WHOIS Proxy/Privacy Reveal & Relay Feasibility Survey

Draft Report to the
Internet Corporation for Assigned Names and Numbers

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Executive Summary

The Domain Name Registration Data Directory Service (WHOIS) is an Internet standard mechanism for providing public access to identity and contact information about domain name registrants. ICANN-accredited domain name registrars are contractually obligated[1] to provide accurate information about all registrants via WHOIS, either directly or through a generic top-level domain (gTLD) registry. Some registrars and third-party service providers offer registrants the opportunity to limit the public disclosure of their personal contact information by offering privacy services that publish alternative contact information. Other providers act as "proxies" by registering domain names for another user, who may access and use the domain name through a separate arrangement with the proxy service provider. A recent study[2] by the National Opinion Research Center suggested that some or all of the public contact information for at least 18% of the domain names registered under the five largest generic top-level domains might be shielded from WHOIS by a proxy or privacy service.

Over time, the public-information requirement and the use of proxy and privacy services have become a battleground on which privacy and data protection advocates have squared off against law enforcement and intellectual property interests over access to domain name registrant data. This battle has often been highly charged and emotional, and in the absence of accurate and authoritative information about the way in which registrant contact information access is affected by the use of privacy and proxy services the debate has been driven more by anecdote than by data. Recognizing this as an impediment to resolving the issue, ICANN's Generic Names Supporting Organization (GNSO) Council has commissioned several studies to collect reliable data on WHOIS deployment and use, including a study of the effect of proxy and privacy services on access to domain name registrant data.

ICANN asked Interisle Consulting Group to conduct a survey to determine whether or not the study of proxy and privacy services contemplated by the GNSO Council would in fact be feasible, and if so how such a study should be designed in order to secure the greatest possible participation from potential information sources and thereby deliver the most useful data to the WHOIS debate.

[1] http://www.icann.org/en/registrars/ra-agreement-21may09-en.htm

[2] http://www.icann.org/en/compliance/reports/privacy-proxy-registration-services-study-14sep10-en.pdf

Interisle gathered information from three broadly defined constituencies: initiators of relay/reveal requests; proxy/privacy service providers; and registrars involved in processing relay/reveal requests and responses. An initial multi-lingual online survey collected 168 responses from 73 request initiators, 25 proxy/privacy service providers, and 36 registrars.[3] Sixteen follow-up interviews were conducted with a representative sample of stakeholders, including 5 request initiators, 3 proxy/privacy service providers, and 4 registrars. The remaining interviews were conducted with individuals who had insights into the use of WHOIS proxy and privacy services but were not directly involved in making or processing relay or reveal requests.

This report presents the results of our analysis of the survey responses and interview data, which demonstrates that:

a) a full study of WHOIS privacy and proxy could, if defined in such a way as to resolve identified barriers, provide some—but not all—of the data anticipated by the GNSO Council;

b) such a study (specifically by ICANN) would be well received by people on all sides of the WHOIS information access debate;

c) attention to issues including confidentiality and convenience in the design of the study would improve the quantity and quality of the data that it would deliver, but would not entirely overcome the asymmetric reluctance of potential participants from different constituencies to contribute; and

d) the results of a full study thus encumbered might not satisfy the expectations of the GNSO Council or the ICANN community with respect to statistical validity or independent verifiability.

The data show that roughly 40% of the principal constituencies (relay and reveal request initiators, proxy/privacy service providers, and registrars) would be interested in participating in a full study. These participants would be able to provide only summary or incomplete data concerning the incidence, processing, and disposition of relay/reveal requests. For the most part they would not, however, be able to provide data concerning specific individually identifiable instances of relay or reveal requests. Several potential full study participants said that additional non-aggregate data could be obtained from the public records of legal and arbitration proceedings, and that they would actively assist in their discovery.

Specifically, in their responses to the online survey 47% of request initiators, 40% of proxy/privacy service providers, and 39% of registrars said that they would be interested in

[3] Some survey respondents were anonymous and/or did not disclose their affiliation.

participating in a full study; 77% of request initiators, 72% of proxy/privacy service providers, and 75% of registrars said that strong privacy guarantees for data contributed to a full study would be important; and 77% of request initiators, 40% of proxy/privacy service providers, and 47% of registrars said that the results of a full study would be valuable either to their organization or to the Internet community as a whole (or both). A full study should be designed to overcome the two most important barriers to participation that were cited by survey respondents as either critical or very significant: the time and effort required to participate (46%) and the confidentiality of client information (44%). 75% of survey respondents said that strong confidentiality guarantees would be significant, very significant, or critical to their ability to provide data to a full study. Follow-up interviews revealed, however, that most potential participants would be willing to provide only anonymized and aggregated data to a full study regardless of how strong the confidentiality guarantees might be.

These findings suggest that a full study would have to be designed and carried out in a way that did not require participants to disclose specific details of domain names or identify registrants using privacy/proxy services. A full study that depended on the ability to track and correlate individually identifiable requests and responses would therefore be impractical. A study designed to work with anonymized or aggregated request data would be acceptable to at least some potential participants if strong assurances were provided that their data would be protected and their participation would not require substantial time and effort. Anonymized or aggregated data, however, might not support the type of detailed analysis expected by the GNSO Council. Careful consideration of this tradeoff should precede any decision to invest in a full study.

1. Introduction

The Domain Name Registration Data Directory Service, often referred to as the WHOIS system or simply WHOIS, is a key component of Internet infrastructure that attracts considerable attention from legislators, regulators, and various ICANN constituencies and other stakeholders. The object of WHOIS is to provide the identity and contact details for the domain name holder or registrant and some status information about the domain name. Usually, WHOIS provides the name, postal address, phone/fax number, and email address for the administrative, billing, and technical contacts for a domain name. This information is public.

Some organizations and individuals do not wish to have their contact details published in WHOIS and many registrars provide facilities, either directly or through a third party, to enable this. These are generally known as WHOIS privacy and proxy services.[4] Both services publish alternative contact data in WHOIS, but their implementation details differ as follows.

Privacy service providers, which may include registrars and resellers, may offer alternative contact information and mail forwarding services while not actually shielding the domain name registrant's identity. By shielding the user in these ways, these services are promoted as a means of protecting personal privacy, free speech, and human rights, and avoiding personal data misuse.

Proxy services protect users' privacy by having a third party register the name. The third party is most often the Proxy service itself. The third party allows the user to access and use the domain name through a separate agreement or some other arrangement directly with the user. Proxy service providers may include web design, law, and marketing firms, web hosting services, registrar subsidiaries, resellers, and individuals.

In some cases, privacy and proxy service providers publish email and postal addresses in WHOIS which can be used to relay communications to the actual domain name holder: *i.e.*, *domain-name@privacy-or-proxy-provider*. Some of these providers may require court orders or other legal instruments before they will provide information to those making requests.

[4] http://gnso.icann.org/files/gnso/issues/whois/whois-working-definitions-study-terms-18feb09.pdf

1.1 WHOIS Studies

At present the GNSO Council is undertaking several studies to provide current, factual data to inform community discussions about WHOIS policy.[5] Interisle Consulting Group was engaged to carry out a WHOIS Privacy and Proxy Relay/Reveal Survey in Q2 2011. The survey was intended to determine the feasibility of conducting a future in-depth study into communication Relay and identity Reveal requests sent for gTLD domain names registered using Proxy and Privacy services. This report presents the findings of that survey.

1.2 Proxy/Privacy Relay & Reveal Survey and Study

As part of a broader effort to develop a comprehensive understanding of the gTLD WHOIS system, the GNSO expressed an interest in conducting a study that would analyze relay and reveal requests sent for Privacy and Proxy-registered domains.[6] As described by ICANN in their original "Request for Proposals for WHOIS Proxy/Privacy Relay & Reveal Studies"[7]:

> *WHOIS Proxy/Privacy Relay & Reveal Studies are designed to explore and analyze a sample of relay and reveal requests sent for Privacy/Proxy-registered domain names to document how they are processed and identify factors that may promote or impede timely communication and resolution.*
>
> *Currently, each Proxy or Privacy service provider has its own independently-developed practices for handling these requests. There is no common format for submitting requests and no central repository for tracking them. The highly diverse and distributed nature of these practices has made it difficult to even assess the effectiveness of related ICANN policies. The objective of this exploratory study is therefore to help the ICANN community better understand how communication relay and identity reveal requests sent for Privacy/Proxy-registered domain names are actually being handled today.*

[5] http://gnso.icann.org/issues/whois/studies

[6] As described in the GNSO's announcement dated 29-Sep-2010: http://www.icann.org/en/announcements/announcement-29sep10-en.htm,

[7] http://www.icann.org/en/announcements/announcement-29sep10-en.htm which references: http://gnso.icann.org/issues/whois/whois-proxy-privacy-relay-reveal-studies-rfp-29sep10-en.pdf

A reasonable assumption would be that such a study would be highly desirable, if not essential. However, the responses to the initial RFP revealed a number of concerns about how such a study could be carried out or even if it could yield meaningful results. It was not clear what data (if any) could be made available to a study team; which entities could provide that data (and on what basis); what levels of participation would be forthcoming from key stakeholders and other members of the community; or how to design and carry out a study so that it was likely to be successful. Therefore, ICANN staff recommended that a survey be conducted first, to determine the feasibility of conducting a full study.[8] The GNSO Council authorized the pre-study feasibility survey recommended by staff[9] to determine whether or not a full one-year study would be feasible, under what conditions or limitations, and how likely it would be to obtain broad participation from Relay and Reveal initiators and responders. The results of this feasibility survey are the subject of this report.

[8] Staff report of 11-Feb-2011: http://gnso.icann.org/issues/whois/whois-pp-relay-reveal-studies-report-11feb11-en.pdf

[9] GNSO council resolution 20110428-1: http://gnso.icann.org/resolutions/#201104

2. Objectives

The objective of this feasibility survey was to gather, analyze, and present data that would:

a) allow the ICANN community to determine the feasibility of conducting the Full Study, and

b) inform the design and conduct of the Full Study (should one be undertaken) so as to maximize its value.

In particular, the feasibility survey addressed the following issues specifically communicated by ICANN in its Request for a SoW and the referenced GNSO Council motion, including Appendix A of the RySG amendment which summarizes the pre-study[10]:

a) To assess the willingness and ability of three distinct groups: Relay/Reveal request originators, Privacy/Proxy providers, and Registrars, to participate in the Full Study.

b) To sample regional limitations on participation, including business sensitivities and national data privacy laws, by surveying respondents from a modest but representative set of countries.

c) To identify availability of requested data elements and conditions for sharing it, including measures needed to protect requests and responses.

d) To explore the impact of incentives and tools on participation, including viable methods for timely accurate reporting and follow-up.

e) To solicit request examples for use in formulating a Full Study, and assess Privacy/Proxy provider and Registrar ability to supply secondary input.

f) To gather the above input from potential participants in both English- and non-English-speaking countries.

g) To not only establish foundation inputs to the Full Study, but help the GNSO Council determine whether or not a Full Study would be likely to obtain a sufficient sample of Relay and Reveal requests.

h) To address confidentiality and privacy concerns participants may have about responding to the pre-study itself.

