

# VFI Executive Briefing

## A weekly roundup of technology news

### February 27 – March 3, 2017

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## HILL UPDATE

### **The Hill** [House Judiciary signals reauthorization of NSA surveillance powers with privacy tweaks](#)

At a Wednesday public hearing, The House Judiciary Committee generally agreed that a controversial surveillance measure was both necessary for renewal and in need of some reform. Foreign Intelligence Surveillance Act Section 702 allows the NSA to monitor the communications of foreign citizens outside of the United States. While the intelligence community touts it as a vital component of its surveillance apparatus, critics note that United States citizens communicating with foreigners can also have data captured. “I believe when it comes to terrorists, we hunt them down and kill them. I don’t believe anyone on this committee has any problem with Section 702 in how it goes after foreign bad dudes in foreign nations,” said Rep. Ted Lieu (D-Calif.).

### **Politico** [Morning Tech: Cornyn Still Intent On ECTR Fix](#)

Politico reported on comments made by Sen. John Cornyn indicating he intends to push for an amendment to the Email Privacy Act that would address access to electronic communication transaction records. Sen. Cornyn introduced a similar amendment last year that ended up stalling the bill in the Senate.

## ARTICLE SUMMARY

### **MIT Technology Review** [This Is Why Encryption Is a Such a Headache for Lawmakers](#)

MIT Technology Review published an article examining a [new report](#) from the Center for Strategic and International Studies (CSIS) on the effect of encryption on lawful access to communications and data. The article notes that any “national law that restricts [encryption] or gives the government special access to encrypted data will not eliminate obstacles the technology raises for law enforcement.

### **Ars Technica** [At US Patent Office, a mystery lingers: Who’s in charge?](#)

The US Patent and Trademark Office has offered the first indication in weeks about who's in charge. Yesterday, at an event for lawyers who practice at USPTO, Michelle Lee was introduced as the office's director. Lee has been running the office for years, so such an introduction would normally be the ultimate non-event. But yesterday's acknowledgement comes after several weeks during which the office refused to answer a simple question: Who is the director of the US Patent and Trademark Office? When President Donald Trump was inaugurated in January, DC-centric publications including The Hill and Politico reported that Lee, a former Google lawyer who is favored by the tech sector, would remain in her office. But weeks later, the USPTO director position continues to be listed as "vacant" on the Commerce Department's website.

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#### **Washington Post** [What the World Wide Web of the 1990s can teach us about Internet policy today](#)

FCC Chairman Ajit Pai is looking to the early days of the Internet for inspiration as he seeks to reduce the role of regulation in the networks that help millions of Americans find jobs, do business and seek entertainment. At an industry conference Tuesday in Barcelona, the nation's top telecom regulator said he plans to use key policy decisions made in the 1990s and early 2000s as a guide for his own agenda. Those early decisions include, he said, a bipartisan consensus to not require Internet providers to obey "outdated rules crafted in the 1930s for a telephone monopoly." He also cited a Bush-era commitment to give Internet providers sole control over broadband networks that they built, rather than adopt a European-style system permitting other companies to use those same cables to sell competing Internet service.

#### **IPWatchdog** [Will the Trump Administration Be Pro Patent?](#)

One of the many questions about the Trump Administration after its first month is how it views the U.S. patent system. Predicting Patent Policy Under the Trump Administration by Mark Hannemann and his colleagues at Shearman & Sterling, LLP, which seems to echo the earlier analysis of Peter Harter and Gene Quinn on the topic (see here, here and here), is an excellent summary of the on-going patent reform debate with informed speculation on where the Trump Administration will come down.

#### **Wall Street Journal** [Indian Workers in U.S. Fear Trump H-1B Visa Crackdown](#)

NEW DELHI—Santosh Pillai was wooed to work in the U.S. for his coding skills more than a decade ago and has built a good life in Cupertino, Calif. He considers it home and is awaiting approval for his green card—but is now worried his family could be forced to leave. As President Donald Trump follows through on his campaign promises to tighten America's borders, Mr. Pillai fears he, his wife and two children may have to return to India. "It's like getting kicked in the stomach," said the 51-year-old, who works for an American computer-chip maker that he declined to name, fearful of added scrutiny. "The future is very uncertain." A draft of an executive order for Mr. Trump's consideration calls for the government to re-examine a range of visa programs to ensure they protect "the jobs, wages and well-being of United States workers." This includes the H-1B visa program, which provides visas for highly skilled foreign workers.

