

# Mediation Rules

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# Glossary

**“Afnic”**: *Association Française pour le Nommage Internet en Coopération*, the French Network Information Centre, an association governed by the provisions of the law of 1 July 1901, responsible for allocating and managing domain names for certain French TLDs corresponding to the French territory.

**“Registrar”**: A technical service provider that has signed a registration contract with Afnic, responsible for handling the requests of its clients (applicants for or holders of domain names).

**“Naming Policy”**: Document defining the technical and administrative rules for carrying out administration interventions on domain names. The Naming policy is supplemented by a set of documents (guide to procedures, etc.) and other information which is accessible on Afnic’s website or directly from Afnic upon request.

**“Contact details”**: All available information such as postal and email addresses, telephone numbers, etc.

**“Claimant”**: A natural or legal person having recourse to mediation in order to seek a negotiated solution to a dispute relating to a domain name susceptible of being covered by one of the cases provided in Article **L. 45-2.** of the CPCE (Postal and Electronic Communications Code.)

**“Declaration of impartiality and independence”**: The declaration whereby the Mediator accepts a case in compliance with the Rules covering the Mediation Procedure and undertakes to mediate in an entirely independent, impartial and neutral manner.

**“Force Majeure”:** The Parties expressly agree that any event that is irresistible and unforeseeable or the forecast of which does not allow the affected party to prevent its effects, shall be considered as an event of Force Majeure. The following events in particular, but without limitation, are considered to be events of Force Majeure: acts of state, war (declared or not), invasion, rebellion, blockade, sabotage, vandalism, total or partial strike, social conflict external to the party affected by the event of Force Majeure, civil unrest, bad weather, natural disaster, fire, pandemic and/or viral epidemic, blockage of means of transport or supplies, particularly of energy, outages in the supply of electricity, heating or air conditioning, breakdown of telecommunications networks or data transmission, failure of satellites.

**“Suspension of operations”:** Operation consisting in preventing any change to a domain name. This operation does not affect the functioning of the domain name (access to the website, email addresses, etc.).

**“Mediator”:** Natural person appointed by Afnic to take charge of the mediation of a dispute relating to a domain name submitted to the mediation procedure.

**“Domain name”:** An alphanumeric term consisting of a radical and a top-level domain (TLD) corresponding to an IP address.

**“PARL EXPERT”:** Refers to PARL EXPERT, one of Afnic’s alternative dispute resolution (ADR) procedures, in partnership with the World Intellectual Property Organization (WIPO).

**“Parties”:** The Parties (collectively, or each individually a “Party”) means the Claimant and the person consenting to the mediation to seek a negotiated solution to their dispute over a domain name.

**“Procedure”** or **“Mediation procedure”**: Mediation procedure regulated by these rules embarked upon by the Parties to seek a negotiated solution to their dispute over a domain name.

**“Rules”**: This document, specifically regulating the mediation procedure between the Parties.

**“Deletion”**: Operation consisting in deleting a domain name from the DNS and the WHOIS database such that the domain name, which is no longer operational, re-enters the public domain and may be registered by a new holder.

**“SYRELI”**: Refers to the SYstème de REsolution de Litiges, one of Afnic’s alternative dispute resolution (ADR) procedures.

**“Holder”**: Natural or legal person who has registered one or more domain names and is responsible for the operations thereon.

**“Compulsory transfer”**: The compulsory transfer procedure implies that the new holder benefiting from the solution negotiated by the Parties following the mediation will carry out all the formalities with Afnic and comply with the identification and eligibility checks.

# 1. General

## 1.1. Communications and time frames

All exchanges between the Parties and Afnic in the context of the mediation shall be conducted exclusively by email and telephone, to the contact details shown in the WHOIS database and/or indicated by the Parties.

Exchanges and their modalities shall be organised with the Parties at the Mediator's discretion, for the benefit of the mediation (audio, videoconference, dates of plenary and private meetings, etc.).

All written exchanges provided by the Rules shall be deemed to have been sent on the date of dispatch of the corresponding emails.

Except in the event of Force Majeure, Afnic and the Parties are obliged to adhere to the time frames established in the Rules.

