RESPONSE PRESENTED BY TRANS EUROPE EXPERTS TO THE CONSULTATION "A CLEAN AND OPEN INTERNET" ON PROCEDURES NOTIFYING AND ACTING ON ILLEGAL CONTENT HOSTED BY ONLINE INTERMEDIARIES

COORDINATION

This response to the Commission's Consultation has been coordinated by the **Contract, Consumer and Electronic Commerce Pole** directed by Martine Béhar-TOuchais and the **Intellectual Property Pole** directed by Célia Zolynski of **Trans Europe Experts**.

CONTRIBUTORS

Valérie-Laure Bénabou, Law Professor at Versailles Saint-Quentin University, Member of the Intellectual Property and Contract, Consumer and Electronic Commerce Law Poles of Trans Europe Experts
Céline Castets-Renard, Lax Professor at Toulouse I University, Member of the Intellectual Property and Contract, Consumer and Electronic Commerce Law Poles of Trans Europe Experts
Ronan Hardouin, Docteur en droit, Chargé d'enseignements in Master 2 Electronic Commerce and Digital Economy of La Sorbonne School of Law, Paris I Panthéon-Sorbonne University, Member of the Contract, Consumer and Electronic Commerce Law Pole of Trans Europe Experts
Cédric Manara, Law Professor at Edhec Business School, Member of the Intellectual Property and Contract, Consumer and Electronic Commerce Law Poles of Trans Europe Experts
Grégorgy Voss, Law Professor at Toulouse Business School, Member of the Intellectual Property and Contract, Consumer and Electronic Commerce Law Poles of Trans Europe Experts
Célia Zolynski, Law Professor at Rennes I University, Director of the Intellectual Property Pole of Trans Europe Experts, Member of the Contract, Consumer and Electronic Commerce Pole of Trans Europe Experts

5. What is / are the category/ies of illegal content of greatest relevance to you in the context of N&A procedures?

- Incitement to hatred or violence (on the basis of race, religion, gender, sexual orientation, etc.)
- Child abuse content
- Terrorism related content (e.g. content inciting the commitment of terrorism offences and training material)
- Intellectual property rights infringements

Please specify:

The N&A procedures are aimed at speeding up the removing of, or the disabling of, access to illegal content. The stakeholders directly ask to the hosting service provider with no intervention of a judge - to remove or disable access to purportedly illegal content. As these procedures do not put in play the adversarial principle, they should not be applied to all contents. If the application of the adversarial principle has exceptions, these must be limited. This is why content of the greatest relevance of N&A procedures should be that for which the hosting service provider becomes aware of their illegality himself.

In our opinion, illegal content of greatest relevance in the context of N&A procedures are that which imply the least ambiguity / vagueness for hosting providers. This is the case for incitement to hatred or violence (on the basis of race, religion, gender, sexual orientation, etc.), child abuse content, terrorism related content (e.g., content inciting the commitment of terrorism offences and training material).

Infringements to intellectual property rights are more debatable: it is very hard to consider that the hosting providers can have knowledge of the illegality of content (ie, content displayed without the right holders' authorisation), when they merely receive a notification. Nonetheless, holders of IP rights frequently use this procedure. And in practice, it often occurs that the notification is justified and aims at content that does infringe IP rights. In general, the French rights holders, who send the notice, can be considered as trustworthy. For example, collecting societies which represent authors may be considered as making notifications in good faith and on the basis of trustworthy information. Thus, the hosting provider confronted with a notice provided by such an organization, would be able to remove or disable contents without needing the case to be referred to court (for either confirmation of illegality or liability for unjustified removal of legal content). As it were, there could exist a kind of presumption for some stakeholders which have proven or provided evidence of their trustworthiness, which could allow to take down content more swiftly and with more legal security. But this solution may result in discriminating right holders and making it more difficult to remove infringing content for individuals, which is not consistent with international copyright rules.

With regard to defamation and privacy infringements under French Law, defamation does not trigger liability when the alleged defamer provides evidence of his good faith. Consequently, this type of offence requires the intervention of a judge or, at least, the application of the adversarial principle. By definition, such categories of content cannot be considered as illegal content of the greatest relevance to us in the context of N&A procedures.

