

VFI Executive Briefing  
A weekly roundup of technology news  
September 5-9, 2016

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## HILL UPDATE

### Morning Consult [Wyden Revs Up Against Government Hacking](#)

Sen. Ron Wyden (D-Ore.) made a public spectacle Thursday by amping up his crusade against a Supreme Court-approved change to criminal procedure. But he was rebuffed by on the Senate floor by Majority Whip John Cornyn (R-Texas), who blocked Wyden's request to quickly pass a bill blocking the forthcoming changes.

### Threat Report [Fallout Over OPM Breach Report Begins](#)

The scathing report by Republicans on the U.S. House of Representatives' Committee on Oversight and Government Reform blasted the Office of Personnel Management (OPM) saying two massive breaches that occurred in 2014 and 2015 were the result of outdated government technology and sloppy cybersecurity. The 241-page analysis of the breaches blames the OPM for endangering America's national security.

## SPECIAL COVERAGE – Brad Smith Profile

### MIT Technology Review [Microsoft's Top Lawyer Becomes a Civil Rights Crusader](#)

When Apple CEO Tim Cook refused to help the FBI get into a mass murderer's iPhone last winter, he was hailed for his boldness in fighting the government on a matter of principle. In fact, Cook was borrowing from the playbook of a top executive at Apple's dowdier rival Microsoft—a genial, sandy-haired man named Brad Smith. Smith has taken the government to court four times in the past three years, each time accusing it of breaching the Constitution in its efforts to get its hands on Microsoft customers' data. He believes computers and the Internet have weakened vital checks on government surveillance that have typically helped to assure personal privacy.

## SPECIAL COVERAGE – Secrecy Case Amicus Briefs Filing

Last Friday, nine amicus briefs with a total of 90 signatories were filed in support of Microsoft's lawsuit challenging indefinite and overly broad nondisclosure orders. Articles published by several news outlets highlighted the broad support Microsoft received from the technology industry, business and media organizations, civil society groups, academics, and prominent former law enforcement officials. [This link](#) provides access to the individual briefs.

Special thanks for VFI members **Wipfli, AvePoint, Archive360 and Onsupport** who all joined the U.S. Chamber of Commerce Brief with 11 other companies/organizations.

- **The New York Times:** [Microsoft's Challenge to Government Secrecy Wins Dozens of Supporters](#)
- **The Seattle Times:** [Long list of groups backs Microsoft in case involving digital-data privacy](#)
- **Engadget:** [Amazon, Apple and Google back Microsoft fight over US gag orders](#)
- **Fortune:** [Dozens of companies support Microsoft's fight against gag orders](#)
- **Reuters:** [Microsoft gets support in gag order lawsuit from U.S. companies](#)
- **The Wall Street Journal:** [Companies Back Microsoft's Effort to Alert Users When Authorities Seek Their Data](#)
- **VFI BLOG:** [Archive360 Supports Modernizing Data Privacy Laws](#) (Cross links to original Archive360 post about participation in the case).

## ARTICLE SUMMARY

### IAM [Patent reform may be on hold in the US, but here's all you need to know about competing proposals](#)

Ever since the summer of 2015 when the possibility of a vote on the Innovation Act was killed in the House of Representatives, patent reform has remained firmly on the back burner in the US Congress. There has been some discussion around the prospects of venue reform with one bill introduced in the Senate aimed at stopping the kind of forum shopping which means that the vast majority of patent cases are heard in Eastern Texas, but that hasn't gone anywhere as yet.

### Wired [Trump Finally Says Something Coherent About 'the Cyber'](#)

WHAT A DIFFERENCE a day makes. Yesterday when Donald Trump was asked during a televised interview how he would deal with ISIS's spread online he responded with a fairly incoherent answer that amounted to "the cyber is so big." Today, during a much publicized speech on national security in Philadelphia, he said one of his first directives as president would be to "conduct a thorough review of all United States cyber defenses and identify all vulnerabilities."

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#### **Inside Counsel [Is There Still Hope For E-commerce Tech Patents?](#)**

The U.S. Supreme Court's decision in a landmark patent case (Alice Corp. v. CLS Bank International) was predicted by many legal experts to create chaos at the U.S. patent office and prevent software innovations in some tech sectors, including ecommerce and fintech, from being patentable. Since Alice, the reject rate for patents for payment technologies is above 90 percent. This is a development that many contend has been crippling the innovation in this space. However, one company CardinalCommerce has secured one, and according to many lawyers, if someone can manage to get an e-commerce patent in this environment, it is worth a lot.

#### **Washington Post [Poll: Most Americans say that globalization is a positive and that free trade improves their lives](#)**

It's pretty clear that dramatic subjects such as terrorism and illegal immigration are having an effect on the 2016 presidential campaign. But perhaps a less heralded undercurrent in this year's race is free trade. Both candidates have taken a stance against unbridled globalization, to varied degrees. Republican Donald Trump has upended his party's standard rhetoric by coming out strongly against international trade agreements, while Democrat Hillary Clinton has more subtly distanced herself from the 12-nation Trans Pacific Partnership, a deal intended to be President Obama's free-trade legacy.

