

VFI Executive Briefing

A weekly roundup of technology news

October 3-7, 2016

TABLE OF CONTENTS

Special Coverage – 1
Article Summary – 1
Notable Quotes – 3
Social Media Highlights – 4

HILL UPDATE

Nothing new this week.

SPECIAL COVERAGE—A Cloud for Global Good Announcement

On Monday, October 3, Microsoft released [The Cloud for Global Good](#): a three-part framework that focuses on creating a “trusted, responsible, and inclusive cloud that will help ensure that technology benefits everyone.” It includes 78 policy recommendations in 15 areas ranging from privacy, security, and safety to environmental sustainability, artificial intelligence, and education and jobs skills training. It “offers our view of the need for a broad-based approach by governments, coupled with a strong sense of shared responsibility and action by those of us in the private sector.”

- **Microsoft on the Issues:** [Building a cloud for global good](#)
- **GeekWire:** [Microsoft unveils 217-page book in bid to influence global cloud policy](#)
- **ComputerWeekly.com:** [Microsoft calls for cross-industry collaboration to create ‘responsible and inclusive’ clouds](#)

ARTICLE SUMMARY

Fortune [Here's Why Software Patents Are in Peril After the Intellectual Ventures Ruling](#)

The end may be in sight for software patents—which have long been highly controversial in the tech industry—in the wake of a remarkable appeals court ruling that described such patents as a “deadweight loss on the nation’s economy” and a threat to the First Amendment’s free speech protections. The ruling, issued on Friday by the U.S. Court of Appeals for the Federal Circuit, found that three patents asserted against anti-virus companies Symantec and Trend Micro were invalid because they did not describe a patentable invention.

Wired [The Internet Finally Belongs to Everyone](#)

THE UNITED STATES no longer controls the address book for the Internet. On Saturday, the US government handed the last vestiges of control to the Internet Corporation for Assigned Names and Numbers, or ICANN, an independent organization whose members include myriad governments and corporations as well as individual Internet users. The nearly-20-year-old ICANN was already overseeing the distribution of Internet addresses, and now it officially owns the Internet Assigned Numbers Authority, or IANA, the database that stores all Internet domain names. IANA is what ensures you see the WIRED website when you type “[www.wired.com](#)” into your browser.

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New York Times [Subpoenas and Gag Orders Show Government Overreach, Tech Companies Argue](#)

It has been six months since the Justice Department backed off on demands that Apple help the F.B.I. break the security of a locked iPhone. But the government has not given up the fight with the tech industry. Open Whisper Systems, a maker of a widely used encryption app called Signal, received a subpoena in the first half of the year for subscriber information and other details associated with two phone numbers that came up in a federal grand jury investigation in Virginia.

Ars Technica: [Researchers ask federal court to unseal years of surveillance records](#)

Ars Technica reported on a [petition](#) filed by Stanford University's Jennifer Granick and Riana Pfefferkorn seeking to unseal judicial records that reveal how the federal government uses U.S. law to order tech companies to decrypt data, turn over encryption keys, or otherwise assist law enforcement with digital surveillance. Granick and Pfefferkorn began their investigation into this issue following the San Bernardino iPhone case and are seeking to ensure that "any documents the courts unseals are published in the interest of informing the public about this important policy debate."

The Verge [WikiLeaks plans to release documents on US election and Google over the next ten weeks](#)

WikiLeaks plans to release documents pertaining to Google and the US electoral system over the next 10 weeks, the organization announced today. WikiLeaks founder Julian Assange announced the planned release schedule in a video address at the end of a press conference in Berlin on Tuesday morning, where the organization was celebrating its 10th anniversary. Assange said the forthcoming documents will pertain to Google, the US presidential election, arms trading, war, oil, and mass surveillance.

Mother Jones [Circuit Court Judge Has Finally Had It With Software Patents](#)

Here's a bracing dissection of whether it should be possible to patent software: Given that an "idea" is not patentable and a generic computer is "beside the point" in the eligibility analysis, all software implemented on a standard computer should be deemed categorically outside the bounds of section 101. The central problem with affording patent protection to generically-implemented software is that standard computers have long been ceded to the public domain....Because generic computers are ubiquitous and indispensable, in effect the "basic tool[]" of modern life, they are not subject to the patent monopoly. In the section 101 calculus, adding software (which is as abstract as language) to a conventional computer (which rightfully resides in the public domain) results in a patent eligibility score of zero.

The Legal Intelligencer [Federal Circuit Strengthens Software, Business Method Patents](#)

The U.S. Supreme Court's 2014 decision in *Alice v. CLS Bank*, No. 13-298, shifted the tide against patents claiming software and business methods and led to record numbers of invalidations under 35 U.S.C. Section 101's prohibition on patenting abstract ideas. After upholding the majority of *Alice* decisions from district courts on appeal, however, the U.S. Court of Appeals for the Federal Circuit has now strengthened protection for software and business method patents by focusing on *Alice*'s pre-emption requirement.

