

*Public consultation*  
***EXPERTS WIPO ADR***

**PRESENTATION AND CURRENT STATE  
OF THE EXPERTS WIPO ADR PROJECT**

**afmic**

# *Presentation and current state of the Experts WIPO ADR project*

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# 1. Presentation

"Alternative Dispute Resolution" procedures (ADR) are an out-of-court method available to rights holders who consider that a third party has infringed their rights by registering a domain name or using it in a way that is detrimental to them.

For the TLDs for which Afnic is the Registry, the Syreli Dispute Resolution System has been available since November 21, 2011.

The public consultation concerns the project to reopen in parallel to the Syreli ADR an ADR with the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO Center) so that Claimants can choose to submit the dispute to an expert appointed by the WIPO Center.

With more than 25,000 disputes administered from 2012 (22,644 on gTLDs and 2,470 on ccTLDs), the WIPO Center is the worldwide main provider of services for the resolution of disputes related to Internet domain names.

The WIPO Center works with Afnic since 2004 and has administered more than 250 disputes for the domains in .fr in accordance with the ADR rules. The WIPO ADR has been modified in order to take account of the new requirements of the French law.

## 2. Current state

### 2.1. Description of the new Experts WIPO ADR

Like SYRELI, which was implemented and managed by Afnic under Article L. 45 of the French Electronic Communications and Telecommunications Act (CPCE), this additional procedure:

- allows the right-holder (Claimant) to obtain the transmission or deletion of a domain name used in the cases and conditions provided for in Article L.45 of the CPCE-2 (public policy, the rights guaranteed by the law, intellectual property rights and personality rights, national utility services, local authorities, etc.).
- is opened and closed by Afnic.
- lasts two months
- leads to the deletion of the domain name in dispute if the decision is not executed within 60 days.



Afnic and the WIPO Center publish the decisions, which are enforceable – unless exceptions – within 15 days.

The procedure is fully electronic via the ADR platform developed by Afnic. Used by SYRELI today, the platform will be designed to accommodate both ADR systems.

The two ADR systems are alternatives and are mutually exclusive: Claimants must choose to use the SYRELI procedure or the Experts WIPO ADR procedure. In addition, for the same file, the Claimant cannot choose one of the procedures and then the other, each procedure being exclusive of each other and cannot constitute an "appeal procedure".

As for SYRELI, decisions handed down via the WIPO ADR may be brought before a judge in appeal; in this case, it is up to the unsatisfied Claimant or Right-holder to refer the matter to the lower Court of Justice according to the rules of common law in order to have the dispute heard.

## 2.2. The differences with the SYRELI ADR

### *2.2.1. NONE OF THE FINANCIAL COMMITMENTS MADE BY AFNIC WITH RESPECT TO THE SYRELI PROCEDURE APPLY TO THE WIPO ADR.*

So, there is no free access for the Government Services and there is no partial refund for Claimants having obtained a favorable decision.

### *2.2.2. THE COST OF ACCESS TO SYRELI IS NOT APPLICABLE TO THE WIPO ADR WHICH HAS ITS OWN COST.*

For the new ADR, the cost of access to the procedure paid by the Claimant includes the costs and fees fixed by the WIPO Center in its currently applicable Schedule of fees and costs.

### *2.2.3. INTERVENTION OF THE EXPERT*

In SYRELI, the Afnic College examines the Claimant's request and hands down the decisions. In the new ADR, it is the designated expert who examines the Claimant's request and hands down the decisions.

The WIPO Center and Afnic select a panel of experts through an application process. Experts undertake to be impartial and independent without taking into account any economic or personal interest in the result of the resolution of the disputes, which they must resolve in accordance with the principles of confidentiality, good faith, and fairness of an adversarial system.

To guarantee that their interventions are impartial and adversarial, the experts:

- must not accept an appointment for any assignment or must resign from any assignment in which a factual or legal issue may lead to a close, related, shared or conflicting interest.



- before accepting each assignment must sign a declaration of acceptance, impartiality and independence.
- must accept to be withdrawn from the list in the case of any infringement of any of their obligations in the procedure including ethical commitments.

## 2.3. Points covered by the consultation

At the current state of the project, the purpose of this public consultation is to gather your opinions, comments and suggestions with respect to

- the organization of interventions by experts selected in accordance with transparent, non-discriminatory and publicly disclosed conditions;
- the rules of conduct applicable to the experts;
- the means and tools to ensure the impartial and adversarial intervention of the experts.

For each of the points in the consultation, you are asked a series of questions. These questions are indicative in nature. You can state an opinion that does not answer them, and you are not obliged to answer all of the questions.

### 2.3.1. CANDIDATE FILE

**Proposal:** To be included in the list of experts, each candidate must send a file with a detailed CV and a letter detailing their motivations for wishing to become an expert.

**Questions:** Should the candidate file contain more items such as proof of experience and professional skills? A sworn statement that the candidate has the means and tools required by the assignments? A sworn statement that the expert will abide by the statutory texts and regulations of the ADR, including its rules of conduct? An affidavit of good moral character? Proof of vocational training? Certificate of professional liability insurance? Others?

### 2.3.2. THE COMMITTEE AND THE SELECTION PROCESS

**Proposal of the Committee:** A Committee composed of members of Afnic staff and members of the WIPO Center staff is responsible for selecting the experts. The Committee only deliberates using electronic means on the basis of documents and files (no physical meeting of the Committee, no meetings or hearings of candidates). The decisions of the Committee (registration or refusal of registration, delisting) are sent with explanations by email and by post to each candidate and/or expert.

