

VFI Executive Briefing

A weekly roundup of technology news

January 30 – February 3, 2017

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HILL UPDATE

IPWatchdog [Goodlatte pledges to pursue patent litigation reform, copyright reform in 115th Congress](#)

Congressman Bob Goodlatte (R-VA) holds the Chairmanship of the House Judiciary Committee, and as such will wield a great deal of power over any intellectual property related legislative reforms that will occur during the 115th Congress. Earlier today Goodlatte unveiled his agenda for the 115th Congress. Not surprisingly, a portion of his agenda includes additional patent litigation reform in order to address what he characterizes as “truly frivolous lawsuits,” as well as reforms to keep America’s patent laws up to date and copyright reforms to help ensure “America’s global leadership in creativity and innovation continues.”

Politico Pro [House aims to bring ECPA reform to floor](#) (subscription needed)

Politico reported that the Email Privacy Act could come to the [House floor on Monday](#). Relatedly, [BSA | The Software Alliance](#) put out a statement urging the House to pass the Email Privacy Act when it comes up for consideration on Monday.

House Judiciary Committee [Goodlatte Announces Agenda for 115th Congress](#)

The House Judiciary Committee announced their agenda for the 115th Congress. Among other items, the Committee plans to address ECPA reform, cross-border access to data, and reform and reauthorization of Section 702 surveillance. The issue of encryption is not listed by the House Judiciary Committee as an agenda item at this time.

SPECIAL COVERAGE – IMMIGRATION

There was significant coverage of President Trump’s immigration executive order and its impact on the technology industry. On February 2nd, Microsoft sent a letter to Homeland Security Secretary John Kelley and Secretary of State Rex Tillerson requesting the creation of a process to grant exceptions for “Responsible Known Travelers with Pressing Needs”. Here is a [link to the letter](#). Below is coverage of this announcement as well as the broader industry response on the executive order.

Microsoft On the Issues [The need for an exception process under last week’s executive order](#)

Microsoft President and Chief Legal Officer Brad Smith wrote a blog calling on the Trump administration to create a process for granting exceptions to law-abiding, visa-holding workers and students impacted by last week’s immigration order.

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Bloomberg [Microsoft Leads Pushback Against Trump Immigration Order](#)

Microsoft Corp. is asking U.S. officials to grant exceptions for law-abiding, visa-holding workers and students from President Donald Trump's immigration order, channeling the outrage expressed by many in the technology industry with a proposed solution. Such individuals are low-risk -- having already undergone a rigorous vetting process -- and face immediate hardship as a result of last week's order, Microsoft President and Chief Legal Officer Brad Smith said in a letter Thursday to the secretaries of State and Homeland Security. Smith said he believes the two officials are empowered to take the necessary steps to allow certain people entry into the country. The exemptions sought would cover workers with visas sponsored by U.S.-based companies and students with ones obtained via a U.S.-based school.

BuzzFeed [Microsoft Urges Trump To Exempt Students And Workers From The Travel Ban](#)

Microsoft is urging the Trump administration to create an exemption in its controversial travel ban to allow foreign-born students, workers, and people with family emergencies to leave and enter the United States. In an executive order signed last week, President Donald Trump indefinitely suspended Syrian refugees from entering the US and has blocked people from Iraq, Iran, Sudan, Somalia, Libya, and Yemen from entering the country for 90 days. In a letter to the head of Homeland Security and the Secretary of State, Microsoft President Brad Smith said the immigration order has impacted people with "pressing needs," noting situations in which parents and children have been separated, individuals stranded, and travel for family medical emergencies blocked.

Wall Street Journal [How Immigration Uncertainty Threatens America's Tech Dominance](#) (subscription needed)

Even before last Friday's executive order on immigration, lawyers told Tim Wilson not to bother hiring a Vietnamese national—an expert in "nanoscale structured material"—for a Silicon Valley startup. The reason? Given the uncertainty around immigration policy under President Donald Trump, it was better to wait, they said. "What ultimately happened was their prediction turned out to be the chaos we saw this week," says Mr. Wilson, a partner at venture-capital firm Artiman Ventures.

