

VFI Executive Briefing
A weekly roundup of technology news
July 11-15, 2016

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HILL UPDATE

[The Hill Senators ask feds to look at digital ad fraud](#)

A pair of Democratic senators want a federal agency to take a look at fraudulent traffic to digital ads served up by platforms like Google and Facebook. Scammers can use software to generate artificial clicks on websites that pay for the traffic, or they can simply set up their own ad-laden websites and drive traffic there to reap the financial benefits. This inflates the price of online ads, which rise and fall based on changes in demand. A 2015 industry study cited by the lawmakers estimated that advertisers would lose more than \$7 billion to this kind of activity this year.

[The Hill Warren joins call for Airbnb probe](#)

Democratic Sens. Elizabeth Warren (Mass.) and Brian Schatz (Hawaii) asked a federal agency on Wednesday to examine the prevalence of commercial websites such as Airbnb that facilitate short-term housing rentals. "In order to assess the use and impact of the short-term rental market, we need reliable data on the commercial use of online platforms," wrote the senators in a letter to Federal Trade Commission (FTC) Chairwoman Edith Ramirez.

SPECIAL COVERAGE—MICROSOFT WINS 2ND CIRCUIT RULING ON WARRANT CASE

[Washington Post Microsoft just won a huge legal victory on email privacy](#)

David Medine was only four days into his job when Edward Snowden changed everything. Nine years after the 9/11 Commission recommended the creation of an independent government watchdog to make sure the ramp-up in national security powers didn't infringe upon individual rights, Medine had finally taken the reins as the first-ever full-time chairman of the Privacy and Civil Liberties Oversight Board (PCLOB). It

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was June 2013, and the Senate had taken 510 days to confirm Medine in a party-line vote. But he had high hopes about what the board could become.

New York Times [Microsoft Wins Appeal on Overseas Data Searches](#)

For the last few years, American technology giants have been embroiled in a power struggle with the United States government over when authorities get to see and use the digital data that the companies collect. On Thursday, Microsoft won a surprise victory in one such legal battle against the government over access to data that is stored outside the United States.

American Constitution Society [Three Key Takeaways: The 2nd Circuit Ruling in The Microsoft Warrant Case](#)

As readers no doubt already know, the Second Circuit today issued a surprise ruling in the Microsoft Ireland warrant case – siding with Microsoft. The result: location of data controls, at least for purposes of warrant jurisdiction. U.S.-issued warrants can no longer be relied on to compel the production of stored communications (such as emails) located outside the United States' territorial jurisdiction. Rather, the United States must make a diplomatic request for extraterritorially located data via a Mutual Legal Assistance Treaty (or other avenue if no such treaty is in place)—and then wait for the foreign partner to respond.

Wall Street Journal [Microsoft Wins Appeals Ruling on Data Searches](#)

Microsoft Corp. won a major legal battle with the U.S. Justice Department Thursday when a federal appeals court ruled that the government can't force the company to turn over emails or other personal data stored on computers overseas. The case, closely watched by Silicon Valley, comes amid tensions between Europe and the U.S. over government access to data that resides on the computers of social-media and other internet companies.

Reuters [Microsoft wins landmark appeal over seizure of foreign emails](#)

A federal appeals court on Thursday said the U.S. government cannot force Microsoft Corp and other companies to turn over customer emails stored on servers outside the United States. The 3-0 decision by the 2nd U.S. Circuit Court of Appeals in Manhattan is a defeat for the U.S. Department of Justice and a victory for privacy advocates and for technology companies offering cloud computing and other services around the world.

The Hill [Microsoft wins victory in warrant case](#)

Microsoft won a major legal victory on Thursday, when a federal appeals court ruled the government cannot use a warrant to force U.S. tech companies to hand over customers' emails that are stored overseas. The three-judge panel overturned a pair of lower court decisions that held Microsoft in contempt and compelled it to hand over a user's email account stored on its servers in Ireland. "Neither

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explicitly nor implicitly does the statute envision the application of its warrant provisions overseas," Judge Susan Carney wrote in the majority opinion.

