

VFI Executive Briefing

A weekly roundup of technology news

September 26-30, 2016

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HILL UPDATE

Nothing new this week.

SPECIAL COVERAGE – Partnership on AI, Microsoft AI Re-Org

Partnership on AI

On Wednesday, there was a significant announcement about Google, Facebook, Amazon, IBM and Microsoft forming the [Partnership on AI](#). The purpose of the organization is to “study and formulate best practices on AI technologies, to advance the public’s understanding of AI, and to serve as an open platform for discussion and engagement about AI and its influences on people and society.”

Here are links to several articles about the announcement:

- TechCrunch [Facebook, Amazon, Google, IBM and Microsoft come together to create historic Partnership on AI](#)
- CNET [Google, Facebook, Amazon, Microsoft join forces to push AI](#)
- The Guardian ['Partnership on AI' formed by Google, Facebook, Amazon, IBM and Microsoft](#)
- The Christian Science Monitor [Why tech giants are forming an AI coalition](#)

Microsoft Re-Org

On Thursday, Microsoft announced a re-org focused on AI with the forming of new AI Research Group led by Harry Shum. Here is a [link to the announcement](#). [TechNet](#), [Business Insider](#), [The Wall Street Journal](#) and several other media outlets covered the news.

ARTICLE SUMMARY

The Hill [Google backs Obama's internet transition plan](#)

Google is throwing its support behind the Obama administration's controversial plans to hand over management of the internet domain name system. In a blogpost Monday, the Mountain View-based tech behemoth called the Obama administration's proposed transition of Internet Assigned Names Authority (IANA) from U.S. oversight to an international governing authority an "important step to protect the Internet for generations to come." Google offered three arguments for its stance: The transition will put the internet in the hands of innovators; protect the internet from "those who want to break it into pieces"; and honor the U.S. government's promise when the internet was created that it "be governed by everyone with a stake in its continued growth."

The Verge [Can virtual reality help us talk politics online?](#)

The more remote someone feels, the less human they seem. This is the driving force behind large parts of what is wrong with communicating on the internet, and it often makes talking about politics on the internet a special kind of hell. But virtual reality, theoretically, can make people on opposite sides of the globe feel like they're talking face-to-face. And this election season, a VR social network called AltspaceVR is testing whether this feeling of connection can bring its users together during a bitterly divided campaign.

PC Mag [The Long War on Encryption](#)

PC Mag published a column written by its editor-in-chief, Dan Costa, in which he discusses the ongoing debate over encryption, noting that the government's stance on it has remained constant over the past 20+ years, despite the evolution of technology.

Law.com [Supreme Court Term Promises to Be IP Blockbuster](#)

With four IP cases on the docket and several more knocking at the door of certiorari, the U.S. Supreme Court is poised for a banner year of patent, trademark and copyright decisions. Headlining the 2016 term will be Samsung Electronics v. Apple, arguably the most famous patent case ever to reach 1 First St. For the first time in more than 100 years, the court will address design patent damages.

Washington Post [Hundreds of tech companies are letting employees skip work on Election Day](#)

The 2014 electoral cycle marked a new low for U.S. voter turnout: Not since World War II had fewer Americans gone to the polls, as a percentage of the population. Now, nearly 300 tech firms want to counter the decades-long decline in voter participation by making Nov. 8, the day America will select its next president, a paid company holiday. In what may be the most coordinated effort yet by tech companies to change a downward trend in U.S. voting behavior, some industry officials say they hope their stance on Election Day will spur other businesses — and maybe even the federal government — to follow suit.

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The Hill [FCC requests probe into ban on Wi-Fi hotspots at debate](#)

A Federal Communications Commission (FCC) member said her office has asked the FCC's Enforcement Bureau to investigate a controversy about Wi-Fi use at Monday's presidential debate. "My office has asked the @FCC Enforcement Bureau to investigate" claims that debate organizers had blocked reporters from using personal Wi-Fi hotspots, Commissioner Jessica Rosenworcel tweeted Tuesday.

Center for Democracy and Technology [Empowering local communities to weigh in on surveillance technologies](#)

The Center for Democracy and Technology published a blog by Natasha Duarte, Ron Plesser Fellow at Center for Democracy and Technology, urging local officials and communities to adopt a set of common [principles](#) governing decisions around the funding, acquisition, and use of surveillance technologies by local law enforcement.

IPWatchdog [Will Yahoo Feed the Patent Trolls?](#)

Yahoo, like many tech companies, maintained a large portfolio of patents and patent applications. However, when Verizon recently purchased Yahoo for about \$5 billion, the sale only included a relatively small number of patents directed to Yahoo's "core business." The remaining patents and applications, about 2600 in total, had been previously split off into a separate portfolio. Codenamed "Excalibur," the portfolio would be put up for sale at a later date.