## 1.2. Compliance with the Rules

The Rules apply to Afnic, the Mediator and the Parties, all of whom undertake to comply therewith.

## **1.3. Purpose of the mediation**

The Parties are free to agree on the solution of their choice. When the solution negotiated and obtained by the Parties in the context of the mediation involves the transfer or deletion of the domain name forming the object of the mediation procedure, Afnic will execute the measure immediately.

The Procedure may not relate to a dispute over a domain name filed by Afnic.

## **1.4. Language of the Procedure**

The Rules are published in French and English.

The procedure will be conducted in French.

If exhibits produced are not in French, the Mediator shall be free to take them into account with or without translation.

## **1.5. Judicial or extra-judicial procedure**

Each Party warrants that to the best of its knowledge no judicial or extra-judicial procedure concerning the domain name forming the object of the mediation is in progress, as regards the Claimant at the time of formulating the request for mediation, and as regards the other Party, at the time of accepting this request.



Mediation can be resorted to only prior to Afnic's SYRELI or PARL EXPERT ADR procedures; unless expressly and jointly decided otherwise by the Parties, once either of these ADR procedures has been instigated and notified to the Holder, mediation is no longer possible.

## **1.6. Costs of mediation**

Mediation is free of charge to the Parties.

Neither the Mediator nor Afnic receive any remuneration from the Parties.

However, each Party shall be entirely responsible for all costs incurred in the mediation such as fees for representation and costs for the provision of exhibits and means of communication, etc.

## **1.7. Liability**

Except in cases of wilful negligence or intentional misdemeanour, Afnic shall be exonerated from any liability towards the Parties for any acts or omissions relating to the Rules.

## **2. Conduct of the mediation**

### **2.1. Consent of the Parties**

As soon as the request is received, the Mediator shall take steps to contact the other Party in order to obtain his or her consent.

The other Party's consent is given by duly completing and signing the consent form and providing any supporting documents that might be required.

If after seven (7) business days the Mediator has not received a response from the other Party, or if the response received is negative, the Procedure shall come to an end.

### **2.2. Opening and duration of the mediation**

Once the Mediator has obtained the other Party's consent, he or she shall inform both Parties by email of the opening of the Procedure as of the date of the first meeting. From the date of opening, the Parties, accompanied by the Mediator, have seven (7) business days in which to find a negotiated solution.

Either Party may terminate the Procedure at any time subject to giving prior notice to the Mediator.

## 2.3. Appointment of the Mediator

For each request, Afnic will appoint a single Mediator with the necessary skill and experience to ensure the proper performance of their task, taking account of their availability and the qualifications required in the case in question.

Before appointing the Mediator, Afnic will check to see, as regards each potential Mediator, whether there are any facts or circumstances, past or present, or that could arise in the foreseeable future, that could call into question his or her independence in the eyes of one or other of the Parties to the Procedure.

Following these checks, Afnic will send the designated Mediator the Declaration of impartiality and independence to complete and sign, whereby he or she accepts the case in compliance with the Rules. The Parties will receive email notification of this document.

If during the mediation process the Mediator becomes aware of the existence of anything likely to call his or her independence and/or impartiality into question, he or she will inform the Parties of this. If the Parties give their agreement by electronic means, he or she will continue his assignment. Otherwise, he or she will suspend the mediation. Afnic will then proceed to replace the Mediator, or bring an end to the Procedure.

## 2.4. Role of the Mediator and conduct of the mediation

Mediation is a process of negotiation based on the Parties freedom, their voluntary participation implying the responsibility of each of them, while all exchanges are covered by the strictest confidentiality. Either Party may bring an end to it at any time.

The mediator does not rule on the dispute; he or she is not a judge, expert, arbitrator or conciliator. The mediator solemnly undertakes to conform to the established and recognised principles by being:

- ✓ neutral: he/she will accompany the Parties in their quest for a solution, without giving a personal opinion.
- ✓ independent: he/she has no objective personal or business link with either Party, and
- ✓ impartial: he/she does not take sides and does not favour any one point of view over another.

