

Public consultation



Fight against abuse

Establishment of a mediation
procedure

8 February 2023 - 23 March 2023

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1. Introduction

1.1. The fight against abuse

As France's national TLD, .fr has been perceived from the outset by its users as a **zone of trust***

Our approach to **dealing with abuse** has a **threefold objective**:

- to retain **the trust of .fr users** in the national TLD;
- to **quickly and effectively bring an end to the abusive practices of certain domain name holders** while respecting the rights of individuals and maintaining the necessary neutrality of the registry, both of which are indispensable elements of this trust;
- and to **develop our practices in consultation with our stakeholders**, in particular by means of innovation, so as to **strengthen the fight against abuse while at the same time maintaining the simplicity**, competitiveness and excellence of the .fr domain, in a context of heightened competition.

Afnic therefore offers all users of the .fr domain **a comprehensive approach to the fight against abuse**, with preventive and supervisory measures and both judicial and extra-judicial procedures.

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** Our annual perception survey (.fr TLD perception survey 2022 carried out by MV2) shows that 85% of the French population trust the .fr TLD. The top two reasons given for this trust are:*

- the security and reliability of the national TLD, managed and hosted in France; and the fact that there is less abuse and fraud on the .fr TLD

1.2. Public consultations on .fr projects

Afnic regularly consults the Internet community as a whole on any far-reaching projects concerning the .fr domain.

For example, Afnic has held various public consultations, on the introduction of alternative dispute resolution procedures ("ADR"), the opening for registration in the .fr TLD to domain names with one or two characters, the reform of ICANN, and the supervision of the DNS root.

In the context of the current debate on how to improve the definition of online abuse and the tools for combating it, we have launched the following consultations:

- in June 2022, an initial **consultation on the detection, at the time a domain name is created, of registration data contrary to the .fr Naming Policy**;
- in September 2022, a second **consultation on access to registration data for authorised authorities**.

To kick-off 2023, we are launching this new public consultation aimed at gathering the contributions of all stakeholders interested in improving our procedures for combating abuse.

2. Establishment of a mediation procedure

This public consultation concerns the plan to launch a mediation service as an amicable means of resolving disputes between rights holders and holders of domain names under .fr¹

This project forms part of our broader measures for combating abuse and more specifically facilitating the resolution of disputes concerning domain names.

These plans were submitted to Afnic's consultative committees on 18 October 2022 and this public consultation incorporates the suggestions made on that occasion.²

2.1. The context

2.1.1. Resolution of disputes relating to .fr domain names

At present, disputes relating to .fr domain names can be resolved in three ways:

- amicably between the parties, on their own initiative, without the Registry being informed;
- extra-judicially through Afnic's ADR procedures;

¹ or the other TLDs managed by Afnic: .re, .pm, .yt, .tf, .wf

² <https://www.afnic.fr/en/associating-excellence/who-we-are/functioning/reports-of-meetings-of-governing-and-consultative-bodies/>

- judicially (through the courts).

2.1.2. Afnic's Alternative Dispute Resolution procedures

According to the provisions of Article L.45-6 of the French Post and Electronic Communications Code,

"Any person with standing may ask the competent registrar to delete a domain name or transfer it to him providing the domain name falls within the cases provided in Article L. 45-2.

The office will rule on this request within two months of receiving it, in an *inter partes* **procedure** established by its internal regulations, which may involve a third person chosen by means that are transparent, non-discriminatory and made public. The internal regulations establish in particular the ethical rules applying to third parties and ensuring their impartiality and the *inter partes* nature of their involvement. The office's internal regulations are approved by order of the minister responsible for electronic communications.

The decisions taken by the office can be appealed before a court of law."

This Article, created by Law No. 2011-302 of 22 March 2011³, gave rise to the two alternative dispute resolution procedures within Afnic, known as **SYRELI** and **PARL EXPERT**.

The former relies on a College composed of three Afnic employees, the latter on an Expert designated by the World Intellectual Property Organization (WIPO).

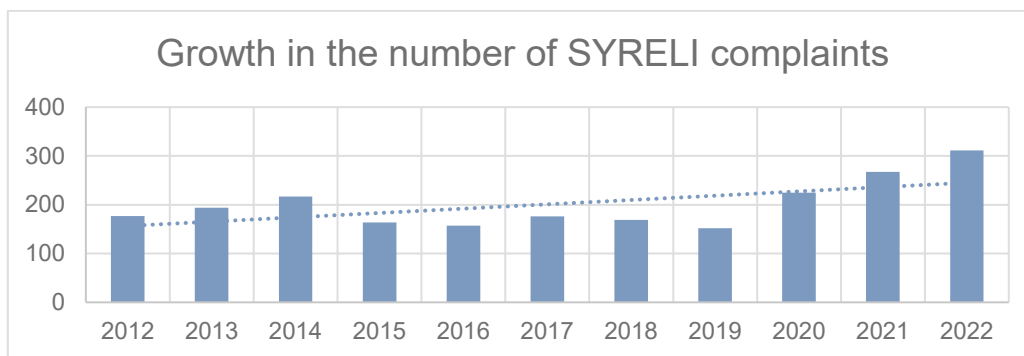
In both cases, rulings are made by the CEO of Afnic and published at the time they are handed down.