[10] RySG amendments to GNSO council resolution:
http://gnso.icann.org/issues/whois/whois-study-recommendations-rysg-29mar11-en.pdf

The specific objective, quoted directly from the 28 March staff memo, is:

> *"Given sampling uncertainties and extensive third-party dependencies, respondents [to the initial RFP] could not reliably estimate study cost or duration. To resolve these uncertainties while establishing the foundation needed to run the full study anyway, we propose to conduct a pre-study feasibility survey of limited duration.*
>
> *If this survey can identify a pool of potentially willing and able participants (including request originators, Privacy/Proxy providers, and Registrars), along with measures and tools required to enable accurate timely data collection, bids can be solicited to conduct the full-blown exploratory study. However, if the feasibility study determines that obtaining a sufficient set of willing and able participants is unlikely, this would also help the community decide whether to pursue, revise, or abandon the full-blown exploratory study."*

3. Methodology

Interisle used an online survey and follow-up interviews to drive a quantitative and qualitative analysis according to the steps outlined in this section.

3.1 Survey with Follow-up Interviews

We began with an online survey to gather information from a wide variety of respondents concerning their willingness and ability to participate in a full study on the use of reveal and relay with proxy/privacy services, and followed that up with more in-depth interviews with a smaller number of people. The information gathered was to determine the different perspectives (profiles) of survey respondents, where appropriate to collect information on the number, frequency, method, and related factors for requestors and processors of reveal and relay requests, and to determine the factors that would encourage or impede participation in the full study.

3.2 Pre-interviews

Interisle conducted a small number of initial interviews to guide the design of the online survey and the focus of the later in-depth interviews. These initial interviews were critical in ensuring that the survey as a whole would be informed by the best available knowledge. Using personal connections, leads provided by ICANN, and other sources Interisle identified people with whom to have highly specific, focused discussions about the survey, gaining further insight into the questions to be addressed by the survey and the general conduct of the project.

3.3 Constituencies and Outreach

The survey was promoted and interview candidates were selected so as to achieve coverage of three broad constituencies:

- **Initiators** of relay and/or reveal requests,
- **Recipients** of relay and/or reveal requests (*i.e.*, proxy/privacy service providers), and
- **Registrars** involved in handling relay and/or reveal requests.

Interisle prepared outreach materials to explain the project and its objectives, submitted them for review by ICANN staff, modified them to take feedback into account, and distributed them in various ways (including in an ICANN blog post announcing the survey[11]).

Participant recruitment started with a list of leads provided by ICANN, including individuals who had proposed WHOIS studies or expressed interest in them at ICANN meetings, representatives solicited by the GAC, Privacy and Proxy service providers identified by the National Opinion Research Center (NORC), and published contact points for gTLD Registries, Registrars, and Data Protection Agencies. That list was then augmented by the survey team's personal contacts from the anti-phishing, financial services, government/regulator, information security, ISP, legal, privacy/proxy provider, registrar, registry, and other communities. The primary objective of the recruiting effort was to ensure coverage across the three target constituencies; a secondary goal was to achieve broad geographic diversity of participants.

The survey was open to anyone, with no entrance criteria; this enabled participation by those outside of the three specified constituencies. A particular effort was made to recruit participants outside the mainstream, who might not be regular ICANN meeting attendees or otherwise active in the ICANN community.

3.4 Developing the Survey

Interisle designed, tested, and validated a multi-lingual online survey, which solicited the following information from participants:

1. an appraisal of the nature, extent, and scope of the relay and/or reveal process and factors that may promote or impede timely resolution;
2. whether or not data about past and/or current experience exist and can be shared, and under what conditions, identifying legal, business, or other obstacles to participation;
3. what factors (*e.g.*, incentives, guarantees of confidentiality, automated tools, etc.) would encourage or discourage participation in a broader study;
4. whether or not the respondent would be interested in participating in a more intensive study, and if so, the nature and/or limits of such participation;
5. what sort of tools the respondent already uses to track reveal and/or relay requests, and what types of tools would make participation in a longer study easier; and

[11] http://blog.icann.org/2011/09/gtld-whois-privacy-and-proxy-relay-and-reveal-survey-now-live/

6. whether there are already specific reveal and/or relay requests that could be used as a basis for designing the full study, including data elements that may or may not be available from each party.

Additional questions were asked depending on whether the respondent was a relay/reveal initiator or responder.

The survey provided respondents with several options as to how the privacy and confidentiality of various elements of their responses would be protected; these options were designed to gauge and address sensitivities while maximizing the degree to which ICANN can use contact information and responses in conducting future studies. Because the survey software required that respondents enable session cookies and JavaScript, an alternative response channel via email was provided for those who might be unwilling to do so. In the event, no one used this alternative.

Interisle provided a draft of the survey to ICANN staff and to a small number of volunteer participants for testing and review, and modified the survey to take into account the feedback provided.

3.5 Structure of the Survey

The online survey included 63 questions organized into 9 sections. Some questions (and some complete sections) were asked conditionally, depending on the responses to earlier questions. The following sections comprised the survey:

1) Questions about the role(s) and interest(s) of the respondent
2) Questions for relay originators
3) Questions for reveal originators
4) Questions for relay processors
5) Questions for reveal processors
6) Questions relating to participation in the full study
7) Questions about follow-up, further contact, and information sharing

The full text of the survey questions in English is in Appendix A, Survey Questions[12].

[12] All of the Appendices to this report are contained in a single separate document.

3.6 Survey Languages

Interisle arranged for the translation of the survey into four widely-spoken languages in addition to English. Languages were selected according to the following criteria:

- The language allows the survey to reach people and organizations not easily reachable in English.
- The language is spoken in a country or region with an active privacy and/or proxy business environment.
- The languages, taken as a whole, enable broad and representative participation by the global Internet community.

The survey materials were made available in the following languages:

- English
- Chinese (Simplified)
- French
- Russian
- Spanish

3.7 Conducting the Survey

Interisle staged the survey, operated the survey mechanism, and monitored the survey during the response period which ran from 14 September 2011 through 31 October 2011. The end date was deliberately selected to be a few days after the end of the ICANN meeting in Dakar to enable outreach to those people attending the meeting and give them time to respond.

Interisle arranged to host a widely used open-source survey tool on a server independent from ICANN. The operational details of the survey (*e.g.*, the use of a dedicated server, appropriate security mechanisms, and clearly defined and well executed privacy policies and procedures) were intended to communicate respect for the respondents' time and the sensitivity of participants' data. They also provided a useful preview of the way in which survey design, particularly with respect to privacy and confidentiality, is likely to affect the willingness of sources to contribute information to a future, more extensive study (as described in Section 5.1).

3.8 Interviews

During and after the online survey period, Interisle conducted 16 individual interviews by phone or in person to add depth and perspective to the survey data and to solicit comments on potential full study design elements and tools. Most of the interview candidates were selected from among those survey respondents who indicated that they were active in Relay and Reveal processing, interested in becoming full-study participants, broadly representative of initiators and responders, and willing to be contacted. Because survey respondents were not required to identify themselves (and their identities were therefore not always knowable), and to deliberately engage individuals known to possess relevant and useful information regardless of their survey participation, interviews were also conducted with individuals representing organizations directly involved in making or responding to reveal requests; others who had a broader understanding of the problem space and could offer a more holistic perspective; people or organizations who might identify other groups and potential data sources for a full study; and other stakeholders who had strong interests in the issues surrounding the use of WHOIS privacy and proxy services. As the survey progressed, it became apparent that the global nature of WHOIS privacy and proxy services for gTLDs was skewed to North America and Western Europe, with less engagement or interest from other parts of the world. This was reflected in the sample set of interviewees.

Interisle was prepared to obtain interpretation assistance to conduct the interviews in languages other than English; in the event, each of the interviewees elected to communicate in English.

Appendix B, Interview Guide Materials, provides the framework for the questions that were used in the interviews. This was used by the survey team to shape the discussions and provide a consistent approach to data gathering. The actual questions that were asked and the order in which they were asked were influenced by the observations made by each interviewee as the discussion unfolded. In some cases the survey team had further communication with interviewees, typically an email exchange on questions of clarification following the team's review of notes they'd taken during an interview.

4. Findings

This section presents a summary of the survey and interview data. Additional detail is contained in Appendix C, Detailed Survey Responses, Appendix D, Survey Response Analysis, and Appendix E, Comparing Survey Results from Different Constituencies.

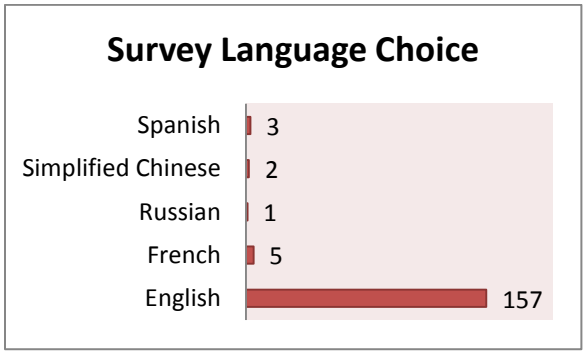
4.1 Respondent Demographics

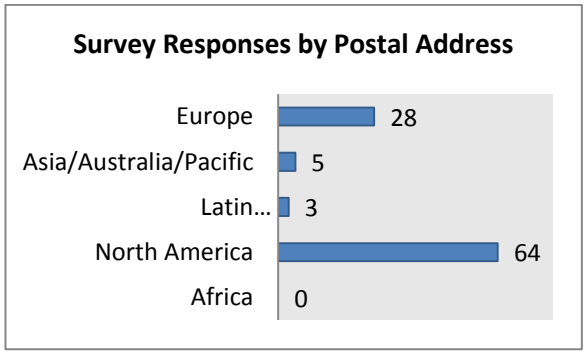
4.1.1 *Survey Participation*

A total of 168 surveys were completed. There were 105 incomplete attempts to take the survey and these responses have not been considered for analysis or included in this report. It is possible however that some of those who did not complete the survey did so at a later point.