Other types of content may prove to be more problematic: the illegal offer of goods and services is a far too general category to be considered as illegal content of greatest relevance in the context of N&A procedures because even if illegal arms or fake medicines might be considered as such, the hosting provider will not necessarily have knowledge that such content belongs to the category of illegal contents without a court decision.

This is also the case concerning contents facilitating phishing, pharming, hacking or infringement of consumer protection rules. Even if a hosting provider can presume the illegality of content belonging to these categories, it can hardly be certain.

II Notice and action procedures in Europe

6. To what extent do you agree with the following statements on notice-and-action procedures?

Action against illegal content is often ineffective: **I partially agree**
(Hosting providers might be responsive but illegal content often reappears quickly, which might trigger mutliple notifications and increase the cost implied by such procedures. In this case the effectiveness of the action is challenged by the fact that upstream, the sender of notification might be discouraged by the transaction costs.

Action against illegal content is often too slow: **I completely disagree**

Hosting service providers often take action against legal content: **I completely disagree**

There is too much legal fragmentation and uncertainty for hosting services providers and notice providers: **I completely agree**

7. To what extent do you agree with the following statements on Article 14 of the E-commerce Directive?

The exact scope of "hosting" is sufficiently clear: **I disagree**

The terms "actual knowledge" and "awareness" are sufficiently clear: **I disagree**

The term "expeditiously" is sufficiently clear: **I disagree**

8. In your opinion, what activities should be considered as "hosting"?

Social networks, Video-sharing sites, E-commerce platforms, Blogs and interactive dictionaries.

Please specify:

France has provided a notice-and-action procedure, which should have been read in accordance with the *Conseil Constitutionnel's* decision of 10th Jun 2004. This decision can be used as kind of guideline, for hosting service providers to know whenever they must remove or disable access to content denounced as illegal. Concretely, it ensues from the *Conseil Constitutionnel's* decision that the hosting provider should delete illegal content when it is clearly illegal - which is not the case of all contents denounced[1] - or when a judge rendered a decision on the illegality[2].

Nevertheless, it seems that French judges are taking no notice of the *Conseil Constitutionnel's* decision and they enforce the quick removal of contents whenever the notice is in conformity with the formalism required by the LCEN[3], despite this statement of the Conseil. Hosting service providers being afraid to be considered liable if they don't take action on the content denounced remove it as soon as they receive a notice from rights holders, not taking into account the risk of infringement of the freedom of speech or the adversarial principle[4].

[1] See above.
[2] In this case, stakeholders can't use the notice-and-action procedure to speed up the removal of the content.
[3] LCEN (law for the confidence in the digital economy) is the law which transposed the e-commerce directive.
[4] See e-directive, whereas 9.

Considering the way the hosting provider enforce the notice-and-action procedures, it can be said that it is, from this perspective, both effective and quick.

To compensate the non-intervention of judges in the notice-and-action procedures, the French law punishes the act of wrongly denouncing contents, which turn out to be not illegal. But this procedure is governed by strict conditions as the denunciator's awareness of the content legality. Yet, in practice, this sanction rarely applies as the denunciator often acts in good faith, not always being aware of the legality of the content.

French court decisions have been numerous and have often been varying on the appreciation of legality of content or obligations of the hosting provider, increasing fragmentation and uncertainty on the enforcement of the procedure.

Concerning the scope of "hosting" terms and its clarity, judges have extended this quality since 2007. If initially the notion of hosting was reserved to the sole hosting service providers who stored contents on their servers, nowadays it also encompasses activities of web 2.0 such as social networks, video-sharing sites, e-commerce platforms, blogs and interactive dictionaries. According to the CJEU's decision of 23th March 2010 (Joined Cases C-236/08 to C-238/08), a hosting service provider is someone who: (i) stores contents provided by a recipient of the service so as to communicate them to the public; (ii) is neutral regarding contents. From this, it appears that the nature of contents or activities is not a criterion to characterize activity provided by hosting service providers. Together these conditions are: providing the service described by article 14[5] of the Directive and being neutral[6].
The search engine case raises some questions and, in particular, about the search engine possibility to benefit from hosting service providers regime. In practice, it is possible to note that search engines are acting as if they were hosting service providers and take down contents when they receive a notice from a stakeholder. The French Cour de cassation seemed to agree with this practice in three decisions of 12th July 2012 even if judges didn't say clearly that search engines activity must be qualified as a hosting service provider. The status of the search engine not being currently defined under French law, there is an on-going discussion (notably at the CSPLA at the ministry of culture) on the opportunity to apply the N&A procedures to search engines.