1. Growth in the number of ADR procedures:

Since the launch of the SYRELI procedure in 2011, Afnic has handed down 2,207 rulings.

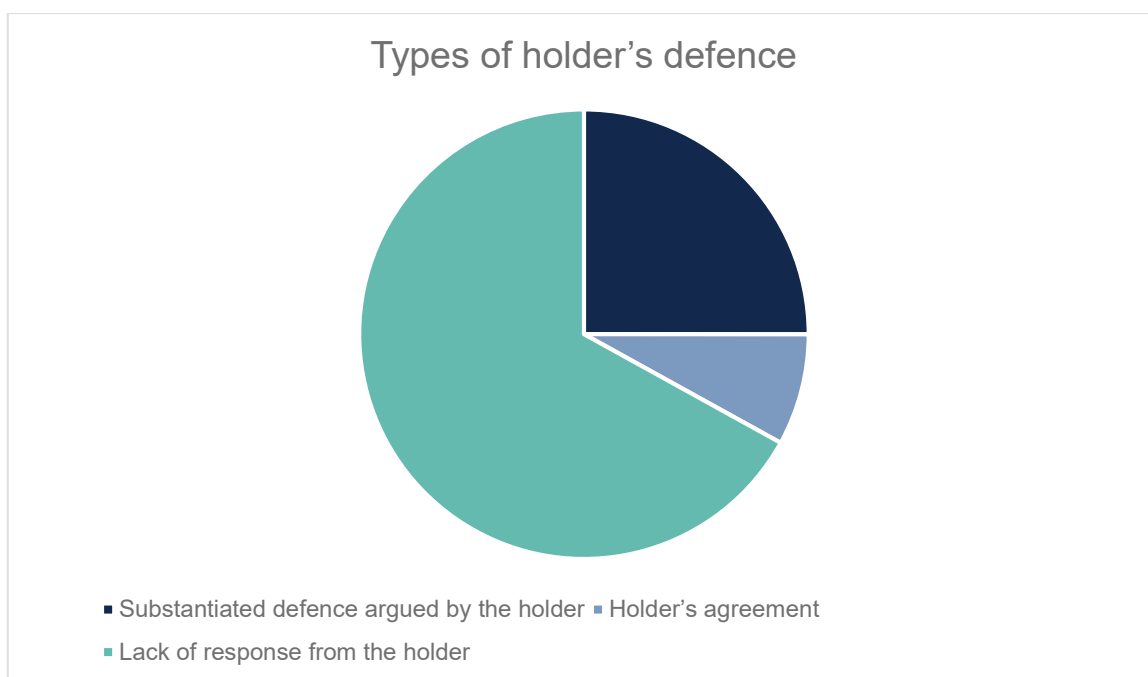
Between 2012 and 2022, Afnic saw an increase of more than 75% in the number of decisions handed down.

³ Law No. 2011-302 of 22 March 2011 on various provisions to bring French legislation into line with European Union law in the areas of health, work and electronic communications



In 8% of cases, the holder spontaneously agreed to the measure demanded by the claimant, and in 25% of cases, the holders defended themselves by giving substantiated responses to contest the claimant’s demands.

It is in these two cases, in which the holder responds, that Afnic intends to offer this mediation service. This represents around 700 rulings since the launch of the SYRELI procedure.



2. Afnic’s new commitments

Observing this increase in claims, Afnic was led to consider whether it would make sense to introduce a mediation procedure meeting the following objectives:

- to bring some of the disputes to a quick and entirely confidential conclusion;

- to propose a new way of resolving disputes which, unlike the ADR procedures, would be free of charge;
- to limit publication of ADR rulings to the cases in which the parties do not reach agreement.

In this context, following its recent re-designation by the French State as the registry office responsible for allocating and managing .fr domain names⁴, Afnic has committed to implementing a free, voluntary, pre-ADR mediation procedure⁵.

This mediation procedure is not intended to replace the ADR procedures, but to offer a new way of resolving disputes.

This consultation therefore seeks to present the plan for a mediation service as an amicable way of resolving disputes relating to .fr domain names.

2.2. Description of the project

2.2.1. Definition of mediation

Mediation is one of the amicable means of resolving disputes allowing the parties to a dispute to find a mutually acceptable solution with the involvement of a third party, the mediator.

