

VFI Executive Briefing
A weekly roundup of technology news
April 24 – 28, 2017

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HILL UPDATE

The Hill [Let's end warrantless searches at the border](#)

The Hill published an opinion piece by Rep. Jared Polis urging Congress to pass the Protecting Data at the Border Act. The bill will require that Customs and Border Protection agents obtain a warrant to search personal electronic devices at U.S. borders.

Associated Press [Senators Seek Data on Americans Caught Up in Surveillance](#)

The Associated Press reported that Senators Ron Wyden and Rand Paul wrote Director of National Intelligence Dan Coats last Friday requesting more information regarding how Americans are surveilled under Section 702. The senators requested Coats disclose the number of Americans surveilled and information about how agencies handle these personal communications.

ARTICLE SUMMARY

Recode [Finally, Silicon Valley and Donald Trump agree on something: Taxes](#)

Silicon Valley's top tech executives have tangled with President Donald Trump over everything from his travel ban to his approach on issues like climate change. But the likes of Apple and Google appear to have put aside their differences with the Republican commander-in-chief, after he unveiled a tax reform plan on Wednesday that could dramatically lower their tax bills and help them return to the U.S. billions of dollars in profits currently overseas. Trump's plan is still just an early set of ideas — it's a single page, not some complex, comprehensive piece of legislation — and it's already drawing complaints from Congress about its cost. But the contours of it are catnip to the tech industry. Under his blueprint, for example, the corporate tax rate would fall to 15 percent, a major decrease from the current 35 percent rate.

The Verge [The fight for net neutrality is officially back on](#)

After months of blunt force foreshadowing, the Federal Communications Commission announced today that it's ready to pick a fight with the public over the future of the open internet. It's great news if you're a lawyer for Verizon or Comcast, and terrible news for the rest of us. In its first wave of propaganda, the FCC says that its proposal to roll back internet regulation will "Restore Internet Freedom for all Americans" — a mendacious slogan on the level of the "Patriot Act," or the "World's Greatest Healthcare Plan." Like the first fight for net neutrality, this one is going to be about words and what they mean. For instance: "internet freedom."

Bloomberg BNA [Google Data Privacy Fight Hinges on Cloud Storage Tech](#)

Bloomberg BNA published an article examining the recent ruling in California by Magistrate Judge Laurel Beeler ordering Google hand over customer data stored extraterritorially. The piece specifically focuses on the differences between Google's case and Microsoft's warrant case. Craig Newman, partner at Patterson Belknap Webb & Tyler, explains that unlike Microsoft, which stores data locally based on user geography, Google moves data around the world "for algorithmic efficiencies"

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UPI [Watchdog investigating possible DHS overstep with Twitter summons](#)

UPI reported that the U.S. Department of Homeland Security is conducting an internal investigation of a recent summons by the U.S. Customs and Border Protection agency to force Twitter to unmask the anti-Trump administration account @alt_USCIS. Department of Justice Inspector General John Roth confirmed his office's investigation in a [letter](#) to Senator Ron Wyden.

Lawfare [Step toe Cyberlaw Podcast: Alan Cohn and Maury Shenk Take Over](#)

During the latest [episode](#) of The Steptoe Cyberlaw Podcast, Steptoe's Alan Cohn and Maury Shenk discussed the recent magistrate ruling in California ordering Google to comply with a warrant and turn over foreign data accessible from the U.S. Cohn and Shenk noted that Magistrate Judge Laurel Beeler agreed with the en banc dissenters in Microsoft's warrant case, and ponder how much of the tech industry use location-based storage vs. algorithmic storage decisions. Shenk detailed that the differing legal rulings increase the chances the Supreme Court will weigh in on these issues.

TechDirt [Search Warrant Gag Order Successfully Challenged In Court](#)

TechDirt published pieces examining U.S. Magistrate Judge Frederick Mumm's decision that an indefinite gag order directed towards Adobe violated the First Amendment. Law360 notes that Judge Mumm found the ruling of Judge James Robart in Microsoft's secrecy order case instructive in formulating his ruling in Adobe's case. Adobe successfully challenged an indefinite gag order attached to a warrant for customer content. According to [unsealed documents](#) from the U.S. District Court in Los Angeles, Adobe asked the court to authorize an end date for the secrecy order, which was authorized under the same provision Microsoft is challenging in its secrecy order lawsuit. U.S. Magistrate Judge Frederick Mumm referenced Microsoft's secrecy lawsuit multiple times in his ruling with regards to how courts are currently addressing ECPA's language on the issue.

