



RSA / LRSA Update and Decision Recommendation

John Curran, President and CEO

July 2015

Situation: We last considered this issue in January

- ARIN could improve its service to the community by updating the Registration Services Agreement (RSA) and Legacy Registrations Services Agreements (LRSA) –
 - Addressing a perceived IPv6 disincentive
 - Providing for uniform service terms and conditions (other than fees) for all ARIN customers
 - Addressing concerns about 'balance' in the agreement
 - Elaborating on ARIN's services including RPKI that are covered in the agreement
- All of these items have been discussed by the Board in the past
- It should be recognized that it will never be possible to create an agreement which satisfies all present and future parties seeking registration services from ARIN

Situation (cont.)

- By design, ARIN's present RSA (version 11.0) and present LRSA (version 3.0) are nearly identical in terms and conditions
 - The most significant differences in numbers are regarding terminology: "Holder" vs "Legacy Holder, "Agreement" vs "Legacy Agreement"
 - Past differences about reclamation already harmonized
 - The most recent LRSA differs with respect to the fees, as it has "Legacy Maintenance Fee" section –
 - *Legacy Maintenance Fee cannot exceed the maintenance fee charged to comparable non-Holders for the maintenance service as set forth in ARIN's Standard Fee Schedule*
 - *ARIN must set these fees in an open and transparent manner through the ARIN community consultation process.*
 - (Note that some earlier LRSA versions set the fee at \$100 at 2013, and not to increase more than \$25/year)
 - Producing a single RSA/LRSA (which is the same except for fee schedule) is a relatively straightforward process

Status

- Draft integrated “RSA 12.0 / LRSA 4.0” has been prepared
- Three significant changes –
 - **First, changing Section 7**
 - **Second, should ARIN Retain or Give Up Section 1(d)**
 - **Third, other changes.**
- ❑ First, section 7 adding the word “included”
 - Section 7 “Included Number Resources” – those resources in this RSA/LRSA will be the only resources covered in this agreement;
 - Holder only agrees that *the Included Number Resources are not property*, as opposed to all “number resources” not being property.

- ❑ Second, Should ARIN Retain or Give Up Section 1 (d) with respect to the ability to change the terms of the Agreement

Here is existing text:

1 (d) Because of the necessary role that ARIN performs for the Internet community, ARIN reserves the right, in its sole and absolute discretion, to amend, supplement, restate or otherwise modify any or all Service Terms at any time and from time to time, including the right to implement new Service Terms and/or make some or all Service Terms obsolete (collectively, "Term Modifications"). ARIN will provide written notice (pursuant to Section 14(i)) of Term Modifications to Holder. ARIN will also publish Term Modifications on its Website. Term Modifications can be made effective immediately and binding on Holder upon the earlier of ARIN's notice to Holder or publication on ARIN's Website, at which time the Term Modifications shall constitute a part of the Service Terms. Holder's continued access to or use of any Services after such notice or publication constitutes Holder's acceptance of such Term Modifications.

Pro – Keeping some version of the Section

You don't know when court case, new law or totally unexpected development requires change.

Allows adapting to any potential future fundamental change to the nature of the Internet number registry system

Con: Get Rid of, or severally limit, the Section

Those buying addresses hate the uncertainty they see in the section.

Arguably overly broad in ability to change terms

We have never even contemplated using it.

☐ Recommended Outcome

- Make clear that changes to the Agreement terms can only be made under limited circumstances (and not thru the policies)
- Changes can only be made in two circumstances:
 1. *“The Board finds an immediate and compelling need to amend the Agreement due to a definable, discrete, identifiable change in relevant statute or caselaw; or*
 2. *Upon recommendation of the Board and ratification by Member vote.”*
- Requires affirmative written notification to be provided and not less than 90 days from taking effect

Status (cont.)

□ Additional Changes

- Representations and Warranty now reciprocal, rather than being solely resource holder to ARIN (i.e. each party has full power and authority perform its obligations under this Agreement; does not have conflict with other agreements, will comply with Agreement and applicable law, and the Agreement is a legal, valid, binding, and an executory obligation of the parties which is enforceable)
- Exclusion of Liability and Limitations of Liability made similarly reciprocal
- Removes the Waiver and Release of all claims against ARIN clause
- Reduces conditions under which ARIN may terminate agreement for cause
- Clarifies notice provisions for changes to policy/service terms vs agreement

Next Steps

- We seek board discussion and approval of direction during the July Board meeting
- After final proofing and preparation of community consultation. We will issue community consultation with 30 day comment period
- We plan to have new ARIN Services Agreement released prior to Fall ARIN Member meeting.

Discussion?