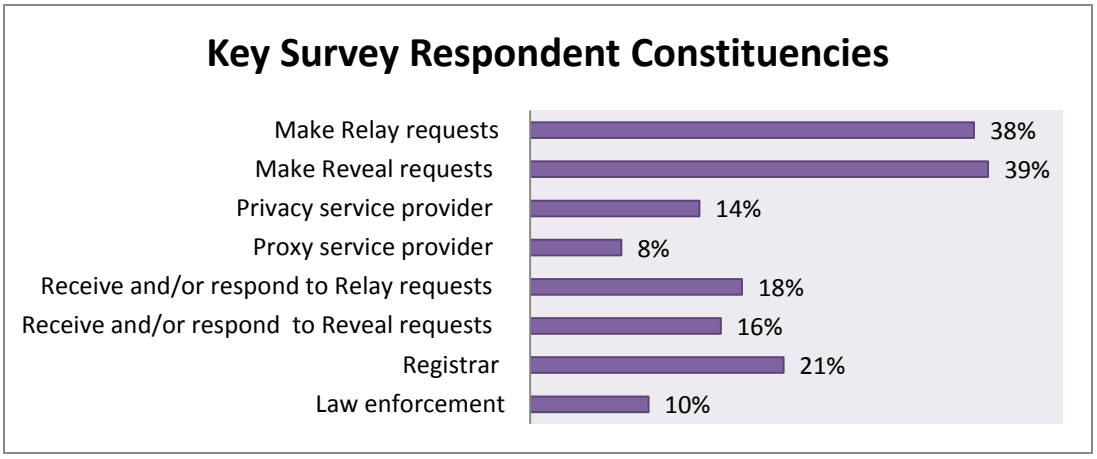
The key demographic information shown below indicates that the overwhelming majority of online surveys were taken in English. Although translations were provided for four widely-spoken languages, hardly anyone chose to use these in the survey.

The geographical coverage of respondents was determined from the postal address reported by respondents (if supplied) or the IP address used to access the survey. The latter may be inaccurate because the actual location of an IP address is not necessarily reflected in RIR WHOIS data and that location may not reflect where the respondent is normally based.





The following chart shows some of the major constituencies identified by survey respondents:



The survey responses show several relationships among groups (see Appendix E, Comparing Survey Results from Different Constituencies) that may be important in the design of a full study and the outreach associated with its pursuit:

- Among respondents who identified themselves as representing a Registrar, 80% also said that they were Proxy/Privacy service providers.
- Among respondents who identified themselves as representing a Privacy service provider, 16% said that they also made Relay or Reveal requests; among Proxy service providers, 11% said the same thing.
- In some groups a very small fraction (<10%) of respondents reported any experience with Relay or Reveal requests or responses: representatives of Registries, government or semi-governmental entities, non-profits, consumer interest and privacy advocacy groups, and consumer complaint centers, as well as people responding individually on their own behalf. A full study should not expect to elicit much participation from people and organizations in these groups.
- In some other groups a larger fraction (13-35%) of respondents reported experience with Relay or Reveal requests or responses: representatives of network security service providers, security incident response teams and researchers, professional organizations, law firms, business entities, and policy makers. A full study would benefit from outreach targeted at these groups.

4.1.2 *Interview Participation*

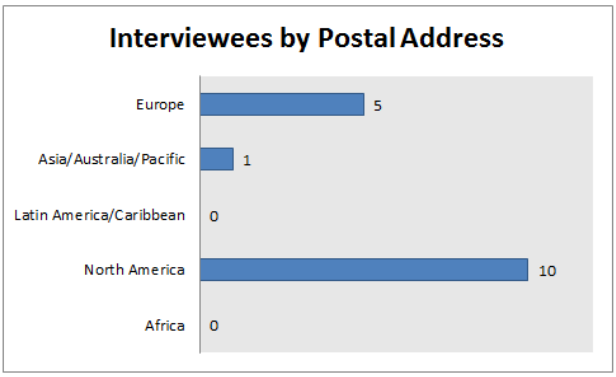
Interisle conducted 16 individual interviews by phone or in person to add depth and perspective to the survey data and to solicit comments on potential full study design elements and tools.

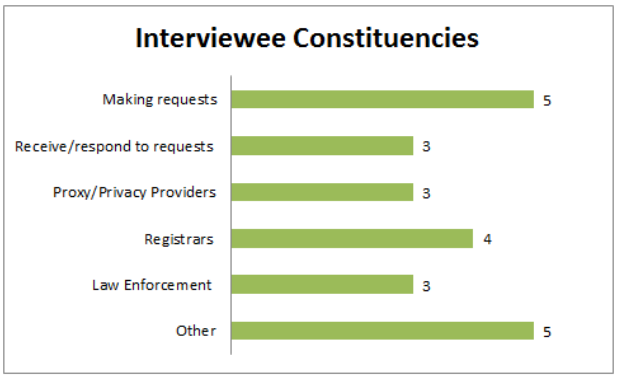
Since survey respondents were not required to identify themselves, these interviews were not necessarily limited to those who took the survey. Those selected for interview were individuals representing organizations who were directly involved in making or responding to reveal requests; others who had a broader understanding of the problem space and could offer a more holistic perspective; and people or organizations who might identify other groups and potential data sources for a full study.

Interisle balanced these criteria against the need to have a broadly representative sample of geographically diverse stakeholders. However as the survey progressed, it became apparent that the global nature of WHOIS privacy and proxy services was skewed to North America and Western Europe, with less engagement or interest from other parts of the world. Follow-up interviews were therefore focused on respondents in North America and Western Europe.

Although Interisle was prepared to obtain interpretation assistance all those interviewed chose to communicate in English.

The demographic and stakeholder breakdown of those interviewed was as follows:





The stakeholder breakdown adds up to more than 16 because some of those interviewed had dual roles: *e.g.*, an anti-abuse representative who makes relay/reveal requests or a registrar who also receives and/or responds to relay/reveal requests.

4.1.3 *Implications for the Full Study*

Although not a statistically representative sample, survey respondents included members of every key constituency and geographic region. Comparable representation was obtained from those participating in the online survey. There may, however, be a perception that some groups or regions were under-represented. It would seem reasonable to conclude that this reflects the level of interest in the topic from those groups or regions rather than a reluctance to engage or

insufficient outreach efforts. Interest in full-study participation was strong among all constituency groups (50% on average answering either "agree" or "strongly agree" to the statement "I would be personally interested in participating in an extended study"), with Law Enforcement evincing the greatest interest (64%) and Registrars the least (39%). A full study might achieve a more broadly representative sample through outreach specifically designed to encourage participation from Asia-Pacific, Africa, and South America, and from constituency groups with low turnout for this feasibility study in spite of substantial interest in a full study among those who did respond (*e.g.*, proxy and privacy service providers and law enforcement agencies). However, it is also possible that no amount of additional outreach would increase participation from regions or among groups in which interest is simply low.

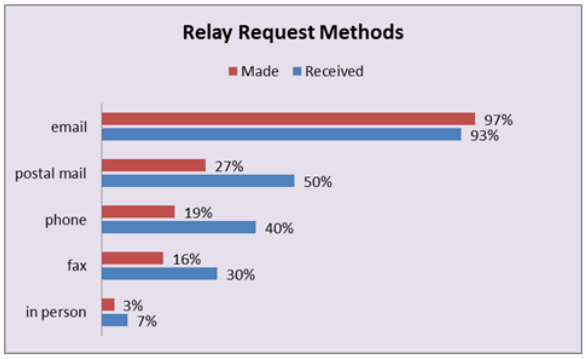
4.2 Relay Handling

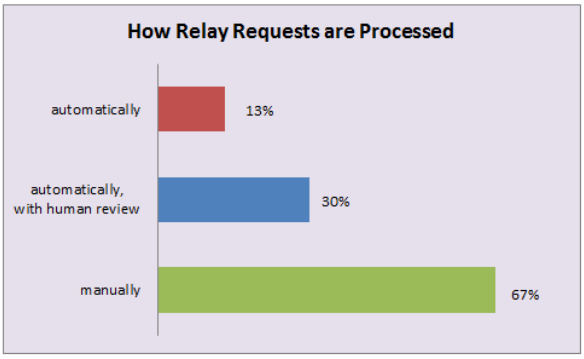
For many domains, Registered Name Holders can be reached directly at addresses obtained from WHOIS. However, for Privacy- or Proxy-registered domains, Registered Name Holders or third party licensees cannot be reached directly via WHOIS-published addresses. Instead, communication with the Registered Name Holder may be attempted by sending a request to the Privacy or Proxy service provider published in WHOIS to relay the message to the Registered Name Holder or third party licensee. Communication may also be attempted using addresses obtained from other sources, websites, or communications associated with the domain.

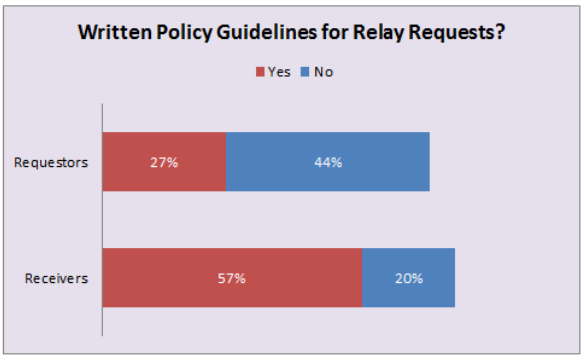
37% of survey respondents reported experience sending communication relay requests. 18% reported experience receiving and/or responding to them.

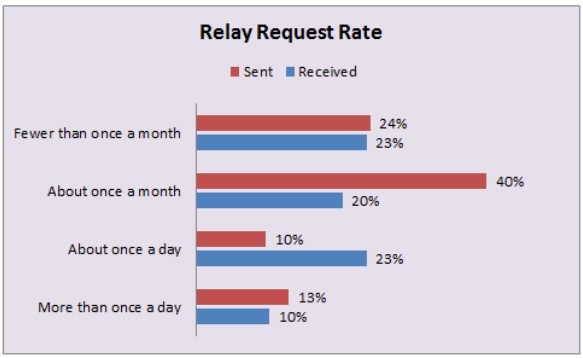
4.2.1 *Survey Results*

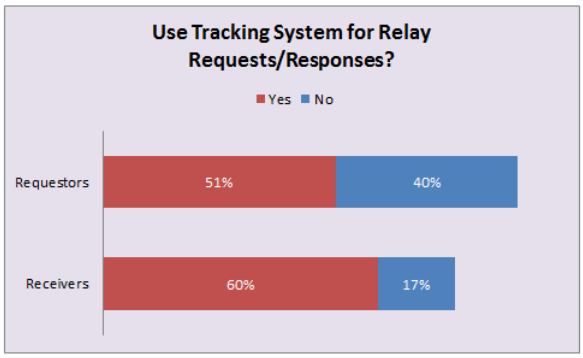
The following charts depict survey results pertaining to the subset of survey responses dealing with the handling of relay requests—both from those who make relay requests and those who process and/or respond to relay requests.

