

VFI Executive Briefing

A weekly roundup of technology news
March 28 - April 1, 2016

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SPECIAL COVERAGE

The withdrawal of the DOJ legal effort in the San Bernardino iPhone Case received a lot of coverage this week. Here are several articles about the topic including the information about the Feds using the All Writs Act to compel Apple and Google to unlock their phones 63 times.

- **New York Times** [U.S. Says It Has Unlocked iPhone Without Apple](#)
- **Forbes:** [FBI Wants Access To Another ISIS-Linked iPhone -- Will It Demand Apple Aid?](#)
- **Ars Technica:** [Feds used 1789 law to force Apple, Google to unlock phones 63 times](#)
- **The Guardian:** [In the wake of Apple v FBI, we need to address some uncomfortable truths](#)
- **The Huffington Post:** [The FBI versus Apple case has left a sour taste](#)
- **Gizmodo** [The Feds Ordered Google to Help Unlock Phones, and Google Didn't Fight Back](#)
- **The Hill** [FBI agrees to hack iPhone in Arkansas homicide case](#)
- **The Boston Globe:** [ACLU wants iPhone hacking case in Boston to go public](#)

ARTICLE SUMMARY

The Hill [Preserving email privacy requires closing a loophole, and not creating another](#)

In 1986, as email was just starting to become a consumer product, Congress passed the Electronic Communication Privacy Act (ECPA) based on a simple concept: Americans' private papers, whether hard copy or electronic, should be protected from government search without a warrant. A broad spectrum of civil libertarians, technology experts, and businesses united to create ECPA to apply this principle as law, and apply it across government. Any government entity, whether it is the FBI, local law enforcement, or a civil agency, should not be able to access your emails if it doesn't have a warrant. Sadly, some in government now want to change that principle we strove for.

The Hill [FBI reversal in Apple fight draws critics' ire](#)

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The FBI's last-minute decision to press pause in their legal fight with Apple over the San Bernardino shooter's iPhone is roiling the agency's critics who accuse it of acting disingenuously. For weeks, critics pressed the FBI on whether it tried hard enough to hack into the device on its own, before it sought a court order to force Apple to help. Then on Monday, the FBI unexpectedly asked to cancel the first hearing in the case, saying it may have found a way in without the help of the company's engineers.

Bloomberg [The War on Internet Piracy](#)

Most people never think about the quiet war raging to keep copyrighted photos, videos and songs off the Internet. But it has emerged as one of the contentious issues dividing big tech companies like Google on one side and entertainment, music and media companies on the other.

The Hill [Black caucus treads carefully into Apple-FBI fight](#)

The Congressional Black Caucus is taking a cautious stance in the fight between Apple and the FBI over a locked iPhone even as prominent civil rights groups rush to back the tech giant. "We have not taken a position on it," Caucus Chairman G. K. Butterfield (D-N.C.) told The Hill this week. The case has raised significant civil rights concerns, and other prominent African-American leaders and Black Lives Matter supporters are lining up behind Apple in its defiance of an FBI court order directing it to unlock the iPhone of one of the San Bernardino shooters.

The Hill [FCC faces pressure on Internet subsidy plan](#)

An unlikely union of industry lobbyists and consumer groups is warning the Federal Communications Commission against changes to a phone subsidy program. Critics say that if the overhaul goes through as planned, many poor Americans who receive free phone service through the program will drop out. Even the White House is expressing concern. The late lobbying scrabble has caught the agency's attention ahead of a vote scheduled next week.

TechRepublic [Election Tech: Why 2016 is the first made-for-social media campaign](#)

Online and off, the Western primaries and caucuses added little clarity to an already atypical campaign. The social web reacted dramatically as candidates traded personal barbs on Twitter. A former political consultant close to the the now-defunct Jeb Bush campaign mused recently, "this is the first made-for-social media campaign."

TechCrunch [Innovation Act might be dead, but innovation lives on](#)

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The U.S. Patent Trial and Appeal Board (PTAB) recently found a business method patent eligible under 35 U.S.C. § 101, in one of the first such decisions since the institution of Covered Business Method (CBM) Patent Reviews and the Supreme Court's decision in *Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). The decision, *NRT Technology Corp. v. Everi Payments*, CBM2015-00167, comes with enough caveats to give patent holders and patent practitioners pause, but stands in stark contrast to the vast majority of recent PTAB decisions utilizing the Alice hammer to obliterate patents in the software and business method fields.

The Hill [FCC Republican: Netflix's throttling of video 'deeply disturbing'](#)

Netflix's acknowledgment that it throttles its video over mobile networks is "deeply disturbing," a Republican member of the Federal Communications Commission (FCC) said Tuesday. The company's failure to inform consumers of that throttling, which reduces video quality, could warrant investigations from Congress or the Federal Trade Commission, FCC Commissioner Michael O'Rielly said.

Lexology [A partial victory for business method patents at the PTAB](#)

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Wired [GOP Launches Handy Site to Teach You About the Convention](#)

THIS ELECTION CYCLE is chock full of confusion. Why, for instance, were there a bunch of steaks on display during a Donald Trump press conference? How, exactly, did that whole Ted Cruz is the zodiac killer meme get started? Where did Jim Gilmore suddenly come from, and also, where the hell did Jim Gilmore go?

The Hill [House GOP wants to cap Internet subsidy budget](#)

House Republicans are vowing to take up a bill that would set a budget cap on a program aimed at offering phone and Internet subsidies to the poor. Republicans on the House Energy and Commerce Committee made the announcement shortly after the Federal Communications Commission (FCC) voted to overhaul and expand the program known as Lifeline in a dramatic meeting Thursday.

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NOTABLE QUOTES

“Civil agencies have functioned from their inception until the rise of cloud-based email storage without warrant-free access to our private communications, and they can do so now. And granting civil agencies the power to warrantlessly grab emails risks law enforcement using this exception as a “backdoor,” encouraging civil agencies to begin investigations that are then expanded to include criminal charges after emails are accessed without a warrant. Congress should enact ECPA reform in a manner that follows its original goal – give all our emails proper privacy protection – not codify an invasive power for all civil agencies that they’ve only briefly possessed because of a legislative loophole and unforeseen technology. A complete fix to ECPA, without a new loophole or exception, is critical to restoring Americans’ privacy rights.”

- [David Beier, former counsel to the House Judiciary Committee during the drafting and passage of ECPA](#)

“From the beginning, we objected to the FBI’s demand that Apple build a backdoor into the iPhone because we believed it was wrong and would set a dangerous precedent. As a result of the government’s dismissal, neither of these occurred. This case should never have been brought.”

- [Apple statement in response to the DOJ’s withdrawal of San Bernardino iPhone warrant](#)

“It remains a priority for the government to ensure that law enforcement can obtain crucial digital information to protect national security and public safety, either with cooperation from relevant parties, or through the court system when cooperation fails,” she said. “We will continue to pursue all available options for this mission, including seeking the cooperation of manufacturers and relying upon the creativity of both the public and private sectors.”

- [Melanie Newman, spokeswoman, Department of Justice](#)

“Encryption is one of the best defenses an individual has to protect himself or herself in the digital world. Without encryption, the technologies we live with would enable thieves to take not only our wallets and purses, but our entire life savings in the blink of an eye.

- [Sen. Ron Wyden](#)

“We are taking this action in order to better understand how government authorities have attempted to use the All Writs Act of 1789 to defeat 21st-century

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technology. We hope this case will inform the ongoing public debate about digital security taking place in Massachusetts and across the country.”

- [Matthew Segal, legal director, ACLU of Massachusetts](#)