

Public consultation

The fight against abuse –
establishment of a mediation
procedure

Summary of contributions

April 2023

CONTENTS

1. Introduction.....	3
2. Reminder of the project	3
3. Categories of respondents	4
4. Reaction to the project.....	4
5. Summary of contributions.....	5
1.1 The well-foundedness of the request for mediation.....	5
1.2 The role and quality of the mediator	5
1.3 Duration of the procedure.....	6
1.4 The parties' agreement to participate in the mediation	7
1.5 The conduct of the mediation	7
1.6 Enforcement of the solution	8
6. Conclusion	9

1. Introduction

The public consultation on the implementation of a mediation procedure was held from 8 February to 23 March 2023, online, on our website (www.afnic.fr).

We received **eight contributions** in response to this public consultation.

This document presents a summary of these contributions.

2. Reminder of the project

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

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. 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.

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;

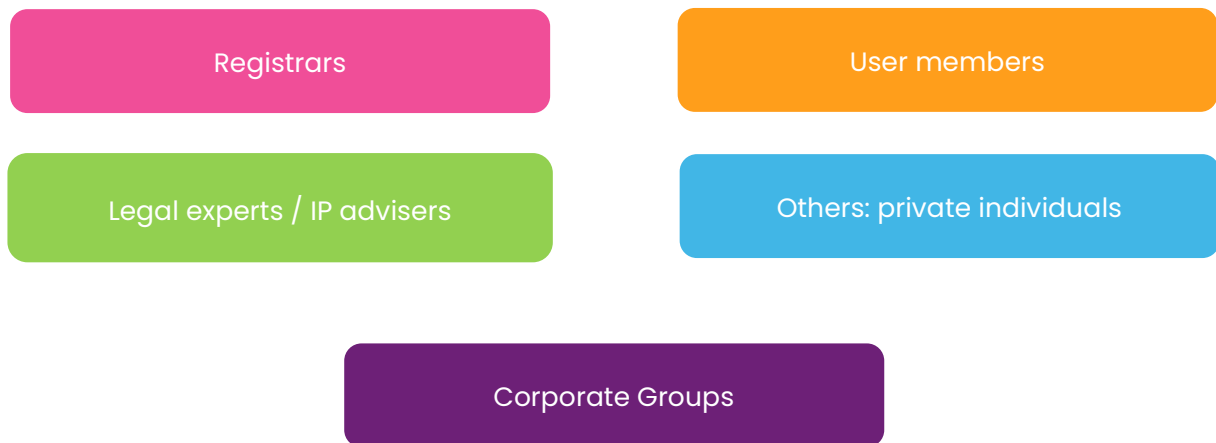
¹ or the other TLDs managed by Afnic: .re, .pm, .yt, .tf and .wf

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

- to limit publication of ADR rulings to the cases in which the parties do not reach agreement.

In this context, and following its recent re-designation by the French State as the registry office responsible for allocating and managing .fr domain names³, Afnic has committed to implementing a free, voluntary, pre-ADR mediation procedure⁴.

3. Categories of respondents



4. Reaction to the project

The project has been very well received and broadcast widely on social media⁵.

"I feel that the establishment of a mediation procedure by Afnic is a good thing."

"Fantastic initiative"

"Mediation is a good solution as long as the fact that it's free doesn't lead to a large number of frivolous cases."

³ By order of 20 September 2021

⁴ Article 14 of the agreement signed with the French State on 18 March 2022

"As presented, the project seems entirely appropriate, and I think it adds real value to ADR."

The contributions received come from competent stakeholders who are concerned by the mediation procedure.

We have not received any objections to this project. Numerous complementary ideas were put forward. The following is a summary of them.

5. Summary of contributions

1.1 The well-foundedness of the request for mediation

Opinions / Contributions

It will be advisable for the mediator to make sure of the well-foundedness of requests, beyond the mere standing, namely as regards the reality of the "registration and use in bad faith" which are often the source of requests made in good faith but without grounds, and therefore not to be encouraged.

Perhaps add the language(s) that can be used to lodge a complaint with the mediator (can a German complainant lodge a complaint in German?)

1.2 The role and quality of the mediator

Opinions / Contributions

I feel that the mediator needs to play the role of intermediary in the sense of informing the parties of the procedure under way and its outcomes, the risks incurred by each party, and to inform them of the elements that are taken into account in the PARL and SYRELI procedures.

A mediator is not a conciliator, but they must be able to propose solutions to resolve the conflict. They must be able to evaluate the situation in light of the positions adopted by the two parties. They must be in a position to analyse whether the positions of the two parties are diametrically opposed or, on the contrary, they could find common ground. In either case, reporting it to the parties.

Concerning the training of Mediators: it should last at least several days and could perhaps be carried out at the IFOMENE. The Industrial Property Advisers (CPIs) followed training as mediators with this body and were entirely satisfied.