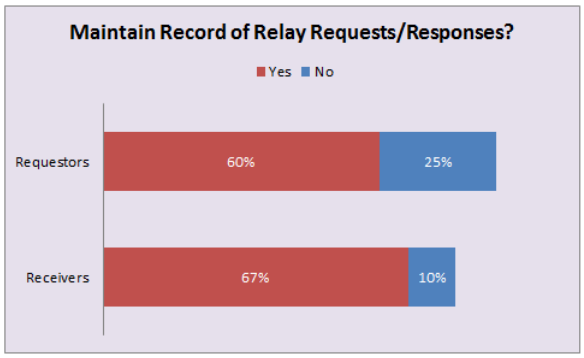












4.2.2 *Interviewee Observations*

The information obtained from interviews was consistent with the results of the online survey. Most requests were submitted and processed electronically. Interviewees were vague about the request rates they handled, saying it varied: some months were quiet and others were busy. Law enforcement said that information was hard to obtain because they have no central clearinghouse handling requests and records are stored across all sectors of the justice system.

All of the interviewees said that the details of actual requests and responses were unlikely to be available to a full study. Both those making the requests and those processing them have

concerns about identifying domain names or registrants, except when that information is already in the public domain: for example in court records or UDRP transcripts.

Processes for responding to requests appear to be ad-hoc and performed manually on a case-by-case basis. Responders said that they automatically co-operate with local law enforcement but have trouble authenticating requests from overseas. Those initiating requests expressed dissatisfaction with providers' responsiveness. It is not clear if the reported inconsistency between those on the supply and demand side of relay and reveal requests is caused by structural problems or process/communications failures.

4.2.3 *Implications for a Full Study*

60% of relay request senders maintain records, and 51% use tracking systems to do so; for relay request receivers, the numbers are similar (67% and 60%). However, it is unlikely that this information would be made available to a full study in a way that would identify individual domain or registrant names. These data would be aggregated or anonymized.

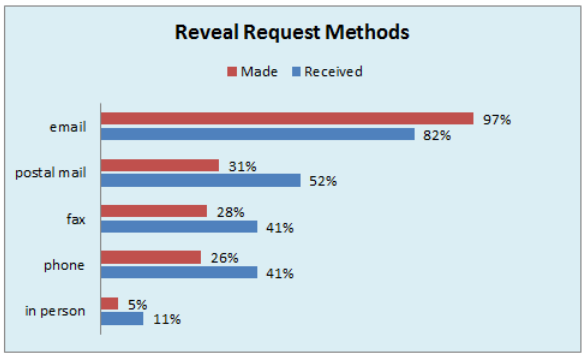
4.3 Reveal Handling

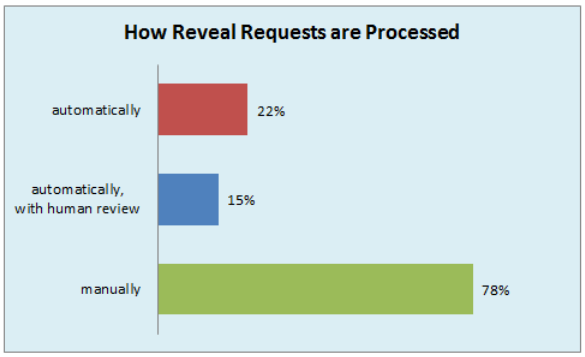
For many domains (including those registered via Privacy services), the Registered Name Holder's identity is published directly in WHOIS. However, for domains registered via Proxy services, the name of the licensee is not published in WHOIS; third party licensees can typically be identified only by asking the Proxy to reveal the licensee's identity.

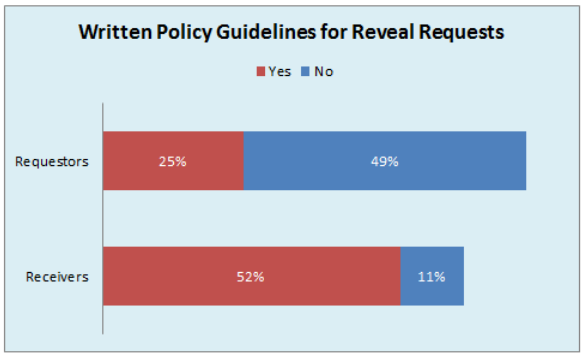
39% of survey respondents reported experience sending identity reveal requests. 16% reported experience receiving and/or responding to them.

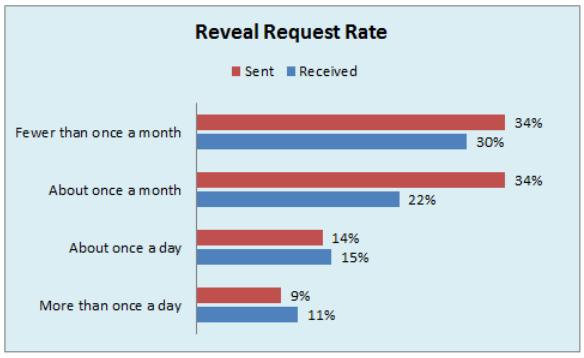
4.3.1 *Survey Results*

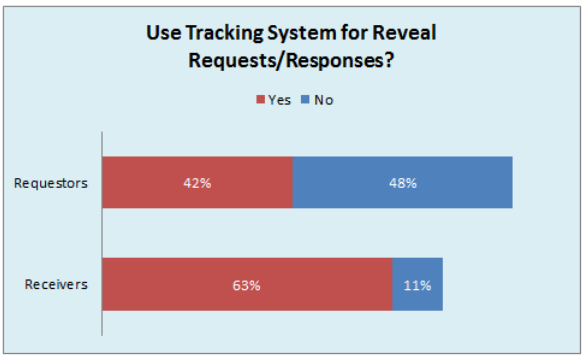
The following charts depict survey results pertaining to the subset of survey responses dealing with the handling of reveal requests—both from those who make reveal requests and those who process and/or respond to reveal requests.

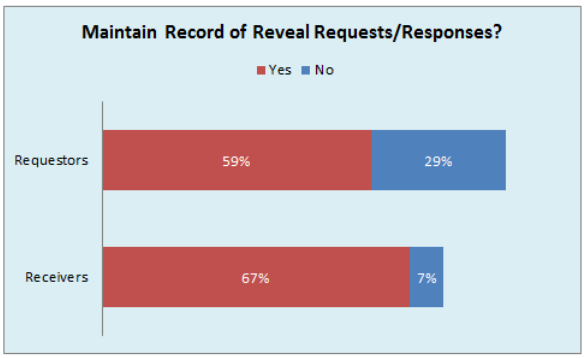












4.3.2 *Interviewee Observations*

In their comments about sending and receiving identity reveal requests interviewees provided information and observations that almost precisely matched those offered in response to questions about communication relay requests—to an extent that suggests possible confusion, in either the minds of the interviewees or the context and conduct of the interviews, between the two. With that caveat, the observations reported in Section 4.2.2 apply to reveal handling as well.

4.3.3 *Implications for a Full Study*

The apparent conflation of communication relay and identity reveal among both survey respondents and interviewees suggests that those who send or receive relay or reveal requests do not consider the difference between them to be important from a policy or record-keeping standpoint. The design of the feasibility study did not anticipate this—it did not, for example, ask participants specifically about the differences between the way in which they handled relay and reveal requests—and therefore the implications of this observation are tentative. However, a full study would probably find it difficult to examine one type of request but not the other, or to distinguish clearly between them among data in which they would likely be commingled.

4.4 Obstacles to Full Study Participation

4.4.1 *Survey Results*

The survey asked respondents to explain the factors that were most likely to negatively influence their participation in an extended survey. 104 (62%) respondents provided this information; 64 (38%) did not. Of those who did:

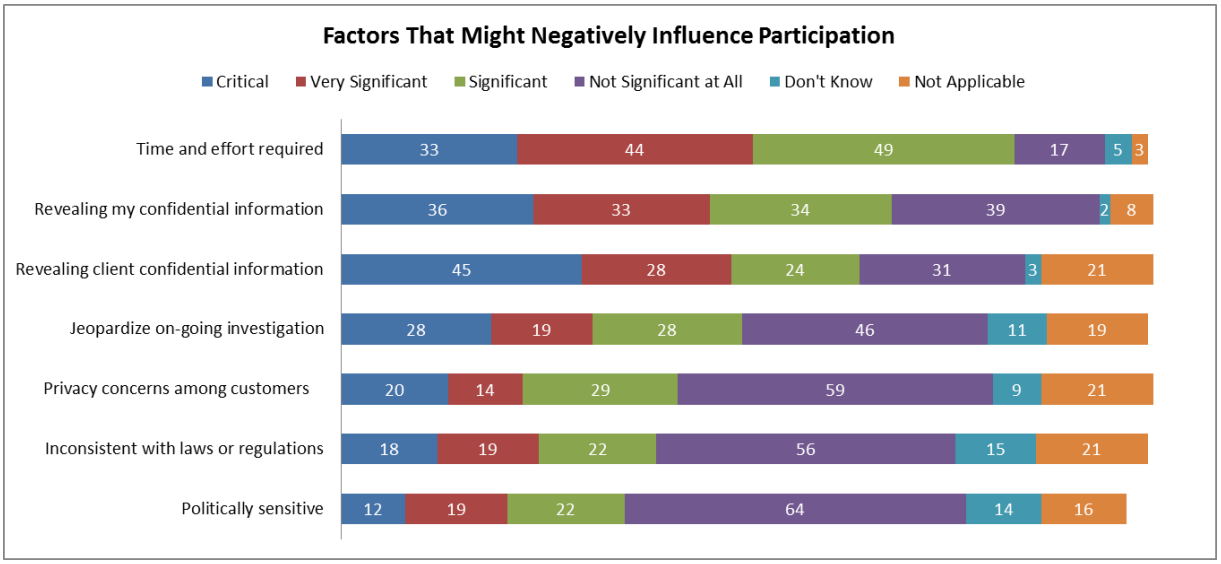
- 54 (52%) focused on time, citing “time consuming,” “time commitment,” or “time required.”
- 12 (12%) were concerned about cost, resource, effort, administrative burden, or expertise impact, citing “in-person meetings may be difficult to attend,” “cumbersome procedure in place to collect data,” “heavy documentation requirements; volume of examples needed,” and “burdensome gathering of detailed information to answer questions.”
- 11 (11%) focused on privacy, citing “privacy considerations,” “stakeholders’ security,” and “client confidentiality.”
- 3 (3%) were concerned about their own anonymity; one worried about the negative effect of an extended survey “If it revealed my contact information such that more junk mail or spam mail followed.”

Despite the anticipated high degree of concern about confidentiality, about one third of responses indicated that participation in a full study would NOT raise privacy or confidentiality concerns among their customers; be politically sensitive for them or their business; or be inconsistent with local laws and regulations.

