

# Rewriting the domain name Law in France

---

**Mathieu WEILL**

**Carthagen, ICANN, December 8th, 2010**

## How it all began...

- **Electronic communications act, July 2004:**
  - Each ccTLD manager for France to be appointed by Minister
- **Decree (executive order) on domain names management rules and principles, 6 February 2007:**
  - ccTLD Manager to be appointed after competitive tender
- **Public consultation on French ccTLDs, spring 2009 :**
  - Broad support for AFNIC
  - Few improvements identified
- **Call for tenders issued 16 January 2009**
  - *.fr* management only
  - Award of *.fr* management for 7 years
- **Submission deadline : 15 march 2009**
- **And...**



## And the winner is...

- **Ministerial order Feb 19th 2010:**

**Art. 1<sup>er</sup>.** – L'Association française pour le nommage internet en coopération (AFNIC) est désignée pour exercer la fonction d'office d'enregistrement du domaine de premier niveau du système d'adressage par domaines de l'internet correspondant au « .fr » pour une durée de sept ans.

- **Convention between AFNIC and Ministry signed at the same date.**

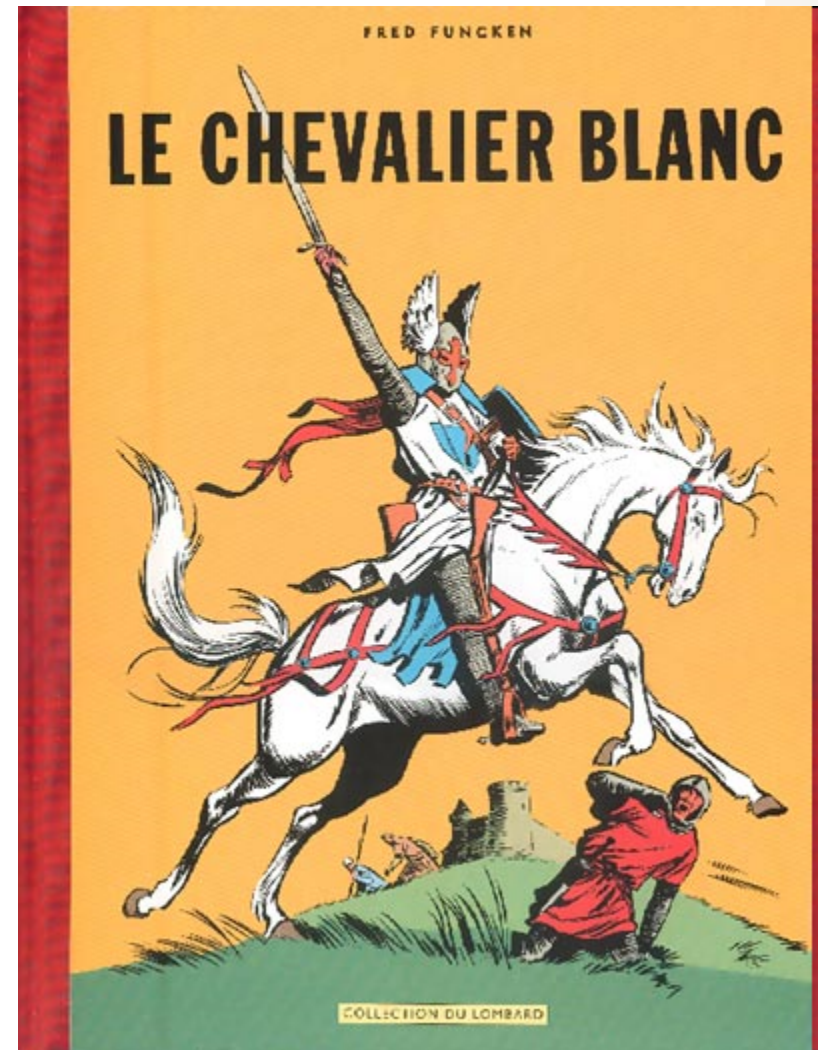
- **References :**

<http://www.afnic.fr/actu/nouvelles/243/le-fr-ce-qui-va-changer>



# The Case

- **The Ministry decision to appoint AFNIC is challenged in court**
  - Challenge mainly focused at some policy implications
  - Essentially dispute resolutions, reserved names, etc.
  - By a young and skilled lawyer, civil liberties advocate, acting in « *his own personal capacity* »
- **Early on, he requests the Constitutional Council to check the French Law on domain names against constitution's principles**