It is in this framework that the Mediator helps the Parties to seek a negotiated solution to their dispute. The Mediator will strive to be fair and to respect the interests of both Parties, but ultimately he or she will decide on how the assignment is to be performed. He or she may hear the Parties in plenary sitting and/or separately as he or she sees fit. He or she takes care to ensure that all Parties are treated equally and that the confidentiality of the processes and exchanges is respected.

At the conclusion of the Procedure, the Mediator establishes a Report summarising the emergence or not of a negotiated solution.

If the Parties are not able to reach a solution, the Procedure is brought to an end:

- ✓ if a Party refuses or does not reply within the time limit established by the Mediator;
- ✓ if it appears to the Mediator that the process of mediation will not lead to a negotiated solution.
- ✓ at the wish of one of the Parties, who are free to call a halt to the mediation at any time;
- ✓ when after seven (7) business days have elapsed from the opening of the procedure, the Parties have not reached a negotiated solution;
- ✓ when at least one of the Parties does not sign the Report within seven (7) business days of the opening of the procedure.

In the event of an agreement between the Parties, the Parties shall sign the report sent by the Mediator.

## **2.5. Operations on the domain name**

When the solution negotiated by the Parties concerns the transfer or deletion of the domain name that is the subject of the mediation procedure, the solution is executed immediately.

Upon receipt of the Record signed by the Parties, Afnic will implement the required procedures in the case of Compulsory Transfer or Deletion of the domain name forming the object of the mediation, in the following manner:

- Afnic will proceed to delete the domain name, or

- Afnic will proceed to carry out the Compulsory Transfer of the domain name once it receives the Afnic Operation Request (*DOA*) form signed by the Party in whose favour the Compulsory Transfer is to take place.

### **3. Confidentiality**

The Parties and their representatives, the Mediator and Afnic, are bound by the strictest duty of confidentiality as regards the mediation; no statement, declaration or proposal made, in the presence of or by the Mediator, and no document produced in the course of the mediation may be used subsequently, even in a court of law, without the formal consent of the Parties, the Mediator and Afnic.

The Report signed by the Parties may however be used to allow the agreement negotiated between the Parties to be applied.

### **4. Protection of personal data**

Afnic processes personal data only when necessary, in a manner that is proportionate and pertinent to the purposes determined in accordance with the provisions in force for the protection of personal data and, in particular those of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable from 25 May 2018.

The Parties and the Mediator must comply with the legal provisions relating to the protection of personal data, breach of which is subject to criminal sanctions. As regards personal data that they access or might access, both Parties and the Mediator must in particular refrain from any wrongful collection or misuse and in general from any act likely to infringe upon personal privacy or reputation.

The personal data collected by Afnic are essential for the provision of its mediation services and are processed in the context of Management of the mediation procedure. The legal basis for processing is the performance of a public service (Article 6-1. e of the GDPR), in this case the agreement between the State and Afnic signed on 18 March 2022, Article L45-2 of the CPCE, the Naming Policy and the Rules.

The data collected are communicated to the following recipients:

- the Mediator for the exchanges aimed at finding a negotiated solution;
- the relevant internal departments of Afnic for managing the mediation procedure;
- where applicable, service providers of Afnic such as the provider of the hosting of the afnic.fr website for sending mediation request forms via the afnic.fr website;
- the registrar(s) affected by the execution of the negotiated solution.

The data processed in the context of mediation cases are destroyed two months after the implementation of the negotiated solution. The Mediator's personal data processed for the management of their assignments are kept until one month has elapsed from the end of the assignment or for longer (i) with the express agreement of the data subject, (ii) in the event of dispute, or (iii) in application of legal obligations.

A detailed description of the Management processing of the mediation procedure is available on Afnic's website <https://www.afnic.fr/en/your-data/> on the page "Your data".

The Parties, providing they are natural persons, have personal rights (of access to and rectification and erasure of the data, the right to restrict their processing, the right to lodge a complaint with a controlling authority and the right to lay down guidelines relating to the retention, erasure and communication of their personal data in the event of their death) which they can exercise by sending an email to Afnic's **DPO (dpo@afnic.fr)**.

## **5. Interpretation & Amendments of the Rules**

Any interpretation of the Rules is the sole competence of Afnic.

The version applicable during a given Procedure is the one in force at the time Afnic receives the request for mediation.