NOTABLE QUOTES FROM MEMBERS OF CONGRESS ON COURT RULING

- **Senator Hatch said:** "*Today's decision confirms that current law does not provide U.S. law enforcement with authority to access data stored overseas. ICPA provides this authority by establishing a legal standard for accessing electronic communications around the world. Our bill will strengthen privacy and promote trust in U.S. technologies worldwide while still enabling law enforcement to fulfill its important public safety mission. The court's decision removes any excuse for Congress to delay passage of this legislation.*"
- **Senator Coons said:** "*Today's Second Circuit decision in Microsoft v. U.S. demonstrates why it is essential that Congress take action to establish clear procedures for U.S. law enforcement to use when seeking data stored overseas. The International Communications Privacy Act, a bipartisan bill that I'm proud to support, does just that. Just as law enforcement agencies should be required to get a warrant before accessing the content of Americans' communications within our borders, processes for accessing content located abroad should also comply with the law. This common-sense bill will protect our data across borders, and encourage fair treatment by our international partners.*"
- **Representative Marino said:** "*Our current electronic communications laws fail to address the advancements in technology over the last 30 years. When ECPA was enacted, cloud storage wasn't even an idea. Today, U.S. companies work on a global scale and house information on servers all across the world. It is Congress' job to recognize these lapses and update our laws to reflect the issues of the day. Today's ruling clearly calls for Congress to act. New legislation is necessary to clarify when companies within the United States must turn over electronic communication to law enforcement agencies when stored abroad. This will not only provide swift access to information for law enforcement when appropriate, but will better protect customers' privacy. Recognizing the discrepancy in the law is an important first step, but acting to fix the problem is critical. I will continue to work with my colleagues in Congress to address this issue and bring our laws into the 21st century.*"
- **Representative DelBene said:** "*Our electronic communications laws never contemplated this era of cloud storage, where U.S. companies are maintaining servers abroad and providing web-based services to customers worldwide. It is the job of Congress to bring the law up to date where clear gaps exist. U.S. companies and consumers need clarity on when and how they are obligated to turn over electronic communications to U.S. law enforcement if that information is stored abroad. Cloud computing holds immeasurable promise as a source of jobs and economic growth in the United States. But the foundation of the cloud is based on trust, and U.S. companies can't be world leaders if customers question whether their data is protected. Today's decision is a great step in the right direction, and yet another sign that Congress should act*"

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swiftly to enact a solution. I look forward to continuing to work with our colleagues to build on that progress."

ARTICLE SUMMARY

New York Times [Live Footage of Shootings Forces Facebook to Confront New Role](#)

Late Thursday evening, when sniper fire rang out across downtown Dallas, a bystander, Michael Kevin Bautista, used his smartphone to stream the events in real time on Facebook Live. Within the hour, CNN was rebroadcasting the footage. The day before, Diamond Reynolds streamed on Facebook Live after local police in Falcon Heights, Minn., shot her boyfriend, Philando Castile, ratcheting up a controversy surrounding how police officers treat African-Americans.

The Verge [Black Lives Matter activist DeRay Mckesson arrested during protest on Periscope](#)

DeRay Mckesson, the prominent and outspoken Black Lives Matter activist, was arrested in Baton Rouge, Louisiana last night during a protest against the shooting death of Alton Sterling. Mckesson livestreamed the protest and his arrest on Periscope. As officers took him into custody, fellow protesters took up his phone to continue the stream, as several demanded to know why he was being arrested. "What was his crime?" asked one protester during the broadcast. "Why is he being arrested?"

The Verge [EU-US Privacy Shield agreement goes into effect](#)

The European Commission has formally adopted a new agreement governing the transfer of data between Europe and the United States, more than eight months after the longstanding "Safe Harbor" transfer deal was invalidated amid concerns over US surveillance. The new agreement, known as the EU-US Privacy Shield, places safeguards on how US authorities can access the data of European consumers, and creates a framework for resolving cases where Europeans feel that their personal data has been misused.

