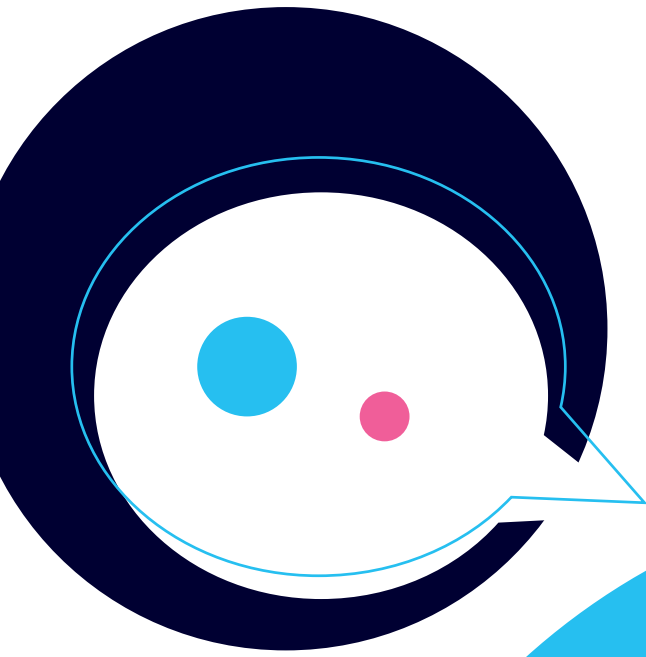


2017
PRACTICAL
GUIDE
for
RIGHTS HOLDERS

afnic



Imagine a domain name been registered by a third party in a way **that infringes your rights** and you want to protect them...

Afnic provides this Guide for all rights holders, containing all the practical information needed to easily find your way around the domain name market.

This guide is also available for free download on our website www.afnic.fr under "Dispute resolution".

CONTENTS

1 HOW TO KNOW IF A DOMAIN NAME INFRINGES YOUR RIGHTS? 4

- The Whois database 4
- The daily list of registered domain names 5
- Monitoring services 5



2 WHAT TO DO IF A DOMAIN NAME UNDER THE .FR TLD INFRINGES YOUR RIGHTS? 6

- How to obtain the contact details of a domain name Holder? 6
- What to do if the contact details obtained by Afnic do not allow you to contact the holder? 7
- What to do if you have contacted the Holder but cannot obtain the latter's agreement ? 8
- What to do if the Syreli or ADR Expert decision is in your favour? 9
- What to do if the Syreli or ADR Expert decision rendered by Afnic is not in your favor or does not apply to your case? 9
- If the Syreli or Expert ADR decision is not in your favor 9
- The domain name in dispute does not fall within one of the cases listed in Article L.45-2 of the CPCE: 9

3 PROCEDURES AND PURPOSES? 10

- Suspending a domain name 10
- Blocking a domain name 10
- Deleting a domain name 11

4 USEFUL INFORMATION 12



HOW TO KNOW IF A DOMAIN NAME INFRINGES YOUR RIGHTS?

On its website Afnic provides a Whois database that you can use to check if there are any domain names under the .fr Top-Level Domain (or any one of the other TLDs managed by Afnic) that are liable to infringe any of your rights.

Similarly, each day Afnic publishes the list of domain names registered under the .fr TLD for that day.

/// THE WHOIS DATABASE

This is the **database** for which Afnic collects from registrars all of the domain names registered under the .fr TLD (and the other TLDs managed¹ by Afnic) and the identification data of the individual or corporate domain name holders. By consulting the Whois database, free of charge, you can check the availability of a domain name, find those you have registered, or obtain:

- ▶ Administrative information² on the holder of the domain name and the various contacts (administrative, technical) associated with it;
- ▶ Technical information about the domain name itself.

The database can be accessed in two ways:

- ▶ Via the Afnic web interface in which queries are not fully automated;
- ▶ Via "Port 43", which allows users to perform automated queries, the volume of which is subject to a limitation policy.



The Whois database does not belong to Afnic; it has a right to use the database, granted by the French State.



THE AFNIC EXTRA

Afnic has chosen to implement measures to limit the number of queries in order to prevent possible abuses in the use of personal information but also to ensure the quality of the service provided.

Afnic may at any time filter access to its services, if malicious use is suspected.