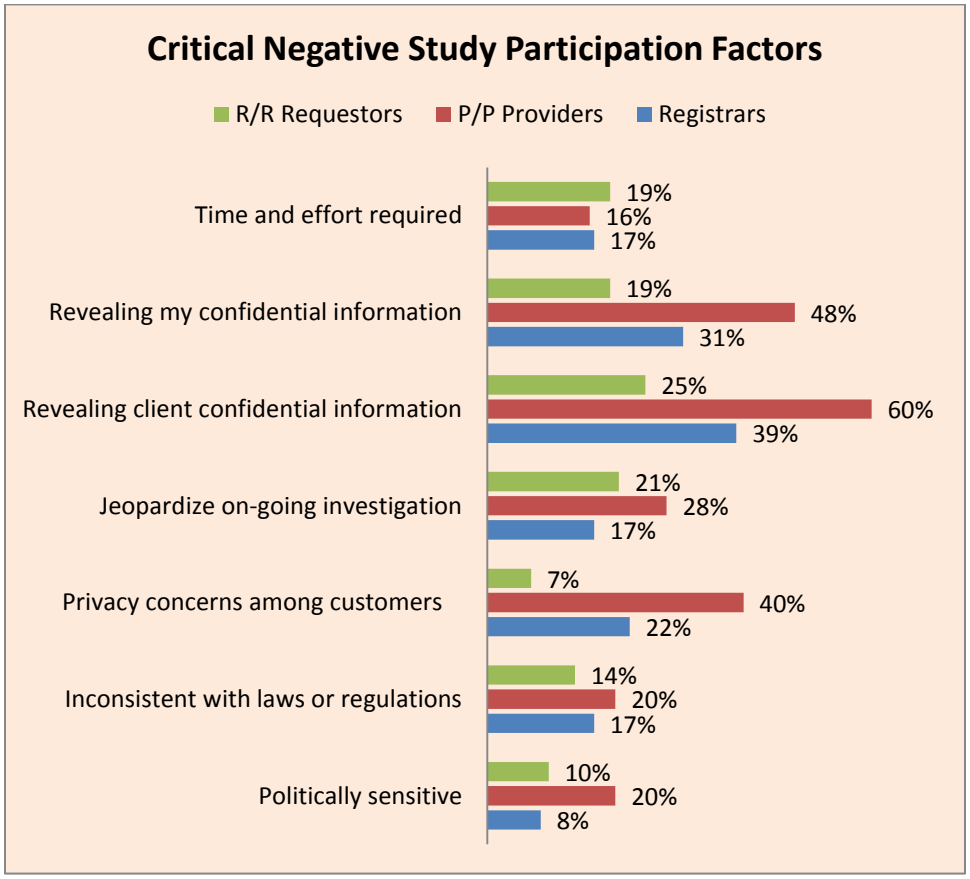
Additionally, over 50 respondents specifically commented on time and effort; for example, "Burdensome gathering of detailed information to answer questions." One respondent observed, "If the study were to just track requests sent, for instance, and their outcome, this would not be a high burden…But if there were some long survey to take on a regular basis, or some other administrative burden that would increase time commitment perhaps that would make me less likely to participate."

When asked for ways that study organizers might minimize or mitigate obstacles, suggestions included "ability to redact information," "indemnity for repercussions due to data leaks," "commit to safeguarding and treating as confidential any information or organization provides," and operating the study within the EU or Canada.

The following chart shows survey respondents' perspectives on the different factors that might negatively influence their participation in a full study.



The data are further broken down by each of three constituencies (Relay/Reveal (R/R) Requestors, Privacy/Proxy (P/P) Service Providers, and Registrars) in Appendix D, Survey Response Analysis. Looking at just the factors judged "Critical" across these three constituencies, we see that Proxy/Privacy Providers are more likely to be concerned about confidentiality and privacy than Relay/Reveal Requestors:



4.4.2 *Interviewee Observations*

Interviewees somewhat contradicted the above findings. Most interviewees who made relay or reveal requests were uncomfortable about sharing information on current or recent requests and would prefer that this information be anonymized or aggregated. In principle, sharing historical data might be easier; however, interviewees reported that they would need to consult with management, clients, and lawyers and approval would depend on how the study was conducted. One privacy/proxy provider made it clear that their terms and conditions of service prevented them from supplying any data which might identify their customers without a court order or law enforcement request, including to a suitably "secure" ICANN study. Law enforcement would have particular difficulties because the data they hold tend to be diffuse and they are likely to have significant internal constraints on resource commitments or data that could be provided.

Those interviewed did however agree with survey participants that lack of time would be a significant obstacle to taking part in a full study, and they felt that this was likely to be the case for all potential participants. This concern should be a major consideration in the design of a full

study since most of those interviewed have critical operational roles in making or responding to relay/reveal requests. It proved to be difficult to schedule telephone interviews with these key figures, which may be a cautionary indication of the level of commitment to participation in a full study that could be expected from these key players.

The consensus among interviewees was that a full study designed in such a way that its purpose appeared to be to identify "bad actors" or collect evidence of "abuse" would attract very little constructive participation. Those making relay/reveal requests stated that it was already known who was acting in bad faith and an ICANN study would not be needed to identify them. There was no wish to go over old ground and report the same findings as before. Those receiving relay/reveal requests said that misuse of privacy and proxy services was largely confined to providers who would not participate in a full study anyway. If the full study looked likely to produce results that might harm their business, providers of these services would be unlikely to participate.

4.4.3 *Implications for a Full Study*

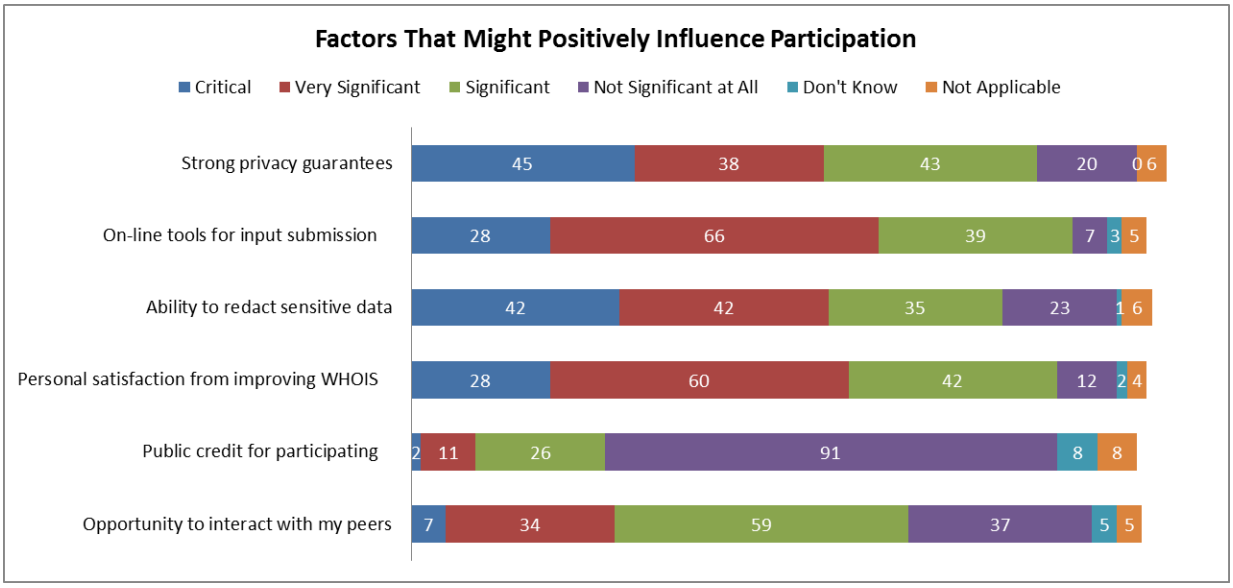
These findings suggest that a full study would have to be designed and carried out in a way that did not require participants to disclose specific details of domain names or identify registrants using privacy/proxy services. A full study that attempted to track requests at the level of detail described by the RFP (including correlation of requests to responses) would therefore be impractical.

A study designed to work with anonymized or aggregated request data would be acceptable to at least some potential participants if strong assurances were provided that their data would be protected and their participation would not require substantial time and effort. Anonymized or aggregated data, however, might not support the type of detailed analysis expected by the GNSO Council. Careful consideration of this tradeoff should precede any decision to invest in a full study.

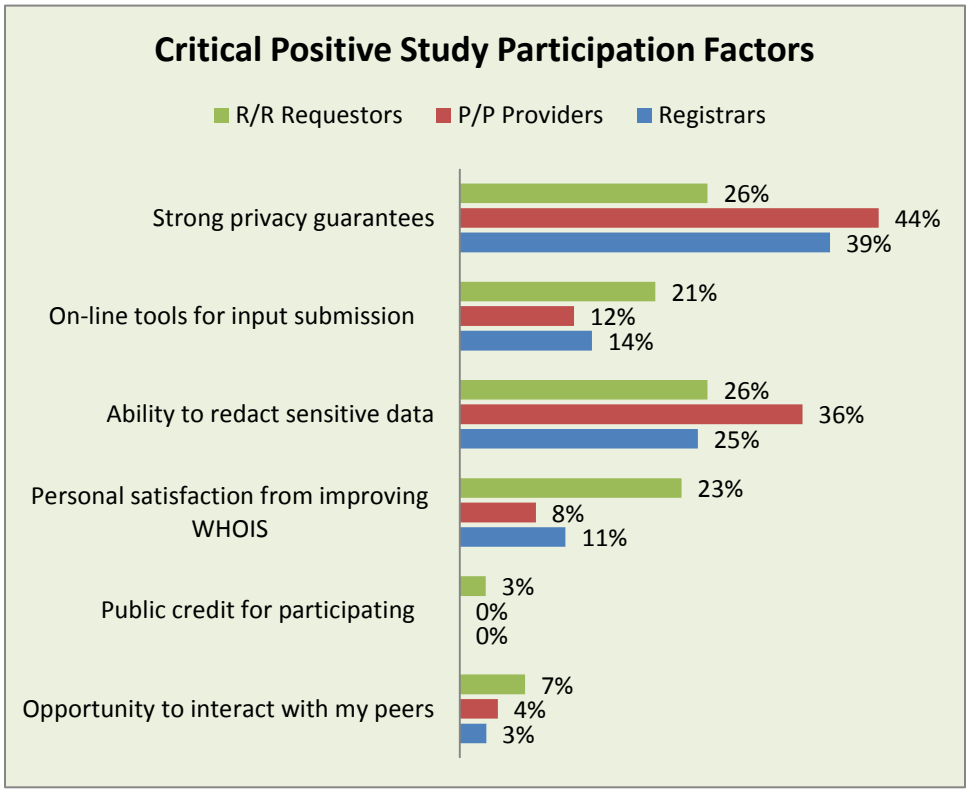
4.5 Enablers to Full Study Participation

4.5.1 *Survey Results*

The following chart shows survey respondents' perspectives on the different factors that might positively influence their participation in a full study.



