

## **WHOIS Proxy/Privacy Reveal & Relay Feasibility Survey Webinar**

### **TRANSCRIPTION**

**Wednesday 15 August 2012 at 13:00 UTC**

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Barbara Roseman: Thank you all for joining us today. This will be a - an overview of the study that was undertaken by ICANN as part of a larger project to study WHOIS data, gather some actual facts so that decisions can be made in a better way for policy.

WHOIS has obviously been the subject of a lot of discussion both inside ICANN and in the Internet community at large. Several years ago the GNSO decided to ask Staff to prepare some factual data, and as a result of that four different studies were identified that were being - that are being pursued now.

This particular study is the WHOIS Privacy and Proxy Relay and Reveal Study. It was originally envisioned as an in depth study into communication of relay and identity reveal requests sent for gTLD domain names registered using proxy and privacy services.

However during the course of that initial study the outcome changed, and today we'll be presenting on that new outcome. We're going to be recording the call today and the Webinar so that those who are not able to join us at this time will be able to view it later.

And there will also be another Webinar offered later today that can be joined using the same details, and Lyman if you would like to begin the presentation.

Lyman Chapin: Yes Barbara Roseman, thank you very much and welcome to everyone who is on the call. We have a total of 60 minutes for the call and so I will try to go through some of the details as quickly as I can so that we have an opportunity for questions at the end.

As Barbara Roseman mentioned this Webinar today is about the results of a feasibility survey that was conducted by Interisle Consulting Group. And the reason for conducting a feasibility survey -- you might wonder what that is -- is simply that the original RFP, which anticipated a full scale study of the way in which communication relay and identity reveal requests were both sent and processed, turned up a significant difficulty with respect to both sampling uncertainty and dependencies on third parties that might or might not be willing to participate.

The result was that the RFP which was published back in 2010 - 29 September 2010 received almost no response and the responses that were received tended to say something on the order of, "There's no way for us to determine how to conduct this study because there are too many things that we don't know.

We don't know who might participate. We don't know what data might be available," and so forth. So as an alternative to trying to proceed with that RFP, the GNSO Council decided that instead they would first conduct a feasibility study.

So in April 2011 they authorized a feasibility study, and the intent of this I think is probably obvious just from the name, basically to find out whether or not there would be data available and to what extent the principals, the people who either generate relay and reveal requests or the people who respond to them would be willing and able to participate in a study.

Essentially the fill in the blanks that the potential responders to the original RFP noted made it difficult for them to scope and propose an actual study. It would also of course provide some information that would help to design the full study should the GNSO decide to undertake it, and also give some of the potential participants an opportunity to identify themselves, so basically get a jump start on things.

As I said earlier Interisle Consulting Group was selected to conduct the survey. We designed a two-part survey. The first part consisted of an online Web-based tool that asked a fairly broad range of questions concerning the way in which the services were used.

We made an effort to recruit respondents and we also made it clear that whether or not you were recruited anybody was, you know, was authorized to participate in the online survey.

We made it clear that participants could respond in such a way that neither their identity nor any of the information that they provided to the survey team would be made available to ICANN or to anyone else, so we had confidentiality controls in place.

We conducted this Web-based survey and then we followed it up with a number of interviews both to fill in gaps in some of the information that we obtained from the Web-based survey, and also to give us an opportunity to talk to people that we had reason to think had useful information to provide, but hadn't necessarily conducted - participated in the survey, and then obviously analyze the results and write the report.

It's important to note with respect to the online survey that we spent quite a bit of time and effort trying to reach out to three key constituencies, and they're listed on this slide right here.

And we did so in such a way as to encourage participation both across constituencies and also across regions and across other demographic groupings.

So for instance we offered the survey online in five different languages so people could choose to answer the survey questions in the language of their choice.

We provided extensive safeguards for privacy and confidentiality, so anyone who had concerns about either being known to participate in the privacy and proxy services, or had information that they really wouldn't be interested in providing without those safeguards would feel comfortable doing so.

The questions were intended to provide both the information necessary for the GNSO Council to determine the feasibility of the study, and also to provide additional information that we felt would be useful should a full study be designed to make sure that that full study actually would be successful this time around, recognizing that two years ago the study that was anticipated originally by the GNSO turned out not to be something that people were prepared to bid on.

