

Recommended Draft Policy ARIN-2015-5
Out of Region Use
(https://www.arin.net/policy/proposals/2015_5.html)

1. Policy Proposal 219 - May 2015
2. Draft Policy - 23 June 2015
3. Revised twice - September 2015
4. Presented:
 - a. ARIN 36
5. Recommended Draft Policy - 22 October 2015
6. Presented:
 - a. ARIN PPC at NANOG 66
7. Last Call – 24 February thru 9 March 2016
8. AC meeting to review last call on 17 March 2016
 - a. AC moved to Board with 14 in favor, none against.

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Recommended Draft Policy ARIN-2015-5
Out of region use

AC's assessment of conformance with the Principles of Internet Number Resource Policy:

ARIN-2015-5 enables fair and impartial number resource administration by allowing any ARIN Organization with a real and substantial connection to the ARIN region to use number resources out of region without prejudice. This proposal is technically sound, as it addresses the key concerns related to the unlimited openness of out of region use and enables ARIN staff to implement the policy efficiently. The policy received a unanimous show of support at the ARIN PPM in Montreal as well as the PPC in San Diego.

Problem statement:

Current policy neither clearly forbids nor clearly permits out of region use of ARIN registered resources. This has created confusion and controversy within the ARIN community for some time. Earlier work on this issue has explored several options to restrict or otherwise limit out of region use or loosen controls and totally authorize such use. None of these options have gained consensus within the community. The next logical option is a proposal that clearly permits out of region use while addressing the key concerns expressed about unlimited openness to out of region use and enables ARIN staff to implement the policy efficiently.

Policy statement:

Create new Section X:

ARIN registered resources may be used outside the ARIN service region. Out of region use of ARIN registered resources are valid justification for additional number resources, provided that the applicant has a real and substantial connection with the ARIN region which applicant must prove (as described below) and is using the same type of resources (with a delegation lineage back to an ARIN allocation or assignment) within the ARIN service region as follows:

- * IPv4: At least a /22 used in region
- * IPv6: At least a /44 used in region
- * ASN: At least one ASN present on one or more peering sessions and/or routers within the region.

A real and substantial connection shall be defined as carrying on business in the ARIN region in a meaningful manner. The determination as to whether an entity is carrying on business in the ARIN region in a meaningful manner shall be made by ARIN. Simply being incorporated in the ARIN region shall not be sufficient, on its own, to prove that an entity is carrying on business in the ARIN region in a meaningful manner. Methods that entities may consider using, including cumulatively, to prove that they are carrying on business in the ARIN region in a meaningful manner include:

- * Demonstrating a physical presence in the ARIN region through a bricks and mortar location that is actually used for the purposes of conducting business in the ARIN region in a meaningful manner. That is to say, the location is not merely a registered office that serves no other business purpose.
- * Demonstrating that the entity has staff in the ARIN region. The greater the number of staff, the stronger this connecting factor is.
- * Demonstrating that the entity holds assets in the ARIN region. The greater the asset value, the stronger this connecting factor is.
- * Demonstrating that the entity provides services to and solicits sales from residents of the ARIN region.
- * Demonstrating that the entity holds periodic meetings in the ARIN region.
- * Demonstrating that the entity raises investment capital from investors in the ARIN region.
- * Demonstrating that the entity has a registered corporation in the ARIN region, although this factor on its own shall not be sufficient.
- * Other fact based criterion that the entity considers appropriate and submits for ARIN's review. The weight accorded to any of the above-noted factors, if any, shall be determined solely by ARIN.

The services and facilities used to justify the need for ARIN resources that will be used out of region cannot also be used to justify resource requests from another RIR. When a request for resources from ARIN is justified by need located within another RIR's service region, an officer of the application must attest that the same services and facilities have not been used as the basis for a resource request in the other region(s). ARIN reserves the right to obtain from the applicant a listing of all the applicant's number holdings in the region(s) of proposed use, when there are factual reasons to support the request.

Comments:

a) Timetable for implementation: Various iterations of this policy have been presented and debated by ARIN for well over a year now. Given the amount of time that has already been spent on developing a policy, ideally, this policy would be implemented as soon as possible.

b) Explanation of draft policy: The draft policy addresses both the problem statement as well as the concerns raised at ARIN 35 by participants as well as ARIN counsel.

Firstly, the draft policy addresses the concerns of ARIN counsel as well as some of the participants at ARIN 35 by ensuring that anyone requesting numbered resources from ARIN has a real and substantial connection with the ARIN region. This should go a long way to addressing concerns about fraud, legal liability, and interference with the jurisdiction of other RIRs.

In addition, by placing the burden of proof for demonstrating a real and substantial connection with the ARIN region on the applicant, the amount of work required of ARIN staff to apply the policy will be reduced.