Pursuant to Article 14 (1) of the Directive, the understanding of terms "knowledge" and "awareness" needs to be replaced in the context of the directive.
It seems that the directive distinguishes between two situations. On the one hand, the situation in which hosting service providers have the actual knowledge of illegal activity and, on the other hand, the situation in which hosting service providers are aware of the appearance of illegal activity or information. Consequently, the directive distinguishes between two situations in which the level of knowledge of illegality is different. To put it plainly, the notion of "certainty" ensues from the first situation. The hosting service provider will be able to cancel the content when and only when he will have the actual knowledge of the content illegality. To warrant the certain illegality, the hosting service provider needs to have a judgment in this sense. This is the only way to be certain. Unlike in the first situation, in the second, the hosting service provider only needs to be aware and does not need to have the actual knowledge of illegality. Consequently, in this second case, the certainty of illegality is not required to ask for the removal of, or disabling of access to content. It could solely have the "appearance" of illegality. In other words, the notion of "certainty" doesn't appear in the second case. The hosting service provider's action to cancel the content doesn't need to be based on a judgment. This means the rights holder's notice will be enough to enforce

[5] To be comprehensive, search engines (except when they host content - like Google Images for example. But, in any way, the fact to purpose merely a link is not constitutive of hosting provider activity), cyberlockers or cloud based services can't be qualified of hosting service provider. They don't provide a service defined by article 14.
[6] About the signification of this term, see below.

the hosting service provider to act in this way[7]. Concretely, it ensues from both situations actual knowledge of illegal content and awareness of the appearance of illegality different degrees of illegality and thus the service provider needs to know when it must have the judge's "green light".

In the first case, the hosting service provider needs to have the judge's "green light", because, concerning some contents, the notification is not enough to prove the illegality. Consequently, it means that the infringement is not apparent enough to enforce the hosting service provider to cancel the content. Contrary to this first situation, in the second, if the hosting provider must remove or disable access to the content on a simple notice from the stakeholder, it's because the notification is enough to consider the content as illegal. Then, the application of the first or second case depends on the nature of the contents. When this is clearly illegal, a notice will be enough. When it cannot be qualified as such, a judgment will be required. To resume, the hosting service provider will have the actual knowledge of illegality when a judge pronounces it so while it will be aware of the illegality when the content is "clearly" illegal. In this last case only, one of the possibilities to be aware of would be the N&A procedure. Conversely, the N&A procedures don't allow hosting service providers to have the actual knowledge and can't oblige the hosting providers to suppress the content when it isn't clearly illegal. Under French case law, the real problem is then to identify what is clearly illegal content and develop general criterion/criteria to define this notion. Unfortunately, until now, judges haven't drawn upon any criteria to define the notion of "clearly" illegal activity. The main issue is about the intellectual property rights. Are infringements of this kind of right clearly illegal or not? There is an actual need for clarification on this point at the European level.

III Notifying illegal content to hosting service providers

9. To what extent do you agree with the following statements?

It is easy to find pages or tools to notify illegal content? **I agree**

It is easy to use pages or tools to notify illegal content? **I agree**

It is generally easy to find the contact of the hosting service provider but the details of the notification requirements if any are note always clearly specified.

10. Should all hosting service providers have a procedure in place, which allows them to be easily notified of illegal content that they may be hosting?

Yes, even if this procedure is merely the sending of an e-mail to the address indicated on the hosting service provider's web page.

Please explain:

Generally, it seems that all websites, and more specifically the hosting service providers, supply, at least, an e-mail contact. Consequently, it is easy to inform the hosting provider that it is hosting an illegal content. It is enough to send an e-mail in accordance with the formalism described by the law[8].

In France, the hosting service providers must only put in place mechanisms to receive notifications of illegal content identified by the law and, specifically, by Article 6-I-7 of the LCEN. The link is available on the hosting service provider's web page.

