

# VFI Executive Briefing

## A weekly roundup of technology news

### March 27 – March 31, 2017

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## HILL UPDATE

### Security Week [New Bill Forces Cybersecurity Responsibility Into the Boardroom](#)

The bill (PDF) defines a cyber security threat as any action not protected by the First Amendment that "may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that is stored on, processed by, or transiting an information system..." The bill then proposes just three requirements under the aegis of the Securities and Exchange Commission (SEC): that annual reports to the SEC must disclose the level of cyber security expertise of the board; or, if none exists, what "other cybersecurity steps taken by the reporting company were taken into account"; and that the definition of what constitutes that expertise should come from the SEC in consultation with NIST.

## SPECIAL COVERAGE – Brad Smith ITV Interview



### [Microsoft's Brad Smith Talks About Protecting Privacy and Handling Government Data Requests](#)

Microsoft President Brad Smith talked to ITV about how the company views government data requests, the need for user privacy to be a priority, and the creation of international digital standards.

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#### Key Quotes:

- *We will not help any government, including our own, hack or attack any customer anywhere. We will turn over data only when we are legally compelled to.*
- *As a [global] company we need to be trusted everywhere and the only way that we can be trusted everywhere is if we put interests of our customers globally ahead, frankly, of individual interests of any single government.*
- *Since last summer we've seen nation states, major governments attacking 60 of our customers in 49 different countries, hacking their way into their networks, accessing and in many instances stealing their email.*
- *This is not a time of war, there should be limits. Governments have understood for centuries that they will spy on each other but that doesn't mean they should spy on private citizens.*

## ARTICLE SUMMARY

### Washington Post [What to expect now that Internet providers can collect and sell your Web browser history](#)

After Congress handed President Trump legislation Tuesday that would wipe away landmark privacy protections for Internet users, we received a lot of reader questions about what happens next. The legislation makes it easier for Internet providers, such as AT&T and Verizon, to collect and sell information such as your Web browsing history and app usage. But let's get into the details: You wanted to know whether the measure could help the government dig up dirt on people. You asked how to protect your privacy. And some of you even asked if it would be possible to buy up the online browsing histories of Trump or members of Congress. To find out, I spoke to a number of privacy and security experts who have been following these issues closely in the public and the private sectors.

### The Hill [Battle over tech patents spills into Supreme Court](#)

A single court in rural East Texas has become the site of one of the biggest battles in Silicon Valley. Tech giants like Intel and Apple say the Eastern District of Texas, within the federal 5th Circuit, has become a haven for frivolous patent lawsuits, with favorable rulings often handed down to litigants that would lose elsewhere in the country. In 2015, 43.6 percent of all U.S. patent cases were filed in the East Texas court, located far from the nation's tech hubs. Those tech companies are now taking the issue to the Supreme Court, filing legal briefs in a separate patent lawsuit before the justices. But other major players in the industry, including Ericsson, are lining up on the opposite side, defending the Texas court and its right to hear patent cases.

### Wired [A Silicon Valley Lawmaker's \\$1 Trillion Plan to Save Trump Country](#)

THE TRUMP ADMINISTRATION may not believe that automation threatens today's American workforce, but try telling that to a travel agent or a truck driver or a factory worker or an accountant. One recent study found that for every one robot introduced to the workforce, six related human jobs disappear. But those six humans still need to get by. That's why many Silicon Valley leaders, even as they innovate entire industries and livelihoods out of existence, have started gravitating toward a not-so-new concept: basic income. Under the idea, the government would provide every citizen with a stipend, no strings

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attached. Especially in times of economic upheaval, when technological change is both rampant and unpredictable, the thinking goes, a basic income would ensure a baseline of stability.

#### **New York Times** [What the Repeal of Online Privacy Protections Means for You](#)

SAN FRANCISCO — Congress on Tuesday moved to dismantle online privacy rules created during the Obama era. The rules, which were scheduled to take effect this year, would have required internet providers to get permission before collecting and selling a customer's online information, including browsing activities. What does this mean for your privacy and what can you do? Here's what to know. What online privacy rules did Congress overturn? Congress voted to overturn rules created by the Federal Communications Commission in October that required broadband providers to get your permission before collecting private data on your online activities and offering it for sale to advertisers.

