

VFI Executive Briefing  
A weekly roundup of technology news  
May 30-June 3, 2016

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## HILL UPDATE

### POLITICO's Morning Tech [TECH FIRMS BACK HATCH BILL](#)

Yahoo, Google, Facebook and Microsoft are publicly supporting a new international access to data bill from Sen. Orrin Hatch, according to the letter obtained by MT. The measure, called the International Communications Privacy Act, is an update to the LEADS Act - a similar bill that was backed by Microsoft but failed to attract support from Google and other companies that move lots of user data around the globe. All four firms negotiated with Capitol Hill over the last several months to reach a compromise measure, which they say would "create a modern legal framework for law enforcement access to electronic communications, regardless of where the data is stored." Hatch introduced the bill last week and spoke highly of it at an ECPA reform markup, but said he wouldn't float it as an amendment. The measure is being stewarded by Reps. Tom Marino and Suzan DelBene in the House. Here's the full letter: <http://politico.pro/24i6Grt>.

## SPECIAL COVERAGE

**Interview with Brad Smith in WSJ:** WSJ published a Q+A interview with Microsoft's Brad Smith discussing the company's legal strategy for balancing concerns about public safety with the desire to protect customer privacy. The piece highlights Microsoft's four lawsuits against the U.S. government, most notably its recent case challenging nondisclosure orders.

### [Why Microsoft Is Suing the Feds Over Issues of Privacy and Security](#)

Companies often try to steer clear of conflicts with the government. But Microsoft Corp. is picking fights with the government. In the past three years, the software giant has sued the federal government four times, challenging law-enforcement efforts to secretly search customer data on servers at Microsoft's data centers in the U.S. and elsewhere.

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## ARTICLE SUMMARY

### Wall Street Journal [Why Microsoft Is Suing the Feds Over Issues of Privacy and Security](#)

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### The Verge [Facebook, Twitter, Google, and Microsoft agree to EU hate speech rules](#)

Facebook, Twitter, Microsoft, and YouTube today agreed to European regulations that require them to review "the majority of" hateful online content within 24 hours of being notified — and to remove it, if necessary — as part of a new "code of conduct" aimed at combating hate speech and terrorist propaganda across the EU. The new rules, announced Tuesday by the European Commission, also oblige the tech companies to identify and promote "independent counter-narratives" to hate speech and propaganda published online.

### New York Times [A Mission to Bring STEM Skills, and Robots, to Children in West Africa](#)

One robot slammed into some blocks and nearly fell to the floor. Another sideswiped a wall. Yet another spun in dizzying circles. So when the robot built by students from an all-girls school finally navigated the twists of the maze, flawlessly rounding every corner and touching every required flag, the crowd went nuts. The girls were among students from 25 schools who gathered in Dakar to compete in the second annual Pan-African Robotics Competition.

### Reuters [Search of old computer files allowed by U.S. appeals court](#)

Reuters reported that the Second Circuit Court of Appeals offered a 12-1 en banc [ruling](#) in *United States v. Ganius* in favor of the government's extended retention of data and the use of said information for additional investigations. Judges Gerard Lynch and Susan Carney, who heard oral arguments in Microsoft's warrant case, were among those in the majority. While the court ruled for the government, their 60-page opinion cautioned law enforcement to be more careful, citing "significant" privacy concerns and Fourth Amendment issues when the government retains hard drives and other digital media containing significant amounts of personal information.

### New York Times [Why the World Is Drawing Battle Lines Against American Tech Giants](#)

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Imagine you're a French lawmaker. For decades, you've protected your nation's cultural output with the diligence of a gardener tending a fragile patch against invasive killer weeds. You've imposed quotas on the French film industry, required radio stations to play more French music than anyone seems to want to listen to, and you've worked methodically to exempt your actions from international free-trade rules.

#### **The Verge [Police are filing warrants for Android's vast store of location data](#)**

In February 2015, a man with a painter's mask and a gun walked into a Bank of America office in Ramona, California, and walked out with more than \$3,000. Police tried to track down the bank robber, but the mask prevented a positive ID and the trail went cold. Until, in November of the same year, someone matching his description robbed the same bank again. This time, witnesses identified Timothy Graham, a 64-year-old who had taken out steep loans from Chase earlier that year. When they searched Graham's apartment, investigators found clothes and a gun matching those used in the robbery, effectively sealing the case.

#### **The Hill [NATO to designate cyber as domain of warfare: report](#)**

NATO member countries will likely move to designate cyber as an official domain of warfare during a summit meeting in Warsaw next month, a senior German defense ministry official said, according to Reuters. Major General Ludwig Leinhos told a Berlin conference that he expects all 28 members to agree to the change. Leinhos, a former senior NATO official, leads the German military's initiative to build a separate cyber command.

#### **The Hill [US, EU sign terror investigation info-sharing deal](#)**

The United States and the European Union on Thursday signed a deal allowing the two sides to exchange more data during criminal and terrorism investigations. The so-called umbrella agreement, agreed to by negotiators in September, was able to proceed after President Obama signed a bill in February giving EU citizens certain privacy rights considered by the EU to be a prerequisite of the deal.

