

VFI Executive Briefing

A weekly roundup of technology news

April 10– April 14, 2017

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HILL UPDATE

Government Technology [Warrants Required For Traveling Americans' Passwords Under 'Protecting Data At The Border Act'](#)

Government Technology reported on the news that Senators Ron Wyden and Rand Paul are sponsoring the Protecting Data at the Border Act introduced in the House by Representatives Jared Polis and Blake Farenthold. The proposed Act would require law enforcement to obtain a warrant before conducting searches of personal devices at the border. [The Atlantic](#) examines several cases with Fourth Amendment arguments like those raised regarding searches of personal devices by Customs and Border Patrol agents.

ARTICLE SUMMARY

SC Magazine [A Cyber Bill of Rights](#)

How much freedom of speech does the First Amendment grant as soon as said speech is online? Are digital communications such as emails protected from unlawful search and seizures under the Fourth Amendment? And how does the Fifth Amendment apply to medical information? Some have even questioned if the Second Amendment provides a right to bear encryption and called for additional legislation to consider internet access a basic right and more. A growing body of cases raises the question of how much protection Americans have under the existing Bill of Rights, how these rights are interpreted when modern technology factors into the equation, and even if a more pointed Cyber Bill of Rights is necessary to ensure internet security and freedom.

Slate [How Courts Avoid Ruling On Issues Of Privacy](#)

Slate published an article analyzing how courts are increasingly avoiding offering definitive rulings in cases involving major questions around privacy, technology, and law enforcement access to data. The article highlights multiple cases, including Microsoft's warrant case, where judges have sidestepped sweeping pronouncements involving new technologies, preferring to hand down narrowly tailored decisions focused on jurisdictional or procedural issues. The article notes that Microsoft's victory may not be viewed as a privacy victory, citing a Florida ruling last week ordering Yahoo to disclose communications possibly stored abroad.

The Verge [Mossberg: A plan to preserve the internet](#)

Despite the never-ending debate on the question of the role of government in America, there's been a strong tradition of protecting our undisputed, important natural treasures, or taking on great common engineering challenges. Few Americans oppose the policies — many of which originated with Republicans — that bar or limit commercial exploitation of unique places like Yosemite National Park, or the Gettysburg Battlefield. Even people who opposed Dwight D. Eisenhower liked the interstate highway

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system, and John F. Kennedy's most bitter political rival, Richard Nixon, cheered on the astronauts who fulfilled JFK's challenge of landing humans on the Moon. President Trump campaigned on creating a massive, long-overdue national infrastructure project.

The Legal Intelligencer [A Walk In The Cloud: Search Warrants For Data Stored Outside The U.S.](#)

The Legal Intelligencer published an opinion piece examining the ruling by Magistrate Judge Reuter in Google's case challenging a warrant for data stored extraterritorially. The piece analyzes that Judge Reuter's ruling addresses an important issue that will persist until legislation is passed to update the Stored Communications Act.

Washington Post [Tech companies are pushing the FCC to preserve its net neutrality rules](#)

Tech companies are pushing the Federal Communications Commission not to water down its rules on net neutrality, teeing up a confrontation between Silicon Valley and Washington as the nation's top telecom regulator mulls a plan to undo the Obama administration's regulations for Internet providers. In a meeting with FCC Chairman Ajit Pai on Tuesday, the Internet Association — which represents companies such as Google, Amazon and Netflix — said it maintains “vigorous support” for the agency's net neutrality policy, which moved to regulate broadband companies, such as Comcast and Charter, like their predecessors in the legacy telephone business. Those rules ban the blocking or slowing of websites, and also prohibited Internet service providers from charging websites special fees for displaying them on consumers' devices.

New York Times [Trump Completes Repeal of Online Privacy Protections From Obama Era](#)

President Trump on Monday signed a congressional resolution to complete the overturning of internet privacy protections created by the Federal Communications Commission during the Obama administration. The change will allow broadband internet service suppliers, such as cable and telecommunications companies, to track and sell a customer's online information with greater ease. The Republican opponents of the Obama-era rules, which would have gone into effect later this year, said they would have unfairly placed restrictions on broadband providers, like Verizon and Comcast, that were more stringent than those on internet companies, like Google and Facebook.

Wall Street Journal [For Google's Data Wars, It All Comes Down to Location](#)

Google and the U.S. Justice Department are clashing in courtrooms across the country over the government's power to compel the company to turn over emails and other personal data sought in criminal probes. The tensions deepened after a landmark court ruling last year declaring private online communications stored overseas off-limits to prosecutors—even if there is probable cause to suspect the data contains evidence of a crime. Law-enforcement authorities send Google thousands of requests a year for user data in probes ranging from investigations of human trafficking and child pornography to terrorism and white-collar cases. Google's “legal investigations support” team is responsible for finding and disclosing matching records, often taking weeks to complete a single request, according to the company.