#### **Wired** [Marco Rubio Says Hack Attempts From Russia Targeted Him, Too](#)

HILLARY CLINTON MAY not have been the only Trump opponent who came into the sights of Russian hackers during the 2016 election. According to testimony in a Senate hearing today, so did one of President Trump's Republican primary adversaries: Senator Marco Rubio. In a hearing of the Senate Intelligence Committee, Rubio revealed for the first time that his campaign staffers were also targeted by hackers seemingly based in Russia. Those repeated attempts at intrusion, according to Rubio, came after he dropped out of the primary, and were also unsuccessful. He added that in just the last 48 hours, those apparent Russian attacks had targeted his staffers again.

#### **New York Times** [In Wake of Attack, U.K. Officials to Push Against Encryption Technology](#)

British government officials will meet with representatives of American technology companies this week to demand that they do more to help in the fight against terrorism and online hate speech, the latest move in a widening global push against encryption technology that blocks access to the private messages of criminal and innocent users alike. The meeting, set for Thursday, comes after Amber Rudd, Britain's home secretary, said that the country's intelligence agencies should have access to encrypted messages sent through WhatsApp, an instant-messaging service owned by Facebook. Her remarks are in response to the terrorist attack on Wednesday in London, when Khalid Masood, a 52-year-old Briton, drove a car into pedestrians, killing three of them, and then fatally stabbed a police officer.

#### **IPWatchdog** [It's time to start eliminating regulations inhibiting patents](#)

In an effort to reign in the American regulatory state, President Donald Trump issued an Executive Order dated February 24, 2017, which directed agencies to review all regulations looking for those that are outdated, unnecessary, or ineffective. The goal of these efforts is to streamline regulations by eliminating regulations that inhibit job creation, eliminate jobs, or that are inconsistent with government initiatives and policies. Michelle Lee, Director of the United States Patent and Trademark Office (USPTO), recently formed the Regulatory Reform Task Force contemplated by the aforementioned Executive Order, although the Office has not released the names of those on the Task Force. Regardless of the anonymity of the USPTO Task Force, a progress report is due on or before May 25, 2017.

#### **The Guardian** [Amber Rudd To Tell Tech Firms: Do More To Combat Terrorism](#)

The Guardian published an article detailing that several tech companies will meet privately with Home Secretary Amber Rudd for a round-table discussion addressing issues of encryption and terrorist content

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online. The article noted that Rudd is expected to ask companies to develop means to automatically identify and take down terrorist content before it can be widely disseminated and form an industry-wide body to take greater responsibility for the issue.

#### **Forbes** [Hard Times For Patent Trolls And Challengers As Courts, Targets Fight Back](#)

Texas hedge fund manager Kyle Bass lost another patent challenge this week, as a panel at the U.S. Patent and Trademark Office rejected his attempt to invalidate Biogen's patent on Tecfidera, a treatment for multiple sclerosis. It was the second defeat this month for the Coalition for Affordable Drugs, an organization Bass's Hayman Capital Management created to pursue the innovative – some say misguided – strategy of using a streamlined process at the USPTO known as inter partes review to invalidate patents Hayman thinks are based on previously disclosed inventions. Hayman sells short the stock in targeted companies in a bet their share price will go down. He lost a challenge to Acorda Therapeutics' multiple-sclerosis drug Ampyra earlier this month, and while he's won some high-profile victories the majority of his attacks have failed.

#### **The Hill** [FCC head delivers another blow to affordable internet program](#)

Federal Communications Commission Chairman Ajit Pai put more pressure on the Lifeline affordable internet program Wednesday, announcing that he would allow states to decide which companies are certified to participate. The announcement comes after Pai's decision earlier this year to cut nine providers from the Lifeline program, which elicited criticism from groups that supported the measures. In his new statement, Pai said that he would not defend federal certification for the Lifeline program — which subsidizes internet access for low income households — out of respect for states' own legal jurisdictions. "But as we implement the Lifeline program — as with any program we administer — we must follow the law," Pai's statement read.