#### **The Hill [Cruz touts bill as 'last chance' to delay internet domain handoff](#)**

Sen. Ted Cruz (R-Texas) is circulating a new bill that would prevent the government from handing off oversight of the internet domain name system without approval from Congress. Cruz began

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circulating the legislation last week to colleagues with background information that called it "our last chance to save internet freedom." The legislation, a copy of which was obtained by The Hill, is titled the Protecting Internet Freedom Act.

#### **New York Times [Researchers Uncover a Flaw in Europe's Tough Privacy Rules](#)**

Europe likes to think it leads the world in protecting people's privacy, and that is particularly true for the region's so-called right to be forgotten. That legal right allows people connected to the Continent to ask the likes of Google to remove links about themselves from online search results, under certain conditions. Yet that right — one of the world's most widespread efforts to protect people's privacy online — may not be as effective as many European policy makers think, according to new research by computer scientists based, in part, at New York University.

#### **The Hill [ECPA reform will protect privacy and meet law enforcement needs](#)**

The Hill published an op-ed from retired U.S. magistrate judge James Stiven, calling on the Senate to vote on ECPA reform and suggesting that law enforcement should support the legislation, noting that its "provisions actually solve their well-intentioned concerns."

#### **The Intercept [FBI Kept Demanding Email Records Despite DOJ Saying It Needed a Warrant](#)**

The secret government requests for customer information Yahoo [made public](#) Wednesday reveal that the FBI is [still demanding](#) email records from companies without a warrant, despite being told by Justice Department lawyers in 2008 that it doesn't have the lawful authority to do so. That comes as a particular surprise given that FBI Director James Comey has said that one of his top legislative priorities this year is to get the right to acquire precisely such records with those warrantless secret requests, called national security letters, or NSLs. "We need it very much," Comey told Sen. Tom Cotton, R-Ark., during a [congressional hearing](#) in February.

## **Notable Quotes**

· *"People feel fundamentally comfortable with the balance of governmental power and individual rights that has existed in the U.S. since the country was founded and information was put on paper. And what people want is to see information that is stored digitally in the cloud get the same kind of protection as information that is written down and stored on paper."*

-[Brad Smith, President and Chief Legal Officer, Microsoft](#)

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· *“The draft Privacy Shield may be a step in the right direction but as currently formulated it does not adequately include, in our view, all appropriate safeguards to protect the EU rights of the individual to privacy and data protection also with regard to judicial redress. Significant improvements are needed should the European Commission wish to adopt an adequacy decision. In particular, the EU should get additional reassurance in terms of necessity and proportionality, instead of legitimizing routine access to transferred data by U.S. authorities on the basis of criteria having a legal basis in the recipient country, but not as such in the EU, as affirmed by the Treaties, EU rulings and constitutional traditions common to the Member States.”*

- [Giovanni Buttarelli, European Data Protection supervisor](#)

· *“In essence, the Government contends that it is entitled to greater latitude in the computer age. I disagree. If anything, the protections of the Fourth Amendment are even more important in the context of modern technology, for the government has a far greater ability to intrude into a person’s private affairs.”*

- [Judge Denny Chin’s dissent opinion in the Second Circuit Ruling in US v. Ganius](#)

· *“We encourage Congress to continue reforming our country’s data access laws to ensure that they are targeted, necessary and proportionate, and transparent. The processes for providing access to users’ information should be efficient and consistent with international standards on privacy and human rights, and should acknowledge the global nature of the Internet and the way data flows freely across borders. These are principles that our companies continue to advocate for as part of the Reform Government Surveillance (RGS) coalition. Consistent with the fifth principle of surveillance reform that RGS unveiled in 2013 – avoiding conflicts among governments to obtain data directly from companies for legitimate investigations, so long as the requests are consistent with international human rights and privacy standards.”*

- [Letter from Microsoft, Google, Facebook and Yahoo urging Congress to adopt ICPA](#)

· *“Because months’ worth of cell phone location data can reveal extraordinarily private details of a person’s life, the right way to protect people’s privacy interest in that information is to require a warrant. The Fourth Circuit’s decision is not the last word on this issue. Other appellate courts will surely address these questions soon, and the Supreme Court may well need to weigh in.”*

- [Nathan Freed Wessler, staff attorney, ACLU](#)

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- *“In sum, all exceptions to Fourth Amendment protections previously allowed were included in the proposed ECPA reforms. Government’s argument for greater intrusion in the private lives of Americans is no more reasonable today than it was thirty years ago. Americans of all political views have come together to insist we fix this unintended threat to our privacy. The Senate Judiciary Committee should resist any attempts by law enforcement to ignore this rare political consensus by increasing its power at the expense of our liberty.”*
- [James Stiven, retired U.S. magistrate judge for the Southern District of California](#)
  
- *“Essentially, the FBI believes they can ask for the sun, the moon and the stars in an NSL, while knowing that tech companies don’t have to turn over anything more than name, address and length of service. The FBI asks for so much, because it is banking that some companies won’t know the law and will disclose more than they have to. ...The FBI is preying on small companies who don’t have the resources to hire national security law experts.”*
- [Chris Soghoian, chief technologist, ACLU](#)