¹ Afnic manages the following country-code TLDs: .fr (France), .pm (St. Pierre and Miquelon), .re (Reunion Island), .tf (French Southern and Antarctic Territories), .wf (Wallis and Futuna) and .yt (Mayotte).

² In accordance with the French law of 6 January 1978 relating to computers, files and freedom, the personal information about individual holders (name, first name, postal address, telephone number, fax number, email address) are protected and are not published. This process, referred to as restricted information, applies by default unless otherwise requested by the holder of a domain name (see above).

HOW TO KNOW IF A DOMAIN NAME INFRINGES YOUR RIGHTS?

Users of the Whois database must refrain from any collection or misuse of the personal information to which they have access, and generally, refrain from any act liable to infringe upon the privacy or reputation of individuals.

To ensure this is the case, Afnic has implemented the security measures required to regulate the ways in which the data are used by processing operations that are fair, non-discriminatory, and proportionate to the aims of the database described in the Afnic Naming Policy and in the policy governing the publication of, and access to information on domain name registrations.

/// THE DAILY LIST OF REGISTERED DOMAIN NAMES

Under Article L.45-5 of the French Electronic Communications and Telecommunications Act (hereinafter referred to as the CPCE), Afnic publishes every day all the domain names that have been registered under each of the TLDs for which it is responsible. These daily updates are available for 7 days, free of charge, under the ".gif" format.³¹

/// MONITORING SERVICES

In order to check whether a domain name infringes your rights or not, various monitoring services are available, including the "Fr watch" service provided by Afnic.

This service allows you to monitor your brands and trademarks, identify the domain names that use them, and thus measure the amount of traffic you are losing.

To set up this service, please contact your registrar. Please note that every registrar accredited by the .fr can provide this service. For further information, please visit our website section entitled "Products and services"



³¹ Although it is accepted for these data to be downloadable and available free of charge and reused for commercial purposes, Afnic is vigilant about illegal and fraudulent behavior that can lead to adverse effects for the holders contacted. If necessary Afnic intercedes with the inconsiderate parties in question.

2

WHAT TO DO IF A DOMAIN NAME UNDER THE .FR TLD INFRINGES YOUR RIGHTS?

If you have identified a domain name under the .fr TLD (or one of the other TLDs managed by Afnic) that infringes any of your rights – infringing your intellectual property rights, identity theft, fraud, etc., – Afnic provides a series of tools allowing you to reach an amicable solution with the Holder.

Failing an amicable agreement, the only remaining means are judicial or extrajudicial proceedings.

/// HOW TO OBTAIN THE CONTACT DETAILS OF A DOMAIN NAME HOLDER?



L'Afnic **refuses to lift anonymity** for the following reasons:

- If the domain name was registered prior to the date on which your trade mark was filed;
- If the domain name was registered prior to the date on which your company was registered;
- When your application concerns second level domains (e.g. <example.example.fr>);
- If the application relates to the content of the website.

As we saw above, the [Whois](#) database is the first reflex to find out whether the contact details of the Holder are available ⁴¹:

- If their contact details are available, we suggest you contact the domain name Holder in order to reach an amicable solution to your dispute;
- If the contact details are available on a "restricted information" basis, we provide an application form enabling you to request the disclosure of personal data, and, under certain conditions, obtain the contact details of the domain name Holder.

The application form for the disclosure of personal data can be used to obtain the contact details of the domain name Holder if and only if the latter has used in identical or almost identical fashion:

- The earlier trade mark registered and protected in France of which you are the holder;
- The earlier distinctive signs(s) that you own (company name, business name, trade name, brand and domain name);
- The earlier title protected by French copyright that you own;
- Your family name or pseudonym.



THE AFNIC EXTRA

You can use the [contact form](#) to send a message to the administrative contact for the domain name, without knowing their contact details:

Afnic is not informed of the content of the message and does not charge any fee for sending it. Afnic proceeds to transfer the message without checking its contents, whether the transfer is successful, the accuracy of the recipient's address, 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 holder of the domain name if the administrative contact and registrant are two different people.

⁴¹ The non-disclosure of personal data concerning individuals is an obligation imposed on Afnic by France's data protection authority (CNIL). With regard to the anonymity of Whois data, both at first instance and on appeal, the liability of the Afnic was ruled out and the de-personalization procedure confirmed by the Paris Court of Appeal on 19/10/2012.

