



American Registry for Internet Numbers (ARIN)

Applying the principles of stewardship, ARIN, a nonprofit corporation, allocates Internet Protocol resources; develops consensus-based policies; and facilitates the advancement of the Internet through information and educational outreach.

Comments Regarding

The ARIN Registration Services Agreement

Recently, several persons in ARIN's community have asked questions about ARIN's Registration Service Agreement (RSA) <<http://www.arin.net/registration/agreements/rsa.pdf>>. We thought it would be helpful to provide some basic information regarding the RSA and the processes by which ARIN manages the content of the RSA.

The RSA is a legal agreement intending to bind parties seeking Internet number resources and services so they will be contractually bound to utilize them in a manner consistent with their promised use. Accordingly, the RSA provides for revocation of the resources in the event someone unlawfully uses the resources to commit a crime; and in a more routine way ARIN must have the right to terminate ARIN services if the recipient fails to pay for them. The RSA simply provides ARIN the right to terminate for enumerated bad acts, and for the ARIN community to amend its policies and have them be effective, if necessary, by changing the RSA, without requiring everyone receiving resources to sign a new contract each time a policy changes.

Procedure for Implementing the RSA: The RSA is issued by the President/CEO of ARIN who makes the final decision about the content of the RSA. He receives advice from his staff, including the General Counsel. It has been the President/CEO's practice to consistently inform the Board of any proposed change in the RSA, other than minor housekeeping changes, so that the Board can provide its thoughts to the President/CEO on the content of the RSA. After receiving that input, and making whatever changes are thought appropriate, the RSA is then amended and announced to the community.

Changing the RSA: What are some of the things that would cause the RSA to change?

First, ARIN does business in a series of countries, including the U.S., Canada, and a number of islands in the Caribbean Sea and North Atlantic Ocean. In particular, both U.S. federal and state laws have changed and continue to change at a rapid pace in response to internet policy issues such as spam, identity theft, and privacy restrictions regarding collection and publication of personal identifiable information, and many other public policy issues. Like any good citizen, we have a duty and an obligation to promptly change ARIN's business practices to act in accord with the direction of sovereign governments within our service area.

Second and related to the first point, judicial decisions in a common law country like Canada or the U.S. may require ARIN to change its practices. For example, a critical Supreme Court or some other judicial decision could require a change to the content of the RSA. ARIN is not necessarily going to be a party to such a case, but will need to respond like all other businesses to such decisions.

Third, every day working experience with any agreement, including the RSA, raises operational questions about the content of a phrase or paragraph where careful scrutiny will suggest that clarifying language be utilized to more precisely describe the rights, duties and responsibilities of the parties. It is intelligent to permit minor changes periodically, after public notice, based on experience on a rolling basis -- perhaps as often as once a year or more when necessary -- to keep the RSA as clear as possible.

Virginia law governs ARIN, which is located in Chantilly, Virginia. Recent changes in Virginia law permits and encourages the provision of the right of parties to contract electronically, and to further permit changes in a contract like the RSA by their being posted on a website, if there is a contractual provision in the contract that explicitly gives this right. ARIN has followed Virginia law in this practice, and hence is permitted to make changes in the RSA for all 3000 of our RSA

signatories, even after it is signed by an individual company. Why is it good policy for Commonwealth of Virginia to permit and even encourage such a practice? We believe the categories of change we described earlier are the very reason why Virginia law permits ARIN's RSA to be amended by public notice and consent.

We hope that this discussion gives you additional insights into the thought process that went into the provisions of the RSA. We recognize that theoretically the capability to make changes in policy or RSA language during the life of an agreement without a one on one negotiation with each person who has signed a copy may be considered controversial by those unfamiliar with the consensus based policy process at ARIN. For this reason ARIN will only use the permitted procedure to amend the RSA in any substantive way when it is truly necessary, and will make appropriate efforts to call attention to such changes repeatedly and publicly so that proposed changes can be scrutinized by the community before they become effective, and concerns about any provision can be addressed to the President/CEO or ARIN's Board before they are enforced.

The ARIN bottom-up and transparent policy development process is for number resource policies, not for ARIN contracts. The terms of the RSA cannot and will not be based on a plebiscite taken in the course of the public policy process. ARIN must have the legal authority to address problems as may occur. But we do want to hear your questions or concerns about the provisions of the RSA. Therefore, if anyone has specific questions, or even procedural or subjective concerns about the RSA, please feel free to send them directly to Steve Ryan (sryan@manatt.com), ARIN's lawyer, and Ray Plzak (plzak@arin.net), so we may consider your input. They will keep the ARIN Board of Trustees fully informed on such issues.

With best regards,

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