[7] Nevertheless, the notice is not the only way to allow the hosting service provider to have the knowledge of the apparent illegality. In this meaning, see CJEU, 12th July 2011.
[8] e.g. LCEN, art. 6-I-5

11. If a hosting service provider has a procedure for notifying illegal content (such as a web form designed for that purpose) that is easy to find and easy to use, should illegal content exclusively be notified by means of that procedure?

No.

The procedure must be drawn in accordance with the law requirements and any valuable way to stop the communication of illegal content might be used. Any effort of standardization (European guidelines for example) might improve the efficiency of the system.

12. Do you agree with the following statements?

A notice should be submitted by electronic means: **yes**.
In regards to evidence law, electronic means have the same value as paper ones, provided that conditions for their use are complied with.

A notice should contain contact details of the sender: **yes**.
If the request does not comply with the law requirements, the hosting provider will be able to explain why it did not remove or disable access to content and thus avoid misunderstanding (and liablity as regards French law).

A notice should make it easy to identify the alleged illegal content (for instance by providing a URL): **yes**.
There are many cases in France in which the sender didn't provide the URL so as to indicate to hosting provider where was the content denounced. In these cases, judges decided that the hosting provider did not have the duty to remove or disable access to the content. There is also the problem of a content available on multiple URL.

A notice should contain a detailed description of the alleged illegal nature of the content: **yes**.
All piece of information, which can help the hosting service provider to find the content, is welcome.

A notice should contain evidence that the content provider could not be contacted before contacting the hosting service provider or that the content provider was contacted first but did not act: **yes**.

13. Should there be rules to avoid unjustified notifications?

Yes.

Please explain:

See answer 8

14. How can unjustified notifications be best prevented ?

- By requiring notice providers to give their contact details
- By providing for sanctions against abusive notices.

Please explain:

"Requiring notice providers to give their contact details" or "providing for sanctions against abusive notices" allow notice providers to take awareness they cannot denounce any contents without legal reasons. In fact, this is a kind of free speech guarantee on Internet (see also question 21).

IV Action against illegal content by hosting service providers

15. Should hosting service providers provide feedback to notice providers about the status of their notice?

Yes.

Please explain:

Both solutions "send a confirmation of receipt" and "inform the notice provider of any action that is taken", are fine and can prove hosting service provider has diligently acted.

16. Should hosting service providers consult the providers of alleged illegal content?

Yes.

Upon reception of a notice, and before any action on the alleged illegal content is taken. That will prevent the disabling of legal content or its removal.

Please specify:

Nevertheless, we can imagine a short procedure in which the content provider should have just some days (2 for example) to exercise his adversarial right. If it didn't, the hosting provider will be able to remove the content denounced.

The response can be different if you defend stakeholders' interests. Indeed, the time required conferring with the provider of alleged illegal content delays the removal or disabling access to the content.
Nevertheless, such delay guarantees that the adversarial principle will be respected but shall not be too long in order to limit the harm caused by the communication of the public of the content. If the content provider remains silent after a certain period of time, this silence may be interpreted as an implied consent to the removal.

17. Assuming that certain content is illegal, how should hosting service provider act?

"Other" and why not "the hosting service provider should first disable access to the illegal content".

Please specify:

The hosting providers should not remove or disable access to the content if they are not sure it is illegal. But, by definition, insofar as, in application of N&A procedure, the judge is not present, so the hosting service provider cannot fully be certain of the illegality. Yet, it may be possible to apply a kind of preventive principle and ask for the hosting providers to merely disable the content. If the content turns out to be legal, it will be faster to put it online again. Removal is a solution too disproportionate when the hosting provider cannot know with certainty that the content is illegal.

18. When the same item of illegal content is hosted by several providers, which hosting service provider should act against it?

