

Litigation management policy

Top-Level Domains
managed by Afnic

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Foreword: Domain names involve several types of rights

The allocation of domain names is on a "first come, first served" basis.

However, unlike similar trademarks which can co-exist in different classes, a domain name is unique in nature: there cannot be two identical domain names registered under the same extension.

In addition, several persons may claim different rights concerning the same domain name (intellectual property rights, the right to the name, commercial rights etc.). It is in this type of context that disputes arise.

In order to reach a solution, Afnic provides several options in the form of procedures that can be used, either as part of litigation or not, or by any individual or entity, whether in their capacity as a rights holder or as the holder of a domain name.

At this stage it is important to recall the roles and responsibilities of each of the stakeholders involved:

Afnic is responsible for implementing and enforcing the provisions of the **naming policy**; and in certain cases may have to hand down decisions pursuant to Articles L 45 et seq. of the French Electronic Communications and Telecommunications Act

The applicant is responsible for ensuring that the term it wishes to use does not infringe the rights of third parties.

The rights holder is responsible for protecting and defending its rights.

The Registrar is responsible for ensuring compliance by its customers with all the legal and regulatory provisions currently in effect and with the naming policies.

Through its policy of litigation management, Afnic wishes to allow each stakeholder to fully understand their role in the process and to adopt the strategy that best suits their situation.

In order to provide the most complete information possible, without being exhaustive, Afnic provides access from its website to the various decisions handed down by the courts, by extra-judicial bodies, or by itself.

1. Prevention and monitoring

First and foremost, prevention and monitoring are the best defence! Companies should develop a filing strategy, adapting its records and registrations to its business, so that it can quickly note any litigious conduct, either by means of in-house monitoring, or by using an automated monitoring service (certain **registrars** offer this type of service), so that they:

- **are informed as quickly as possible and can rapidly stop the litigious conduct in question**
- **do not lose the evidence of bad faith of the registrant,**
- **do not risk an objection being raised for their lack of response in the event of an application for the adoption of interim measures.**

It is possible at this stage not to engage in legal or extralegal proceedings, and to favour direct negotiations with the registrant of the domain name: the contact details of the registrant are available in the **Whois** database, subject to the obligations relating to the protection of personal data.

2. Non-litigious solutions available to rights holders

2.1. Write to the administrative contact of a domain name having opted to be classified as restricted information

In accordance with the law of 6 January 1978 and at the request of the **CNIL**, France's data protection authority, Afnic has set up a specific protection system for the personal data of individuals.

These data, which are protected by default, are not accessible via the public **Whois** service and are displayed as "restricted information". They are only disclosed if the registrant makes the request itself.

To contact a registrant having opted to be classified as restricted information, the claimant can use the tool to link with the administrative contact of the domain name available at the following address:

<http://www.afnic.fr/fr/resoudre-un-litige/actions-et-procedures/joindre-le-contact-administratif-d-un-domaine/>

This tool does not disclose the identity of the registrant and its use is the sole responsibility of the sender of the message.

Afnic proceeds to transfer the message issued without checking either its contents, or its outcome, or the accuracy of the address of the recipient, or the identity of the issuer.

There is no guarantee of a response from the administrative contact, or even any guarantee that the latter has received and/or read the message sent. The administrative contact is free to reply and to decide or not whether to transfer the e-mail to the registrant of the domain name if the administrative contact and registrant are two different people.

2.2. Request of the disclosure of personal data

Afnic may, at the request of third parties, lift the anonymity of an individual (natural person), who has registered a domain name and has chosen the "restricted publication" option under any of the extensions managed by Afnic, i.e. .fr, .pm, .re, .tf, .wf, and .yt.

Afnic communicates the contact details of the registrant within a few days to the issuer of the request, if Afnic finds the registrant has used the same or nearly identical reproduction of a protected sign (typosquatting, dotsquatting, etc.) In addition, Afnic's scope of competence does not include the content of the website.

This means any application must be supported by evidence proving its validity.

To submit a duly justified request for the disclosure of personal information to Afnic, the claimant must use the form available at the following address:

<http://www.afnic.fr/fr/resoudre-un-litige/actions-et-procedures/demande-de-divulgation-de-donnees-personnelles.html>

Afnic cannot be held liable for a refusal to satisfy a request for the disclosure of personal data.

The information however is forwarded by Afnic to the competent authorities to whom the request should be made.

2.3. Application to check compliance with the naming policy

According to the **naming policy** for domain names registered under any of the extensions managed by Afnic, any individual or legal entity residing or having its headquarters or principal place of business in one of the territories specified below may apply to register or renew a domain name in each of the top-level domains:

- **within the territory of one of the member states of the European Union;**
- **within the territory of the following countries: Iceland, Liechtenstein, Norway and Switzerland.**

Whatever the quality of the registrant (individual or entity), it is possible for a rights holder to ask Afnic to carry out data checks as part of qualification operations in order to ensure the eligibility and/or reachability of the holder of the domain name.

The qualification process consists of two (2) distinct processes, namely the verification process and the substantiation process.

The substantiation process is initiated in several cases:

After a verification used to highlight the implausible nature of the eligibility data and / or the reachability of the holder;

When the verification after a report proves to be fruitless;

As a result of a duly substantiated complaint from a third party by means of the verification form available on the Afnic website; the request is made to Afnic with supporting documentation via the form available at the following address:

<http://www.afnic.fr/fr/resoudre-un-litige/actions-et-procedures/demande-de-verification.html>

When the substantiation process is initiated, Afnic sends the registrar a substantiation request and informs the holder and the third party of same. Concomitantly, Afnic suspends the portfolio of the holder of the domain name for a period of thirty (30) days.

If, after this period, there is no evidence to conclude that the holder complies with the eligibility and reachability rules, Afnic informs the registrar, the holder and the third party, and blocks the holder's portfolio for a maximum period of thirty (30) days.

If, after this second suspension period, there is no evidence to conclude that the holder complies with the eligibility and reachability rules, Afnic informs the registrar, the holder and the third party, and deletes the holder's portfolio.

3. Litigation solutions available to rights holders

3.1. Extrajudicial procedures for dispute resolution

In accordance with Article L45-6 of the French Electronic Communications and Telecommunications Act, the registrant of a domain name undertakes to comply with procedures for resolving disputes concerning domain names in accordance with the regulations specific to each of the procedures available here:

<http://www.afnic.fr/fr/resoudre-un-litige/>

These procedures are exclusively designed to resolve disputes relating to the registration of domain names between registrants and third parties, and are in no way designed to resolve disputes relating to the liabilities or responsibilities of Afnic or Registrars.

Afnic undertakes to implement decisions taken pursuant to a dispute resolution procedure in a timely manner.

3.2. Legal proceedings

Whatever the case, claimants retain the right to go to court in order to resolve a dispute over a domain name.

The choice of the court having jurisdiction to decide on the case is the most difficult issue because it depends on several criteria.

In general, jurisdiction is attributed to the court competent for the place of residence of the registrant of the domain name in dispute, but may vary depending on the amount of damages at stake and the person behind the case.

While these procedures can result in the granting of damages, the lead-times and costs involved as well as their outcome are difficult to predict, as is the enforcement of the judgment ("enforcement proceedings" when the decision is rendered by a foreign court).

There is no need to incur Afnic's liability for it to implement court decisions: the Naming Policy sets out the conditions under which court decisions are implemented.