The Hill [Leahy wants Judiciary hearing on Yahoo](#)

Senate Judiciary Committee ranking member Patrick Leahy (D-Vt.) wants a hearing on the Yahoo data breach, an aide to the panel told The Hill Wednesday. The recently announced hack of 500 million Yahoo accounts is the largest of a single company to date. Six Democratic senators on Tuesday, including Judiciary Sens. Leahy, Richard Blumenthal (Conn.) and Al Franken (Minn.) signed a letter to Yahoo CEO Marissa Mayer, hammering Yahoo for their delay in revealing the 2014 hack to the public. The letter called on Mayer to answer several questions about the breach, including when Yahoo first became aware of it and what they were doing to prevent future breaches.

The Hill [Court strikes down ban on 'ballot selfies'](#)

The First Circuit Court of Appeals on Wednesday said voters have the constitutional right to snap photos of themselves in the ballot box in November, overturning a New Hampshire law that banned so-called "ballot selfies." The decision upholding a lower court order strikes down a law that went into effect in 2014, which levied fines of up to \$1,000 for anyone who took a photo of their ballot.

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Forbes [At Least For Today, Intellectual Property Triumphs At The FCC](#)

Today, Chairman Tom Wheeler withdrew from consideration at a Federal Communications Commission public meeting an order promulgating new rules for what are popularly known as “set-top boxes” for television viewing. While they may be approved by the FCC at a later date, as of today, there are no new rules. The dispute surrounding whether to adopt the new rules is often characterized as between the video distribution industry—cable, satellite, and telephone companies—and high-tech Internet companies. As the story goes, the former want to keep business as usual, and the latter want to open up video services more easily to Internet customers.

Washington Post [The FCC is putting off a historic vote to disrupt your cable box](#)

The Federal Communications Commission has delayed its vote on new rules that would force cable companies to provide their channels as a free app on major device platforms such as iOS and Android. There’s currently no word on when the vote may be rescheduled; FCC officials said Thursday that it would remain under consideration for future meetings. Several people close to the matter say that late changes to the final draft offered by FCC Commissioner Jessica Rosenworcel (D) pushed back the vote.

The Hill [European antitrust chief says user data may factor into merger reviews](#)

The top antitrust regulator in the European Union said on Thursday that officials are weighing whether to more heavily factor the acquisition of data into the way it vets mergers. “A company might even buy up a rival just to get hold of its data, even though it hasn’t yet managed to turn that data into money,” said Margrethe Vestager, according to the prepared text of a speech delivered in Brussels.

The Register [Human rights orgs take Five Eyes nations to court](#)

The Register reported that 10 privacy and human rights organizations, including Privacy International, Liberty and Amnesty International, filed a direct [complaint](#) with the European Court of Human Rights challenging UK and US bulk surveillance programs. The article notes that this is first attempt to directly challenge bulk surveillance initiatives such as GCHQ’s Tempora system and the NSA’s Upstream collection program.

The Intercept [Five Lawmakers Are Challenging Gag Orders on FBI National Security Letters](#)

The Intercept reported that Representatives Zoe Lofgren, James Sensenbrenner, John Conyers, Anna Eshoo, and Ted Poe [filed an amicus brief](#) in an appeal challenging the use of gag orders attached to National Security Letters. The lawmakers argued that “the rules currently in place for reviewing NSL nondisclosure orders do not meet the requirements of the USA FREEDOM Act and are unconstitutional.”

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ZwillGen PLLC [Blog: 5 Things To Know About The Microsoft Irish Warrant Opinion](#)

Marc Zwillinger's law firm published a blog post detailing five important takeaways about Microsoft's warrant case victory before the Second Circuit. The firm plans to offer a more detailed discussion of the case during a [November 10 webinar](#) titled "Hot Topics in Law Enforcement for Service Providers."

The Washington Post: [A rule change to make it easier to catch pedophiles will lead to government mass hacking, critics say](#)

The Washington Post published an article about the proposed changes to Rule 41 of Federal Rules of Criminal Procedures. The article focuses on a ruling by federal judge in Colorado who criticized a search warrant issued by a magistrate judge in Virginia for use in an investigation into the PlayPen child-porn website.

Washington Military Department [We're leading the way on cybersecurity preparedness](#)

Gov. Jay Inslee is recognizing October as Cyber Security Awareness Month, a designation that comes on the heels of a summit between Maj. Gen. Bret Daugherty and Guard leaders from other states to help bolster the nation's cybersecurity presence. [...] The Washington Emergency Management Division is one of the first in the nation to include cybersecurity threats as an incident annex of the state's Comprehensive Emergency Management Plan, which is the go-to document for most emergencies that state and local officials will face.

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

There are at least 70 cases, many under seal, in which courts have mandated that Apple and Google unlock mobile phones—and potentially many more. The Lavabit district court may not be the only court to have ordered companies to turn over private encryption keys to law enforcement based on novel interpretations of law. Courts today may be granting orders forcing private companies to turn on microphones or cameras in cars, laptops, mobile phones, smart TVs, or other audio- and video-enabled Internet-connected devices in order to conduct wiretapping or visual surveillance.

