NEW AMERICA

OPEN TECHNOLOGY INSTITUTE

Berkman
The Berkman Center for Internet & Society
at Harvard University

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# THE TRANSPARENCY REPORTING TOOLKIT

## Best Practices for Reporting on U.S. Government Requests for User Information

## Executive Summary

MARCH 2016

## The Transparency Reporting Toolkit: Project Overview

In the wake of Edward Snowden's revelations in 2013, which revealed details of the U.S. government's classified surveillance programs, including those permitting access to Internet users' data and the bulk collection of telephone records, Internet and telecommunications companies faced a crisis of lost trust. The number of companies publishing "transparency reports" about their handling of government requests for user data skyrocketed as the Internet industry scrambled to rebuild that lost trust. But that explosion of transparency reports led to a fragmentation of practices. As a result, there are no clear standards or best practices for start-ups and smaller companies looking to create transparency reports. In addition, the data from companies currently reporting are hard to compare in any sensible way because there is no consistency in terminology, standards, definitions, or structure across companies.

Starting over two years ago, New America's Open Technology Institute and the Berkman Center for Internet & Society at Harvard University, with the support of the MacArthur Foundation, set out to solve both problems by building a "transparency reporting toolkit." The ultimate goal of the project is the creation of an online portal that promotes standardized transparency reporting and that can serve as a public repository for transparency reporting data. That way, the standardized data can be meaningfully combined and compared in a manner that gives us a fuller picture of how, and how often, governments access our online data. It will also be a useful resource for policymakers, advocates, journalists, academics, and Internet users.

In October 2013, we began conducting interviews with companies about their processes for creating transparency reports in order to identify lessons that would be helpful for companies just starting their transparency reporting. Building off of that work, in November 2013, the Berkman Center for Internet & Society, in conjunction with the Center for Democracy & Technology, the Open Technology Institute, the Global Network Initiative, and others, convened a dialogue at the University of California, Berkeley with academics, civil society, and representatives from a variety of Internet companies. That meeting was followed by an East Coast convening, hosted by OTI in July 2014, with strong civil society and academic representation. Those dialogues informed the materials and work that makeup ***The Transparency Reporting Toolkit.***

In total, ***The Transparency Reporting Toolkit*** has three components, each of which informs the others:

1. Survey & Best Practice Memos (March 2016)
2. Reporting Guide & Template (Draft, March 2016)
3. Online Portal (Spring/Summer 2016)

## The Toolkit's Survey & Best Practice Memos

Our previous convenings highlighted a variety of best practices, open questions, and tensions within the area of transparency reporting, as well as the need for tools that could aid in the creation and standardization of reporting. One tool highlighted as a priority for development was a template that would help companies standardize their transparency reporting while engaging in best practices. But first, we had to identify those standards and best practices.

We began by surveying the transparency reports of 43 U.S. companies reporting on requests for user data from government and law enforcement agencies in the U.S. From there, we identified best practices in reporting. The result is a nearly comprehensive survey of the state of transparency reporting by Internet and telecommunications companies in the U.S. during the first half of 2015.

There are eight memos in ***The Transparency Reporting Toolkit***, each surveying a different topic related to how U.S. Internet and telecommunications companies report on U.S. government and law enforcement requests for information in their transparency reports.

*For details on the content covered by each memo, see the back page of this document.*

## The Toolkit's Template & Guide to Reporting

Having surveyed the landscape of transparency reporting and identified best practices in reporting, we set out to translate that research into a template and guide to best practices. The result is ***The Transparency Reporting Toolkit's Template & Guide to Reporting***.

This document, which includes a text-based guide alongside a template of introductory text and tables for reporting on user data requests, walks companies through reporting using best practices by:

- Identifying each best practice
- Exploring the hows and whys of reporting
- Explaining why each practice was selected
- Highlighting innovative practices companies might consider adopting

The ***Template & Guide*** (currently in draft format) reflects input from a wide variety of individuals and is intended to be a starting point for discussions with stakeholders about best practices in the creation of transparency reports.