The Verge [Mossberg: Immigration builds America's tech dominance](#)

The next time you're driving from New York to Boston on I-95, you should make a little detour in Pawtucket, Rhode Island, to visit the Old Slater Mill national historic landmark. It's the site of what is considered to be the first successful water-powered textile spinning mill in America. That feat was made possible by Samuel Slater, an immigrant to the US who came here at the age of 21 in 1789 from England — a country with which we had just fought a long, bitter war. He had the mill going only a few years after the signing of the US Constitution, and is sometimes referred to as the "Father of the American Industrial Revolution."

Wall Street Journal [Draft of Executive Order Looks to Re-Examine Visa Programs](#) (subscription needed)

WASHINGTON—After targeting illegal immigrants, refugees and migrants approaching the southern border, the White House appears ready to take on another controversial slice of immigration policy: the legal-immigration programs favored by technology and other companies. A draft of an executive order for President Donald Trump's consideration directs the government to re-examine a range of visa

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programs to ensure they prioritize and protect “the jobs, wages and well-being of United States workers.” The draft also repeatedly suggests existing policy gives foreigners an unfair advantage.

New York Times [Tech Companies Fight Trump Immigration Order in Court](#)

Technology executives have for days assailed President Trump’s executive order suspending immigration from seven mostly Muslim countries, framing their arguments largely in moral terms. On Monday, two tech companies — Amazon and Expedia — stepped up their opposition to the order with filings that were part of a lawsuit in federal court against the Trump administration, arguing that the order will hurt their businesses. The filings represent an escalation of the technology industry’s efforts to push back on the order signed by Mr. Trump on Friday night. There was little sign of the outcry over the order diminishing throughout the industry, as employees at Google staged demonstrations in the San Francisco Bay Area and beyond.

Washington Post [Amazon explores legal options against Trump’s immigration ban](#)

Some of the world’s biggest tech companies have criticized President Trump’s executive order to temporarily ban citizens and refugees from seven Muslim countries from entering the United States. Now, one of those firms said it is exploring legal action to oppose the order. Amazon chief executive Jeffrey P. Bezos wrote in an email to employees Monday that company lawyers have prepared a “declaration of support” backing Bob Ferguson, Washington state’s attorney general, in a lawsuit against the Trump administration’s order. Bezos also wrote that the company’s attorneys “are working other legal options as well,” according to the letter, which was sent to The Post by Amazon in response to questions about the Ferguson lawsuit.

Washington Post [Tech firms recall employees to U.S., denounce Trump’s ban on refugees from Muslim countries](#)

The country’s leading technology companies are recalling overseas employees and sharply criticizing President Trump after he signed an executive order Friday barring for 90 days immigrants and visitors from seven Muslim countries from entering the United States. The companies warned the action — which affects foreign-born immigrants with legal permanent residence status in the United States and also includes suspending the acceptance of refugees for 120 days — could impair the ability of America’s top companies to compete. Google chief executive Sundar Pichai late on Friday ordered scores of staffers traveling overseas to return to the United States immediately.

ARTICLE SUMMARY

WIRED [Trump’s SCOTUS Pick Needs to Get Tech—These Cases Show Why](#)

WIRED published an article highlighting Supreme Court nominee Judge Neil Gorsuch’s previous rulings on technology issues and previewing tech cases that might be on the Supreme Court’s docket in the next year. It highlights Microsoft’s warrant case as one of five cases that might be considered by the court.

National Law Review [FTC and DOJ Issue Revised Guidelines for Licensing of Intellectual Property](#)

Since the Federal Trade Commission (FTC) and the Antitrust Division of the US Department of Justice (DOJ) first issued the Antitrust Guidelines for the Licensing of Intellectual Property (Guidelines) in 1995, both antitrust law and intellectual property law have evolved to adapt to modern technology and

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business relationships. Yet the guidance provided by the antitrust agencies had not been updated to reflect recent court precedent or enforcement policies. On January 13, 2017, the FTC and the DOJ issued updated Guidelines following roughly six months of consideration and public comment.

Wired [Police Could Get Your Location Data Without a Warrant. That Has to End](#)

THE MORE WE rely on technology, the more detailed a technological footprint we leave behind. A recent study from Deloitte shows that, on average, American millennials check their phones roughly 82 times a day. This dependence on technology has led to a world where most people are never more than a few feet away from their cell phone at any given time. Being constantly connected to the world is one of the many benefits of our advanced society, but unfortunately, privacy regulations haven't kept pace with the advances we've made.