Notable Quotes

"(We need) a rational debate over the tools that law enforcement needs to do its job, right? I trust law enforcement to keep me safe, but I also trust the legal system to protect my privacy as well, and to find a balance. But we haven't been able to have those conversations in this country (yet)."

– [Scott Jones, deputy director of IT security, Communications Security Establishment](#)

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"We live in a world where every click gets tracked; your phone continually transmits your location, and we're constantly broadcasting and receiving digital information. Digital trails extend from every decision we make, both online and in real life. And those trails persist indefinitely. None of that means we can dismiss the warnings of the FBI, but its offer a new context."

– [Dan Costa, editor in chief, PC Mag](#)

"Notably, the DOJ policy waives the warrant requirement for "exigent circumstances," such as "the need to protect human life or avert serious injury," or "exceptional circumstances" in which obtaining a search warrant is "impractical." This leaves wide discretion to law enforcement and, with lack of adequate oversight, can do little to curb surveillance abuses."

– [Kris Hermes, legal activist](#)

"[Access Now U.S. Policy Manager Amie Stepanovich] added that user privacy is a "fundamental human right" and should be the foremost concern in developing policy around what data law enforcement can access. Though encryption does prevent law enforcement agencies from gaining full access to all data at any time, Stepanovich said there could be more problematic consequences to creating data security infrastructure with built-in holes for law enforcement to gain universal access."

– [Gabrielle Orum Hernández, reporter, Legaltech News](#)

"The fact that Apple is able and willing to help the government map the communications networks of its users doesn't necessarily undermine the company's posturing (and record) as a guardian of privacy, though this leaked document provides more detail about how the iMessages system can be monitored than has been volunteered in the past. Ideally, customers wouldn't need to read documents marked "For Official Use Only" in order to know what information Apple may or may not disclose to the police."

– [Sam Biddle, reporter, The Intercept](#)

"For years, the UK Government has been secretly intercepting enormous volumes of internet traffic flowing across its borders. At the same time, it had and still has access to similarly vast troves of information intercepted by the US Government. The UK court tasked with overseeing the UK intelligence agencies has sanctioned these bulk surveillance practices, normalizing state interception, retention, analysis and dissemination of personal communications and data at this scale."

– [Caroline Wilson Palow, general counsel, Privacy International](#)

"A more modern phone means a greater likelihood of evidence being found inside it. That should mean it's easier to establish probable cause, not that it's harder. The better response to the massive storage capacity of computers is [use restrictions on nonresponsive data](#), not a higher probable cause standard."

– [Orin Kerr, law professor, George Washington University](#)

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"And [privacy advocates] argue that the rule change would allow prosecutors to seek out judges they feel would be more sympathetic to their warrant application. If the rule change goes through, and if the government can show probable cause, 'the FBI gets the authority to hack anywhere in the world,' said Christopher Soghoian, principal technologist for the American Civil Liberties Union. 'We desperately need to have congressional hearings and investigations into the use of this technology before it becomes the tool of choice of law enforcement.'"

– [Ellen Nakashima and Rachel Weiner, reporters, The Washington Post](#)

"If nondisclosure orders were meant to apply indefinitely, there would never be a need for a court to "extend" an order. An extension would only be necessary if a time limit would otherwise expire. The only plausible reading of the statute is that these phrases were meant to refer to a fixed time period of time."

– [Amicus brief of five members of Congress challenging the use of gag orders attached to National Security Letters](#)

Social Highlights

- **@alexboutillier:** [Canadians need to take their online security more seriously, according to an exec at ... CSE? #cdnpoli](#)
- **@csoghoian:** [ACLU asks Supreme Court to weigh in on whether historical cell phone location records are protected by the 4th amendment.](#)
- **bradheath:** [Police: Criminals use phones. Therefore, we can search/seize the phones of people who might be criminals." Court: No, not even close.](#)
- **@csoghoian:** [Apple retains metadata about iMessage use, will disclose to law enforcement.](#)
- **@josephfox:** [Good. Totally different to San Bernardino, not comparable; information obtained by LE under a warrant](#)
- **@nicolenbcsd:** [ACLU statement reminds people police do not have the right to demand cell phone video, or confiscate...amid deadly shooting in El Cajon.](#)
- **@theintercept:** [Apple claims they don't store users' location-related data, but a leaked police document shows that's not true.](#)
- **@BradHeath:** [Important reading for journalists who thought iMessage was a secure way to contact sources. It isn't.](#)
- **@OrinKerr:** [My latest at Volokh, "Probable cause and cell phone searches."](#)
- **@EricWenger:** [@paukif notes importance of decision in Microsoft Ireland Warrant case, which @Cisco strongly supported #CyFy2016](#)
- **@ZwillGen:** [5 Things to Know About the Microsoft Irish Warrant Opinion](#)