

VFI Executive Briefing
A weekly roundup of technology news
July 18-22, 2016

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HILL UPDATE

No Update

SPECIAL COVERAGE—Continued Warrant Case Coverage

Lawfare [The Microsoft Ireland Case: A Brief Summary](#)

Yesterday, the Second Circuit Court of Appeals ruled against the United States Government in the case Microsoft v. United States, stating that the government cannot compel Microsoft, or other companies, to turn over customer emails stored on servers outside the United States. Here's a brief summary of the opinion. The case hinged on the question of whether Section 2703(a) of the Stored Communications Act (SCA), the provision under which the government sought and received a search warrant for the email account, applies extraterritorially.

The Verge [Microsoft wins major victory in legal fight over data center access](#)

After years of arguments, Microsoft has won a major victory in its legal fight over US access to information stored in a company data center in Ireland. In a decision filed today by the Second Circuit Court of Appeals, judges ruled that US investigators can't use the Stored Communications Act to compel access to the data, as it is physically located outside of US borders. As a result, the court found that Microsoft has "no remaining lawful obligation to produce materials to the government."

Politico [WhiteBoard: Microsoft data center ruling raises serious concerns](#)

Politico reported on comments from Attorney General Loretta Lynch stating that Second Circuit ruling in Microsoft's warrant case raises "serious concerns" and that the Justice Department is weighing its next steps for resolving the case.

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ARTICLE SUMMARY

Washington Post [Developers consider Apple's App Store restrictive and anticompetitive, report shows](#)

A new survey shows that more than half of app developers consider restrictive policies, such as a lengthy and ever-changing app approval process, the number one obstacle to using Apple's App Store. An even larger percentage considered "anticompetitive" actions very or somewhat common when attempting to launch an app. The survey, which pooled together answers from 750 developers from around the world, demonstrates a rocky relationship between app creators and the Apple platform -- which is the world's second largest, according to analytics firm App Annie.

Wall Street Journal [Google to Steer Would-Be Voters to Registration Guides Ahead of Election](#)

Google is trying to demystify the voter registration process in time for this year's U.S. presidential election. On Monday, when users enter search queries such as "how to register to vote" or "how do I vote" on Google.com, the Alphabet Inc. subsidiary will display a voter registration guide specific to your state. These state-by-state guides will explain how users can register to vote, as well as your state's voting requirements and registration deadlines. The registration guides will show up above other search results, right beneath the search box on Google.com and in Google's search app.

ZDNet [US may let foreign states serve warrants on tech firms, but only if feds can do the same](#)

ZDNet reported on the announcement that the Obama administration is negotiating a data-sharing agreement with the UK government allowing UK law enforcement agencies to serve U.S. tech companies with warrants for email searches and wiretaps. Outlets emphasized how the agreement could provide a framework for similar agreements with other nations, particularly in the wake of the Second Circuit warrant case decision. [The Wall Street Journal](#) suggested the proposed agreement could be in conflict with the decision from the Second Circuit.

The Register [UK gov says new Home Sec will have powers to ban end-to-end encryption](#)

The Register reported on statements made last week by a UK official confirming that the Investigatory Powers Bill could be used to force communications providers to remove or disable end-to-end encryption.

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The Hill [Google: Requests for data rose in second half of 2015](#)

Google said Monday that global government requests for its user data had risen in the second half of 2015 to an all-time high. Authorities made 40,677 requests in the second half of last year, according to an update made to the company's transparency report, up from 35,365 in the first half of the year. The number of users and accounts affected rose from 68,908 to 81,311. More than 12,000 requests were made in the United States, affecting 27,157 users or accounts. Requests have risen every year since at least 2010, the first year when Google released 12 months worth of data.

The Hill [Pew: Trump's social media posts get more attention than rivals'](#)

Presumptive Republican presidential nominee Donald Trump's social media posts attract far more attention than those of Democratic candidate Hillary Clinton (D-N.Y.) or her former rival, Sen. Bernie Sanders (I-Vt.), according to a study released Monday. The Pew Research Center found that Trump's Facebook posts received an average of 76,885 reactions, compared to Clinton's 12,537. Sanders, whose rise was buoyed by an intense Facebook fan base, only received an average of 31,830 reactions to his Facebook posts.

The Irish Times [High Court approves US bid to join data privacy case](#)

The Irish Times highlighted that an Irish court granted the U.S. government the right to join the legal challenge examining Facebook's EU-U.S. data transfers.

The Hill [Court in Brazil reportedly suspends order blocking WhatsApp](#)

The third Brazilian court-ordered ban on messaging application WhatsApp in recent months has been suspended, Reuters reported on Tuesday. The news service reported that the country's Supreme Court had suspended the ruling of a lower-court judge ordering five of the nation's wireless carriers to block the service. WhatsApp has repeatedly come into conflict with Brazilian authorities over demands for user data from the Facebook-owned service.

The Hill [Microsoft fires back on Safe Harbor violations](#)

Microsoft is pushing back a key component of a French government agency's recent accusations. On Wednesday, the Commission Nationale de l'Informatique et des Libertés (CNIL) ordered the software company correct a list of problems in Windows 10 it claimed threatened the privacy of French citizens. CNIL, which regulates data privacy, gave the company three months to do so before it would consider punitive measures.