The factors noted above are suggestions that an entity may use to demonstrate to ARIN that it is carrying on business in the ARIN region in a meaningful manner. These factors are all indicative, some more than others, that an entity has a real and substantial connection to the ARIN region through the carrying on of business in the ARIN region in a meaningful manner. Not all of the factors will apply in a given case and proving a single factor may not be enough to satisfy ARIN that an entity is carrying on business in the region in a meaningful manner. The list of factors is meant to be quite broad, including an open-ended factor, in order to capture the diversity of businesses that operate in the ARIN region and that may justifiably require numbered resources from ARIN. This approach is very similar to the practical method that courts typically apply to assess whether parties have a sufficient connection to a jurisdiction so as to require them to submit themselves to the courts of that jurisdiction.

This draft policy is a substantial improvement over the previous version of ARIN-2014-1 in terms of reducing the overall risk to the community by requiring a real and substantial connection between an entity requesting resources and the ARIN region.

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ARIN STAFF & LEGAL ASSESSMENT

Draft Policy ARIN-2015-5

OUT OF REGION USE

Date of Assessment: 17 September 2015

1. Summary (Staff Understanding)

This proposal would allow an organization to receive Internet number resources from ARIN for use out of region as long as the applicant is currently using at least the equivalent of a /22 of IPv4, /44 of IPv6, or 1 ASN within the ARIN service region, respectively. In addition, the applicant must have a real and substantial connection with the ARIN region, which the applicant shall be responsible for proving.

2. Comments

A. ARIN Staff Comments

This policy would increase the complexity of ARIN staff review work in request cases that fit the profile of this policy. There would be an increase in the vetting and utilization verification work currently conducted by ARIN staff.

This policy would be placed in the NRPM as section 9, "Out of Region Use".

B. ARIN General Counsel – Legal Assessment

If the policy is enacted it will require ARIN staff to work with counsel with some attendant increase in costs in the first year to manage implementation. The policy is consistent with standard legal principles routinely utilized in the ARIN region. The policy creates no material legal risks.

3. Resource Impact

From a request review standpoint, implementation of this policy would require additional review steps for Internet number resource requests. It could have future staffing implications based on the amount of additional work the policy could present. It is estimated that implementation could occur within 3 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

Implementation of this policy may allow for registrations in the ARIN database that require unicode character sets. From an engineering standpoint, implementation of this policy could have a major resource impact. It is estimated that implementation would occur within 12 months, instead of the 3 months cited above, after ratification by the ARIN Board of Trustees if ARIN is required to support unicode character sets. The following would be needed in order to implement:

- * Engineering: Engineering efforts to handle out of region business rules may be substantial as our system only supports ascii now. If there is a need for unicode character sets, then there is a substantial amount of work required to upgrade the DB and applications to support unicode. Additionally, we would need to discuss how to display unicode characters in port 43 whois.

4. Proposal / Draft Policy Text Assessed

Draft Policy ARIN-2015-5 (September 9, 2015, version)

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Policy statement:

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- * ASN: At least one ASN present on one or more peering sessions and/or routers within the region.

A real and substantial connection shall be defined as carrying on business in the ARIN region in a meaningful manner, whether for or not for profit. The determination as to whether an entity is carrying on business in the ARIN region in a meaningful manner shall be made by ARIN. Simply being incorporated in the ARIN region shall not be sufficient, on its own, to prove that an entity is carrying on business in the ARIN region in a meaningful manner. Methods that entities may consider using, including cumulatively, to prove that they are carrying on business in the ARIN region in a meaningful manner include:

- * Demonstrating a physical presence in the ARIN region through a bricks and mortar location that is actually used for the purposes of conducting business in the ARIN region in a meaningful manner. That is to say, the location is not merely a registered office that serves no other business purpose.
- * Demonstrating that the entity has staff in the ARIN region. The greater the number of staff, the stronger this connecting factor is.
- * Demonstrating that the entity holds assets in the ARIN region. The greater the asset value, the stronger this connecting factor is.
- * Demonstrating that the entity provides services to or solicits sales from residents of the ARIN region.
- * Demonstrating that the entity holds annual meetings in the ARIN region.
- * Demonstrating that the entity raises investment capital from investors in the ARIN region.
- * Demonstrating that the entity has a registered office in the ARIN region, although this factor on its own shall not be sufficient.
- * Any other method that the entity considers appropriate.

The weight accorded to any of the above-noted factors, if any, shall be determined solely by ARIN.

The services and facilities used to justify the need for ARIN resources that will be used out of region cannot also be used to justify resource requests from another RIR. When a request for resources from ARIN is justified by need located within another RIR's service region, an officer of the application must attest that the same services and facilities have not been used as the basis for a resource request in the other region(s). ARIN reserves the right to request a listing of all the applicant's number holdings in the region(s) of proposed use, but this should happen only when there are significant reasons to suspect duplicate requests.