The Hill [US claims progress fighting ISIS on Twitter](#)

The Islamic State in Iraq and Syria's (ISIS) Twitter traffic has dropped 45 percent in the past two years, the Obama administration told The Associated Press. U.S. officials say the drop is a sign of progress toward eliminating propaganda they say inspires attacks around the world. The U.S. and its allies have countered messages from ISIS on social media with its own messages that say the terrorist group "slaughters childhood," "kills innocence" and "lashes purity."

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Washington Post [How artificial intelligence could help warn us of another Dallas](#)

As the country reels from the spasm of gun violence that killed two black men and five police officers this week, a prominent digital vigilante is using an online tool he hacked together to keep an eye on hot spots that seem at risk of boiling over into bloodshed. The Web app, which is powered partly by artificial intelligence, analyzes posts on social media as well as police radio chatter and feeds of the local airspace in virtually any region. Its goal? To detect rumblings of unrest and alert the public.

The Guardian [How the tech industry is exploiting Black Lives Matter](#)

When prominent activist Deray McKesson was arrested Saturday night at a protest against the police killing of Alton Sterling in Baton Rouge, Louisiana, many saw the arrest as another example of the excessive policing of Black Lives Matter protests. Others saw a branding opportunity. “Black Lives Matter activist Deray McKesson arrested while Periscoping,” read the headline of an article on the incident on tech industry blog TechCrunch, which included a sidebar about the Twitter-owned live-streaming app.

The Hill [FBI to give deleted Clinton emails back to State Dept.](#)

The FBI will give the State Department thousands of deleted work-related emails that it uncovered while investigating Hillary Clinton's private server. The bureau said in a letter filed with a federal court late Tuesday afternoon that, now that the investigation into Clinton is over, it would turn over the emails over to the State Department for record-keeping.

Computerworld [Google quietly brings forgetting to the U.S.](#)

If you are worried about your online privacy, it might be of interest to you that Google has quietly brought its Google forget program to the U.S. It has made it quite simple, for the most part. Simply go to myactivity.google.com to see the history of your searches, YouTube viewing and everything else you do on Google platforms, and then be guided through the process of trimming that history.

New York Times [D.E.A. Needed Warrant to Track Suspect's Phone, Judge Says](#)

A federal judge in Manhattan ruled on Tuesday that drugs seized from a man charged in a narcotics case could not be used as evidence, because agents had not obtained a warrant for a covert cellphone tracking device that led them to his Washington Heights apartment, where the drugs were found. The portable

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device, known as a cell-site simulator and often referred to as a Stingray, has been used widely by federal and local law enforcement officials around the country, including in New York, to solve crimes and locate missing people.

The Christian Science Monitor [Opinion: A bold move in Congress to protect privacy](#)

On Wednesday, more than two dozen congressional representatives announced the formation of the Fourth Amendment Caucus, an incredibly important group dedicated to defending our right to privacy. At a time when many in Congress are falling all over themselves to increase privacy-invasive surveillance, the bravery of these lawmakers to form a coalition to buck that trend is well worth commending.

New York Times [Google Faces New Round of Antitrust Charges in Europe](#)

When it comes to Europe's lengthy investigations into Google, Margrethe Vestager, the region's competition chief, is hoping that the third time's a charm. Ms. Vestager announced on Thursday a new round of antitrust charges against the company — the third set since early 2015 — claiming that some of the company's advertising products had restricted consumer choice. The efforts are part of her continuing push to rein in Google's activities in the European Union, where the Silicon Valley company has captured roughly 90 percent of the region's online search market.

Washington Post [Google's latest online collections show American politics has always been a glorious mess](#)

Political junkies and history buffs: This is your lucky day. Google on Thursday announced that it's putting more than 2,500 historical artifacts that delve into the political history of the United States online as part of its Cultural Institute. The institute is a part of Google that works with museums, libraries and other groups to give everyone access to great works of art and historical artifacts without having to physically travel to the places where these collections live.

Wired [Clinton Has a Team of Silicon Valley Stars. Trump Has Twitter](#)

GIVING UP GOOGLE wasn't easy for Stephanie Hannon, if it's easy for anyone. A person can get used to the big salary, cushy perks, and creative time Silicon Valley's top employers offer. Plus, she was working on cool, potentially life-saving stuff, like tools to assist in natural disasters. The tech life was good. Then, in February 2015, Democratic digital guru Teddy Goff asked her to serve as chief technology officer for Hillary Clinton's yet-to-be-announced bid for president.

