

VFI Executive Briefing

A weekly roundup of technology news

April 17 – 21, 2017

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HILL UPDATE

The Hill [Schiff advocates for NSA, Cyber Command split](#)

The top Democrat on the House Intelligence Committee is calling for the National Security Agency (NSA) to be split from U.S. Cyber Command. Rep. Adam Schiff (D-Calif.) on Wednesday said it would be “wise” to have separate leaders for the two organizations, pushing for a civilian head of the NSA during remarks at Columbia Law School in New York. Currently, the two organizations are both led by Adm. Mike Rogers. Congress elevated Cyber Command to a unified combatant command using annual defense policy legislation passed last year, but also required the Pentagon to conduct a full assessment before splitting it from the NSA. The Pentagon told The Hill earlier this year that it has started assessing whether it should split up the dual-hat leadership. “Those are two very big jobs housed under the same hat,” Schiff said. “I think we would be wise to split up those responsibilities.”

Foreign Policy [Intelligence Community Pushes to Keep Surveillance Powers](#)

Foreign Policy reported that the Office of the Director of National Intelligence (ODNI) published a [Q&A fact sheet](#) advocating for reauthorization of the Foreign Intelligence Surveillance Act (FISA) Amendments Act. Coverage noted that the document provides a deep overview of the processes and legal foundations for Section 702. The fact sheet also argues that 702 programs help “inform cybersecurity efforts” by offering intelligence about the cyber capabilities of foreign adversaries.

SPECIAL COVERAGE – IMMIGRATION

Immigration was in the news again this week with President Trump signing an [executive order](#) ordering a review of the H-1B program and an amicus brief filing by technology companies concerning President Trumps “travel ban” executive order.

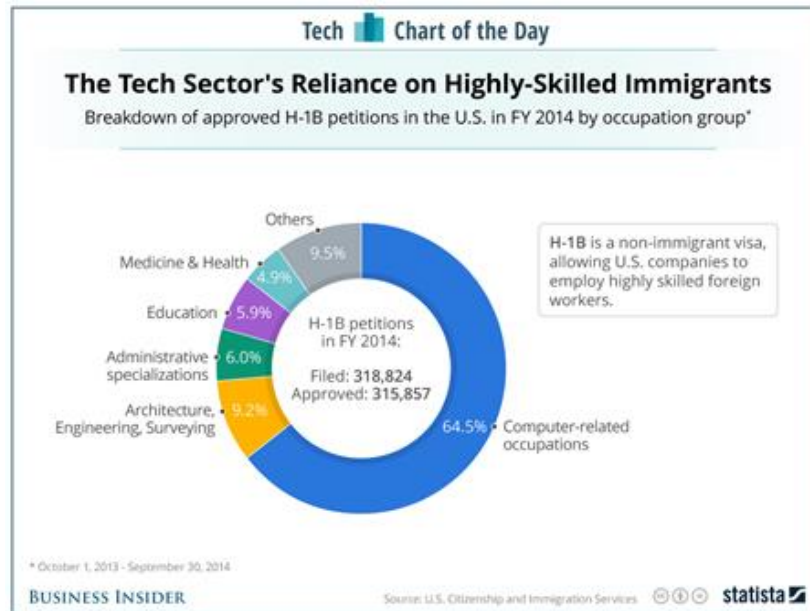
The order directs federal agencies to review and propose changes to the visa program. The [Business Insider](#) chart below shows which industries received approved H-1B visas in FY14. The intent of the program is to bring in skilled labor and talent thought to be unavailable within US. Critics have said the H-1B program is “exploited by companies to hire cheap foreign labor instead of their more expensive American peers.”

In other immigration news, 162 tech companies filed an [amicus brief](#) in *International Refugee Assistance Project v. Trump* which is in the Virginia-based 4th U.S. District Court of Appeals. The brief opposes [Executive Order 13780](#), the second executive order that temporarily suspends travelers from six majority-Muslim countries and temporarily suspends all refugees from those countries who do not possess either a visa or valid travel documents. The brief is asking to let stand an injunction blocking the executive order. Oral arguments in the case are scheduled for May 8 in front of the full court of 15 judges.