WHAT TO DO IF A DOMAIN NAME UNDER THE .FR TLD INFRINGES YOUR RIGHTS?

Should Afnic refuse to lift the holder's anonymity, it is possible to file a new application, or file an application for a preliminary order before the ordinary courts (see below). On receipt of the order, Afnic will proceed to implement the order within two days

/// WHAT TO DO IF THE CONTACT DETAILS OBTAINED BY AFNIC DO NOT ALLOW YOU TO CONTACT THE HOLDER

The items of information available in the Whois database are those provided by the holder when registering the domain name with the registrar in charge of that domain name. Even though holders are obliged to update their identification data, the latter may be inaccurate.

The **application form to check** the contact details of the domain name holder allows you to request that Afnic verify on the one hand the eligibility of a holder of the domain name under Afnic's Naming policy, and their reachability on the other.

This verification procedure is free of charge and consists of two (2) **distinct processes**:

WHOIS VERIFICATION

Initiated upon receipt of the form without the provision of any documents in support. The verification process does not affect the holder's portfolio of domain names;

SUBSTANTIATION

A verification process indicating the holder's eligibility or reachability is unsatisfactory, or following a reasoned complaint from a third party via the verification form or even at its own initiative, Afnic contacts the registrar.

This substantiation procedure takes a little more than a month during which the Holder must provide evidence substantiating its compliance with the eligibility and/or reachability rules.

Substantiation has an impact on the domain name portfolio of the domain name holder because the portfolio is suspended, then blocked before being deleted by Afnic if there is no evidence proving that the holder has complied with the eligibility and reachability rules.



THE AFNIC EXTRA

By consulting the Whois database, it is possible to know the verification status of a domain name holder. When the check has been successfully carried out, the field that has been checked is marked (as well as the date and originator of the check) in the Whois database.



ELIGIBILITY:

Under the naming policy, any individual or corporation is considered to be eligible if they reside or have their headquarters or principal place of business:

- Within the territory of one of the member states of the European Union;
- Within the territory of the following countries: Iceland, Liechtenstein, Norway or Switzerland.

REACHABILITY:

Any individual or corporation is considered to be reachable if they indicate a working telephone number, email and mailing address and their identification is accurate.



The verification procedure is interesting on the one hand because it is free, and on the other for its impact.

In a little more than month, a domain name holder who has not substantiated or corrected their contact information has their entire domain name portfolio immediately deleted.

Warning: if the domain name is deleted, the former holder may register it again. Afnic does not offer any pre-reservation services or waiting lists to obtain deleted domain names.

In addition, the eligibility of the domain name holder obtained under the aegis of a previous naming policy cannot be checked under the terms of the currently applicable Naming policy. Only their reachability can be checked and where appropriate, corrected.

/// WHAT TO DO IF YOU HAVE CONTACTED THE HOLDER BUT CANNOT OBTAIN THE LATTER'S AGREEMENT?

If you have not managed to reach an amicable arrangement with the holder, extrajudicial or judicial means should be considered.

As part of its mandate as a Registry, Afnic has set up two Alternative Dispute Resolution procedures (ADR): Syreli and Expert ADR.

Both procedures are adversarial in nature and allow anybody (individuals and corporations alike) to retrieve a domain name or to obtain its deletion within two months of filing the application.

THE AFNIC EXTRA

Afnic is neither mandated nor qualified to provide legal advice.
We invite you to obtain legal advice for help in dealing with the case.

Whichever of the procedures you use, you must prove you have a right to bring action, and substantiate by any means that the domain name in dispute falls under one of the cases listed in Article L.45-2 of the CPCE, namely that the domain name is:

- liable to disrupt public order or morality, or the rights guaranteed by the French Constitution or French law; or
- liable to infringe your intellectual property or personal rights, and that the holder has no right to bring action and is acting in bad faith; or
- identical or related to that of the French Republic, of a local authority or group of local authorities, of an institution or a local or national public service, and that the holder has no right to bring action and is acting in bad faith.

Once the procedure has started (the case file is complete), the Holder of the domain name has a period of 21 days in which to reply to the claim. At the end of the period granted to the Holder, you can check the latter's response but cannot reply in turn.

There are two noteworthy differences between the Expert ADR and Syreli procedures:

- **The costs and financial arrangements;**
- **The person analyzing the case files:**
 - In the Expert ADR procedure, your case will be studied by an expert selected by the WIPO from a list previously drawn up in conjunction with Afnic;
 - In the Syreli procedure, a College (consisting of Afnic employees) is in charge of studying the case.