#### **Wired** [Hate to Break It to Steve Mnuchin, But AI's Already Taking Jobs](#)

TODAY, IN 2017, the president's top economic advisor said he had no worries about robots putting people out of work. "In terms of artificial intelligence taking over the jobs, I think we're so far away from that that it's not even on my radar screen," Treasury Secretary Steve Mnuchin told an audience in Washington. "I think it's 50 or 100 more years." Great! That's a relief! President Trump can go back to horsing around on his big rig confident in the knowledge self-driving trucks won't replace millions of drivers in a few years. Except Mnuchin's wrong. Like super-wrong. Artificial intelligence is not only coming for jobs, the jobs it's coming for are the precious few left over after old-school automation already came for so many others.

#### **Recode** [Trump has a new tech whisperer in the White House](#)

In new filings, prosecutors told a court in Washington, DC that within the coming weeks, they expect to extract all data from the seized cellphones of more than 100 allegedly violent protesters arrested during the inauguration of President Donald Trump. Prosecutors also said that this search is validated by recently issued warrants. The court filing, which was first reported Wednesday by BuzzFeed News, states that approximately half of the protesters prosecuted with rioting or inciting a riot had their phones taken by authorities. Prosecutors hope to uncover any evidence relevant to the case. Under normal judicial procedures, the feds have vowed to share such data with defense attorneys and to delete all irrelevant data.

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#### **IPWatchdog** [Director Lee forms USPTO Working Group on Regulatory Reform](#)

By Executive Order dated February 24, 2017, President Donald J. Trump proclaimed: “It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.” In this Executive Order, President Trump ordered the heads of each agency to designate a Regulatory Reform Officer (RRO) within 60 days. The RRO will oversee the implementation of the regulatory reform initiatives and policies, including what will become a significant streamlining of the regulatory estate in America. In addition to the designation of a Regulatory Reform Officer, the Patent Office (along with many other agencies) is required to create a Regulatory Reform Task Force, which will be made up of the RRO, the agency Regulatory Policy Officer, a representative from the USPTO’s central policy office, and at least three other senior level USPTO officials as determined by the Director of the USPTO.

#### **Wall Street Journal** [EU Antitrust Chief Says Companies May Have Misled Regulator for Merger Clearance](#)

BRUSSELS—The European Union’s antitrust chief said Friday that her department is reviewing a handful of recent merger clearances on suspicions companies misled investigators in securing approval. The unusual reassessment could lead to formal charges and ultimately significant fines for the companies or—though highly unlikely and complicated—withdrawal of clearances. In similar circumstances, the regulator leveled charges in December against Facebook Inc. In that case, the EU accused the social-media company of giving incorrect or misleading information to regulators reviewing its planned purchase of chat app WhatsApp in 2014.

#### **JustSecurity** [Drawing a Line on Mass Surveillance: How Congress Must Reform Section 702](#)

Section 702 authorizes two truly alarming efforts that must be reformed or ended. The first program is Prism, which produces the majority of information collected under Section 702, and involves ordering companies to search all information in their possession and copy whatever data is tied to something intelligence agencies call ‘selectors.’ A selector is like a keyword in a search engine; they can be very broad and are connected to enormous amounts of information, all of which is provided to the government. [...] The second program is Upstream, which collects information from the Internet’s ‘backbone,’ which includes the undersea cables linking continents and thereby enabling the global connectivity the Internet depends on.

## Notable Quotes

*“We need to make sure that organizations like WhatsApp, and there are plenty of others like that, don’t provide a secret place for terrorists to communicate with each other.”*

– [British Home Secretary Amber Rudd](#)

*“Compelling companies to put back doors into encrypted services would make millions of ordinary people less secure online. We all rely on encryption to protect our ability to communicate, shop and bank safely.”*

– [Jim Killock, executive director, Open Rights Group](#)

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*“For decades, there has been a border doctrine where the government has more power to search our stuff. That’s well and good for the 20th century things we are carrying, like when it applies to papers or our backpack. Our position is that if the government wants to search someone’s phone, the government ought to get a warrant.”*

– [Adam Schwartz, staff attorney, Electronic Frontier Foundation](#)