New York Times [Ron Wyden Discusses Encryption, Data Privacy and Security](#)

After Apple and the F.B.I. made their battle over encryption public in February, members of Congress quickly jumped into the debate. Some lawmakers promised new rules that would give authorities more

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access to smartphones, while others promised to fight off those laws. Yet after several hearings and bills, and the formation of congressional working groups, little has been done to resolve the central tug of war between the tech industry and federal authorities over civil rights versus national security.

Washington Post [Facebook is talking to the White House about giving you ‘free’ Internet. Here’s why that may be controversial.](#)

Facebook has been in talks for months with U.S. government officials and wireless carriers with an eye toward unveiling an American version of an app that has caused controversy abroad, according to multiple people familiar with the matter. The social media giant is trying to determine how to roll out its program, known as Free Basics, in the United States without triggering the regulatory scrutiny that effectively killed a version of the app in India earlier this year. If Facebook succeeds with its U.S. agenda for Free Basics — which has not been previously reported — it would mark a major victory for the company as it seeks to connect millions more to the Web, and to its own platform.

Fortune [The FTC Has Some Harsh Words for Patent Trolls](#)

A new report by the Federal Trade Commission sheds light on companies that game the patent system, boosting claims by many in the tech industry that such firms—commonly known as “patent trolls”—employ shakedown tactics. Published on Thursday, the 269-page report titled “Patent Assertion Entities: An FTC Study” is based on an investigation into how the patent firms operate, and offers a detailed look at their business model, which typically involves purchasing old patents and then assigning them to shell companies that file lawsuits.

Washington Post [We’re finally starting to see what Trump’s stance on tech might look like](#)

It's safe to say much of the 2016 presidential race has been devoid of substance. Policy wonks have particularly homed in on Donald Trump's lack of policy specifics, ranging from foreign policy to government spending. Trump still hasn't outlined a plan for America's multibillion-dollar tech industry, but we've gotten glimpses here and there of an agenda. For example, Trump's campaign said it supports blocking a major, if mostly symbolic, development in Internet governance. In July, the GOP nominee also encouraged Russian hackers to meddle in the U.S. election — which, in its own way, sheds light on Trump's view of foreign policy, national security and technology, all at the same time.

Notable Quotes

“Because surveillance orders are usually sealed and often remain so, people do not know what kind of technical assistance the government is entitled to obtain from communications companies under current law. We want to know whether the FBI has asked for or successfully obtained court orders to turn on microphones or cameras in cars, laptops, and mobile phones, or to use smart TVs or other audio- and video-enabled Internet-connected devices for wiretapping. This knowledge will inform public debate at a time when the FBI is pushing for even greater surveillance powers.”

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

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"The government is using gag orders in circumstances where it does not need them. It didn't take the government much to agree that we could make all this public."

– [Brett Max Kaufman, staff attorney, American Civil Liberties Union](#)

"Microsoft sued the Justice Department over the gag order practice in April, arguing that law enforcement was relying on these orders too often. Specifically, the software giant said the gag orders violate the Fourth Amendment right of its customers to know if the government searches or seizes their property and also the company's First Amendment right to speak to its customers. Microsoft also complained that the orders often came without time limits, unlike the Open Whisper Systems order."

– [Nicole Perlroth and Katie Benner, reporters, The New York Times](#)

"The changes to Rule 41 allow the F.B.I. to hack millions of victims of cybercrime. These victims of hacks are regular people, not criminals. "This is a serious issue that the American people and their elected representatives should consider and debate, rather than allowing the Department of Justice to put into law through an obscure bureaucratic process. There would be overwhelming congressional support for something that gives the F.B.I. the tools it needs, while providing the American people the strong protections they deserve."

– [Senator Ron Wyden](#)

Social Highlights

- **@Nextgov:** [Rep. Will Hurd: 'Encryption is Good for Our National Security'](#)
- **@StanfordLaw:** [@StanfordCIS 's @granick & @Riana Crypto asked a federal court to unseal surveillance data @arstechnica @cfarivar](#)
- **@csoghoian:** [No longer subjected to a secret gag order, @whispersystems reveals they received their 1st gov demand for data.](#)
- **@emptywheel:** [Reup: Important detail fr Signal subpoena: how much govt demanding they're not entitled to.](#)
- **@jeffjohnroberts:** [Nice work by @ACLU to overturn year-long gag order on Signal](#)
- **@jilliancyork:** [Google's Allo sends the wrong message about encryption](#)
- **@csoghoian:** [FBI still demanding more data than they're entitled to, hoping tech firms don't know the law.](#)
- **@EFF:** [Illegal mass surveillance is all too familiar, but the Yahoo story presents some deeply troubling new twists.](#)
- **@JennaMC_Laugh:** [Legal experts said subpoena to Signal designed to get companies to overproduce, like national security letters:](#)
- **@josephfcox:** [RE: UK IMSI-catchers, a contract shows that some agencies might not understand the power of the devices](#)
- **@mattburgess1:** [No surprise UK police hoovering up phone data with IMSI catchers but brilliant work to have it finally confirmed](#)
- **@trevortimm:** [Sen. @RonWyden says the Obama admin is required to declassify the Yahoo mass email surveillance order under the USA Freedom Act](#)