



# **Dispute Policy for French Internet Top Level Domains**

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AFNIC manages domain names for some of the French ccTLDs, in the general interest and in application of the provisions L.45 and R.20-44-34 and following of the Post and Electronic Communications Code.

AFNIC performs this task in accordance with its articles of association and the non-discriminatory rules that ensure that the applicant for a domain name respects the rights of third parties.

To this end, it defines the guidelines for registration and maintenance of the domain names described in each of the Naming Charters for the French domains that it controls.

The aim of these guidelines is to define the conditions that must be fulfilled by future holders in order for them to obtain the domain names they desire.

They are aimed at specifying the roles and responsibilities of each entity in the registration chain (registrars, domain holders and AFNIC) and the options available for settling conflicts linked to domain names under the best conditions.

## **Preamble: Domain names at the meeting-point of various aspects of law**

The basis for the allocation of domain names is the rule of “first come, first served”.

A domain name is nevertheless unique by its nature and, unlike similar trademarks that can co-exist in different classes, two identical domain names cannot be registered with the same extension.

Furthermore, several entities may be entitled to claim different rights over the same domain name (intellectual property, right to the name, trading name, etc.).

This is the situation that has given rise to disputes.

In order to provide a solution, AFNIC is suggesting several options that translate into procedures that can be used in advance, in a non-contentious or contentious manner by any individual or corporate entity that can claim rights to or ownership of a domain name.

It is at this stage, that it is important to remember the roles and responsibilities of each of the protagonists:

- it is AFNIC's job to implement and cause to be respected the provisions of the [Naming Charters](#); occasionally, AFNIC could be required to render decisions in application of articles R.20-44-34 and following of the Post and Electronic Communications Code;
- it is up to the applicant to ensure that the term he/she/it wishes to use does not infringe the rights of others;
- it is up to the rights owner to protect his/her/its rights and defend them;
- it is up to the registrar to ensure that its customers comply with all of the legal and regulatory provisions in force as well as the Naming Charters.

Through its dispute management policy, AFNIC tries to enable everyone to find their place in the process and adopt the strategy that is best suited to their situation.

In order for the most complete information possible to be available, even though it is not exhaustive, AFNIC makes it possible to access from its web site various decisions rendered by the courts, extra-judicial bodies and itself.

## 1. Prevention and monitoring

First and foremost, prevention and monitoring are the best weapons! It is necessary for a company to define a registration strategy by adapting its registrations to its business activity and by being aware of any disputes through personal monitoring or recourse to an automated monitoring service (some [registrars](#) offer that type of service). The reason for this is:

1. to become aware of the situation as quickly as possible and put an end to the interference as soon as possible,
2. not to lose proof of any bad faith on the part of the holder,
3. not to risk being blamed for failing to react should there be an application for an summary order.

At this stage, it is possible to try and avoid embarking on judicial or extra-judicial procedures, and to favour direct negotiation with the domain name holder. The name and address details of the holder are available in the [Whois](#) database, subject to the obligations connected with the protection of personal data.

## 2. Non-contentious solutions available to rights-owners

### 2.1 Reach the administrative contact of a domain name under restricted publication

Pursuant to the data protection law of 6 January, 1978 and at the request of the [CNIL](#) (French Data Protection Authority), AFNIC has introduced specific protection for the personal data of individuals for their registration with *.fr* and *.nom.fr* domains.

This data, which is protected by default, is not accessible through the public [Whois](#) service and only appears under the label "restricted publication". It is made public only if the domain holder has specifically asked for it to be.

In order to contact a holder benefiting from restricted publication, a rights holder can use the tool for communicating with the administrative contact for the domain name, available at the following address: [www.afnic.fr/outils/formulaires/contact-admin](http://www.afnic.fr/outils/formulaires/contact-admin).

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

AFNIC then proceeds to transfer the message issued without checking its content, without any control over the result nor a check on the correctness of the address details of the recipient, nor verification of the identity of the sender.

There is no guarantee of a reply from the administrative contact, nor even a guarantee that the recipient even received it and was made aware of the message transmitted. The recipient is free to reply and to decide whether or not to transfer the electronic mail to the domain name holder if they are two different entities.

## 2.2 Request for disclosure of personal data

AFNIC may proceed, at the request of a third party, to the removal of the anonymity status of an individual holding a *.fr* domain name registered with restricted publication.

AFNIC provides details of the name and address of the holder, to the issuer of the request, within few days, after checking that the domain name is identical or similar to a protected sign (typosquatting, dotsquatting, etc.).

Thus, every application must be supported by evidence proving that it is justified.

To register a substantiated application for revealing personal data, the rights-owner must use the form made available from the purpose from the following address: [www.afnic.fr/outils/formulaires/divulgation-donnees](http://www.afnic.fr/outils/formulaires/divulgation-donnees).

AFNIC's refusal to satisfy a request to disclose personal data does not make it legally liable.

However, personal data may be disclosed by AFNIC at the request of French law enforcement agencies.

## 2.3 Request to check compliance with the Charter

The *.fr* [Naming Charter](#) provides for *.fr* domain names to be allocated to individuals or corporate entities with a link of attachment to French territory.