#### **BBC [Microsoft's UK data centres power up cloud services](#)**

BBC reported that Microsoft launched its first UK cloud computing data centers. It noted that the announcement follows Microsoft's recent Second Circuit victory in the warrant case.

#### **Reason [Digital Privacy Shouldn't Depend on a Law Written in the Time of Stranger Things](#)**

Reason published an op-ed by Veronique de Rugy, senior research fellow at George Mason University, highlighting the outdated nature of the Email Communications Privacy Act (ECPA) for the era of online stored data. Rugy details how the International Communications Privacy Act (ICPA) could resolve issues caused by the outdated regulations in ECPA, and urges Congress to pass the legislation even during "a contentious election season."

#### **Yahoo [New Wells Fargo Insurance Cyber Security Study Shows Companies More Concerned With Private Data Loss Than With Hackers](#)**

With network security top of mind, businesses are nearly two times more concerned with losing private data (47 percent) than hackers disrupting their systems (26 percent), according to the 2016 Network Security and Data Privacy Study, released today by Wells Fargo Insurance, part of Wells Fargo & Company (WFC). Misuse of technology among employees also emerged as a new, growing threat (seven percent), while network viruses and disruption of operations fell slightly to less than 10 percent from 2015.

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#### New Orleans Times-Picayune [iPad voting might be coming to Louisiana](#)

The transition could drastically change how people submit their ballots. It goes beyond people using an iPad instead of a traditional voting machine. New technology would allow people to fill out their ballot ahead of time on the GeauxVote mobile app and transfer that information to a election machine iPad with a simple swipe. Schedler said most of Louisiana's voting machines are outdated and not even manufactured anymore. The equipment runs somewhere between 15 and 22 years old and needs to be replaced soon anyway.

### Notable Quotes

*“Microsoft is challenging this practice by suing the U.S. Department of Justice — its past nemesis — for violating the First and Fourth amendments of the U.S. Constitution. It’s the company’s fourth lawsuit against the government to bring more transparency over its clandestine practices. The Redmond company is protecting its interests — its success depends on people trusting the security of its products. But it’s also waging a noble fight to update and rein in overly aggressive surveillance policies that undermine America’s fundamental values.”*

– [The Seattle Times editorial board](#)

*“We are in a new age of technology that requires a new understanding of our fundamental rights”*

– [Brad Smith](#)

*“Archive360 has engaged in this lawsuit for both principled and practical reasons. From a principled perspective, the surreptitious gathering of businesses data without notice raises serious constitutional questions of privacy and trade secret protection. Practically, if confidence in cloud computing is jeopardized by laws that predate and do not consider this new technology, it will harm the US economy and impact US businesses’ ability to compete globally.”*

– [James McCarthy, General Counsel, Archive360](#)

*“The reforms in the ICPA would move us away from the current ‘80s drama. It also seems that the package could even move through Congress during a contentious election season because it safeguards consumer data while also acknowledging that there must be legitimate and accessible law enforcement tools to pursue digital evidence across borders.”*

– [Veronique de Rugy, senior fellow, George Mason University](#)

*“Without so much as a vote or even a hearing, letting this procedural rule go forward amounts to congressional consent for government mass hacking. The government would have a blank check to hack hundreds of thousands of computers with a single warrant from one judge.”*

– [Senator Ron Wyden](#)

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*"The [proposed Rule 41 rule change] simply make clear that which federal district court the government can go to in order to apply to a judge for a search warrant in cases involving sophisticated cyber criminals and people like child pornographers and even terrorists. If there were constitutional or other legal issues, and concerns about this, you would think that the highest court in the land would have flagged those and declined to endorse those, but they didn't."*

– [Senator John Cornyn](#)

## Social Highlights

- **@DavidPapp:** [Google, Apple, Twitter, and others back Microsoft over gag orders](#)
- **@prashantrao:** [Microsoft's challenge to government secrecy has won dozens of major supporters](#)
- **@TheNextWeb:** [Industry giants support Microsoft in its on-going privacy battle against the DOJ](#)
- **@thurrott:** [Microsoft Sees Strong Support For Legal Case Against Government Secrecy -](#)
- **@andyjamesbeale:** [Great news from @Microsoft for government technology and for UK digital as a whole. Nice one @liamax & the NTA team](#)
- **@DanielSolove:** [Fewer use Privacy Shield than Safe Harbor, likely b/c Shield uncertainty -but standard contracts on shaky ground too](#)
- **@andyjamesbeale:** [Great news from @Microsoft for government technology and for UK digital as a whole. Nice one @liamax & the NTA team](#)
- **@liamax:** [Congratulations @Microsoft. This is a game changer for gov technology and a huge boost for UK tech sector.](#)
- **@EFF:** [Senator @RonWyden is speaking out publicly today against the dangerous updates to Rule 41.](#)
- **@techreview:** [Brad Smith's legal cases affect anyone who stores data in the cloud, from large corporations to individuals.](#)
- **@tsimonite:** [Microsoft's @BradSmi says he has to keep suing the govt to shore up civil rights in the internet age](#)
- **@RonWyden:** [Heading to floor to ask for unanimous consent to pass Stopping Mass Hacking Act. Watch: #SMHact #Rule41](#)