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New York Times [Trump Signs Order That Could Lead to Curbs on Foreign Workers](#)

SHENZHEN, China—In a corner of a Foxconn Technology 2354 -0.11% Group warehouse in this southern Chinese city, the secretive maker of iPhones is looking beyond Apple Inc. to its own future. Dozens of young workers sit before computers in blue plastic chairs, drawing up battle plans for Foxconn's sales initiative for its new Sharp-branded television sets. "Sell Sharp with all your might," a red banner hanging from the ceiling commands. Foxconn's acquisition of Japan's Sharp Corp. SHCAY 4.58% last year was the Taiwanese company's first big effort toward transforming itself from a contract manufacturer to a technology powerhouse, with its own brands and product lines. It is now bidding \$27 billion for Toshiba Corp.'s memory-chip business, underscoring just how seriously Foxconn—formally known as Hon Hai Precision Industry Co. 2317 -0.31% —wants to reinvent itself. Behind both the Sharp and Toshiba plays is the conviction of Foxconn Chairman Terry Gou that the company he started 43 years ago must have its own components and brands if it is to survive to become what he has called a "100-year company."

The Verge [Trump signs executive order reviewing H-1B visa program](#)

President Donald Trump today signed an executive order directing the government to review its policies on the H-1B visa program, as the administration says it looks to cut down on abuse in the system designed for high-skilled workers. Nearly 200,000 applications were recently sent in for this year's 85,000 spots in the popular program, meant to bring skilled workers from overseas to the United States. But despite a push from Silicon Valley-aligned groups, the program has been controversial, with critics arguing that the system is rife with abuse, as it allows companies to unnecessarily import cheap labor instead of hiring within the country. Proponents counter that it is a necessary way to fill tech jobs that are crucial to the American economy.

New York Times [Meet the Foreign Tech Workers Left in Limbo by Trump](#)

At dawn in California's Bay Area, the river of commuters begins to flow. It is filled with the people who help make our smartphones, our favorite games, the apps we download. But many have also come to make something else, perhaps — a new life in America. These are just a few of the 85,000 people who

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come to work at American companies from as far away as India and China on H-1B visas, which are granted to highly skilled workers from overseas. Many, like Kaushik Gopal, land jobs at technology firms that have struggled to find enough American citizens with advanced math and science skills to fill their cubicles. Often, they hope to call the United States home.

The Verge [The Replacements](#)

In the summer of 2014, Craig Diangelo thought he was on the path to an easy retirement. A veteran of the tech industry, Diangelo got his start as a COBOL programmer in the 1970s. Over the next four decades he learned dozens of new programming languages and kept up with the evolution of the sector from mainframe computers to PCs, from the early days of the web to the advent of cloud computing. He held a position as a senior advisor to the CTO at a major health insurance provider, then took a job as data storage specialist at regional utility Eversource Energy. He lived near his office in Berlin, Connecticut, made a six-figure salary, and was working toward a comfortable pension. And then, in October, he and his fellow staffers were called into an all-hands meeting with the company's chief information officer.

Recode [More than 160 tech companies asked a court to reject Trump's second travel ban](#)

Amazon, Facebook, Google, Snap and more than 150 other tech companies told a federal court in Virginia today that it should toss U.S. President Donald Trump's latest attempt to ban refugees and travelers from many majority-Muslim countries. In a brief filed in the U.S. District Court for Appeals for the Fourth Circuit, a host of Silicon Valley heavyweights lambasted Trump's new order — his second attempt, after a judge blocked his first one — and stressed it would inflict “substantial harm on U.S. companies, their employees, and the entire economy.”

