

**VFI Executive Briefing**  
**A weekly roundup of technology news**  
**August 29 – September 2, 2016**

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## **HILL UPDATE**

### **The Hill** [Lawmakers to grill FCC commissioners amid major policy debates](#)

All five Federal Communications Commissioners will testify before the Senate Commerce Committee later this month, giving lawmakers a chance to grill them before the commission votes on multiple high-profile proposals. “With the FCC considering significant new rules affecting consumer privacy, cable service through set-top boxes, and other issues impacting our economy, effective collaboration and informed decision making at the commission couldn’t be more important,” said the committee’s chairman, Sen. John Thune (R-S.D.), of the Sept. 15 hearing.

## **SPECIAL COVERAGE – Microsoft/DOJ Secrecy Case**

### **Law360** [Microsoft Wants End To Gov't Gag Orders Over User Data](#)

Law360 reported on Microsoft’s response to a DOJ motion to dismiss the company’s lawsuit challenging the use of indefinite and overly broad non-disclosure orders. The article notes that Microsoft argues that the First and Fourth Amendment violations cause concrete harm in both the physical and digital world, and that the company “merely asks the court to enforce limits on secret government action that have long constrained law enforcement in the physical world.”

### **Courthouse News Service** [ACLU Can't Intervene in Microsoft Privacy Lawsuit](#)

Courthouse News Service reported that the U.S. District Judge James Robart denied the ACLU’s motion to join Microsoft’s lawsuit against the U.S. government challenging the use of indefinite and overly broad nondisclosure orders. Judge Robart denied the request on the grounds that the organization’s claims don’t overcome the presumption that Microsoft will adequately represent ACLU’s interests and objectives and instead granted ACLU's request to file an amicus brief in the case.

### **Techdirt** [ACLU Challenges Gag Orders Issued To Tech Companies By The DOJ](#)

Techdirt published an article highlighting the ACLU’s now-dismissed motion to join Microsoft’s nondisclosure litigation against the U.S. government. The article quotes from ACLU’s brief criticizing the government’s actions and arguments.

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## ARTICLE SUMMARY

### Wired [Hack Brief: As FBI Warns Election Sites Got Hacked, All Eyes Are on Russia](#)

IN ANY OTHER year, hackers breaking into a couple of state government websites through common web vulnerabilities would hardly raise a blip on the cybersecurity community's radar. But in this strange and digitally fraught election season, the breach of two state board of election websites not only merits an FBI warning—it might just rise to the level of an international incident. On Monday, an FBI alert surfaced warning state boards of election to take precautions against hackers after two election board websites were breached in recent months.

### New York Times [Broadband Law Could Force Rural Residents Off Information Superhighway](#)

On the first day of the harvest last week, a line of trucks brimming with sweet potatoes rolled into Vick Family Farms, headed for a new packing plant that runs on ultrafast internet. The potatoes were tagged with online bar codes to detail the plots where they grew, their types of seed, and dates and times picked. On a conveyor belt, 50 flashing cameras captured and sent images of the spuds to an online program that sorted the Carolina Golds by size and quality and kicked them into boxes.

### Washington Post [Could hackers tip a U.S. election? You bet.](#)

Reports this week of Russian intrusions into U.S. election systems have startled many voters, but computer experts are not surprised. They have long warned that Americans vote in a way that's so insecure that hackers could change the outcome of races at the local, state and even national level. Multibillion-dollar investments in better election technology after the troubled 2000 presidential election count prompted widespread abandonment of flawed paper-based systems, such as punch ballots. But the rush to embrace electronic voting technology — and leave old-fashioned paper tallies behind — created new sets of vulnerabilities that have taken years to fix.

### New York Times [Apple Must Pay Billions for Tax Breaks in Ireland, E.U. Orders](#)

Europe's antitrust enforcer ordered Ireland to collect billions in back taxes from Apple, a move that will ramp up trans-Atlantic tensions over what global companies pay in the countries where they do business. The decision, part of a broader crackdown on tax avoidance by the European Union commissioner for competition, slammed Ireland for providing illegal incentives that allowed Apple to cut its tax bill in the region to virtually nothing some years. The clawback of taxes — 13 billion euros, or about \$14.5 billion, plus interest — is a record penalty by the union for such activities.

### Washington Post [Twitter just became even more like a cable company](#)

If Twitter's biggest challenge is attracting new users to its service and showing investors it's capable of competing with the likes of Facebook, the company's latest move seems to take direct aim at fixing that problem. Twitter is beginning to offer individual users and entities the chance to make money off the

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videos they post, according to reports. And the terms look pretty favorable to content creators, who will get to take home 70 percent of the ad dollars from their videos. That's somewhat more money than what YouTube or Facebook offer.