For further details about these procedures and how to use them, please visit the [SYRELI PLATFORM](#) and the [EXPERT ADR PLATFORM](#).

THE AFNIC EXTRA

Check ADR trends before filing your case under one of our procedures to ensure that your case file is as complete as possible;

And keep track of our monthly analyses and figures on changes in ADR procedures with our [Scope infographics](#).



COMPLETENESS:

A case file is said to be complete when:

- The domain name is registered;
- The petition form has been duly filled in;
- The costs of the procedure have been paid by the Claimant;
- The domain name to which the procedure refers is not subject to any current judicial or extrajudicial proceedings.



WHAT TO DO IF A DOMAIN NAME UNDER THE .FR TLD INFRINGES YOUR RIGHTS?

**WARNING**

Please note:

- ▶ Each application is assessed exclusively on the basis of the documents and deeds filed by both parties, and no further research is done by the people analyzing your file;
- ▶ Proceedings are conducted in French. If important documents are in another language, please provide an official translation.

/// WHAT TO DO IF THE SYRELI OR ADR EXPERT DECISION IS IN YOUR FAVOR?

The Holder may bring the case before a court for a period of 15 days after the date of receipt of the Syreli or ADR Expert decision. After this deadline, and only in the case of the transfer of the domain name, you should contact the [registrar](#) of your choice, indicating the decision that is in your favor. The registrar will then sign an Afnic Operation Request (DOA) and send it to Afnic in order to recover the disputed domain name. If the decision requires the deletion of the domain name, you have nothing to do, Afnic will delete the domain name at the end of the 15-day period. The deleted domain name will then be available for registration on a first-come basis.

/// WHAT TO DO IF THE SYRELI OR ADR EXPERT DECISION RENDERED BY AFNIC IS NOT IN YOUR FAVOR OR DOES NOT APPLY TO YOUR CASE?**If the Syreli or Expert ADR decision is not in your favor**

You have a period of 15 days from the notification of the decision to submit the case to the competent court of first instance. During this period, the domain name remains suspended.

After this period, the Afnic decision will be enforceable and the domain name returns to its initial configuration.

Since the ADR regulations have been approved by the Minister in charge of electronic communications and published in the Official Gazette, no change is possible.

**THE AFNIC EXTRA**

By carefully studying the ruling handed down, you can identify the reasons why your claim has been rejected.

Depending on your analysis, you may decide to file a new claim with new evidence in accordance with the terms of the ADR Regulation (both ADR procedures are alternative and are mutually exclusive) or take the case to court.

The domain name in dispute does not fall within one of the cases listed in Article L.45-2 of the CPCE:

- ▶ If you have a dispute with an Internet professional or have been the victim of a scam, we advise you to contact the Directorate General for Competition, Consumer Affairs and Fraud Control (DGCCRF), the authority for dealing with such situations.
- ▶ If you have been a victim of «Phishing», please visit the website of the Phishing Initiative Association: <http://www.phishing-initiative.com/>.
- ▶ If you have received spam, please visit the national platform for reporting SPAM in connection with the competent authorities: <https://www.signal-spam.fr/>.
- ▶ If you have been a victim of identity theft:
 - In the content of a website, please see the advice provided by the HADOPI (the French High Authority for the Dissemination of Works and Protection of Rights on the Internet) or that of the CNIL (France's data protection authority).
 - By the holder of a domain name (the holder has used your contact details to register a domain name), please contact Afnic as soon as possible.



Decree No. 2011-926 of 1 August 2011 provides for an easily accessible system allowing any person to bring to Afnic's notice any domain name considered to be unlawful or contrary to public policy (<http://www.afnic.fr/fr/resoudre-un-litige/actions-et-procedures/signaler-un-nom-de-domaine-illicite-ou-contre-a-tordre-public/>)

The Afnic form does not cover the contents of websites or behavior that are unlawful or contrary to public policy. In such cases, please visit the reporting platform of the Ministry of the Interior, Overseas Territories and local authorities:

www.internet-signalement.gouv.fr

If in doubt, contact a legal advisor for assistance.

3

PROCEDURES AND PURPOSES?

