

ARIN 35 Discussion Guide - Updated Legal Assessment for 2014-1

Recommended Draft Policy ARIN-2014-1: Out of Region Use

ARIN General Counsel - Legal Assessment

19 March 2015

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.

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.

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.