

Alternative Dispute Resolutions for *.fr* and *.re* domain names

1. OVERALL PRESENTATION

The *.fr* and *.re* naming Charters, which can be accessed at www.afnic.fr/obtenir/chartes, expressly remind you, in compliance with the terms of the French draft bill for electronic and audiovisual communication services, that it is the responsibility of the person registering the domain name or exploiting the domain name to verify that it does not breach the rights of third parties.

To do this, and in parallel with the traditional legal channel, two alternative procedures for resolving disputes are implemented within the zone files, *.fr* and *.re*, designated by the acronym, “ADR for *.fr* and *.re*”.

When they request the registration of a domain name and subscribe to the naming Charter, the registrant of the domain name undertakes to comply with these procedures.

Each of these issues is administered by a different body and has separate regulations.

These are:

- *the ADR for .fr and .re* by “on-line recommendation”, administered by the Centre de Médiation et d’Arbitrage de Paris (CMAP) [Centre for Mediation and Arbitration of Paris] whose regulations can be accessed at www.mediationetarbitrage.com ;
- *the ADR for .fr and .re* by “technical decision”, administered by the Centre of Mediation and Arbitration of the World Intellectual Property Organisation (WIPO), whose regulations can be accessed at <http://arbiter.wipo.int/domains/cctld/fr/index-fr.html>.

2. ADR FOR *.FR* AND *.RE* BY ON-LINE RECOMMENDATION (CMAP)

The ADR for .fr and .re by “on-line recommendation” enables the parties to a dispute relating to one or several domain names to entrust, by common agreement, the task of formulating a “recommendation” to a “dispute-resolution provider” designated by CMAP.

The “dispute-resolution provider” intervenes to facilitate the emergence of an out of court solution.

If the parties accept the recommendation, it is then used to draft a transaction protocol and to put an end to the dispute.

The solution chosen will then be implemented by AFNIC at the request of the service provider administering the domain name.

Having many things in common with mediation, this innovative solution is not restrictive, in the sense that the parties agree both to start the procedure and to apply the recommendation of the “dispute-resolution provider” or to base their decision on the suggestion of the latter.

The dispute-resolution provider may suggest solutions other than mere deletion or transfer of the domain name and may make it possible to serve the entire dispute, dealing, in particular, with the problem of compensation.

This extremely rapid and easy procedure (it takes about 16 days) is especially suitable in the event of disputes about legitimacy, as, for example, litigation between franchisers and franchisees or, in merger, acquisition, partial capital operations etc., that is all conflictual situations that are not necessarily cases of bad faith registrations of domain names (cybersquatting), which does not exclude this procedure also being used in the situation.

3. ADR FOR .FR AND .RE BY TECHNICAL DECISION (WIPO Centre)

The ADR for .fr and .re by “technical decision”, administered by the WIPO Centre is a UDRP (Uniform Domain Name Dispute Resolution Policy) adapted to the *.fr* and *.re* zones.

This is a binding procedure, which the owner of the domain name cannot evade.

It is, however, possible to submit the dispute to a court with jurisdiction at any time.

Under this procedure, the expert designated by the WIPO Centre will have to decide whether to reject the complaint or to transmit the name of the complainant or to remove them.

This decision is sent to AFNIC, which implements it after a period of 20 days, during which the owner may file a complaint with the French Courts to contest the decision. In that case, the application of the technical decision then depends on the decision of the Courts.

This type of procedure, which has been used since 1999, both for gTLD (generic Top Level Domains) and in the case of some ccTLD (country-code Top Level Domains), has proved its efficacy, in particular, in combating the fraudulent registration of domain names. It will be seen, however, that the field of application of the UDRP procedure is limited to breaches of brand law.

On the other hand, *ADR for .fr and .re* by “technical decision” applies to breaches of third party rights protected in France and, in particular, to intellectual property (literary and artistic property and/or industrial property), to the regulations on competition and fair trading and to the right to the name, first name or pseudonym of an individual.

While it is possible to implement a *ADR for .fr and .re* by “technical decision” after a recommendation has been made within the framework of a *ADR* by “on-line recommendation”, the reverse is not possible because of the binding nature of the “technical decision”.

4. ROLE OF AFNIC

Each of *the ADR for .fr and .re* is administered on a case-by-case basis, either by the CMAP, or by the WIPO Centre, without the intervention of AFNIC, which remains strictly neutral in its capacity as registry.

The role of AFNIC is restricted to:

- informing the CMAP dispute-resolution provider or the WIPO expert of the information in their possession on the owner of the domain name and their domain name assets (number and time);
- freezing operations on the domain name or domain names that is the subject of a ADR;
- applying either the decision arrived at by agreement between the parties as a result of an “on-line recommendation” or of the “technical decision” made by the WIPO expert.

Under the terms of the naming Charter, *ADR for .fr and .re* does not apply to disputes that are the responsibility of AFNIC or to that of service providers, which, where possible, are brought before the courts with jurisdiction.

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