The data are further broken down by each of three constituencies (Relay/Reveal (R/R) Requestors, Privacy/Proxy (P/P) Service Providers, and Registrars) in Appendix D, Survey Response Analysis. Looking at just the factors judged "Critical" across these three constituencies, we see similar viewpoints, with Proxy/Privacy Providers somewhat more likely than others to be concerned about privacy and sensitive data redaction:



4.5.2 *Interviewee Observations*

Although survey respondents said that "strong privacy guarantees" would have a positive effect on their willingness to participate in a full study, interviewees provided a very different perspective. Privacy guarantees for a full study did not matter much to interviewees, who said that no study would be likely to obtain data that identified domain names or registrants regardless of privacy or other data-protection guarantees. Those making relay/reveal requests would provide only aggregated or anonymized data, and those processing requests would not provide information about their customers to a third party. An online tool for tracking requests and responses, assuming one could be built, would not influence their participation either way.

The providers of WHOIS privacy/proxy services who were interviewed were keen to have their contribution to a full study recognized. They wished to show the positive aspects of their business and that they provided a necessary service to the community, differentiating themselves from other providers who may have bad reputations.

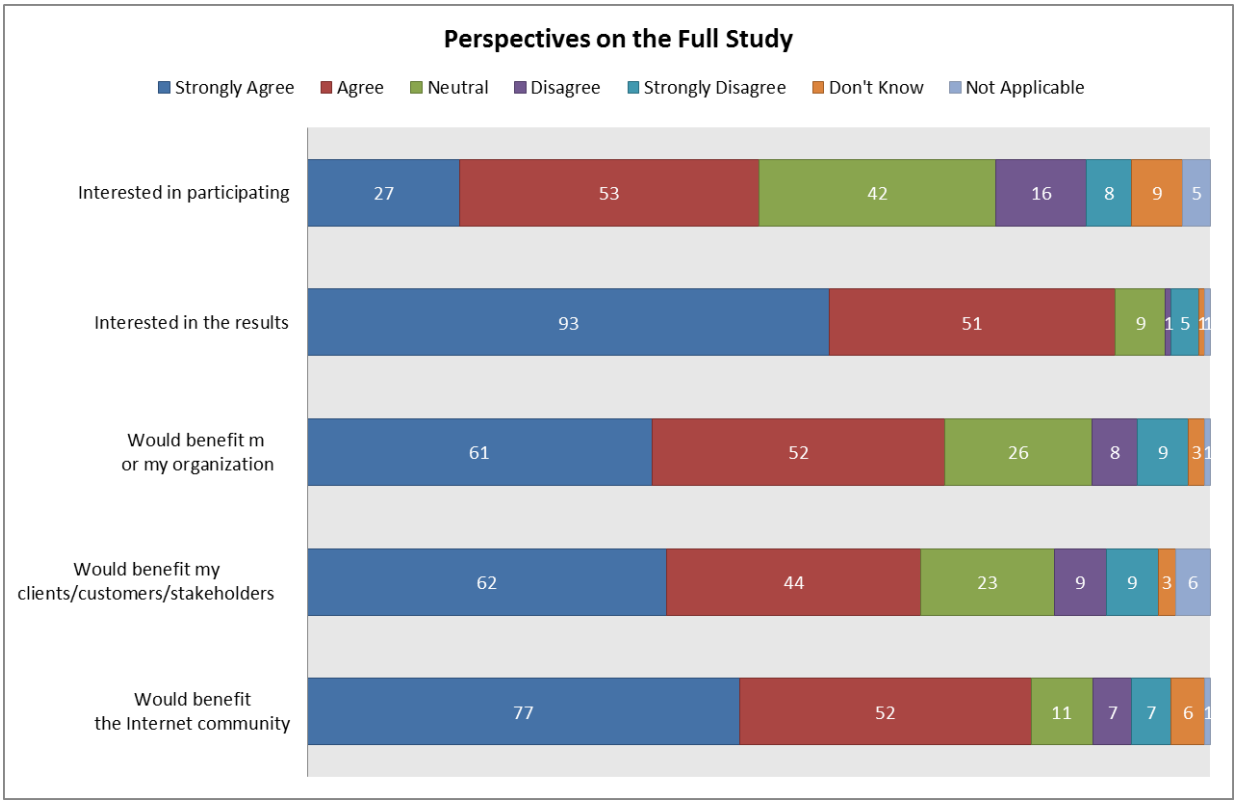
4.5.3 *Implications for a Full Study*

These findings suggest that a full study would have to be designed and carried out in a way that did not require participants to disclose specific details of domain names or identify registrants using privacy/proxy services. A full study that depended on the ability to track and correlate individually identifiable requests and responses would therefore be impractical; and the results of a full study thus encumbered might not satisfy the expectations of the GNSO Council or the ICANN community with respect to statistical validity or independent verifiability.

4.6 Interest in Full Study Participation

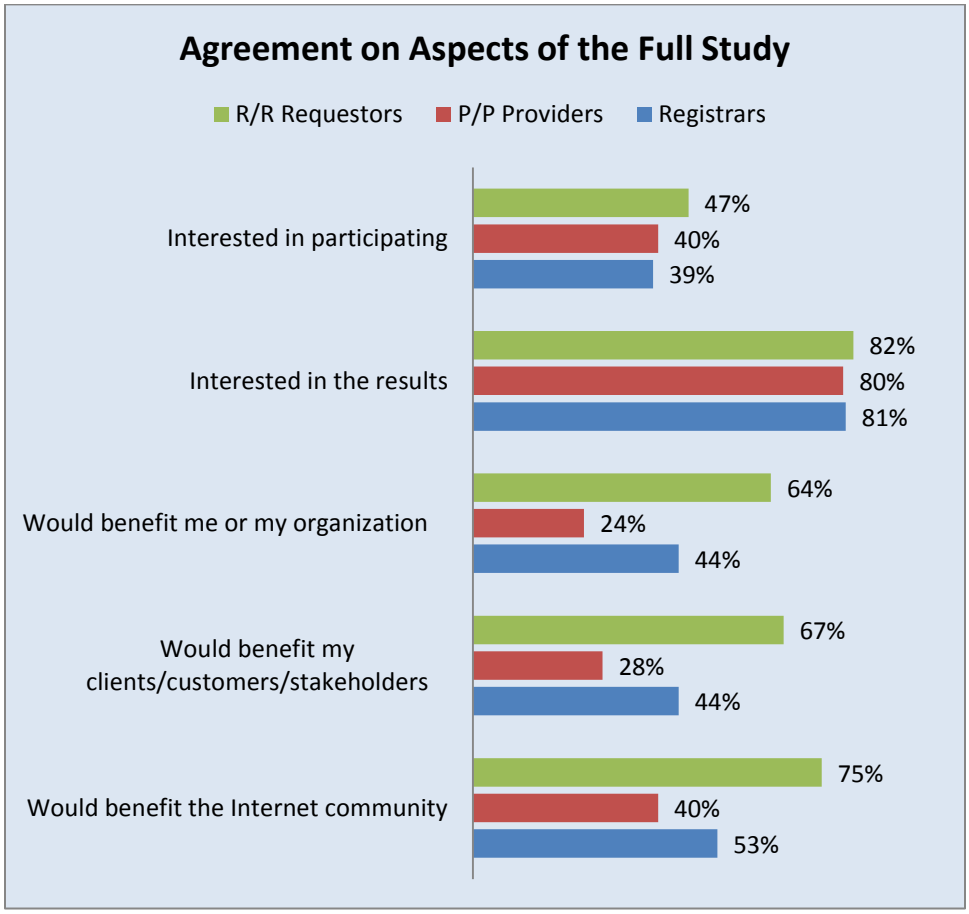
4.6.1 *Survey Results*

The following chart shows survey respondents' level of interest in participating in a full study.



The data are further broken down by each of three constituencies (Relay/Reveal (R/R) Requestors, Privacy/Proxy (P/P) Service Providers, and Registrars) in Appendix D, Survey Response Analysis.

Looking at just the factors judged “Strongly Agree” or “Agree” across these three constituencies, we see somewhat similar viewpoints (although, not surprisingly, agreement on the three “benefit” items is higher for Relay/Reveal Requestors and lower for Proxy/Privacy Providers):



4.6.2 *Interviewee Observations*

The interviewees largely agreed with the results of the online survey. There was a strong interest in the results of a full study, provided that it analyzed hard facts and not anecdotal data. They agreed a well-designed and executed study would benefit their organizations and the wider Internet community. Those offering privacy/proxy services were uncertain if the study would benefit their customers and expressed concern that a full study could lead to unwelcome burdens such as "extra regulation" of the sector or restrictions on the use of those services. Although those interviewed seemed willing to take part in a full study, these intentions might not materialize. It was difficult to schedule interviews with most of these busy people, so it is doubtful that they would be able to make significant amounts of time available for a full study.

4.6.3 *Implications for a Full Study*

Most survey respondents and interviewees said that they personally or their organization would be interested in taking part in a full study. Although respondents were asked about their interest in a study of Relay and Reveal requests, write-in responses suggest that at least some respondents anticipated a full study with a much broader scope. Some interviewees said they had an essential job responsibility to take part in the full study. However interviewees were unclear about how much commitment they could provide, saying that this would depend on too many unknowns. These factors included the scope and design of the full study and who conducted it; when the full study would be carried out (and for how long); what the likely or intended goals of the study were; how much effort they would be expected to contribute; and how representative study participants would be of the community as a whole. For some, decisions on the level of participation would be made by management and would depend on their perception of the relevance of the study.

5. Analysis

Interisle used both statistical analysis and qualitative analysis to develop the findings. For purposes of report generation, Interisle redacted all data supplied by respondents who asked that their comments not be shared with ICANN, obscured specifics, and ensured that the confidentiality and privacy issues inherent in the nature of the data (or raised by study participants) were addressed.

The questions used in the online survey are shown in Appendix A, Survey Questions. The survey answers were analyzed using Excel to determine counts and applicable percentages, including counts for questions which some respondents chose not to answer, and graphical charts depicting some of the quantitative information. The detailed results for each of the survey questions are shown in Appendix C, Detailed Survey Responses with additional analysis shown in Appendix D, Survey Response Analysis and Appendix E, Comparing Survey Results from Different Constituencies. Further qualitative analysis of the survey responses was performed leading to information shown in Section 5.2.

A similar quantitative analysis was performed on the information gathered from the in-depth interviews. Interisle used a collaborative process to categorize and organize the information. The topics were categorized into four different groups: those relating to the feasibility of the full study; those describing the context of the proxy/privacy services and how they are used; those relating to how and under what conditions the fully study should be performed; and those describing the nature of the results expected from the full study. The summary of the analysis is also included in Section 5.2.

The survey results are presented in two categories:

- observations concerning the exercise of designing and conducting the survey ("lessons learned") that are likely to be instructive in the context of future study design, and
- information about the feasibility and optimal design of a full-scale study of privacy and proxy services derived from our analysis of the online survey responses and interview data.

