data gathering and security once the data is harvested.

Chow and his legal team take extraordinary care addressing these issues because they understand the ramifications they hold for Exponential's clients and for consumers. "Naturally, our clients are concerned about their image, relationships to customers, and potential liability," Chow says. "Consumers are becoming more aware of how targeted advertising works by tracking and monitoring their online activities, and that frightens some of them. So we conform to the highest compliance standards to protect everyone's interests, including our own."

Not only do applicable law and industry guidelines vary across the globe, the rules and the technology they govern change constantly. Along with a staff of only three attorneys, Chow consults frequently with outside experts and is not beyond doing Google searches to dig deeper into ongoing matters. Another tool he relies on is GC Navigator from Wolters Kluwer, which provides the team access to comprehensive case and issue information, multistate checklists, and applicable international statutes.

"We're a startup and don't have the luxury of unlimited budgets for consulting external counsel," Chow says. "If I can save five to eight hours of legal research

from an outside firm, a service like GC Navigator has already paid for itself."

An example of the changing nature of global privacy and data requirements is the European Union's stance regarding the US-EU Safe Harbor program. Safe Harbor enabled data to be transferred from the EU, which has some of the strictest regulations in the world, to servers within the United States, which has less uniform regulations. In October of 2015, however, the framework was struck down by the European Court of Justice, and one of the two remaining mechanisms for authorized data transfer has also been called into question. This means the only way for Exponential to stay in compliance is to add EU-approved clauses to a large number of individual client and vendor contracts.

"The Safe Harbor issue is indicative of our work. It's nearly impossible to anticipate changes, so we've learned to scramble, quite effectively, to catch up with the issues that constantly blindside us," Chow says.

On the flip side, part of his job is anticipating where trends in the uses of big data and analytics are headed in the advertising world. "The [use of personal data by

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advertisers] will continue to make some consumers very emotional," Chow says. "At the same time, as the technology and regulations keep changing, there will likely be an ongoing game of cat and mouse between consumers and advertisers as each tries to outsmart the other."

Chow and his legal team continue to ensure that Exponential's practices and clients' content and campaigns adhere to the most stringent worldwide standards. He admits to one exception: "In the UK we got a complaint about a client's Halloween campaign featuring an SUV escaping a horde of zombies being too graphic to display on a website accessible to minors," he says.

Blindsided once again. ●

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