Whatever the status of the holder (individual or corporate entity), it is possible for a rights-owner to ask AFNIC to check:

- that the information supplied in the [Whois](#) database is correct and makes it possible to contact the holder of the domain name ;

- and that the holder who is an individual complies with the criteria for eligibility, i.e. that he/she is of age and has an address in France.

This request may be made by completing a form available at the following address: <http://www.afnic.fr/outils/formulaires/verification> and will be transmitted by AFNIC to the registrar responsible for the domain name after checking its admissibility.

AFNIC will communicate the answer obtained from registrar to the applicant and, in the case of unsuccessful checks, will apply the provisions of the charter (blocking and deletion of the domain name).

### **3. Dispute solutions available to rights-owners**

#### **3.1 Extrajudicial procedures for dispute resolution (ADR)**

"Alternative dispute resolution procedures " (ADR) are extra-judicial means available to anyone who considers that third party is adversely affecting their rights by registering a domain name ending in *.fr* and/or by using such a name in such a way as to damage them.

There are three procedures, each managed by a different body: the CMAP (Centre de Mediation and d'Arbitrage de Paris) [Paris Mediation and Arbitration Centre], the WIPO [World Intellectual Property Organisation] and le Forum des droits sur l'internet (FDI) [Internet Rights Forum].

The [details](#) of these bodies and additional information about the ADR are available on the AFNIC site.

These procedures have the advantage of ensuring that matters will be dealt with quickly and predictably (a maximum of one or two months) and at a low price (from nothing to less than 1500 euros).

These procedures are not intended to award damages with interest to the rights-owner. Note that the holder of a “disputed” domain name can refuse to participate in proceedings involving an online recommendation of the FDI or a mediation of the CMAP.

On the other hand, the holder of a disputed domain name cannot refuse to be the subject of ADR proceedings conducted by the WIPO Arbitration Centre. In this context, should an unfavourable decision be made, the domain name holder may ask for a stay of execution of a decision by applying to the national courts.

Finally, only WIPO decisions are enforceable and will result in a decision to circulate or delete a domain name.

In every case, AFNIC does not become involved either in the assessment or in the decision-making process.

### 3.2 Dispute resolution procedure for obvious breaches of the provisions of the Decree of 6 February, 2007

AFNIC, in its capacity as registry of French Internet Top Level Domains, is proposing a dispute resolution procedure for obvious breaches of the provisions of the decree dated 02/06/2007 covering domain names under its management.

Obvious breaches are defined as cases in which the illegal nature of the domain name registration is in no doubt.

Applications must be filed on line and the cases will be analysed by AFNIC, which will render substantiated decisions that it will publish on its web site after ensuring that the names of individuals remain anonymous.

This procedure would make it possible to achieve a decision for the transmission, blocking or deletion of the domain name within a minimum of 45 days; throughout the term of the procedure, the domain name would be frozen

Before implementing the decision, AFNIC must allow the parties to refer the matter to the national jurisdictions or institute an Alternative Dispute Resolution procedure ([ADR](#)) as provided for under the provisions of the Naming Charter.

The details of these proceedings as well as their implementation are available from the following address: <http://www.afnic.fr/doc/ref/juridique/predec>

### 3.3 Judicial proceedings

At any event, the rights-owners retain the option of applying to the courts in order to settle a domain name dispute.

The choice of the competent court remains more difficult to define since it depends on various criteria.

In general, the competent court is that of the residence of the “disputed” holder but may vary depending on the subject of the dispute, the amount of the damage claimed and the individual or body that involved in the case.

If the procedures make it possible to obtain damages with interest, the time frames, costs and outcomes are hard to predict, as are the implementation of the decisions ("procedure for enforcement outside the jurisdiction " where the decision is rendered by a foreign court).

It is not necessary to involve AFNIC as being liable in order for it to apply a court order: the Naming Charter provides for conditions whereby court orders can be implemented

## 4. An exceptional case: massive and obvious breach of the Charter

AFNIC reserves the right to intervene where the registration of domain names by a single holder is massive, manifestly contrary to the [Naming Charter](#), and where AFNIC has recorded numerous complaints involving names deposited by this holder.

The cumulative effect of these three criteria is an essential and decisive element capable of triggering action.

In this exceptional situation, AFNIC sends an alert through the registrar used by the holder who has committed the breaches and may proceed to block all of the domain names of the holder in the absence of a reply or correction made by the holder within a period of fifteen days.

Removal of the blockage of domain names is possible, either through a court order or if AFNIC receives no complaint, claim or request for the circulation of any of these domain names for a consecutive thirty-day period.

In the meantime, AFNIC may proceed to the transmission or deletion of the domain names that have been the subject of a formalised agreement between the holder and the third party under the current procedures.

The blocking of disputed domain names is therefore non-definitive and is designed to be an interim measure to enable a third party that has made itself known and other potential rights-owners to initiate discussions with the holder.

This procedure must remain exceptional and cannot be substituted for dispute resolution procedures nor for legal action if any.

The details of such proceedings as well as their implementation are available at the following address: <http://www.afnic.fr/doc/ref/juridique/violation-charte>