5.1 Lessons Learned

5.1.1 *Recruiting Participants*

Section 3.3 describes how information about the feasibility survey was disseminated and how participation was encouraged. Some of the pitfalls encountered are described below.

The level of uptake from registrars and privacy and proxy providers was low at the start of the survey. Increased outreach efforts were made by the survey team to engage these stakeholders, encouraging their participation. ICANN staff also circulated details on various mailing lists and informed relevant ICANN constituencies.

On October 26th, the survey team sent email to every ICANN-accredited registrar informing them of the survey and inviting them to participate. At that date, ICANN's published list of accredited registrars[13] contained 997 entries which condensed to 599 unique email addresses. Delivery to 17 of these email addresses failed. There were a variety of errors: "no such user" bounces, misconfigurations of the registrars' email systems (like loops or mailbox quota exceeded failures), and false positives from spam filtering defenses. Three registrars had fundamental mail errors that lasted over a week and could not be contacted. Two had non-responsive mail servers and one had no functioning DNS servers for their domain name.

Considerable effort was expended by the survey team in the last week of October to contact privacy and proxy providers. This proved to be a challenging and painstaking task. There is no central register of these providers or their contact details. ICANN staff helped locate a breakdown of providers and the number of domain names they serve.[14] This list was supplemented by provider names known to the survey team and others arising from earlier research by NORC.[15]

The web sites of the 50 largest providers were located and manually checked. Some sites provided no contact details at all. Others offered web forms for requesting information or technical support, usually protected by CAPTCHA mechanisms. Where these forms were available, invitations to take part in the survey were sent manually. Many of these web forms

[13] http://www.icann.org/registrar-reports/accredited-list.html

[14] http://anonwhois.org/stats.html

[15] http://www.icann.org/en/compliance/reports/privacy-proxy-registration-services-study-14sep10-en.pdf

require users to choose from a predefined list of request categories—*e.g.*, sales inquiries or technical support—that did not fit well with a notification about the survey, and it is not clear how effective that communication channel was.

Further attempts were made to contact privacy and proxy providers. The WHOIS entries for their domain names were checked and email was sent to the published Technical and Administrative Contacts inviting them to participate. (Ironically, almost all of those Contacts were themselves obscured by the use of privacy and proxy services.) Many of the privacy and proxy providers identified by this outreach effort were either operated by or had close business relationships with ICANN-accredited registrars. Although all of those emails were successfully delivered, it is not known if they were read or acted upon.

The feasibility survey design did not include correlation of individual outreach efforts with subsequent participation in the survey, so it is not possible to quantify the impact of those efforts on survey participation.

5.1.2 *Survey Language*

Although the survey was made available in five languages, as described in section 3.6 above, the vast majority of survey respondents elected to take the survey in English. Of the 168 completed surveys only 11 used a language other than English.

The optimistic conclusion is that almost everyone we needed to contact could communicate in English due to the technical nature of the subject. An alternative view is that people who didn't speak English didn't know about, or want to, take the survey; or that the wrong languages were chosen. However, it seems reasonable to conclude that those well-versed in the issues surrounding WHOIS are, for the most part, able and willing to communicate in English. This suggests that a full study with global participation could be conducted entirely in English.

5.1.3 *Emailed Responses*

Prospective survey participants were explicitly warned about web browser requirements imposed by the survey software (specifically, the use of session cookies and JavaScript) that might influence their decision to proceed with the online survey. Interisle provided a special email address for people to submit their perspective, answers, and comments using an alternative method. However, no communications were received via this email address (which was tested regularly). A reasonable conclusion is that prospective survey participants were

willing to accept the use of session cookies and JavaScript once their use was explained. This suggests that a full study could employ a similar web-based survey, given similar assurances.

5.2 Analysis of Survey Data

5.2.1 *Geographic Distribution of Survey Respondents*

The survey was announced via many different channels with the objective of reaching a geographically diverse population of potential respondents. Approximately 60% of the respondents provided a postal address, allowing determination of the geographic region of those taking the survey. The IP address from which the survey was taken (which does not necessarily correspond to respondents' usual geographic location) was also used, and yielded broadly similar results.

Approximately 60% of the respondents were located in North America and about 30% were located in Europe, with about 10% divided among the Africa, Latin America/Caribbean, and Asia/Australia/Pacific regions. Outreach at the ICANN meeting in Dakar, and other efforts to increase the geographic diversity of respondents, produced no significant change in these percentages.

5.2.2 *Interest*

Survey participants overwhelmingly supported the idea of conducting a full study—for some value of "full study." The survey question was framed narrowly to refer to Relay and Reveal requests, but write-in responses suggest that at least some respondents anticipated a "full study" with a much broader scope, encompassing a wide range of issues concerning the use and abuse of proxy and privacy registration services.[16] It is not clear from the survey data, nor from the interviews, how much enthusiasm a full study limited to the processing of relay and reveal requests would elicit from these or other potential participants.

Among survey respondents, 40% of relay request initiators and 60% of reveal request initiators reported using ticketing systems, as did some relay/reveal responders. Between 13% and 22% of privacy and proxy service providers simply forward incoming requests to the registrant and leave it to them to decide whether or not to respond to the request. In these cases, the

[16] See the ICANN Request for Proposals for a WHOIS Privacy and Proxy Abuse Study (http://www.icann.org/en/announcements/announcement-2-18may10-en.htm).

provider will have little data available for a study beyond confirming the date(s) on which requests were received and forwarded.

5.2.3 *Context*

It may be difficult to reconcile survey respondents' expectation of "tangible results" with the more limited goal of the anticipated full study to pursue and collect data to inform policy discussion with no guaranteed outcome. If the full study is limited to data-gathering, it should be presented to the community in the context of a multi-step process intended to result in genuine issue resolution and prompt action.

5.2.4 *Full Study Design Criteria*

Many survey respondents noted concerns:

- 75% (significant or critical) about the time it might take to participate in the full study
- 60% (significant or critical) about revealing confidential information about their business
- 55% (significant or critical) about revealing confidential client information
- 45% (significant or critical) about jeopardizing on-going legal action

Despite this, about one third of these responses indicated that participation in a full study would not raise privacy or confidentiality concerns among their clients; be politically sensitive for them or their business; or be inconsistent with local laws and regulations.

The fact that 70% of survey respondents cited input redaction as a critical, very significant, or significant factor in their willingness to participate in a full study suggests that such a study should be designed and carried out in a way that does not require participants to disclose the individual details of domain names or registrants. This information is unlikely to be forthcoming, except in aggregated or anonymized form which may not yield meaningful data for the study team and/or inform GNSO policy discussions.

In certain instances specific data may be too difficult or expensive for study participants to collate anyway. Law enforcement would have particular difficulties because the data they hold tend to be diffuse and as yet there is no centralized clearinghouse. In general, details of specific investigations are kept locally and may be spread across the institutions which handled the case: police, prosecutor's office, court, chamber of commerce, etc. Furthermore, internal checks and approvals would be needed before those data could be shared, even on a confidential basis, with ICANN and/or the study team. Although two-thirds of law enforcement

respondents said that they would participate in a full study, they are likely to have significant internal constraints on what resources they can commit or the data that could be provided.

Interisle concludes that there is no practical way to overcome these barriers to participation. The terms of reference for a full study and its eventual design should therefore be pragmatic in its acceptance of these limitations. The results of a study encumbered by participation barriers and limited or no access to data that have not been aggregated or anonymized (in inevitably non-standard ways) may not be statistically representative or independently verifiable.

5.3 Analysis of Interview Data

5.3.1 *Interest*

Interviewees, like the survey respondents who provided write-in comments on their support for a follow-on study, expressed a desire for such a study to be defined with a broader scope that would include the full range of "access to registrant data" issues—not just the processing of relay and reveal requests. Almost everyone agreed that ICANN was the most appropriate organization to commission this study, and that (neutral) ICANN sponsorship would ensure the widest possible participation. Some went so far as to say that ICANN had an active **responsibility** to conduct a broadly scoped study, and that its inability to approve and implement changes to WHOIS policy was its biggest failure. It was clear that interviewees expected tangible results to follow any further WHOIS study, and that a study which did not lead to the resolution of WHOIS issues would be considered a failure.

Some interviewees expressed concerns that some stakeholders are so frustrated with the lack of progress that they may act unilaterally or withdraw from involvement in the ICANN community. There was a lot of impatience with the lack of progress in the area of WHOIS data accuracy, and a perception that over time the quality of WHOIS data is deteriorating. Some interviewees were concerned that too much time is being spent studying or talking and not enough action is being taken to address the problems.

Interviewees who represented providers of WHOIS privacy and proxy services claimed that the quality of the registrant data they hold for their customers is much better than for public WHOIS services in general. This seems credible because those providers tend to have a direct business relationship with their customers. However it is doubtful if these claims could be independently audited or verified. Assessing the accuracy of a representative sample of public WHOIS data is already very difficult. It would be far harder to do so for a representative sample

of data protected by WHOIS privacy and proxy services. In its 2010 study of WHOIS data accuracy, NORC was able to assess the accuracy of privacy-registered domain information, but was not able to do the same for proxy-registered domains.[17]

The general consensus among those interviewed was that good co-operation and participation for a full study would be forthcoming from those making reveal requests. Some interviewees would consider participation in such a study to be part of their core mission or job. Pro-active WHOIS privacy and proxy service providers—those who already engage with ICANN and/or with those who make reveal requests—expressed strong interest in participating in a full study. They felt that some WHOIS privacy and proxy service providers would not participate if they feared the study's outcome (*e.g.*, "stronger regulation" or other measures that might negatively affect their business). Some privacy and proxy service providers also said that they believed that the security and IPR constituencies would participate **only** if "bad behavior" and how to deal with it were the focus of the study.

The general view of those interviewed was that a full study should be conducted even if some stakeholder groups choose not to take part. The terms of reference for a full study should recognize that some stakeholders might prefer to maintain a *status quo* in which the issues are left unresolved rather than risk resolutions that might be unfavorable to them. The results of a study in which this form of non-participation were substantially greater for requesters than for responders, or *vice versa*, would lack a balance of perspective from both ends of the actual relay and reveal experience.

5.3.2 *Context*

Many of those interviewed felt that the problems around WHOIS privacy and proxy services would be exacerbated by the introduction of new gTLDs. Others felt this would make no difference. Nobody expressed the view that adding new gTLDs would improve matters. Some interviewees said that if the concerns over the use of WHOIS privacy and proxy services were not addressed by the time new gTLDs came online, they would never be resolved.

[17] http://www.icann.org/en/compliance/reports/privacy-proxy-registration-services-study-14sep10-en.pdf

5.3.3 *Full Study Design Criteria*

Most of the interviewees who made reveal requests were uncomfortable about sharing information on current or recent requests and would prefer that this information be anonymized or aggregated. That could diminish the usefulness of those data and potentially make the job of the study team much harder. In principle, sharing historical data would be easier. However interviewees reported that they would need to consult with management, clients, and lawyers beforehand and their approval would depend on how the study was organized and conducted. Some of those interviewed were anxious about sharing the historical data they held because they consider those data to be business-critical intellectual property.