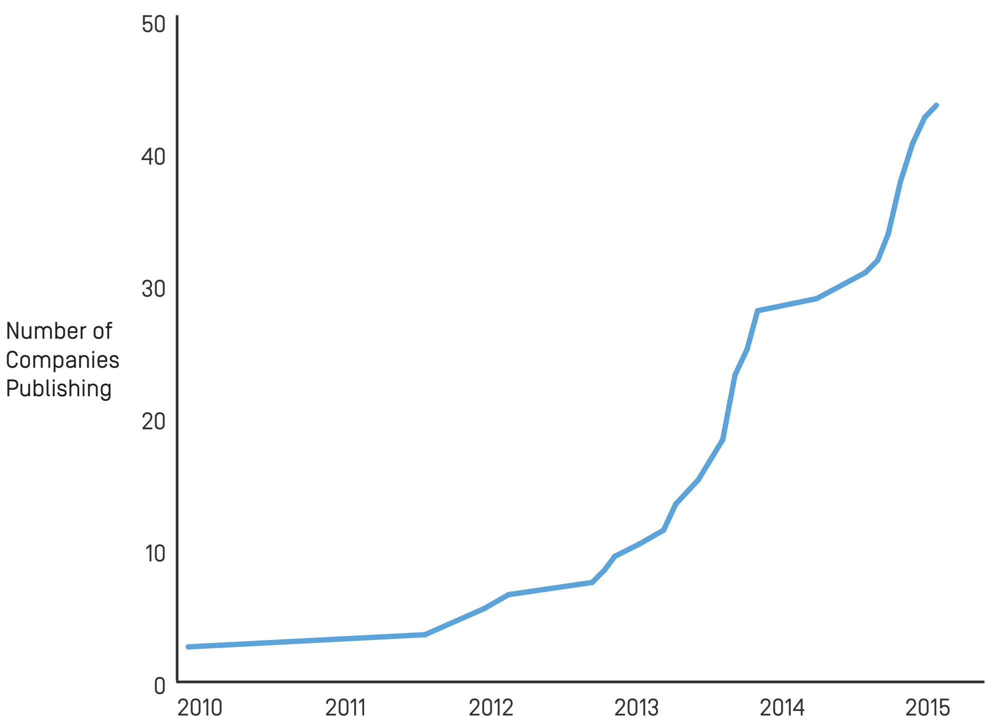
## What's Next: The Online Portal

With the ***Survey & Best Practice Memos*** completed and the ***Template & Guide to Reporting*** in progress, the final piece of the toolkit, the online portal, is on the horizon. Working with a Mozilla-Ford Open Web Fellow, we have started to build the interactive portal. This website will help companies create and publish reports in a format that utilizes best practices, help researchers translate existing reports into a standardized format, and help consumers of these reports make the best use of the data. As with the ***Survey & Best Practice Memos*** and the ***Template & Guide to Reporting***, the online portal will reflect input and feedback from stakeholders, including those companies currently engaged in transparency reporting.

## Starting a Discussion

Over the past two years, we have synthesized the various dialogues from our interviews and convenings, as well as additional research, into a survey of the current, and best, practices of existing transparency reports. Building on those findings, we created a separate guide and template to encourage the use of those best practices. There is a vast array of approaches and practices within current transparency reports. This has created a sometimes confusing, but ultimately rich environment in which to create meaningful transparency reporting standards. ***The Transparency Reporting Toolkit***, including the ***Survey & Best Practice Memos*** and the ***Reporting Guide & Template***, is our attempt to start the discussion.

## Growth of Transparency Reporting




Prior to Snowden's 2013 revelations, only a handful of companies were engaged in the practice of transparency reporting. By mid-2015 nearly 50 U.S. internet and telecommunications companies were publishing regular reports on government requests for user data.

Download The Transparency Reporting Toolkit: https://www.newamerica.org/oti/transparency-toolkit/

## Quick Look: What's Covered in the Survey & Best Practice Memos

The following list provides an overview of the content of each of the eight Survey & Best Practice Memos. These memos survey how U.S. Internet and telecommunications companies report on U.S. government and law enforcement requests for user information.

### Memo #1: Reporting on Different Legal Processes

This memo, the first in the series, surveys how companies categorize the different legal processes (e.g, search warrants, subpoenas, emergency requests) used by law enforcement and government officials to request user information.

### Memo #2: Explaining Legal Processes

This memo surveys how companies define or explain legal processes (warrants, subpoenas, wiretap orders, pen register orders, emergency requests, and national security orders) in their transparency reports.

### Memo #3: Reporting on the Subjects of Requests & How Users are Impacted

This memo surveys how companies report on the subjects of requests and how users are impacted by requests. Specifically, this memo surveys the terms used to describe subjects of requests (e.g., users impacted, accounts affected, URLs identified). This memo also includes explanatory information from companies' transparency reports about what those terms mean.

### Memo #4: Reporting on Information Provided in Response to Requests

This memo surveys how companies report on provision of user information in response to legal process requests. Specifically, this memo surveys what information will be supplied in response to each type of legal process.

### Memo #5: Explaining "Content" & "Non-Content"

This memo surveys how companies report on how U.S. Internet and telecommunications companies describe the "content" and "non-content" of user communications on their platforms.

### Memo #6: Reporting on Outcomes & Compliance with Requests

This memo surveys how companies report on responses to and / or compliance with requests. Also included are explanations from the companies' transparency reports about how and why they report compliance and response data.

### Memo #7: Reporting on User Notification

This memo surveys how companies report on notification of users who are the subjects of legal process requests. Also included are explanations from the companies' transparency reports about how and why they report on user notification.

### Memo #8: Reporting on National Security Orders

This memo, the final in the series, surveys how companies report on National Security Letters and Foreign Intelligence Surveillance Court Orders.

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