Forbes [The Handmaid's Tale And Surveillance: Silicon Valley Acts As Trump's Eyes, Whether Willing Or Not](#)

At least thirteen reviews of *The Handmaid's Tale*, Hulu's adaptation of Margaret Atwood's 1985 dystopian novel, describe the series the same way: timely and cautionary. For those Americans feeling that women's rights are under attack and democracy is at risk, *The Handmaid's Tale* paints a totalitarian picture of oppression that encapsulates their worst fears. Even for Trump supporters, *The Handmaid's Tale* should sound an alarm about the dangers of ubiquitous surveillance; after all, Obama had expansive surveillance powers too. Essential to controlling the citizenry in *The Handmaid's Tale* are the "Eyes," a secret police who keep constant watch to create pervasive paranoia and crush dissent. The eye is a recurring symbol throughout, even tattooed on handmaids' ankles to remind them they are being watched. The Trump administration has access to a far more efficient means of surveillance than the secret police of *The Handmaid's Tale*, thanks in large part to Silicon Valley. With Big Data, the level of information the government can now obtain about its citizens is unprecedented. Better yet, the government does not even have to pay a police force to spy on its citizens. Advertisers pay the bills for the highly targeted marketing that Big Data enables.

Ars Technica [Big content cheers as Congress votes on changes to US Copyright Office](#)

The US House of Representatives will vote today on a bill that will make the US Register of Copyrights a presidential appointment, confirmed by the US Senate. The bill, H.R. 1695, is being celebrated by big copyright owners and dreaded by public interest groups. It's the result of a power struggle that could dictate how much industry will influence who runs the US Copyright Office. Currently, the Copyright Office is run by the Register of Copyrights, a position that's appointed by the Librarian of Congress. If H.R. 1695 passes, the Register of Copyrights will be appointed by the president and confirmed by the Senate.

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New York Times [F.C.C. Chairman Pushes Sweeping Changes to Net Neutrality Rules](#)

WASHINGTON — The chairman of the Federal Communications Commission on Wednesday outlined a sweeping plan to loosen the government's oversight of high-speed internet providers, a rebuke of a landmark policy approved two years ago to ensure that all online content is treated the same by the companies that deliver broadband service to Americans. The chairman, Ajit Pai, said high-speed internet service should no longer be treated like a public utility with strict rules, as it is now. Instead, he said, the industry should largely be left to police itself. The plan is Mr. Pai's most forceful action in his race to roll back rules that govern telecommunications, cable and broadcasting companies, which he says are harmful to business.

The Hill [Hundreds of startups call on FCC to preserve net neutrality](#)

A group of more than 800 tech startups is urging Federal Communications Commission Chairman Ajit Pai not to go forward with his plan to dismantle net neutrality. In a letter sent Wednesday morning, the coalition — led by tech groups Y Combinator, Techstars and Engine — said it is “deeply concerned” about the reports that Pai is planning to repeal the FCC's net neutrality rules, which prohibit internet service providers from favoring or discriminating against web traffic to certain sites. “Without net neutrality, the incumbents who provide access to the Internet would be able to pick winners or losers in the market,” the letter reads. “They could impede traffic from our services in order to favor their own services or established competitors. Or they could impose new tolls on us, inhibiting consumer choice.”

New York Times [How Trump's Pick for Top Antitrust Cop May Shape Competition](#)

WASHINGTON — Makan Delrahim, the nominee for chief antitrust cop at the Justice Department, was 10 when his family immigrated to the United States from Iran as Jewish political refugees. Unable to speak English, he struggled to keep up in school. He worked afternoons and weekends at his father's gas station near Los Angeles until college. As a young Senate staff member years later, Mr. Delrahim found those early experiences had laid the foundation for his conservative views. “I came to realize that my values identified with the conservative viewpoints of personal responsibility, hard work, respect for individual rights and appreciation of a limited role of government,” Mr. Delrahim, 47, said in his first interview since being nominated last month by President Trump for assistant attorney general for antitrust.

The Hill [DNC hackers targeted French presidential candidate Macron: researchers](#)

The hackers behind the Democratic National Committee (DNC) email breach appear to have made similar attacks against Emmanuel Macron, a French candidate for president, as well as groups associated with German political parties, according to a new report. The security firm Trend Micro reports that the hacking groups known as Fancy Bear, APT 28 and Pawn Storm attacked the French and German targets using similar phishing schemes to the one that caught the DNC. U.S. intelligence, as well as the bulk of experts, believe Fancy Bear is a Russian espionage operation.

Ars Technica [FBI allays some critics with first use of new mass-hacking warrant](#)

Mass hacking seems to be all the rage currently. A vigilante hacker apparently slipped secure code into vulnerable cameras and other insecure networked objects in the “Internet of Things” so that bad guys can't corral those devices into an army of zombie computers, like what happened with the record-breaking Mirai denial-of-service botnet. The Homeland Security Department issued alerts with instructions for fending off similar “Brickerbot malware,” so-named because it bricks IoT devices. And perhaps most unusual, the FBI recently obtained a single warrant in Alaska to hack the computers of thousands of victims in a bid to free them from the global botnet, Kelihos.