Reuters [New York regulator wants other states to model cyber laws after its rules](#)

New York's cyber security rules took effect on March 1. [...] The rules lay out steps that New York banks and insurers must take to protect their networks and customer data from hackers and disclose cyber

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events to state regulators. Firms, for example, must scrutinize security at third-party vendors that provide them goods and services. They must also perform risk assessments to design a cyber security program particular to them. Covered entities must annually certify compliance.

Axios [Espinell: Digital trade risks are growing](#)

In an interview with Axios, BSA President and CEO Victoria Espinell briefly remarked on the state of digital trade policy and the challenges posed by a lack of international rules on cross-border data flows. Axios featured the interview in their [Login](#) newsletter.

CNS News [US Undermining Patents, Innovation – Meanwhile, China Gains Ground](#)

Last Thursday, President Trump met with Chinese President Xi Jinping – a meeting many observers expected to be tense given the situation in North Korea, as well as each leaders' commitment to strengthening their respective countries' positions in the world. The President and his team are no doubt also aware of China's moves to supplant the U.S. as the leader of innovation and even patent protection. Unfortunately, this ambition coincides with our own actions to weaken patent protection in America. Since our founding, America has led the world in invention and risk taking. This largely stems from the fact that our founders wrote patent rights into our Constitution and extended the idea of property rights to include ideas, not just physical property. It is one of the concepts that separates us from many other nations, particularly China, and made us the global leader in innovation.

Axios [Computer programmers may no longer be eligible for H-1B visas](#)

U.S. Citizenship and Immigration Services quietly over the weekend released new guidance that computer programmers are no longer presumed to be eligible for H-1B visas. What it means: This aligns with the administration's focus on reserving the temporary visas for very high-skilled (and higher-paid) professionals while encouraging low- and mid-level jobs to go to American workers instead. The new guidance affects applications for the lottery for 2018 fiscal year that opened last Monday.

Ars Technica [H-1B visa applications cap out in just five days](#)

Last Monday, the government began accepting applications for H-1B visas that are often granted to foreign tech workers. Trucks full of thick Fedex applications lined up before dawn to get their applications in. By Friday, the door was shut. US Customs and Immigration Service (USCIS) said on Friday that they have already maxed out, hitting the limit of 65,000 H-1B visas set by Congress and an additional 20,000 visas that are reserved for applicants who have master's degrees. It's the fifth year in a row that the cap has been met within five days. Some H-1B employers aren't subject to the visa cap, including universities and some nonprofits.

King 5 News (WA) [Few Americans understand cyber security, study finds](#)

Seventy-five percent of those surveyed could pick the most secure password out of a list of four options, but 73 percent weren't sure what a botnet was. "A botnet is essentially thousands or hundreds of thousands of zombie computers: computers that have been taken over by an attacker," said Jeremy Johnson, Director of Offensive Security Services. [...] The Pew study showed 73 percent of those surveyed understood that using public Wi-Fi, even if pass protected, is not always safe for sensitive activities, like banking. However, only 48 percent were sure what Ransomware was. Johnson says that's when a hacker encrypts all your files with a password or key that you don't know.

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Ars Technica [The campaign to put science and tech leaders in public office starts now](#)

Tracy Van Houten has an undoubtedly cool job. She's a systems engineer at NASA's Jet Propulsion Laboratory, and she currently leads a team that's conducting testing for the upcoming Mars 2020 rover mission. She joined JPL, located 15 miles outside of downtown Los Angeles, 13 years ago. Since then, she's worked on several space missions, including the last Mars rover mission, Curiosity, and an Earth satellite that collects data on soil moisture. Landing a job at JPL wasn't an accident. Van Houten dreamed of working at the NASA center since she was in high school, and she looked for any way to get her foot in the door. She collected the business cards of people with even a slight connection to JPL, and she sent out hundreds of resumes. She hustled her way to her dream job. Now she's willing to give it all up.

Slate [Tech Companies Need a Patent Law History Lesson](#)

Ownership of Internet of Things devices, digital rights management law, interminably long software click-through agreements—these are all modern issues that seem to be a consequence of new technology. Indeed, questions of technological ownership are on the cutting edge of the law, with the Supreme Court set to consider those questions in the *Impression Products v. Lexmark International* case argued recently, a case over printer ink cartridges that has potential implications for emerging technologies like cars and automatic cat feeders. Some contend that “complexity of the modern contracting markets” requires new rules of ownership, but history shows that this question is not so modern.

The Hill [Ex-Obama defense chief calls for boosting Pentagon, Silicon Valley ties](#)

Former Defense Secretary Ash Carter on Tuesday called for strengthening ties between the government and Silicon Valley, saying it is “essential” to the country's defense. “The bridges between technology-driven change and government need to be repaired,” Carter said at an Atlantic Council panel, which coincided with the launch of the council's new report, *Keeping America's Innovative Edge*. “The secretary of Defense needs to win the wars and meet the security challenges of today ... but also to meet the unforeseen challenges and opportunities that an unpredictable future might hold,” Carter continued. “To me, that meant ensuring that my successor ... continues to have what I inherited from my predecessors, the finest fighting force the world has ever known.”