Afnic is not obliged to take protective measures: Afnic commits no error in refusing to suspend or block domain names on simple request from, or when subpoenaed by third parties, as confirmed by the Judgment of the Court of Appeal of Paris dated October 19, 2012: "the plea for Afnic's behavior to be incriminated for not setting up measures to block or suspend disputed domain names on request from third parties must be rejected".



Afnic does not freeze, block or delete domain names on its own initiative. It carries out these operations within the framework of the procedures detailed in the Naming Policy, or in accordance with a court order.

There are various types of technical operations that Afnic, in cases strictly defined in the Naming Policy, may apply to a domain name.

/// SUSPENDING A DOMAIN NAME

Definition

"The suspension of a domain name cancels all the transactions currently being processed by Afnic and prevents any future transaction request on the domain name from being carried out (change of registrar, transfer of domain name, etc.). This does not affect the operation of the domain name, however".

A domain name suspended:

- When a court order suspending the domain name is notified to Afnic: the suspension is maintained in accordance with the provisions of the court order and is raised after a new ruling has been handed down;
- When an ADR procedure is initiated (see above): the suspension is maintained until the ruling is enforced
- When a verification procedure is initiated (see above): the suspension is maintained for a period of 7 days.

How to know if a domain name has been suspended?

Query the Whois database; the results of the search will indicate the status of the domain name.

/// BLOCKING A DOMAIN NAME

Definition

"The blocking of a domain name cancels all the transactions currently being processed by Afnic and prevents any future transaction request on the domain name from being carried out. This makes the domain name inoperative (the website and its email address(es) no longer work)."

A domain name blocked:

- When a court order ordering the blocking of the domain name is notified to Afnic: the blocking is maintained in accordance with the provisions of the court order and is raised after a new ruling has been handed down;
- When a verification procedure is in progress (see above): the blocking occurs after the suspension period and is maintained for a further period of maximum 30 days;
- When the domain name is an orphan (when no registrar is any longer in charge of the domain name).

How to know if a domain name has been blocked?

Query the Whois database; the results of the search will indicate the status of the domain name.

/// DELETING A DOMAIN NAME

Definition

"Deleting a domain name makes it re-enter the public domain and can be registered again on a first-come, first-served basis." When the redemption period allowed for domain names deleted at a registrar's request has elapsed, deletion is irreversible. During the redemption period, the domain name can be reactivated with the same configuration (same holder and same registrar). Once deleted, the domain name re-enters the public domain and can be registered by a new applicant.

A domain name is deleted

- When the deletion is requested by its registrar, in which case, deletion becomes irreversible once the redemption period of 30 days has elapsed. During the redemption period, the domain name can be reactivated with the same configuration;
- Further to a court decision ordering the deletion of the domain name and meeting the terms and conditions stipulated in the Naming Policy;
- Following a decision to delete the domain name taken as part of the ADR procedure (see above);
- Following an unsuccessful verification procedure (see above);
- Following an orphaned domain procedure (when no registrar is any longer in charge of the domain name).

This means that you can no longer obtain the IP address of the service you have requested by consulting the domain name. Instead, you see an error message telling you that the domain cannot be found. Deletion affects all services within the domain and all of its subdomains.



Here is no redemption period when Afnic deletes a domain name. Its effect is immediate and leads to the withdrawal of the domain name from the domain name system. It can be registered again by a third party on a first-come, first-served basis.



THE AFNIC EXTRA

Under certain conditions, and to organizations that request it to do so, Afnic provides the list of domain names registered each day under the .fr TLD, together with the names of the registrars who have registered the domain names, and the names of the holders that have registered the domain names (with the exception of individuals who opt for access to that information to be restricted).

For more information on the SQUAW service (the French acronym for the Qualified Whois Data Access Service), see the «[Products and Services](#)» section of the Afnic website.



4

USEFUL INFORMATION

To contact Afnic:



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afnic.fr



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Practical guide for .fr domain
name holders

About Afnic

Afnic is the French Registry for the .fr (France), .re (Reunion Island), .yt (Mayotte), .wf (Wallis and Futuna), .tf (French Southern Territories), .pm (Saint-Pierre and Miquelon). **Afnic** is also positioned as a provider of technical solutions and services for registries and registrars. **Afnic** (the French Network Information Centre) comprises public and private stakeholders, including government authorities, users, and Internet service providers (Registrars). It is a non-profit organisation.