Washington Post [The U.S. government's 'witch hunt' to root out a Trump critic has now sparked an investigation](#)

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The federal government's effort to root out an anonymous critic of President Trump's immigration policies has sparked an investigation into whether officials abused their authority by demanding that Twitter reveal the identity of one of its users, according to a letter released Friday. The Twitter account was part of an explosion of anonymous online criticism of Trump that began shortly after his inauguration in January and appeared to emanate from within many federal agencies. The Department of Homeland Security's effort to identify the user behind one of these accounts — @ALT_uscis, which uses the acronym for U.S. Citizenship and Immigration Services — prompted a summons to Twitter demanding that the company reveal the identity of the user, who was thought to be a federal employee.

NOTABLE QUOTES

"The fight against terrorism is not just one for the police and security services. Social media and its companies have a role to play too. We are protesting this decision in talks with Twitter on getting access to this information. There is ongoing conversation between the Home Office and Twitter."

– [U.K. Home Office spokesperson](#)

"That the NPO furthers the government's interest in protecting its investigation is well-taken. And the court will accept arguendo that the government cannot state with certainty an end date for the threat Adobe's speech would pose thereto. However, the government's arguments do not address the core issue in strict scrutiny review [under the First Amendment]: 'whether the challenged regulation is the least restrictive means among available, effective alternatives.'"

– [U.S. Magistrate Judge Frederick Mumm](#)

"A service provider's location and ability to retrieve data stored abroad have been considered decisive factors—not whether the data is subject to protection under foreign law or is otherwise a violation of privacy rights."

– [Craig Newman, partner, Patterson Belknap Webb & Tyler LLP](#)

"The Protecting Data at the Border Act is the commonsense solution. The government should not have the right to access your personal electronic devices without probable cause. Whether you are at home, walking down the street, or at the border, we must make it perfectly clear that our Fourth Amendment protects Americans from government overreach at all times and all places."

– [Rep. Jared Polis](#)

*"In the landmark case of *In re Warrant to Search a Certain E-mail Account Controlled & Maintained by Microsoft Corp.*, the Second Circuit held that the SCA... was intended to protect privacy rights. The Second Circuit said that the SCA focused on user privacy and determined that enforcing the warrant and directing Microsoft to seize communications stored in Ireland would be an unlawful extraterritorial application where Microsoft didn't have to turn over email stored on Irish servers."*

– [Daniel Stoller, senior legal editor, Bloomberg BNA](#)

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"I think that people should realize that the law keeping their data out of the hands of the government is really weak... the dossiers that are being developed about them are not just going to stay in one company."

– [Frank Pasquale, law professor, University of Maryland](#)

"A meaningful legal response in this respect would be the establishment of global privacy standards, in the form of a 'new universal law on surveillance'... by requiring the prohibition of mass and indiscriminate surveillance already from the stage of data collection, and mandating a comprehensive legal framework regarding the extraterritorial reach of the State and the extraterritorial application of human rights."

– [Valsamis Mitsilegas, director, Queen Mary University Criminal Justice Centre & Niovi Vavoula, doctoral candidate, Queen Mary University](#)

"We all aim to strike the right balance between national security and civil liberties. I believe Section 702 strikes just the right balance as is. Any more restrictions would hamper our national security agencies' ability to protect us... I do worry that potential misconduct by Obama administration officials might make it harder to reauthorize this very important program."

– [Senator Tom Cotton](#)

"As written, the NPO [notice preclusion order] at issue herein effectively bars Adobe's speech in perpetuity. The government does not contend, and has made no showing that Adobe's speech will threaten the investigation in perpetuity. Therefore, as written, the NPO manifestly goes further than necessary to protect the government's interest."

– [Adobe legal brief challenging an indefinite gag order](#)

SOCIAL HIGHLIGHTS

- [@dnvolz: Well this is strange: Two weeks ago Microsoft reported a big boost in FISA demands. Just kidding, company now says](#)
- [@FT: The UK says Twitter isn't doing enough to fight terrorism](#)
- [@TechCrunch: UK government irate at Twitter's surveillance API crackdown by @riptari](#)
- [@just_security: Newly declassified & leaked materials suggest Section 702 surveillance data may be used to detect low-level crimes.](#)
- [@OpenRightsGroup: #Surveillance powers are threatening investigative journalism and freedom of expression in UK](#)
- [@RepJaredPolis: Warrantless searches at the border need to stop. Here's why:](#)
- [@DavidLeopold: .@DHSgov launches internal probe of attempt to unmask @ALT USCIS](#)
- [@FoxNews: Senators seek data on Americans caught up in surveillance](#)
- [@agcrocker: My post on just-unsealed ruling in Adobe gag order case:](#)

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- **@arstechnica:** [Hey, do you have a warrant for those hacks? \(Evidently, yes.\)](#)
- **@ggreenwald:** [Japan made secret deals with the NSA that expanded global surveillance by @rj_gallagher \(w/Japan's NHK Network\)](#)
- **@josephfcx:** [Scoop: Metropolitan Police \(London\) officer bought malware that can intercept calls, steal emails, much more](#)
- **@kateconger:** [Another court says indefinite gag orders have got to go \(this time in a challenge brought by Adobe\)](#)