The survey was available online from September 2011 through the end of October 2011, and it was completed by 168 respondents. We then followed up with interviews with 16 individuals, again both people directly involved and people with a broader perspective on the space in which we were investigating the problem.

We learned a couple of lessons and I won't belabor these because these are primarily of interest if a full study is undertaken. We discovered a few things about conducting this kind of survey, the first being that it's not as easy to get in touch with potential respondents as you might think.

Discovering who the people are who actually participated in proxy and privacy services and who issue relay and reveal requests is a little trickier than we initially expected.

But we did discover that essentially all - only 11 of the survey responses elected - survey responders elected to respond in a language other than English.

And of course, you know, that means either that people who were not comfortable responding in English simply didn't bother trying to use any of the other available languages, or that most of the people who are concerned with this topic are comfortable responding to questions presented in English.

And again the geographical distribution, you know, followed what you might expect: 60% from North America and 30% from Europe even without outreach.

And the outreach included very aggressive activities during the ICANN meeting in Dakar, which took place while the survey was active - produced minimal response from other regions.

I think it is - given the amount of outreach that we conducted I think it's safe to conclude from that lack of response that most of the interest in and concern about access to registered data through various WHOIS proxy and privacy shields is in both North America and Europe, possibly in Asia as well but other regions were minimally represented.

The findings and analysis - this is the first of several slides that present a number of graphs showing the distribution of responses and some other key data from the survey.

This first slide is interesting in part because it shows that the respondents who make relay and reveal requests, in other words the people who are looking for Registrant data and ask providers of proxy or privacy services to either relay a request for information to the actual domain name Registrant or to in fact reveal that information, that those folks are more highly motivated at least with respect to responding to a

survey like this, than the people on the other side, the people who provide those proxy and privacy services or the people who actually receive a reveal or a relay request and have to - or - and are trying to figure out how to respond to it.

That's probably not surprising, but it's something that ought to be taken into account by anyone who is putting together the plan for a full study if that should ever happen.

These two charts capture in graphical form a point that I made earlier, which has to do with the geographical distribution of respondents and also the constituencies.

Now this tracks very closely the data from the online survey. These are data from the 16 people that we interviewed. In making our selections from among the interviewees of course we tried to balance the, you know, balance a little bit better between the people who make requests and the people who receive and respond to requests, including the people that process them who for the most part are Registrars.

We found that of course as you would expect almost everyone was interested in the results, so it's very easy for someone responding to a survey to say, "Yes I'd like to see what the results are."

But it was interesting to note that a very large number of people, particularly the requesters believed that the study would benefit the Internet community. And when we probed into that a little bit during the interviews, what emerged was that people felt that the fact that there was so much controversy about WHOIS and access to Registrant data was a problem that the Internet community really needed to solve.

In other words this was a very important problem. So even people who were not interested in participating themselves for whatever reason believed that a full study would be beneficial.

They might not personally be able to participate but they believed that participation would be beneficial to the Internet community. Things that are - that cause people to be reluctant to participate - this is interesting in part because it shows a big difference between the concerns that the requesters, the people who are looking for Registrant data, the relay and reveal initiators, differ significantly from the responses from the providers, the people who are engaged in the business of providing proxy and privacy services.

In particular as you might expect the providers were much more concerned than the requesters about the problems associated with revealing client confidential information or the privacy concerns of their customers.

Interesting we found a relatively small number, relatively even distributed but a relatively small number who were concerned that participating in a full study would be difficult given the laws and regulations in their jurisdiction.

We had expected that people would object to the time and effort required, but in fact that was not as big an issue for people as we felt. And certainly it was not as big as - as big an issue as confidentiality and privacy concerns.

On the flip side, the positive factors, we found -- again when I say we found these are survey results -- that providing opportunities for respondents to either maintain their privacy or confidentiality or make sure that sensitive data were not revealed were probably the most important positive things that would encourage people to participate.

And again this - these are all data that speak to the way in which a future study should one be undertaken might be designed so as to increase as much as possible or to encourage as much as possible participation from the people who are actual participants in these activities.

So what we - what we're looking at is a feasibility study, and a feasibility study of course is not a study of the actual problem. It's a study of the feasibility of conducting a study of the actual problem.

And because - and I belabor that point a little bit because we can't be certain that the types of responses that we got to the feasibility survey would track precisely with the responses that we might get back from a full survey.

We did find that many of the people that we talked to, particularly during the interview phase, had expectations for a full study, that it might be very difficult to satisfy.