ARTICLE SUMMARY

Just Security [A Microsoft Ireland Fix: Time To Act Is Now!](#)

Just Security published a blog by Jennifer Daskal, associate professor at American University Washington College of Law, calling for an immediate legislative fix to the issues in Microsoft's warrant case. Daskal cites recent legal challenges from Yahoo and Google as evidence of the growing obstacles for law enforcement access to data following the Second Circuit ruling. She offers three requirements for any legislative solution, including analysis of comity, notice requirements, and reciprocal notice and control. She also highlights the U.S.-UK pact as a model approach for a solution.

The New York Law Journal [Will Tech Firms Be Compelled to Produce Overseas Emails?](#)

The New York Law Journal published a joint article from Nicholas M. De Feis and Philip C. Patterson of De Feis O'Connell & Rose, P.C., analyzing recent legal challenges of U.S. government requests for data stored abroad. De Feis and Patterson examine how recent lower court rulings involving Google and Yahoo conflict with the Second Circuit's ruling in Microsoft's warrant case, arguing that legislators should act now to reform outdated laws rather than leaving the issue to the courts.

Yahoo Finance [4 tech problems America's lawmakers should fix](#)

Yahoo contributing editor, Rob Pergoraro published an article highlighting four tech issues Congress needs to address. Among other items, Pergoraro calls out ECPA reform as a primary issue for Congress, noting the broad, bi-partisan support for the Email Privacy Act.

TechCrunch [Microsoft Publishes First National Security Letter In Transparency Report](#)

TechCrunch reported on the release of Microsoft's latest biannual transparency report. Coverage focused primarily on Microsoft's disclosure for the first time of a National Security Letter (NSL) and the increase in Foreign Intelligence Surveillance Act (FISA) requests Microsoft received during the latest six-month

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period. Outlets noted that despite the nearly doubled number of FISA requests by the U.S. government since the last report, the overall number of users affected by the requests decreased.

Law360 [EU Regulator Says Trump Mum On 'Privacy Shield' Pledges](#) Law360 reported on comments from EU Data Protection Supervisor Giovanni Buttarelli that his office has yet to receive confirmation from the Trump administration about whether the U.S. will adhere to commitments regarding surveillance that the U.S. made as part of the EU-U.S. Privacy Shield agreement.

Recode [Europe's competition cop says she'll monitor Google's ad-blocking efforts](#)

European Commissioner for Competition Margrethe Vestager is keeping an eye on Google's development of an ad blocker. Google is working on a feature for its Chrome browser on desktop and mobile that would either filter certain types of ads or filter ads entirely from sites that run what it sees as "bad ads," according to sources. The feature could still end up not being released and it may or may not qualify as an ad blocker in the way people typically think about ad blockers. Still, Vestager, who heads up the EU's regulatory body in charge of anticompetitive behavior, has her ears perked. "We will follow this new feature and its effects closely," she tweeted in response to a question from a reporter.

Ars Technica [Why one Republican voted to kill privacy rules: "Nobody has to use the Internet"](#)

A Republican lawmaker who voted to eliminate Internet privacy rules said, "Nobody's got to use the Internet" when asked why ISPs should be able to use and share their customers' Web browsing history for advertising purposes. US Rep. Jim Sensenbrenner (R-Wis.) was hosting a town hall meeting when a constituent asked about the decision to eliminate privacy rules. The person in the audience was disputing the Republican argument that ISPs shouldn't face stricter requirements than websites such as Facebook. "Facebook is not comparable to an ISP. I do not have to go on Facebook," the town hall meeting attendee said. But when it comes to Internet service providers, the person said, "I have one choice. I don't have to go on Google. My ISP provider is different than those providers."

New York Times [Social Media Is Not Contributing Significantly to Political Polarization, Paper Says](#)

Why has the United States become so politically polarized? Many have argued that social media, where users can find their viewpoints reinforced with slanted news stories and the partisan commentary of friends, has played a role in reinforcing tribal political identities. That explanation has been percolating long enough and loud enough that it has even reached the Oval Office. In an interview he gave before leaving office, President Barack Obama gestured to the rise of social media as a key factor in the continuing political polarization of the United States, arguing that Americans were trapping themselves within filter bubbles, limiting their own perspectives.