**Proposal on selection as an expert:** The Committee independently studies the file for each candidate and checks that the latter meets the requirements, if necessary by contacting the



professional organizations cited in the candidate's file. The Committee notifies each candidate of the reasons for its decision to accept or reject the person. In particular, the competence and experience of the experts in procedures relating to domain names are taken into consideration by the Committee as grounds for its decisions.

**Questions:** The composition of the Committee and the number of its members. How the Committee operates. How the Committee deliberates and selects experts. If the Committee has an even number of members, which decision-making procedure can be set up in cases where there equal numbers of votes? A draw, or a casting vote?

### *2.3.3. PUBLIC, TRANSPARENT, OBJECTIVE AND NON-DISCRIMINATORY SELECTION CRITERIA*

**Proposal:** To choose an expert on the basis of their candidate file, the Committee considers the following criteria: (i) the expert must be a qualified lawyer in French law with a minimum of ten (10) years of experience in the sector of intellectual property and domain names, and regularly attend training courses in this area; (ii) the expert must not be involved in any activity incompatible with the independence required to carry out the assignment, and (iii) the expert must not have committed acts resulting a disciplinary measure and/or legal proceedings within the last three (3) years.

**Questions:** Are these criteria sufficient in number? Sufficiently detailed? With particular regard to specialized competencies, training and skills? To their good moral character? With respect to the means and facilities available to the experts? Does the profile fit? Are 10 years of experience enough? Should an age limit be set?

### *2.3.4. THE LIST OF EXPERTS: REGISTRATION PERIOD AND NUMBER OF EXPERTS*

**Proposal:** The selected experts are registered for a renewable period of five years. There is no numerus clausus and candidate files may be submitted at any time during the year.

**Questions:** Should the registration period be shorter or longer? Fixed and non-renewable? Renewable with a limitation? Automatically renewable or upon presentation of a new candidate file? Number of experts in a limited list with a numerus clausus? A single annual recruitment campaign?

### 2.3.5. RULES OF CONDUCT

**Proposal:** The experts undertake to be impartial and independent without taking into account any economic or personal interest in the result of the resolution of the disputes, which they must resolve in accordance with the principles of confidentiality, good faith, and fairness of an adversarial system. The expert must not accept an appointment for any assignment or must resign from any assignment in which a factual or legal issue may lead to a close, related, shared or conflicting interest.

**Questions:** Are these rules of conduct sufficient as general principles? Are they sufficient in number? Are they sufficiently detailed? Would you prefer each expert to take more detailed ethical commitments for each major principle\*?

\* Example of a major principle broken down into specific commitments: "**Carry out an impartial, adversarial appraisal** (= Intervene in an objective, honest, independent and autonomous way; Apply neutrality and equal treatment; On their appointment report any factual or legal issue that may result in a close, related, shared or conflicting interest; Resign if necessary, if during an assignment the Expert notes any factual or legal issue that may result in a close, related, shared or conflicting interest). ". ».

### 2.3.6. DELISTING & GUARANTEE OF IMPARTIAL, ADVERSARIAL INTERVENTION BY THE EXPERTS

**Proposal on the ethical commitment of the expert, prior to each assignment:** Commitment by the expert via a statement of acceptance, impartiality and independence for each assignment, published for the attention of the Claimants and Holders in the space dedicated to the case on the WIPO ADR platform.

**Proposal on delisting:** There is no right of registration on the list. The Committee may at any time modify the list of experts and withdraw experts from the list when they are no longer available, or if, during previous litigation proceedings, they regularly failed to meet the deadlines and requirements in the WIPO ADR regulations. In particular, experts will be removed from the list by the Committee in the event of an infringement of any one of the established rules of conduct set out in the WIPO ADR regulations, and in case of sanctions against an expert by an appropriate professional association.

**Questions:** Are these proposals sufficient? Can you think of other reasons for withdrawing experts from the list? Should we add cases of complaints about decisions made by an expert? Or when there are numerous appeals concerning decisions made by an expert? Or complaints about potential conflicts of interest? If so, in what ways? Should there be cases of immediate suspension of experts? If so, under what circumstances? A specific procedure to control experts that needs to be implemented (Annual Report of the experts on their business? Certification of the training courses taken and/or data to be produced each year in order to be kept on the list? Self-assessment?)? When they register, should the experts be

asked to sign a formal commitment about their observance of the ADR regulations that would enable their assessment and suspension (withdrawal?) in case of non-observance? Other cases?

### *2.3.7. DESIGNATION OF AN EXPERT FOR EACH ASSIGNMENT*

**Proposal:** Given the overall lead-time of two months between opening a case file and the publication of the decision, it has now been proposed that the expert be appointed by the WIPO Center. Neither the Claimant nor the Holder may refuse an expert once s/he has been designated by the WIPO Center.

**Proposal (a):** Based on the same constraint of lead-times, another proposal to appoint an expert for an assignment could be as follows: "The WIPO Center appoints two experts with an order of preference "Expert 1" and "Expert 2", enabling the Claimant and/or the Holder to refuse Expert 1 and have the case file reviewed by Expert 2. If no action is taken by the Claimant and/or the Holder, Expert 1 is automatically appointed.»

**Questions:** Which proposal do you think is the most appropriate and why?

To answer, please fill in the [reply form](#).