I understand there will be just one Mediator. I think that a college of between two and four mediators would be preferable so that one person is not left to face complainants alone. I realise it's not easy to "recruit" several people for such a task, but I think that would make the entity stronger.

The Mediation sessions themselves could be conducted with just two mediators, providing for rotation among the mediators.

I think a member of Afnic personnel would have to be present at each session, at least in the early stages of Mediation. For the rest, the participation of Afnic members could be hoped for; the question then arises as to whether only users should be involved or whether a registrar member also needs to be involved, which would seem logical given the registrars' intrinsic competences, but which could pose ethical questions.

Possible remuneration. It would be possible to envisage an honorary position if the workload is not too great: one session per month with a mediation report. If honorary, the fixed annual allowance could be between €100 and €300.

1.3 Duration of the procedure

Opinions / Contributions

The duration of the mediation (2.2.3.b) is very short! Seven days in which to find a mediation agreement is very ambitious, even utopian in certain situations. We need to give the parties time to come together.

The lack of a minimum and a maximum duration in the exchanges between the parties could pose a problem.

Seven days may seem short but we believe it is appropriate.

Seven days seems short in practice (holder travelling, sick, on leave, etc.). Also, what of the possibility for a complainant to re-apply for mediation in such a case? Will the complainant necessarily have to instigate a SYRELI procedure if the request for mediation fails or will they be able to make a second request?

1.4 The parties' agreement to participate in the mediation

Opinions / Contributions

How many times must the mediator try to contact the holder?

Is it conceivable that a holder could instigate a mediation procedure? And if so, how could the other party be contacted?

1.5 The conduct of the mediation

Opinions / Contributions

For the mediation to have the best chance of success, it seems important to agree with the parties on the conduct of the mediation and to have some flexibility as regards its duration.

Where will the mediation sessions take place? In Saint-Quentin-en-Yvelines? In Paris?

Absence of suspension/blocking of the DN:

- o A holder acting in bad faith could take advantage of this alert represented by the mediation procedure to remove traces of his activity for fear of a subsequent public procedure (SYRELI)

- o Conversely, safeguards would be necessary to avoid the risk of anyone at all being able to block a domain by requesting an unfounded mediation, which would then make it necessary to filter requests upstream for admissibility...

However, I wonder about the lack of suspension of the domain name during this phase: aren't we running the risk of having a holder change their holder name and/or contact details if they realise during the mediation that things are not going their way and that a change of holder/contact details would increase their chances of success (example: holder outside the EU/EFTA changing to a dummy corporation in an eligible zone)?

It is tempting to compare the UK model in which the holder is also contacted by emails, attached to the mediation file. In my opinion this reinforces the weight of the mediation procedure and the rate of participation. On the other hand, it creates logistical constraints, all the more so as this is a procedure that's free of charge.

1.6 Enforcement of the solution

Opinions / Contributions

Logically, it is the mediator who must take charge of drawing up the agreement reached and having the parties sign it. For me, this is an important point.

The lack of response and/or refusal to try to reach agreement through mediation should be taken into account subsequently in the PARL and SYRELI procedures.

Afnic's taking part as a neutral third party could be a possibility, in the case of agreement and a deal in order to facilitate the exchanges.

I think it's a pity that Afnic remains outside the decision and does not ratify the parties' agreement. This could favour transfers in complex situations, particularly loss of contact with or difficulty in contacting the registrar concerned.

In the course of my activity, I have seen agreements in principle given by a holder in the context of a lawsuit on several occasions, commitments never honoured subsequently despite various reminders and exchanges. The current framework of the mediation procedure, with its confidentiality and its non-coercive nature, could thus limit this 'rationale for the decision' with the presence/agreement of the holder. Similarly, the means of applying the protocols of agreement unfortunately seem to me to be insufficient in that "It will then be for the parties to execute this protocol."

In these conditions, what would be the added value of a mediation procedure, given that it is not coercive and that it will also not be possible for the agreement to be enforced by means of the intermediation of Afnic (in particular through transfer operations)?

6. Conclusion

In the context of the procedure as presented for public consultation, there are opinions and contributions as reproduced above and particular points to take into consideration to consolidate our mediation procedure.

The responses tell us that there is indeed interest in opening a mediation procedure and encourage us to look more in-depth at the following aspects:

- **The complainant's justification of their standing** or legitimate interest in acting when asking Afnic to open a mediation procedure against another party. In other words the complainant must have a valid right linked to the domain name.
- **Suspending a domain name when a mediation procedure is opened** to avoid updates by the Holder of their domain name during the mediation phase and above all before a potential Syreli or PARL EXPERT procedure
- **A document recording the outcome of the mediation** that can be used as a complementary document in pleadings in a PARL Syreli or PARL EXPERT procedure.
- **The intervention of Afnic for enforcement of the agreement** when the agreement involves the transfer or deletion of a domain name.