Washington Post [Here's why your browser may tell you the White House website isn't secure](#)

Some visitors to the White House website have reported seeing messages that carry some scary warnings. A message from Google Chrome warns: "Attackers might be trying to steal your information from messages.whitehouse.gov, for example passwords, messages or credit cards."

Washington Post [This simple change in government policy could mean a lot more transparency](#)

The nation's top telecom and cable regulator wants to give Americans a better view into the workings of their government. So, in a first-ever pilot project, the Federal Communications Commission has begun publishing the full text of proposals and regulations that the public would otherwise never see until after they have been finalized and approved. On Thursday, FCC officials released two such documents: a proposed order that, if approved, could relax some regulations concerning AM-to-FM radio transmitters, as well as a notice saying that the agency hopes to draw up new rules allowing the use of a "next-generation" broadcast TV technology.

The Hill [Trump scraps signing of cybersecurity executive action](#)

President Trump scrapped plans on Tuesday to sign an executive action launching a government-wide cybersecurity overhaul. The White House did not immediately provide an explanation for the cancellation. It was an abrupt about face after the White House spent all day Tuesday plugging its plans to boost the nation's offensive and defensive cyber capabilities. Officials told reporters earlier in the day that Trump planned to order Cabinet officials to enhance their agencies' cyber defenses and commission an administration-wide review to assess hacking risks.

The Hill [Trump's patent policy should put America first, not the patent lobby](#)

President Trump campaigned on a platform to put America first and protect American industries from foreign competitors. As he makes the transition from celebrity real estate mogul to president of the United States, rumors continue to swirl about whom he will appoint to head the country's various federal agencies. One question is whether Michelle Lee will stay on as director of the U.S. Patent and Trademark Office, a subject about which everyone from Rep. Darrell Issa (R-Calif.) to Wilbur Ross—Trump's pick to head the U.S. Commerce Department, in which the USPTO sits—can be expected to have an opinion.

CNBC [Google has a higher antitrust risk under Trump because laws are 'rather vague'](#)

Shares of Alphabet underperformed the already sagging broader tech sector following a New York Times report that some advisers to the president are discussing subjecting Google to more antitrust scrutiny. At its lowest point today, the stock traded down 2.84 percent at \$821.03 per share. By comparison, the

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Tech Sector hit a low of \$843.29 per share, down 1.39 percent at that low. Alphabet, which had close ties to the Obama administration, has so far avoided antitrust charges, but faces greater risk under the incoming as yet unnamed FTC Chairman, said Seth Bloom, founder of Bloom Strategic Counsel on CNBC's "Closing Bell." (Bloom counts Google rival Yelp as a client.) Google has at least 80 percent market share in search.

Forbes [China Economy Becoming More Strict, 'Less Open'](#)

Over the last two weeks, since the World Economic Forum in Davos, China has been heralded as the world's savior of globalization. The country's leader, Xi Jinping, was the first Chinese president to ever attend the Forum, where he was cheered for touting the wonders of open markets. To many investors, he was a refreshing reminder of the reliable rules of global capitalism at a time when Brexit and Donald Trump are busy rewriting those rules. Yet, according to a number of investors with money at work in China, and surveys by American corporations there, the world's No. 2 economy is as protective as ever. The herald of open market capitalism is hardly open.

Fortune [How Silicon Valley and Washington Can Be Friends Again](#)

Fortune published a joint op-ed by Adam Segal, Ira A. Lipman chair in emerging technologies at the Council on Foreign Relations, and Alex Grigsby, assistant director of the Council on Foreign Relations' digital and cyberspace program, on ways the U.S. government and tech companies can mend their policy divide. Segal and Grigsby suggest that the U.S. government can help bridge the Washington-Silicon Valley divide by addressing cross-border requests for data, quickly attributing state-sponsored cyber-attacks and imposing reciprocal costs on attackers, and by recognizing the value of encryption for U.S. firms.