Washington Post [The government just wrapped a major auction that'll shape the future of the Internet](#)

T-Mobile, Dish Network, Comcast and AT&T were among the biggest winners of a historic government auction of wireless airwaves, the Federal Communications Commission said Thursday. The auction will transfer a significant amount of spectrum — the invisible radio waves that carry voice, video and data — from TV stations to companies in other industries eager to build out wireless data networks. For consumers, the results may mean bigger Internet pipes or a faster experience. T-Mobile spent the most out of all the bidders, dumping \$8 billion into the contest. That enabled the company to walk away with new spectrum in virtually every U.S. market, said company chief executive John Legere in a tweet.

Electronic Frontier Foundation [The Bill of Rights at the Border: Fifth Amendment Protections for Account Passwords and Device Passcodes](#)

Electronic Frontier Foundation published a blog by criminal defense staff attorney Stephanie Lacambra

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examining whether the Fifth Amendment protects travelers entering the U.S. from having to give Customs and Border Patrol agents the passwords to their personal devices and accounts.

Washington Post [D.C. appeals court poised to rule on whether police need warrants for cellphone tracking](#)

Prince Jones was sitting in his car on Minnesota Avenue in Northeast Washington one morning in October 2013 with a prepaid cellphone and four other cellphones that had been stolen from three women in recent sexual assaults. With help from two phone companies, D.C. police were able to narrow down the general location of the phones. And then with the use of a “StingRay” device, investigators were able to pinpoint the location of the phones — and Jones. He was arrested and later convicted of sexual assault, kidnapping and armed robbery. Police and federal agents around the country have for years been quietly using cell-site simulators in which a portable device intercepts signals from cellphones attempting to connect with cell towers and then captures their identifying numbers and precise locations. Defense lawyers and civil libertarians claim that the devices are the equivalent of a police search and, therefore, require a search warrant.

Lawfare [Hoover Book Soiree: Privacy & Power: A Transatlantic Dialogue in the Shadow of the NSA-Affair](#)

On Tuesday, the Lawfare Institute and the Hoover Institution cohosted an event discussing “[Privacy & Power: A Transatlantic Dialogue in the Shadow of the NSA-Affair](#),” a new book exploring how the Snowden disclosures revealed a growing divide between the U.S. and EU on privacy and surveillance. Lawfare published a brief article previewing the event, which featured Lawfare editor-in-chief, Benjamin Witte and Washington & Lee law professor, Russell Miller discussing their contributions to the book and the changing notions of privacy in a big-data era.

Wall Street Journal [Cyber Insurance Becomes a Must for More Manufacturers](#)

Abbott Laboratories was pilloried last week by regulators for, in part, botching its response to a report that certain company defibrillators and pacemakers could be manipulated by hackers. Shares of the health-care giant, which acquired the devices in its purchase of St. Jude Medical Inc., fell 1.9%. The criticism, which came in a warning letter from the U.S. Food and Drug Administration, casts another spotlight on the fusillade of cyber dangers facing manufacturers. For years cyber insurance was overwhelmingly purchased by consumer-facing business—retailers, financial-service providers and hospitals. Mostly this was to protect against customer data theft. The St. Jude situation helps explain why manufacturers are now rushing to make sure they are covered.

NOTABLE QUOTES

“No proposal will fully satisfy all of the various interests – or interest groups – at stake. And I don’t hold out the false hope that this one will either. But there is also an almost universal consensus that the status quo is both unworkable and normatively unsound. It is bad for security. It is bad for privacy. And it bad for the U.S. companies that manage our data – and hence for a big part of our economy. So rather than just talking about what won’t work, it’s time to talk about what might.”