*“Mathematics is universal, and the mathematics on which strong encryption depends is quite as inflexible as that which specifies Earth’s orbit round the sun. If the encryption on terrorists’ messages were weakened so that the government could read them, the same weakening would apply to everyone else, however innocent.”*

– [Editorial Board, The Guardian](#)

*“The technology of what Americans now carry on laptops and iPhones has changed so rapidly that the law desperately needs to catch up when it comes to these border searches. Randomly picking through a traveler’s purse is not the same as accessing a device that contains anything from a trove of intimate emails and photos to personal medical files, tax information, financial data or a reporter’s notes.”*

– [Editorial Board, USA TODAY](#)

*“We are working closely with national experts on enforcing jurisdiction in cyberspace and identifying possible legal solutions for cross border access within the European Union. Our goal must be straightforward arrangements for cross border access to electronic evidence accompanied by strong procedural rights’ safeguards. I will report back in June with possible options both for practical measures and also legislative solutions.”*

– [EU Justice Commissioner Vera Jourova](#)

*“There are well-established legal rules governing how law enforcement agencies may obtain data from social media companies and email providers. By requesting a traveler’s credentials and then directly accessing their data, CBP would be short-circuiting the vital checks and balances that exist in our current system.”*

– [Sen. Ron Wyden](#)

*“No matter how you look at it, a perpetual gag order is inconsistent with the First Amendment... Imagine a law that does stop and frisk and says you can’t talk about this unless you go to court. That’s not something that would be allowed, but it’s allowed here. The evidence is quite strong that my clients wish to speak, and transparency reports are common in this industry.”*

– [Andrew Crocker, staff attorney, Electronic Frontier Foundation](#)

*“The fact that our intelligence-gathering laws leave room for politically motivated surveillance should give us pause. And it’s not enough for President Trump or members of Congress to simply express*



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*outrage that the private communications of political leaders could have been surveilled. With the expiration of Section 702 looming, they have the opportunity to push for a complete overhaul of our surveillance authorities, and ensure that they are brought fully in line with the requirements of our Constitution.”*

– [Neema Singh Guliani, legislative counsel, ACLU](#)

*“The FBI was unable to tell us how many people unmask names and until we get to the bottom of who has the ability to unmask names, I don’t think we’d be able to reauthorize FISA.”*

– [House Intelligence Committee Chairman Devin Nunes](#)

*“What happened with Trump’s folks is a perfect opportunity for Americans to understand how “incidental” surveillance of citizens’ works, what happened to the data, and the inherit risks of this level of collection for all of our privacy so at least we’re all informed about how all of this works.”*

– [Scott Shackford, associate editor, Reason](#)

*Judge Gorsuch’s opinion leaves open the questions of whether and how the third-party doctrine, which holds that an individual does not have a reasonable expectation of privacy in what he or she shares with third parties, applies to email.*

– [Sarah Tate Chambers, Lawfare Blog](#)

## Social Highlights

- **@dnvolz:** [Republicans at Monday's hearing were obsessed with surveillance "unmasking." Today showed why.](#)
- **@ericgeller:** [Great explainer by @Cory Bennett of how the IC might have collected comms involving the Trump transition team:](#)
- **@just\_security:** [With this week's talk of Section 702, here's how @danielschuman & @SeanVitka think it should be reformed:](#)
- **@MikeScarcella:** [Tech, telecom companies challenge secrecy protocols for FBI national security letters Video:](#)
- **@Reuters:** [Lawmaker suggests U.S. surveillance of foreigners picked up Trump calls](#)
- **@verge:** [Prosecutors think they can extract data from phones seized during Inauguration Day protests](#)
- **@ericgeller:** [Comey on designing technical solution to encryption: “I really do think that we haven’t given this the shot it deserves.”](#)
- **@Gizmodo:** [Prosecutors say they are hacking over 100 phones confiscated at inauguration protests](#)
- **@kateconger:** [Alt headline: "I'm very confused by all of this right here"](#)
- **@lawfareblog:** [Sarah Tate Chambers: Gorsuch on Cyber-Related Issues: Part One](#)
- **@Slate:** [The government probably did spy on Trump, because it surveils almost all Americans:](#)