#### **Washington Post** [How we could close tech's gender gap in a decade](#)

We all know that the technology industry has a gender problem. But how do you move the needle from awareness to action? Sheryl Sandberg, Facebook's chief operating officer, and Girls Who Code, a nonprofit tech group, have an idea: take the fight to the states. Last week, the two hosted the first-ever Girls Who Code Governor's Summit at Facebook's headquarters in Menlo Park, Calif. The guest list included Govs. Mary Fallin of Oklahoma and Gina Raimondo of Rhode Island and Lt. Gov. Kim Reynolds of Iowa. Many organizations aimed at improving gender equality in the tech field have focused on changing the culture at tech companies in the past. But this was the first time an effort was aimed at the state level.

#### **Torrentfreak** [Lawmakers Won't Force Google to Police Piracy but Doubt Voluntary Code](#)

A Digital Economy Bill amendment that would've given the UK government the power to impose an anti-piracy code on Google has been withdrawn. Instead, the voluntary agreement announced this week will be given a chance to do its job, but in parliament, law lords were split over whether it will achieve its aims.

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#### New York Law Journal [Indefinite Gag Orders Under the Stored Communications Act](#)

The New York Law Journal published a column by Peter A. Crusco, executive assistant district attorney with the Queens County District Attorney's office, highlighting current lawsuits over the use of indefinite gag orders issued under the Stored Communications Act. Crusco references Microsoft's secrecy order litigation and Judge Robart's recent ruling in the case to detail the current legal debate regarding whether these orders violate the First and Fourth Amendments.

#### Notable Quotes

*"In denying the Department of Justice's motion to dismiss the suit and allowing it to proceed, District Court Judge James L. Robart discussed some of the issues being addressed nationally in this evolving area of the law. First, he analogized the gag orders to permanent injunctions preventing speech from taking place before it occurs, and concluded that Microsoft alleged sufficient facts to state a claim that certain provisions of §2705(b) failed the strict scrutiny test and violated the First Amendment."*

– [Peter Crusco, executive assistant district attorney, Office of Queens County District Attorney](#)

*"Millions of people are putting digital assistants in their lives with no clue about the potential havoc this Trojan horse could bring. Based on what Amazon and Google say about their devices, everyone needs to recognize the unresolved legal issues involving this new technology. Beware of who, or what, is listening."*

– [Gerald Sauer, partner, Sauer & Wagner LLP](#)

*"The legislation has nothing to do with fighting terrorism or otherwise protecting the nation, but simply corrects a glaring, 30-year-old mistake... But 30 years ago, Congress did not envision a world of such ubiquitous electronic communication and storage (although, even then Congress shouldn't have created any exceptions to the Fourth Amendment's requirement of a warrant)."*

– [Tom Giovanetti, president, Institute for Policy Innovation](#)

*"[The Fourth Amendment] must protect not only communications stored on our persons and in our homes, but also the natural extensions of those places enabled by the connectivity that drives our economy and powers our modern world. The government should obtain a warrant when seeking access to communications regardless of whether they are stored in mobile devices we carry or in the cloud that powers them.."*

– [Eric Wenger, director for cybersecurity and privacy, Cisco](#)

*"Everyone is concerned about terrorism and public safety, but this should never be misconstrued by the Trump administration as an invitation to circumvent the Fourth Amendment, which protects against unreasonable search and seizure."*

– [The Boston Globe editorial board](#)

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*“The authors of the new [CSIS report] estimate that 1.5 billion people in the world use messaging apps, including Apple’s iMessage and WhatsApp, with end-to-end encryption, which prevents third parties, including service providers, from being able to read messages. About 18 percent of the world’s total communications traffic is now inaccessible to law enforcement, they say.”*

– [Mike Orcutt, associate editor, MIT Technology Review](#)

## Social Highlights

- **@PaulNemitz:** [U.S. says Trump order will not undermine data transfer deals with EU via @Reuters #privacyshield #privacy #EUDatap](#)
- **@PSBJ:** [Amazon claims First Amendment protections for Alexa recordings in murder case, reports @CoombsPSBJ](#)
- **@BrianForde:** [A Murder Case Tests Alexa’s Devotion to Your Privacy](#)
- **@amir\_anasr:** ["Americans are counting you to do the exact same thing here" to protect privacy, @LizaGoitein, referring to House vote on Email Privacy Act](#)
- **@i2Coalition:** [We want to engage the Judiciary leadership on the Section 702 reauthorization issue.](#)
- **@TechCrunch:** [Email privacy could be a quick win for Trump and Congress by @tgiovanetti](#)
- **@theintercept:** [“There Are Very Powerful And Intrusive Tools That Can Be Used” To Turn Trump’s Rhetoric Into Reality.](#)