Many people - and this actually also came up even in the online survey. Many people told us that what they really wanted to see was a study which would result in concrete, tangible action.

And obviously that's not something that either we or the GNSO could guarantee. But it was a big deal for a lot of the people who said that, "I would be willing to make the effort to participate in a full study if I were confident that the results of the study would bring about real, you know, meaningful change in the way in which registered data are managed through WHOIS or some other mechanism."

That's going to be a tricky expectation to deal with if you - if a full study is conducted because of course, you know, you can gather data in a study but you can't guarantee that the data will then produce or lead to a outcome that is known in advance.

We also found, you know, for what might be obvious reasons that lots of people would be unwilling to participate if they thought that the study were simply an effort to find the bad guys.

So if a study came along that looked pretty much like it was just a witch hunt and somebody was just out to find all the bad actors and punish them, there'd be, you know, essentially no interest on the part of the proxy and privacy service providers to participate in such a study.

So neutrality with respect to some of the politics of the WHOIS debate would be important. And of course as I've said before we found that privacy and confidentiality guarantees would probably improve participation, because a number of people indicated that without those guarantees it would be very difficult or impossible for them to provide meaningful data.

So I have four conclusions I'd like to discuss before we move on to questions. First of all and probably the most important one is that a full

study of these issues, privacy and proxy reveal and relay handling, could provide some but not all of the data anticipated by the GNSO Council.

So if you go back to 2010 and you look at the Council resolutions and discussions that led up to the initial RFP, some of those objectives could be achieved by the data or could be addressed by the data that a full study could gather but not all of them, so that's an important point.

It's going to be - it's going to require I think a little bit of, you know, rethinking of what the objectives of the full study might be. The second much more optimistic is that such a study, and specifically such a study by ICANN -- ICANN was viewed as the right organization to undertake the study -- would be well received by people on all sides of the WHOIS debate.

And by that I mean obviously not universally everybody in every constituency. But in almost every constituency we found at least a very large number, in most cases a majority of people who would welcome such a study, and again obviously with the right character, you know, the right kind of study with the right privacy guarantees and so forth.

The third conclusion is that confidentiality and also convenience meaning, you know, how easy is it to participate, would almost certainly improve the quantity and quality of study data but that we did not - looking at the survey results that were available to us we did not find a pattern that would suggest how you might design a study in such a way that it would attract more uniform or balanced participation.

It looks as though inevitably it's going to be harder to get the proxy and privacy service providers and the organizations that have to respond to relay and reveal requests - it's going to be harder to get them to participate even with confidentiality guarantees than it will to get people on the other side of the equation, the people who are looking for or have a requirement for Registrant data, the people who issue privacy and proxy service relay and reveal requests.

So that's an issue for study design. It's also something that needs to be factored into the expectations for any future study in terms of what kind of data will it reveal.

And so that leads us to the fourth conclusion, which is really the bottom line with respect to the next steps that the GNSO Council might want to take. And that is that if we designed a full study that had enough of these safeguards and enough of these characteristics so that people might be willing to participate, it's possible that that might not satisfy the expectations that exist either within the GNSO Council or within the ICANN community.

So there's a risk that a full study, even a well designed full study, would at the end of - at - would after it had been conducted produce results that could not be used by the decision-making bodies, the Council and so forth in the ways in which they anticipate they might be used.

So there's a risk associated with the statistical validity and the verifiability of data that would be produced, even by a very well designed full study. And again that's a important point to keep in mind as we talk about what might come next.

So at this point before I go any further with what might come next as I just said, I think it would be appropriate to stop at this point and ask for questions. And Barbara Roseman I'll hand it back to you.

Barbara Roseman: Thank you. You can indicate that you have a question here by raising your room in the connection, or if you're not connected to that say that you have a question and I'll try to keep a queue moving forward.

David, do you want to ask your question aloud? You might be on mute. Or Glen could you explain...?

Gisella Gruber-White: Barbara Roseman sorry, Gisella here just to say that I believe that David Olive is not on the audio bridge. So he is just on the Adobe Connect so if you'd be so kind as to ask his question for him. Thank you.

Barbara Roseman: So Lyman, David asks, "Could you elaborate on the confidentiality conclusion? Even with your safeguards there were still concerns about releasing customer information via the replies."