The Hill [Thiel to speak at the Republican convention](#)

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Silicon Valley billionaire Peter Thiel will speak at the Republican National Convention in Cleveland next week. Thiel, a venture capitalist who was among the earliest investors in Facebook and a founder of PayPal, was among the many speakers announced by convention planners on Thursday. Other speakers include Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan. Thiel's support for presumptive Republican presidential nominee Donald Trump puts him at odds with most of the tech sector.

Wired [Europe Is Going After Google Hard, and Google May Not Win](#)

MICROSOFT PULLED THE strings. At least, that's what Google and so many business and tech journalists said when the search giant first faced antitrust complaints in Europe six years ago. And indeed, Microsoft had filed one of those complaints. It was also the money-wielding mastermind behind the Initiative for a Competitive Online Marketplace, a group that lobbied the European Union and helped others bring complaints against arch-rival Google. But all these years later, Microsoft has removed itself from the fight, reaching an agreement with Google that says both companies will drop all regulatory complaints against each other. And yet, Google's antitrust problems are only getting worse.

POLITICO Morning Tech [Tech's tense history with Pence](#)

MIKE PENCE'S ROCKY RECORD WITH TECH — If Donald Trump were looking to pick a running mate who would earn him some much-needed friends in Silicon Valley, Indiana governor Mike Pence would not be the most obvious choice, reports Nancy. Pence — who has not officially been named to the ticket by the presumptive Republican nominee despite a host of sourced reports that Trump will give him the nod — announced plans on Thursday to invest \$1 billion into Indiana's entrepreneurship and innovation ecosystem.

Notable Quotes

- *"A lot of industry lawyers I talk to say they are not going to rely on Privacy Shield because it is going to be challenged and overturned...I don't think it's going to be a commercial success story as Safe Harbor was before, because there's a lack of legal certainty."*

- [Max Schrems](#)

- *"In the aftermath of mass shootings in places like Orlando and San Bernardino, our constituents make it clear that they want policies that protect both their security and their privacy. Unlike many policymakers, they know these values aren't mutually exclusive. This kind of rushed proposal doesn't do much to advance security, and it*

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doesn't protect core American liberties. The way to protect both security and liberty is to require court oversight for intrusive government surveillance while giving the government the ability to act quickly in emergencies."

- [Sens. Ron Wyden and Martin Heinrich](#)

- *"It is hard for the State Department to promote a coherent, consistent view of encryption policy because it does not exist at home."*

- [Adam Segal, director of digital and cyberspace policy, The Council on Foreign Relations](#)

- *"Of course, given the global nature of the Internet and cloud computing, we often have no control over where our data is stored, processed, or backed up; so US government claims that it can access all this information without first getting a warrant is, essentially, a blanket mandate to surveil everyone's most private information."*

- [Sean Vitka and Sascha Meinrath, committee members, Fourth Amendment Advisory Committee](#)

- *"While I think it is reasonably likely a challenge will come, I'm also confident that the Privacy Shield would withstand that challenge."*

- [Victoria Espinel, president, BSA - The Software Alliance](#)

Social Highlights

- **@CenDemTech:** ["@RonWyden + @MartinHeinrich explain why they object to a proposal that expands @FBI surveillance:" #browserspying](#)
- **@johnedwardfrank:** [#PrivacyShield agreement sets a new high standard for protection of Europeans' data](#)
- **@accessnow:** [Need background on #PrivacyShield? Here's our original take & call for reform in EU & US:](#)
- **@EU_Commission:** [@EU_Commission adopts the EU-U.S. #PrivacyShield: High level of #EUdataP & legal clarity](#)
- **@BSAnews:** [The Irish warrant case decision points to the need for #Congress to act on international requests for data by law enforcement. #ICPA](#)
- **@AT&TpublicPolicy:** [AT&T applauds Microsoft decision. Balances #dataprivacy, law enforcement & other nations. But legislative solution still needed. #ICPA](#)