One privacy/proxy service provider made it clear that they would not make available any data which might identify their customers to any third party, including a suitably "secure" ICANN study. The privacy and confidentiality of their clients was absolute. This was written into the terms and conditions of their service. Disclosure of this sort of data would be made only upon production of a valid court order or at the request of a properly authorized representative of local law enforcement. To the extent that this reflects a position likely to be shared by other privacy and proxy service providers, it means that data from which the identity of proxy/privacy service customers might be determined would not be available to a full study.

5.3.4 *Expectations for a "Full Study"*

There was an overwhelming and strong consensus from those interviewed that a full study should have clear goals and expectations and be pursued with the expectation that it will lead to real and prompt action. The study's terms of reference should identify who gets the study's results and what will be done with them. A common view from those interviewed was that a full study should provide the factual basis for meaningful policy changes, not simply fodder for yet another round of discussion.

In their comments during interviews, representatives of all three constituencies described as favorable or feasible a study designed to identify and document current procedures and policies and the functional and dysfunctional relationships among those making, receiving, and processing relay/reveal requests. They described as unfavorable or infeasible a study designed as an investigation or inquisition intended to identify and blame "bad actors." The interview data suggest that a study focused on gathering information that could lead to better policies and mechanisms for interaction among the WHOIS constituencies would be welcome. They also suggest that a study focused on tracking individual relay/reveal requests from originator to

recipient in order to correlate specific requests and responses with individually identifiable domain names and registrants would be rejected.

6. Conclusions and Recommendations

The results of the feasibility survey and interviews suggest that:

a) a full study of WHOIS privacy and proxy could, if defined in such a way as to resolve identified barriers, provide some—but not all—of the data anticipated by the GNSO Council;
b) such a study (specifically by ICANN) would be well received by people on all sides of the WHOIS information access debate;
c) attention to issues including confidentiality and convenience in the design of the study would improve the quantity and quality of the data that it would deliver, but would not entirely overcome the asymmetric reluctance of potential participants from different constituencies to contribute; and
d) the results of a full study thus encumbered might not satisfy the expectations of the GNSO Council or the ICANN community with respect to statistical validity or independent verifiability.

The detailed conclusions in this Section are presented by reference to the objectives expressed in the RySG amendment to the GNSO Council motion concerning the pre-study (see Section 2 of this report). Statistical information is presented relative to the survey and interview sample sizes. The online survey received a total of 168 responses which included 73 request initiators, 25 proxy/privacy service providers, and 36 registrars. The survey team conducted 16 interviews. These interviews included 5 request initiators, 3 proxy/privacy service providers, and 4 registrars.

Due to the small sample sizes, and the way in which survey participants and interviewees were selected, the data collected by this feasibility study are not (and were not intended to be) statistically representative of the global population involved in gTLD relay and reveal request handling.

6.1 Participation and Information Availability

To assess the willingness and ability of three distinct groups: Relay/Reveal request originators, Privacy/Proxy providers, and Registrars, to participate in the Full Study.

To identify availability of requested data elements and conditions for sharing it, including measures needed to protect requests and responses.

The survey revealed that 47% of request initiators, 40% of proxy/privacy service providers, and 39% of registrars would be interested in participating in a full study. It was not possible to determine from the online survey responses how many of these interested participants would be able to provide "raw data" concerning specific relay or reveal requests and their processing history. During follow-up interviews it became clear that with very few exceptions potential study participants would be able to provide only summary or incomplete data concerning specific relay and reveal requests. The exceptions cited (but did not provide specific pointers to) a large volume of relay/reveal request histories that have been incorporated into the public record of instances in which courts or other legal venues were involved in requests to obtain access to registrant data by law enforcement or intellectual property agents.

Respondents considered confidentiality guarantees to be essential with respect to their ability to provide some—but not all[18]—of the requested data elements, and we conclude that with proper design a future study would have access to a limited (but not statistically representative) sample of both public and private data concerning relay and reveal requests. It seems likely however that these data would not identify specific domain names or registrants except where that information was already public. These data would in general be made available in an aggregated or anonymized form to a full study so that they would not disclose identifying details. The expectations, terms of reference, and design of a full study should recognize this constraint, which would limit or preclude the verification of data and the correlation of individual requests and responses.

6.2 Geography

> *To sample regional limitations on participation, including business sensitivities and national data privacy laws, by surveying respondents from a modest but representative set of countries.*

Based on the geographical distribution of responses to the survey, we conclude that relay and reveal request activity is much greater in some regions than in others. Regional differences in legal systems and the way in which proxy and privacy services are offered and used in different regions are possible sources of this disparity. Participation in a future study would therefore be likely to skew toward high-activity regions such as North America and Europe regardless of

[18] Some respondents would not be willing to share some data under any circumstances; others said that they would be willing to share data without confidentiality guarantees.

efforts to elicit interest from other regions. In high-activity regions, limitations on participation arise most clearly from national and regional (specifically, E.U.) data privacy laws. A full study would therefore contend with legal barriers to data disclosure in some of the regions with the greatest relay and reveal request activity, even with willing potential participants.

6.3 Incentives

To explore the impact of incentives and tools on participation, including viable methods for timely accurate reporting and follow-up.

The incentives that appear to be most important to potential participants in a future study involve the absence of barriers—convenient and time-efficient mechanisms and tools for participation, confidentiality assurances, and sensitivity to participants' exposure to data-privacy regulation constraints. Also important was anticipation of constructive outcomes; the assurance that meaningful tangible results would ensue ("not just another academic study, after which nothing changes") was remarkably important to a very large number of survey respondents and interview subjects.

6.4 Language

To gather the above input from potential participants in both English and non-English-speaking countries.

In both the survey and the interview contexts, we gave respondents the opportunity to choose from a list of five widely-spoken languages, including English. However, very few survey respondents, and none of the interview subjects, elected to use a language other than English, regardless of their native language or geographical location. Because it is difficult to assess the "goodwill" or "comfort level" dimension of language-selection opportunity to participation in the survey (and respondents were not asked if language choice affected their willingness to participate), we can conclude only that future study participants are likely to prefer English to other languages. If the full study were to offer a choice of languages, it is not clear how that would make a material difference to the level of participation or study outcome.

6.5 Relay and Reveal Data Availability and Sufficiency

To solicit request examples for use in formulating a Full Study, and assess Privacy/Proxy provider and Registrar ability to supply secondary input.

To not only establish foundation inputs to the Full Study, but help the GNSO Council determine whether or not a Full Study would be likely to obtain a sufficient sample of Relay and Reveal requests.

Three of the 16 respondents interviewed during this survey asserted the existence and availability of an extensive public record of instances in which courts or other legal venues were involved in requests to obtain access to registrant data by law enforcement or intellectual property agents, and suggested that documentation of a large number of specific relay and reveal requests and corresponding responses could be found there. Based on their representations, the survey team concluded that (a) at least some originators of relay and reveal requests would be willing (and in fact eager) to provide assistance to a future study in identifying and obtaining information from a variety of public sources, including court hearings and UDRP rulings, and (b) the sample of requests and responses available through those channels would be large, although not necessarily statistically representative. The study team did not solicit examples of requests that were not publicly available, taking at face value the representation from both originators and receivers that examples could be made available to a future study if adequate provisions for confidentiality were made. As noted in Section 4.3.3, a full study would likely examine commingled relay and reveal data due to the apparent lack of differentiation between these request types by respondents.

Some interviewees claiming experience making reveal requests reported that privacy/proxy service providers frequently do not co-operate with them. Interviewees representing privacy/proxy service providers claimed that they do have a general policy of cooperation but frequently receive improper requests that would fail a reasonable and objective test of fairness. It is not clear from the feasibility study data if there is a structural issue—*i.e.*, privacy/proxy service providers fail to cooperate in circumstances in which it would be reasonable for them to do so—or a process/communications failure in which cooperation founders on a large number of defective requests to which service providers cannot reasonably respond. A full study could be designed so as to collect and compare data on the number of purportedly "defective" requests received by proxy/privacy service providers and the number of instances in which reveal requestors report that what they consider to be legitimate requests have been rejected or ignored by service providers. The ability of a full study to collect these data would depend on the willingness of parties in both constituencies to make them available in a form that would permit competing claims with respect to the same reveal request to be evaluated. Because service providers are in general reluctant to provide unaggregated data concerning individually identifiable instances of reveal request processing, this goal would be difficult to achieve.

The survey found a significant difference between the reported experiences of law enforcement representatives and other privacy/proxy reveal request originators. Some interviewees representing law enforcement agencies reported that their work is hampered by lack of co-operation from privacy/proxy service providers. However, interviewees representing other request originators stated that service providers almost always co-operated with them (in the context of legal or regulatory proceedings) and that this was done as a matter of routine practice. These differences in experience could be explored in the context of a full study, as described above, with the same caveats.

Both those making reveal requests and those receiving them stated that they had policies and procedures for handling requests. The survey team is confident that a full study would be able to compare and contrast these processes and document any frequently-encountered industry best practices.

6.6 Full Study Outcome Expectations

Both the online survey responses and the information collected from follow-up interviews suggest that the objective of the full study as originally formulated by the GNSO Council—to "analyze relay and reveal requests sent for Privacy and Proxy-registered domains to explore and document how they are processed"[19]—could be satisfied only partially with data currently in the public domain augmented by the limited additional data likely to be available from prospective study participants. The information concerning relay and reveal requests and how they are processed that is currently in the public domain reportedly includes, in some but not all cases, the identity of the parties involved, including the (real) identity of the domain name holder. However, the feasibility study did not attempt to verify interviewees' assertions that substantial relevant public-record data exist; and similar information that could be provided by likely full study participants would almost certainly not include the identity (or identifying characteristics) of the parties involved. These limitations would handicap even a well-designed full study, the results of which might not be either statistically valid or independently verifiable to the extent expected and anticipated by the GNSO Council resolution.

A full study could therefore be expected to provide the basis for GNSO policy development directed at improving communication and cooperation among those seeking access to registrant data (*e.g.*, law enforcement and intellectual property agents); those providing proxy

[19] GNSO Council Resolution 20110428-1 (http://gnso.icann.org/resolutions/#201104)

and privacy services to registrants who want to control access to those data; and the registrars that collect and maintain data concerning registered domain names and registrants (their customers). It would not be likely to provide statistically valid documentation of how relay and reveal requests sent for Privacy and Proxy-registered domains are handled by initiators and receivers, and to that extent would not be reliable as the basis for GNSO policy development directed at categorizing specific types of behavior as (for example) “legitimate” or “abusive,” prescribing or proscribing specific privacy or proxy server operating rules or regulations, or sanctioning specific actors.