Lyman Chapin: Yes. It's actually not so much a concern about would the study folks really be able to keep the information confidential. In other words it wasn't a concern about leakage.

It was much more a practical concern. In many cases organizations don't have individually identifiable data that even could be made available. In other words only aggregated statistics are maintained.

So in order for that organization to provide more details even under confidentiality guarantees, they'd have to do some significant work and they weren't sure they were willing to do that just in order to participate in the study.

That was one concern. The other concern simply had to do with the business, you know, the contractual arrangements that they have - that some of these organizations have with their customers, which essentially prevent them from revealing information regardless of how many promises are made by the organization asking for the information.

So they might be from a business standpoint contractually obligated not to provide data, individually identifiable data simply because their customer agreements specify that.

And it's important to distinguish here between individually identifiable data, the kind of data that might make it possible to look at an actual specific relay or reveal request that named a particular domain name, and at the end of the process named the actual owner of the domain name sitting behind the proxy or privacy shield from aggregated data, which are statistical data that many organizations said they would be willing to provide even without confidentiality guarantees.

So the issue here really is to what extent would confidentiality guarantees enable a full study to obtain the kind of individual detailed data that might enable you for instance to track a specific request all the way from beginning to end and back again?

Barbara Roseman: Okay. If there were confidentiality agreements that it would be unlikely to yield that type of data.

Lyman Chapin: Well you couldn't be - you could not assume that offering confidentiality to a potential responder would in fact enable that responder to participate...

Barbara Roseman: Got it.

Lyman Chapin: ...because...

Barbara Roseman: Okay thank you.

Lyman Chapin: Even if they were completely confident that your confidentiality guarantees were airtight, they still might not be able to participate. That's the point.

Barbara Roseman: Right because they don't collect the data in that way.

Lyman Chapin: Right. Exactly.

Barbara Roseman: Can you talk a little bit about what you found regarding differences in region, like if there were local or regional laws that prohibited participation?

Lyman Chapin: Yes. From a regional standpoint the only region from which we heard concerns about, you know, privacy regulations and other kinds of legal or governmental impediments to participation was from Western Europe. And that almost certainly has to do with the EU privacy directives.

Barbara Roseman: Hello?

Lyman Chapin: Hello. I'm sorry, did someone just...?

Barbara Roseman: Yes. No go ahead. Continue Lyman.

Lyman Chapin: Oh okay, sorry. And we assume that those refer to the EU privacy directives that do in fact in many cases make it difficult to provide data, even under conditions of confidentiality.

We did not hear those kinds of concerns about regulatory barriers from either North America or any of the other regions.

Barbara Roseman: And did you perhaps break out any data regarding law enforcement ability to participate in such a survey?

Lyman Chapin: We did and for the most part law enforcement agencies were eager to participate in the survey from the standpoint of, you know, this is a problem that really, really, really needs to be solved.

They were also however skeptical about the ability of a study to turn up data that would actually be useful. So they tended to be - take a more jaundiced view of the likelihood that a study would actually produce useful data.

And in many cases they said that it would be structurally or institutionally difficult for them to participate but they - in two specific instances for example we actually had people who, you know, offered

to dedicate quite a bit of time and human resource to helping a full study achieve its objectives.

Barbara Roseman: Any other significant results from like a group of participants that you think are worthwhile to mention as either posing a difficulty to getting the study done or, you know, or a aid to getting the study done?

Lyman Chapin: I'm sorry Barbara Roseman. Was that a question to me?

Barbara Roseman: Yes it was. I mean, I'm just asking if there's any other constituencies or groups of interested parties that stood out for you as having a, you know, a specific concern or a specific drive to move forward on the study?

Lyman Chapin: Yes. I'm very confident that the single most important characteristic of a full study that would encourage people pretty much across the board to participate in all different constituencies is a very clear commitment to use the results of the study to do something to finally - let's just use a shorthand term and say fix WHOIS which is a, you know, as we know is a simplistic way to put it.

But there was a tremendous amount of frustration in all sectors with the apparent inability of ICANN, and again I'll say something I said before. ICANN is - was viewed by pretty much everyone that we talked to as the right place to solve this problem.

But there was almost universal frustration and not - I won't say anger but border - frustration bordering on anger that, "nothing had been done." And if a study were presented and structured in such a way that the promise of finally breaking some of the bottlenecks that have

prevented this whole issue of access to Registrant data from being resolved for many years now were clear to participants, that that alone would encourage participation almost more than anything else.