#### **The Hill [Advocates hail Europe's net neutrality guidelines](#)**

Advocacy groups cheered on Tuesday the release of new guidelines for implementing net neutrality rules in the European Union. The Body of European Regulators for Electronic Communications (BEREC) released the guidelines after years of haggling over the rules. Groups that are supportive of net neutrality, or the idea that all content on the internet should be treated in the same way, called the guidelines a victory.

#### **The Hill [FBI director looks to 2017 for 'adult' encryption debate](#)**

FBI Director James Comey is welcoming the brief lull in the encryption debate, hoping that it will reemerge next year as a less passionate, more fact-based "adult conversation." Comey seemed willing to accept the result of a sober conversation during comments Tuesday at the 2016 Symantec Government Symposium in Washington. But he appeared incredulous it would result in anything but requiring tech companies to provide law enforcement a technological means to access currently irretrievable encrypted data with a warrant.

#### **The Hill [Treasury secretary: EU targeting US companies with Apple ruling](#)**

Treasury Secretary Jack Lew said on Wednesday that the European Union (EU) is targeting U.S. companies after the European Commission ruled against Apple in a case over the tech giant's tax dealings with Ireland. "I have been concerned that it reflected an attempt to reach into the U.S. tax base to tax income that ought to be taxed in the United States," Lew said in response to the decision, Reuters is reporting. The commission on Tuesday ordered that Apple to pay Ireland \$14.5 billion in back taxes after it decided that the country had granted the tech company unfair state aid that violated EU regulations.

#### **Washington Post [This court ruling is a 'fatal blow' to consumer protections, advocates say](#)**

Companies such as Google and Facebook thrive on your personal data — the bits of information that tell advertisers how old you are, what brands you like and how long you lingered on that must-see cat video. Historically, how these companies use this data has been subject to oversight by the Federal Trade Commission, the government's top privacy watchdog. But a big court defeat for the FTC this week is putting the agency's power to protect consumers in jeopardy, analysts say.

#### **CIO.com [FTC v. Wyndham and corporate cybersecurity](#)**

The case of FTC v. Wyndham is one of the most important security and privacy cases decided in the last 10 years. The case affirms several important principles governing data security, and it is a must-read for business executives and attorneys. First, it cements the FTC's authority to act as the nation's privacy and security watchdog. Second, it identified a laundry list of privacy and security missteps. Third, it stands for

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the proposition that if a company was not on notice that it has to meet certain privacy and security standards, even if they are not readily and specifically ascertainable, it is now.

## Notable Quotes

- *"At the end of the day, if the American people say 'You know what, we're okay with that part of the room being dark, we're okay with, to use one example, with the FBI in the first 10 months of this year getting 5,000 devices from state and local law enforcement and in 650 of those not being able to open those devices. That's criminals not caught, that's evidence not found, that's sentences far shorter for pedophiles and others because judges can't see the true scope of their activity. We should not drift to a place that a wide swath of America is off limits to judicial authority."*

– [FBI Director James Comey](#)

- *"But Microsoft says 'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,' adding that it has alleged 'thousands of concrete, particularized injuries, both actual and imminent: the secrecy orders to which Microsoft has been subject since 2014, issued at a pace of over 100 a month, all restraining its speech pursuant to a constitutionally defective statute.'"*

– [Kat Sieniuc, reporter, Law360](#)

- *"If Congress is looking to improve the current procedures surrounding law enforcement access to digital evidence, it should start by passing the Email Privacy Act, which would finally require a warrant before law enforcement in the US can access stored content. After that, it could consider improvements to the system for fulfilling foreign governments' cross border law enforcement demands, so long as those improvements do not diminish human rights, and indeed, respect them."*

– [Ross Schulman, senior policy counsel at New America's Open Technology Institute and Greg Nojeim, senior counsel at Center for Technology and Democracy](#)

## Social Highlights

- **@engadget:** [UK: Facebook, Google, Twitter 'consciously failing' on terrorism](#)
- **@brettmaxkaufman:** [newly filed @aclu & @aclu wa brief in @microsoft case: gov't email searches w/o notice to users are unconstitutional](#)
- **@ChiOnwurah:** [Good to see Jeremy Corbyn now prioritising #digitalrights, tho doesn't address all the points I raise in my piece](#)
- **@csoghoian:** [The FBI director is still fearmongering about the same US-gov-funded crypto technology that the Clinton campaign is now using. I can't even.](#)
- **@emptywheel:** [Shorter Jim Comey: Thoughtful conversations are ones in which everyone agrees with me.](#)
- **@FBI:** [Dir. Comey: "Our mission is to protect the American people & uphold the Constitution of the United States." #symgovsym](#)
- **@BrusselsGeek:** [One month in Microsoft, Salesforce shiver under EU-US #PrivacyShield, wave nervously at chums](#)