The mediator is not a judge, expert, arbitrator or conciliator. It is not the mediator's place to rule on a dispute. The mediator solemnly undertakes to conform to the principles of:

- **Confidentiality:** each party, including the mediator, gives a written undertaking not to disclose any information relating to the mediation.
- **Neutrality:** the mediator will accompany the parties in the quest for a compromise, without giving a personal opinion.
- **Independence:** there must be no objective ties (personal or business) between the mediator and either of the other parties.
- **Impartiality:** the mediator does not take sides and does not favour any one point of view over another.

⁴ By order of 20 September 2021

⁵ Article 14 of the agreement signed with the French State on 18 March 2022

Mediation is a process relying on the freedom and responsibility of each of the parties. It is based on a voluntary approach of the parties in which all exchanges are covered by the strictest confidentiality. Either party may bring an end to it at any time.

2.2.2. Implementation of mediation within Afnic

This mediation procedure will be an alternative solution suggested to claimants and holders in the context of Afnic’s ADR procedures. In order for mediation to take place, both parties will have to consent to it.

2.2.2.a/ Advantages of mediation



2.2.2.b/ Framework of mediation

Afnic will propose regulations specifically for the mediation procedure, which will establish in particular the rules for:

- calling for an Afnic mediator;
- designating the mediator and defining his/her role;
- the conduct of the mediation;
- ethics.

2.2.2.c/ Training of mediators

Afnic’s mediators will all be trained in the process of mediation and will have as their mission to facilitate and encourage negotiations between the parties so as to help them find a solution to their dispute themselves.

2.2.3. The main steps in mediation within Afnic

2.2.3.a/ When and how to appeal to Afnic?

Mediation can be instigated jointly by the parties or unilaterally, prior to any extrajudicial *inter partes* dispute resolution procedure. In this latter case, Afnic will contact the other party to obtain its agreement.

Afnic will provide a form on its website for requesting mediation, or a contact address, inviting the party or parties to present the following information:

- The personal particulars or company name and the address of each party and of their representative if any;
- A brief presentation of the dispute;
- The parties' respective proposals or that of the party calling on Afnic for mediation.

If the other party refuses or if the mediation fails, the claimant will be free to file a SYRELI or PARL EXPERT claim or to take the matter to court.

2.2.3.b/ How long does the mediation take?

If the request comes from the claimant, the mediator will contact the holder whose data appear in the Whois database by email and telephone. If the mediator cannot contact the holder within seven days, the claimant will be informed of this failure and will then be free to settle the dispute extra-judicially or through the courts.

In cases where the parties have given their agreement to the mediation, the mediator will accompany the parties for a maximum of seven days, in the form of successive private conversations or in the form of [a] plenary meeting(s), which may be by video conference, at the mediator's discretion.

2.2.3.c/ What will be the status of the disputed domain name during the mediation?

No suspension or blocking operation will be applied to the domain name.

2.2.3.d/ How will the agreement be executed?

If at the conclusion of the mediation the parties have found a solution, it will be for them to establish a memorandum of agreement with the help of their representatives.

It will then be for the parties to execute this memorandum.

To implement a voluntary transfer or deletion of a domain name, the parties will have to approach the registrar of their choice.

3. Arrangements for the public consultation

3.1. Your contributions

You can forward your contributions and comments on these plans up until **23 March 2023** by connecting to the following address: <https://www.afnic.fr/en/observatory-and-resources/public-consultations/public-consultation-fight-against-abuse-establishment-of-a-mediation-procedure/>

In this form, you will be asked to provide certain elements of identification that will enable us to take better account of your contribution, which will be anonymised in the summary report that we will publish following this public consultation.

Lastly, if you would like to discuss the projects of the .fr domain in the fight against abuse in greater depth and to become a stakeholder in the search for and implementation of the solutions discussed in the consultative committees, we invite you to become an Afnic member: <https://www.afnic.fr/en/become-an-afnic-member/>

3.2. Additional resources

- **Naming Policy**
- **Articles L45-1 ff. of the CPCE**
- **Practical user's guide to ADR**
- **Practical guide for name holders**
- **Guide for rights holders**

3.3. Glossary

CPCE

French Postal and Electronic Communications Code. Article L45 of this Code provides the legislative frame of reference for the DNS in France.

ADR Claimant

Natural or legal person instigating an alternative dispute resolution procedure.

Holder

The natural or legal person at whose behest the domain name was registered and is maintained. Pursuant to the French Postal and Electronic Communications Code, domain names are registered and renewed on the basis of declarations made by the applicant and under said applicant's responsibility. The same applies to the use and exploitation of a domain name, which is the sole responsibility of its holder.