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Bloomberg Patents, Not Sexism, May Be Reason Women Lag in Venture Capital

While women own more than a third of all businesses in the U.S., companies run by them get only about 3 percent of venture capital funding. Is that one more example of sexism in Silicon Valley? Maybe not, according to a new study by the Institute for Women's Policy Research, which found that the lack of funding may be partly explained by what it calls a gender patent gap.

Notable Quotes

- *"The Microsoft Ireland case and the legislative proposal for foreign law enforcement access means there's a fire under Congress to do something to ECPA. ECPA was passed in 1986, and Congress could not have fully understood the privacy implications, or the jurisdiction implications, of the Internet at that time. There have been ongoing attempts to modernize ECPA to make it clear that law enforcement needs a search warrant based on probable cause before it can read our email or track our physical location—though these have not progressed in Congress. Now, with the investigatory barriers imposed by the Microsoft Ireland case and this new legislative proposal, Congress will likely take up ECPA again, with an eye to a more thorough overhaul."*

- [Jennifer Granick, director of civil liberties, Stanford Center for Internet and Society](#)

- *"The limits of the Stored Communications Act are now on full display, and it will be up to Congress to solve the puzzle of how much protection should be afforded to personal communications while allowing investigators to gather evidence. But with Congress in recess until early September, and little prospect of significant legislation in the short time before the presidential election, any major changes will most likely have to wait until after November, and perhaps well into 2017."*

- [Peter Henning, associated professor of Law, Wayne State University](#)

- *"Law enforcement and the intelligence agencies must retain the ability to require telecommunications operators to remove encryption in limited circumstances. Subject to strong controls and safeguards to address the increasing technical sophistication of those who would seek to do us harm."*

- [Lord Earl Howe, minister of state for defense and deputy leader in the UK's House of Lords](#)

- *"The distinctions that U.S. privacy and surveillance laws make between U.S. and non-U.S. persons are increasingly obsolete in a world where communications primarily take place over a global medium: the Internet."*

- [Richard Salgado, legal director, law enforcement and information security, Google](#)

- *"Judge Harvey chose a different path. When prosecutors failed to meet what he considers to be the evidentiary standard of the Electronic Communications Privacy Act, he rejected the surveillance request. And then he took the*

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extraordinary step of making his opinion public. He even changed the caption of the case to be sure it's clear his ruling is not sealed. Whether you think the magistrate was right or wrong to deny the government access to electronic records in what appears to be a terrorism investigation, you have to agree that by contributing his ruling to the public privacy-right debate, Judge Harvey showed the courage of his convictions."

- [Alison Frankel, Bloomberg legal columnist](#)

Social Highlights

- **@CenDemTech:** [@GregNojeim: "\[@Microsoft\] decision underlines need for reform to address #lawenf demands for data stored abroad:"](#)
- **@csoghoian:** [Everyone loves end-to-end encryption.](#)
- **@dnvolz:** [DoJ says still no decision on whether to appeal yesterday's 2nd Circuit decision siding with Microsoft on overseas email grabs](#)
- **@ForeignPolicy:** [Silicon Valley just scored a huge victory in its war with Washington over data access.](#)
- **@InternetAssn:** [@microsoft's search warrant case is an important decision for people everywhere. #ECPA #ICPA](#)
- **@Liberationtech:** [@Microsoft wins email #privacy battle against US government](#)
- **@OpenRightsGroup:** [Microsoft ruling: States should not arbitrarily reach across borders just because they feel they can bully companies](#)
- **@OpenRightsGroup:** [UK Royal Society's #1 cybersecurity recommendation: don't backdoor crypto #IPBill](#)
- **@PaulNemitz:** [#Microsoft Just Won a Big Victory Against Government #Surveillance @DanielSolove #Ireland #NewYork #privacy](#)
- **@PrivateAplin:** [My comments on @BloombergRadio re #Microsoft #Ireland #email 2d Cir. ruling @BloombergLaw](#)
- **@Quartz:** [Microsoft's win over the US government is a rare moment of clarity around global data laws](#)
- **@SCMagazine:** [IP Bill: the end-to-end-to-end encryption?](#)
- **@SCMagazine:** [Second Circuit rules in favor of Microsoft, gov't can't force access to email on Irish server](#)
- **@TechCrunch:** [Microsoft triumphs in warrant case against U.S. government](#)

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- **@WiredUK:** [WIRED Awake: US government can't access Microsoft data abroad; biodiversity has fallen](#)
- **@WSJD:** [Obama administration negotiating international data-sharing agreements](#)
- **@zackwhittaker:** [US may let foreign nations serve warrants on tech firms, but only if feds can do the same](#)
- **@ZDNet:** [In privacy victory, Microsoft wins appeal over foreign data warrant @zackwhittaker](#)
- **@businessinsider:** [Governments are demanding more data from Google than ever before](#)
- **@dnvolz:** [DOJ spox: Still no decision on whether to appeal Microsoft Dublin data center case](#)
- **@hshaban:** [GOP Platform calls for the new President and Congress to act on encryption/law enforcement debate. @BuzzFeedNews](#)
- **@maxschrems:** [US Government joined as "amicus" in Irish case on EU-US data transfers of @Facebook.](#)
- **@KevinBankston:** [GOP platform position on #encryption is more moderate than I expected, considering Trump's call for an Apple boycott](#)
- **@AlisonFrankel:** [In rare public order, judge denies #DOJ access to murder suspects' private data](#)
- **@csoghoian:** [@SenJohnMcCain says he is ready to subpoena tech experts if they are unwilling to testify about encryption.](#)