Some of the other characteristics I think are well documented, and we've gone over some of them today and they're all in the report. So a well-designed study should have a lot of those other characteristics as well.

But I think the most important one that's going to get people to actually want to participate is a sense that, "Okay, this looks like a study that will produce data that the GNSO Council and the community can finally rely on to come up with some solution to the problem that exists today."

Barbara Roseman: (Lisa) asks if you can comment on the ability of a full study to examine existing practices so that would we be able to, you know, create a chart of existing practices and sort of align that with the responses that we get?

Lyman Chapin: Yes, that was not something that anyone thought would be a violation of business relationships with clients or any other kind of confidentiality obligation.

We could definitely obtain information about the processes and systems and tools that were, you know, that are used by the various players to actually carry out the activities of both providing these kinds of services and issuing and responding to relay and reveal requests.

So in terms of creating a - sort of a map of what exists today and what people are actually doing today, I believe that that would be fairly straightforward and that we would have little or not impediment from potential participants.

Barbara Roseman: Great. Okay I'll ask everyone on the call again if there are any other questions. We're at the halfway point to our reserve time for the presentation, but we can conclude early if there are no other questions.

So Lyman why don't you go ahead and move to the next steps slide? And we're not going to take a lot of questions on next steps, because this is really something that has to be discussed within the GNSO and is not, you know, really something that this survey can - or study can answer at this time.

Lyman Chapin: Okay. So the report of the feasibility study as I'm sure you all know has been published. There was a public comment period that closed in June and then there was a reply period, which is currently open.

The reply period's been extended to 22 August, so you can still go to the public comment site and enter additional comments during the reply period. And the final version of the report, the draft from 31 May - the final version of that report will be - will then be published after the reply period ends.

And the expectation - and again as Barbara Roseman said this is not something that the - that is a conclusion of the survey. But the expectation then is that the GNSO Council will be able to use that final report to make a decision about whether to launch a full study, and if so under what circumstances and with what characteristics.

Barbara Roseman: (Lisa) - I'm sorry. Lyman could you just compare what you think the - this next steps study might include that wasn't addressed - that wouldn't address the original study terms, like how you feel that it would differ?

Lyman Chapin: Well the problem with the original RFP if you go back to 2010 was not so much that it asked the wrong questions, as that it wasn't possible for potential responders to that RFP to quantify the - either the data that would be available if they undertook the study, or the people who might be willing to participate.

And without knowing anything really about those two variables, it wasn't possible for respondents to put together a meaningful proposal. They - there was no way to know how, you know, what kinds of data would be available and there was no way to know who would be willing to participate.

So the difference this time around I think is not so much that the GNSO Council for instance has to come up with a completely different set of objectives.

The difference this time around is that it should be possible to write an RFP that much more clearly specifies the kinds of information that the full study would be expected to collect, because we now know a lot more about what kinds of data would be available and also be much more specific about the breadth of participation, breadth and depth of participation across several constituencies that a full study team can - could expect to obtain.

And that should make it possible to create an RFP that is both successful in the sense that potential responders will know how to respond. They'll be able to put proposals for full studies together that can then be considered by the Council.

But it will also much more tightly frame or constrain - no, constrain's the wrong word - much more tightly define the expectations for what such a study will produce so that when that study - let's imagine that it is in fact pursued.

When that study was completed the Council would be able to receive the results, and essentially know ahead of time how it was going to deal with them so that the - there'll be a much better match between achievable results, what a study could achieve and what the expectations of the GNSO and the - or GNSO Council would be with respect to how they would then be able to use those results to make decisions.

Barbara Roseman: Okay, well that's a good result. So Glen can you please remind people how they can access the recording of the Webinar and the slides that have been posted?

Glen de Saint Gery: Certainly Barbara Roseman. These will be posted on the GNSO calendar page and I'll put the link up for you in a minute. It's on the GNSO Web site.

Barbara Roseman: Thank you. Thank you everybody for participating. If there's no further questions I think we'll go ahead and close a little early, give you back some time in your day.

There will be a second Webinar that will cover the same material later today, and that should've been in the initial invitation you received. So please join us if you have further questions that come up and otherwise you can access the materials at the GNSO Web site. Thank you. Thank you Lyman.

Lyman Chapin: Thank you Barbara Roseman.

Barbara Roseman: Bye-bye.

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