Notable Quotes

"At some point, the Trump administration will need to address law enforcement's access to data. One facet of this issue surfaced last year in the discussion around backdoors into encryption. While we think this is a serious issue that merits serious consideration, it probably falls outside of the scope of a draft EO designed to kick off rapid reviews designed to educate the new team about the country's vulnerabilities, external threats, and capabilities."

– [Charley Snyder, Cyber Security Project affiliate, Harvard Kennedy School's Belfer Center for Science and International Affairs](#)

"[The FBI's use of NSLs to obtain internet records] is an ongoing practice and it is significantly beyond the scope of what is intended."

– [Andrew Crocker, attorney, Electronic Frontier Foundation regarding National Security Letters](#)

"The fact that the [FBI] pulled the plug on the litigation on the literal eve of the [San Bernardino] hearing speaks volumes about the strength of its legal argument. Instead of risking binding precedent on our side, the government blinked."

– [Nate Cardozo, senior attorney, Electronic Frontier Foundation](#)

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“This issue is likely to emerge again this Congress, particularly in the Senate. Emergency disclosures will be more controversial than consent. All things considered, it seems unlikely that the argument providers are better suited to determine if an emergency exists will prevail. If Congress does add emergencies to ECPA’s mandatory disclosure provision, the question will be whether this addition should be accompanied by restrictions on these demands or on the use of evidence derived from them.”

– [Caroline Lynch, former chief counsel, House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations](#)

“Encryption serves many valuable and important purposes, but it is also important that national security and law enforcement investigators be able to continue to use lawful authorities to prevent, investigate and respond to threats.”

– [Senator Jeff Sessions, in a written response to Senator Patrick Leahy](#)

“There are these old doctrines, and we’re struggling to apply them in the digital age. It’s a bit like fitting a square peg in a round hole.”

– [Faiza Patel, liberty and national security program co-director, Brennan Center for Justice](#)

“The government’s position is: We can ask for anything analogous to toll billing records” — such as email and browsing data — “and if the providers are dumb enough to give it to us, that’s not our problem.”

– [Chris Soghoian, former principal technologist, American Civil Liberties Union](#)

“As I wrote on [these pages](#) last year, modernizing decades-old privacy laws is essential if the cloud computing revolution is to realize its full potential. Innovators that offer electronic communications services must be able to maintain trustworthy relationships with their users. By closing gaps in legal protection, Congress can restore Americans’ individual liberties in the digital age and ensure the Internet remains a powerful engine of economic growth, while preserving the tools necessary for effective law enforcement.”

– [Ryan Radia, fellow, Competitive Enterprise Institute](#)

“The [outcome of Microsoft’s warrant case] affirms a landmark defense of privacy rights against law enforcement overreach and clearly establishes that the U.S. government does not have jurisdiction over the entire world.”

– [Veronique de Rugy, Senior Research Fellow at George Mason University](#)

“This law is outdated and contains insufficient privacy protections for Americans’ email communications in today’s digital age.”

– [Bob Goodlatte, House Judiciary Committee Chairman on ECPA](#)

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“The Trump administration should work with Congress to amend U.S. law to make it easier for U.S. service providers to comply with foreign law enforcement requests, subject to human rights protections.”

– [Adam Segal, director, and Alex Griqsbay, assistant director, Digital and Cyberspace Policy Program at the Council on Foreign Relations](#)

Social Highlights

- **@BSAnews:** [New BLOG: Decision in @Microsoft Irish warrant case points to need for #Congress to update #ECPA: #privacy](#)
- **@BuzzFeedNews:** [Apple CEO Tim Cook met with a top Republican senator on Capitol Hill](#)
- **@dvolz:** [Twitter disclosed 2 surveillance orders showing FBI sought records beyond scope of DoJ legal opinion... tip @Techmeme](#)
- **@nxthompson:** [As of today the Web is more than 50% encrypted. Good timing!](#)
- **@hshaban:** [JUST IN: In 2017 The House Judiciary Committee will take up: Email surveillance, FISA 702; Patents; Law Enf. international data requests](#)
- **@Joseph_Marks_:** [House Judiciary Chmn @RepGoodlatte pledges to reform ECPA incl. clarifying law enforcement access to foreign stored data this Congress.](#)
- **@FortuneMagazine:** [Commentary: How Silicon Valley and Washington can be friends again](#)