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Notable Quotes

"Americans' Constitutional rights shouldn't disappear at the border," Senator Ron Wyden said in statement to BuzzFeed News. "By requiring a warrant to search Americans' devices and prohibiting unreasonable delay, this bill makes sure that border agents are focused on criminals and terrorists instead of wasting their time thumbing through innocent Americans' personal photos and other data."

– [Sen. Ron Wyden](#)

"The government should not have the right to access your personal electronic devices without probable cause... Whether you are at home, walking down the street, or at the border, we must make it perfectly clear that our Fourth Amendment protections extend regardless of location. This bill is overdue, and I am glad we can come together in a bicameral, bipartisan manner to ensure that Customs and Border Patrol agents don't continue to violate essential privacy safeguards."

– [Rep. Jared Polis](#)

"I'm sure there are people that want to search houses without warrants, too. But in this country, for American citizens, we establish a balance between privacy and law enforcement. That's why we have the Fourth Amendment."

– [Rep. Jared Polis](#)

"There is no substitute for legislative clarification. Thus, until such takes place or the Supreme Court steps in, parties will be forced to fight the same battle over the meaning of the language at issue in court after court, as thousands of such search warrants are issued each year and the cloud grows bigger and more complex."

– [Leonard Deutchman, The Legal Intelligencer](#)

"Despite the minor similarities between SCA warrants and subpoenas, in this post-digital world, we are not convinced that SCA warrants—which are required under the statute to obtain certain content-based information that cannot be obtained with a subpoena due to heightened privacy interest in electronic communications—should nevertheless be treated as subpoenas."

– [New York State Court of Appeals](#)

"Hopefully my Republican colleagues are now going to finally take this issue seriously. And there will be bipartisan support for the kinds of reforms that I'm seeking. I think we have to be given an accounting of the number of Americans' communications collected under section 702 of FISA... warrantless backdoor queries of communications, minimum procedures for how this system works — have to be given to the Congress so that Congress can start looking at how to reform surveillance authorities that expire at the end of this year."

– [Sen. Ron Wyden](#)

"At times, courts have avoided making grand privacy declarations by saying that U.S. law doesn't apply to the communications at hand. In July the 2nd Circuit ruled that the government could not force Microsoft

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to provide customer emails on a server in Dublin because the messages were outside of U.S. jurisdiction. According to the opinion, the Stored Communications Act “neither explicitly nor implicitly ... envision[s] the application of its warrant provisions overseas.” Because privacy invasions occur when and where data is seized, the warrant was invalid. The confusing decision seemed to be an unwitting win for privacy.”

– [Jill Priluck, columnist, Slate](#)

“U.S. surveillance of EU citizens’ has increasingly become an issue with the approach of the EU-U.S. Privacy Shield data transfer program’s first annual review in September. The prospect that EU concerns over U.S. government surveillance might bring an end to the Privacy Shield is of great concern to the thousands of U.S. and EU businesses that rely on the program to ease the legal transfer of personal data from the EU to the U.S.”

– [Daniel R. Stoller, senior legal editor, Bloomberg BNA](#)

“Speaking anonymously about issues of the day is a longstanding American tradition, dating back to when the framers of the constitution wrote under pseudonyms... The anonymity that the first amendment guarantees is often most essential when people criticize the government, and this free speech right is as important today as ever.”

– [Esha Bhandari, attorney, American Civil Liberties Union](#)

Social Highlights

- **@ericgeller:** [This, from Ron Wyden, is interesting.](#)
- **@nytimes:** [Border officers nearly double searches of electronic devices, U.S. says](#)
- **@Slate:** [How courts avoid ruling on issues of technology and privacy:](#)
- **@TheAtlantic:** [Digital border searchers are on track to increase by a third this year, writes @kavehwaddell](#)
- **@washingtonpost:** [The FBI obtained a FISA warrant last year to monitor Trump adviser Carter Page in a probe of campaign’s Russia ties](#)
- **nationalreview:** [Broad Minnesota Warrant Seeks Data on All Users Who Googled Fraud Victim <http://ow.ly/EPZB30aLvY2> @CovingtonLLP #fraud #Minnesota #privacy](#)
- **@realdanstoller:** [STORY: Yahoo U.S. Email #Surveillance Bothers EU #Privacy Chiefs <https://www.bna.com/yahoo-us-email-n57982086525/> ... via @bloombergbna @Yahoo #privacysield](#)
- **@AJEnglish:** [What is electronic surveillance? Is it legal? We answer your question on privacy and data security](#)
- **@axios:** [The federal government is dropping its information request for an anti-Trump Twitter account.](#)
- **@Davidlaz:** [Twitter drops suit after government gives up request for ID of anti-Trump account](#)
- **@dnvolz:** [New: House Judiciary Committee renews demand for disclosure of estimate of Americans incidentally spied on](#)