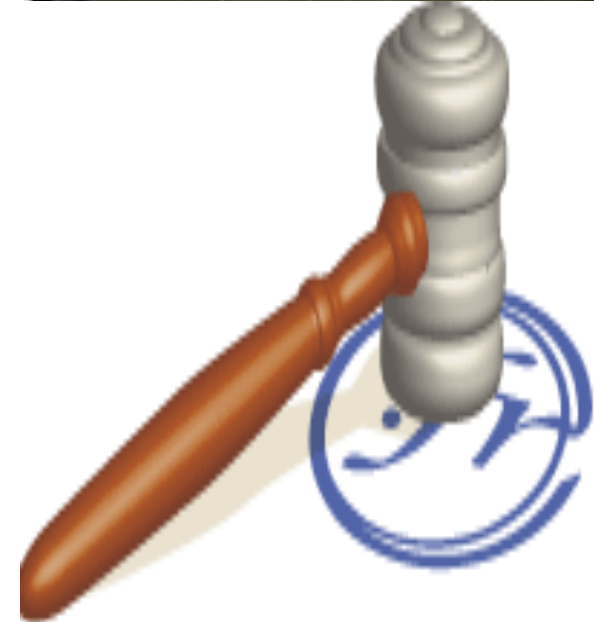
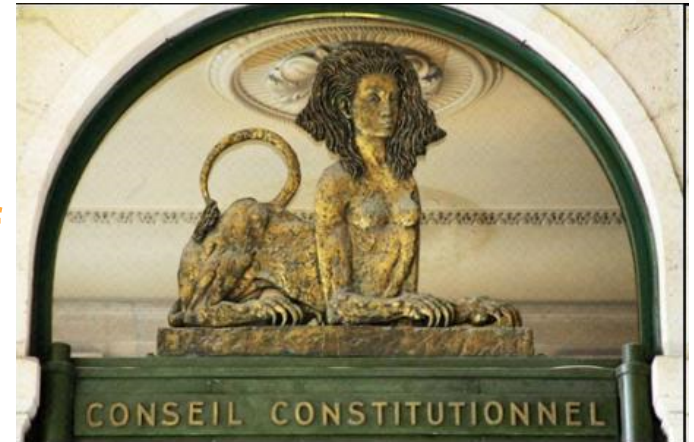


## French Legal Framework and Registry Policies

<b>Source</b>	<b>Who decides ?</b>	<b>Contents</b>
<b>Law</b>	<b>Parliament</b>	Basic principles, appointment of ccTLD manager
<b>Decree</b>	<b>PM</b>	TM protections, city and institutions names, DRP, role of registry...
<b>Ministerial</b>	<b>Minister</b>	Appoints ccTLD manager, limits to role of registry, eligibility rules, 1st come 1st served,
<b>Charter</b>	<b>AFNIC</b>	Procedures, role of registrars

## Decision of the Constitutional Council

- **On oct. 6th, cancels the Domain Name Law**
- **« Law insufficiently addresses balance between Freedom of Expression, freedom of Trade and protection of rights, including IP rights and registrant's rights »**
- **Given the potential consequences, cancellation enters into force on July 1st, 2011**
- **Decisions taken before or until that date remain valid.**
- **Does not target AFNIC appointment or decisions**
  - But wipes out legal basis for appointment



## Potential consequences on July 1st, 2011

Source	Who decides ?	Contents
Law	Parliament	<del>Basic principles, appointment of ccTLD manager</del>
Decree	PM	TM protections, city and institutions names, DRP, ? role of registry...
Ministerial	Minister	Appoints ccTLD manager, limits to role of registry?, eligibility rules, 1st come 1st served,
Charter	AFNIC	Procedures, ? role of registrars

## Now what ?

- **One certainty : we don't know exactly what happens on July 1st**

- expert study ordered
- impact assessment on all aspects of registry policies and business
- scenario analysis launched

- **Parliament has 9 months to issue new Law**

- huge challenge !
- last week, amendment introduced by Mr Lionel TARDY, MP to create a new legal framework, more detailed
- lobbying going to number 1 priority on agenda





## Lessons learnt (the hard way !)

- **There is more to domain names than Intellectual Property Rights**

- Freedom of Expression, Registrant rights recognized
- Domain names are not only a subcategory of IP rights



- **More legal framework does not imply better legal security**

- Decisions by public authorities are sometimes more exposed in courts



- **Consider the « policy reset » scenario in your contingency plans**

- Crisis communication
- Pre-emptive lobbying
- Take risk into account when defining policies

# Questions ?

---

[Mathieu.weill@afnic.fr](mailto:Mathieu.weill@afnic.fr)