



Recommended Draft Policy

ARIN-2014-1

Out of Region Use



2014-1 History

1. Origin: ARIN-prop-192 from December 2013
2. AC Shepherds: Milton Mueller, Tina Morris
3. Presented at:
 - PPC at NANOG 60
 - ARIN 33
 - PPC at NANOG 61
 - PPC at NANOG 62
 - ARIN 34
 - PPC at NANOG 63
4. Advanced to Recommended Draft Policy in December 2014
5. Updated legal assessment March 2015
6. Text Online & in Discussion Guide
https://www.arin.net/policy/proposals/2014_1.html



Staff Understanding

This policy would allow out of region use of ARIN issued resources as long as the requesting organization is presently an ARIN registry customer and currently using the equivalent of a /22 IPv4 block, or a /44 IPv6 block, or an ASN on infrastructure physically located within the ARIN region. An officer attestation would be required to verify that the resource request is not a duplicate of one made to another RIR.



Staff Comments

1. Current ARIN policy requires organizations to show a justified need for resources to be used specifically within the ARIN region in order to receive number resources from ARIN. If the draft policy were adopted, ARIN number resources could be requested for use in another region.
2. When processing resource requests for use in another region under this policy, ARIN staff would include any address space registered through another RIR and currently used (or available to be used) within that region in its evaluation of the organization's justified need based on current ARIN policy.
3. This policy adds a new requirement that staff review utilization outside of the ARIN region, which will require additional time, and could delay the review and processing of requests of this type as well as other request types that ARIN currently handles.
4. This policy would be placed in the NRPM as "2.17 Out of Region Use".



Legal Assessment (1 of 3 slides)

Counsel has significant and material legal concerns about this policy. Counsel recognizes and supports the issuance of resources to entities in the ARIN region that need number resources that will be used in both this region and in the remainder of the world. ARIN currently issues resources for these needs based on a needs based allocation methodology.

However, this proposed policy removes the requirement that there be any meaningful need for those resources in the ARIN service region, and allows all of the need to be outside the ARIN service region. This creates new legal challenges for ARIN which are identified below:

First, ARIN is governed by ICANN ICP-2, which calls for establishment of a single RIR to serve each region. It further notes that multiple RIRs serving in single region is likely to lead to difficulty for co-ordination and co-operation between the RIRs as well as confusion for the community within the region. The implication of that governance structure is that each RIR can and should serve its service region. This policy would allow entities with no real connection to the ARIN's service region to obtain, for example, increasingly scarce IPv4 resources from ARIN and related registry services. This policy would result in ARIN effectively providing registry services to other regions, and thus appears on its face to be inconsistent with ICP-2. ARIN has obligations to follow the global policy in ICP2, or seek changes in it.



Legal Assessment (2 of 3)

Second, if the policy were adopted, ARIN could arguably become subject to the jurisdiction and laws passed by governments outside our service region. This may lead to ARIN being a litigant in courts of nations outside its service region and subject to their requirements and judgments. ARIN will need to accept greater legal expenditures and risks, as well as potentially larger costs in order to take this greater scope into consideration in ARIN's registry activities on an ongoing basis.

Third, the policy fails to recognize that ARIN is not likely to be able to perform the function contemplated in the policy with certain countries, and related public or private entities. See as examples under US law: Cuba, Iran and North Korea. The policy could benefit from a specific carve out that ARIN may meet its obligations under the laws of governments in its service region, even if such requests would otherwise comply with ARIN policy. For those who assert that this requirement to conform to law is implicit and does not need to be stated in policy, it is important the community is under notice of this limit. This issue has not been an issue for ARIN prior to this proposed policy.



Legal Assessment (3 of 3)

Fourth, ARIN may be subject to significantly greater political oversight by national governments in its service region that will wish to evaluate why ARIN alone of the 5 RIRs is assuming a duty to service all of the world's community. It may be argued by governments in ARIN's region that this is a potential breach of ARIN's fiduciary obligations to its own region, and to examine whether it is consistent with ARIN's non-profit status and other corporate documents.

Fifth and finally, counsel is concerned that the policy will lead to an increase in fraudulent applications from out of region requestors, and issuance of resources to those who fraudulently file, since ARIN is not as well positioned to successfully discover such fraud by out of region requestors.



Implementation

- This policy would have significant resource impact from an implementation aspect. It is estimated that implementation would occur within 5-6 months after ratification by the ARIN Board of Trustees. The following would be needed in order to implement:
 - Updated guidelines and internal procedures
 - Staff training
- Additional time to review resource requests for out of region use as out of region utilization would now need to be included in the analysis of these requests
- Engineering efforts to handle out of region business rules may be substantial.



Presentation by the AC