– [Jennifer Daskal, associate professor, American University Washington College of Law](#)

“Microsoft is the latest in a series of companies able to disclose an NSL due to provisions in the USA Freedom Act requiring the FBI to review previously issued non-disclosure orders. The reforms in the USA Freedom Act were a positive step forward and we believe reasonable limits on the routine use of government secrecy should be adopted more broadly. There are times when secrecy is vital to an investigation, but too often secrecy orders are unnecessarily used, or are needlessly indefinite and prevent us from telling customers of intrusions even after investigations are long over.”

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– [Steve Lippman, director of corporate responsibility, Microsoft](#)

"Fifth Amendment protections do apply at the border, and they protect your right to refuse to reveal your password in most circumstances... But whatever your status, whether you choose to provide your passwords or not, border agents may decide to seize your digital devices."

– [Stephanie Lacambra, criminal defense attorney, EFF](#)

"The House Judiciary Committee will work in a bipartisan fashion to reauthorize and reform [Section 702] intelligence gathering program to ensure that it continues to be a critical tool to thwart terrorist attacks and that it best protects Americans' civil liberties."

– [Rep. Bob Goodlatte](#)

"Section 702 essentially legalized President Bush's warrantless wiretapping program... If we learned that it was actually tens of millions or more of Americans' communications [collected], we would understand that the term incidental here is somewhat meaningless."

– [Elizabeth Goitein, co-director of Liberty & National Security Program, Brennan Center for Justice](#)

"The obvious and painful contradictions within the [10-page document](#) [PDF] are testament to the very reason why the factsheet had to be prepared in the first place: Congress is threatening not to renew the legislation due to the intelligence agencies' willful misrepresentation of the law to perform the very activities it was designed to prevent."

– [Kieren McCarthy, reporter, The Register](#)

"The application of this principle here is straightforward. The movants lack an injury to a legally protected interest because they base their claim on a First Amendment right of access that simply does not exist in this context... To be sure, the First Amendment provides rights to movants. And those rights include a right of access to certain places. But, as this court has repeatedly held, the First Amendment right of access does not extend to proceedings or rulings of the FISC."

– [U.S. government](#)

SOCIAL HIGHLIGHTS

- **@dinvolz:** [Microsoft publishes first national security letter, says FISA orders exceeded 1K in first half of 2016... tip @Techmeme](#)
- **@jendaskal:** [Proposed Fixes to Cross-Border Data Issues -- A Microsoft Ireland Fix: Time to Act is Now! ... via @just_security](#)
- **@just_security:** ["rather than just talking about what won't work, it's time to talk about what might" - @jendaskal](#)
- **@BradHeath:** [DOJ says agents may conduct brief, electronic searches of cellphones and computers at the border without individualized suspicion.](#)
- **@ForeignPolicy:** [U.S. Intelligence Community pushes to keep surveillance powers, @JennaMC Laugh reports](#)
- **@JacobGershman:** [Splitting with 2nd Circuit, another judge rules against Google in dispute over government access to data overseas](#)

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- **@JennaMC_Laugh:** [Left out of ODNI's missive, says @JakeLaperruque, is the number of Americans swept up in that surveillance program:](#)
- **@OrinKerr:** [Govt can only search phone w/a warrant once, court says. \(Confusing phys vs. digital search stages?\)](#)
- **@RT:** [Twitter to move Russian users' personal data to servers in Russia](#)
- **@TheRegister:** [We're spying on you for your own protection, says NSA, FBI](#)
- **@ACLU:** [We were in court today, arguing police need to get a warrant before using invasive cellphone tracking technology](#)
- **@OrinKerr:** [No reasonable expectation of privacy in images posted to Imgur, even when URL is not shared. US v. Morel, 2017 WL 1376363 \(DNH 4/14/17\)](#)
- **@robpegoraro:** [Town-hall tech talking points: Internet and e-mail privacy, border device searches, broadband infrastructure](#)
- **@wamu885:** [Did DC cops violate a suspect's 4th Amendment rights by using whiz-bang technology to track his cellphone?](#)
- **@techdirt:** [Microsoft Latest Service Provider to Pry A National Security Letter Free From Its Gag Order](#)