Other

Please specify:

Rather either. When the content is illegal, the most important is to avoid the public communication thereof. It seems that any hosting providers can act to avoid that. France put in place a quick procedure – an emergency appeal of judge in application of article 6-I-7 of the LCEN, which allows asking for specific monitoring. This procedure enables rights holders to ask courts that they order hosting service providers: (i) to remove or disable access to the illegal content; (ii) to monitor specifically an illegal content to prevent it from coming back online again. This procedure seems to comply – though it has not been challenged yet - with the CJEU's decision and, more specially, with the decision SABAM vs Netlog decision of the 16th February 2012. In this case, the European judge refused to impose upon hosting service providers a general obligation to monitor contents because such an obligation would be not able to guarantee individual freedoms[9]. But, this does not mean that when individual freedoms are respected because a judge has already rendered a decision on the illegality of the content, it will be impossible to order hosting service providers to monitor this contents (see question 22).

19. Once a hosting service provider becomes aware of illegal content, how fast should it act?

As soon as possible depending on the concrete circumstances of the case. The starting point of the reaction shall be the moment when the content is proved to be manifestly illegal.

Please specify:

There are many kinds of hosting providers. Some are professional providers (social networks, video-sharing sites, e-commerce platforms, for example) other are just amateur providers (blogs for example). Yet, it appears, as a function of these qualifications, that the faculty to act may be different. The professional will presumptively be more reactive than the amateur. Consequently, it is, without any doubt, better to avoid putting in place a predefined time period. In case of difficulty, the judge will evaluate the situation.

20. Should hosting service providers act expeditiously on illegal content, even when there is a request from law enforcement authorities not to do so?

No. But the answer might depend on what is called "law enforcement authorities".

21. How can unjustified action against legal content be best addressed / prevented?

By consulting notice provider before any action is taken and by providing for sanctions against abusive notices.

Please specify:

To avoid any doubt about the illegality of contents, opening a short period of time during which the content provider can prove the legality of the content communicated might a good solution. Nevertheless, such discussion period might delay the removal of the illegal content and increase the harm due to the communication thereof. There is a need for a reasonable balance between those opposite interests. The duration of the discussion with the content provider has to be limited in order to prevent delaying tactics.

Sanctions might be criminal offenses because mere damages might not be enough deterrent as the evaluation of the prejudice for undue removal of legal content is sometimes difficult to prove. Another possibility is to deny the possibility to sue to the person who has made an unjustified notice.

22. In your opinion, should hosting service providers be protected against liability that could result from taking pro-active measures?

[9] See whereas 44 and followings.

Please explain:

If the judgment of the CJEU of 12th July 2011 can be interpreted in the sense that the awareness of the hosting provider can result from the facts and circumstances of the communication of the content, the same jurisdiction decided in a ruling of 16th February 2012 (C-360/10 SABAM C/ Netlog) such as a general filtering system, could not comply with the directive. The different relevant Directives read together and construed in the light of the requirements stemming from the protection of the applicable fundamental rights, must be interpreted as precluding a national court from issuing an injunction against a hosting service provider which requires it to install a system for filtering:

information which is stored on its servers by its service users;
which applies indiscriminately to all of those users;
as a preventative measure;
exclusively at its expense; and

- for an unlimited period,
- which is capable of identifying electronic files containing musical, cinematographic or audio-visual work in respect of which the applicant for the injunction claims to hold intellectual property rights, with a view to preventing those works from being made available to the public in breach of copyright.

As regards this ruling, it appears that pro-active measures taken by the hosting service provider, which would amount to such a general filtering system, would not comply with the EU acquis.

This decision is consistent with the French law, which limits the intervention of the hosting service provider to the mere content previously identified by the judge as illegal (Art. 6-1-7 para. 2), that is to say to ex post measures.

Nevertheless, French case law has progressively developed an obligation of "targeted filtering" on behalf of the average hosting service provider in order to enhance cooperation with the right holders on whom, in that context, relies the burden of the identification of the "targeted illegal content". Even if this case law might also raise difficulties as regards the protection of fundamental rights, it is generally considered as less infringing because of the limited scope of the content subject to the measure. Many scholars consider that the good will of pro-active hosting service provider shall not be deterred by principle of liability whereas negligence, on the contrary, would ensure an absence of liability to the hosting service provider.

Specifically, the need for such "cooperation" of the hosting service provider is stressed when the disputed content has already been removed after a fist N&A procedure and reappears. As regards copyright, this phenomenon is particularly important and makes more difficult the fight against repeated infringements. Therefore, some right holders advocate for a "stay down" procedure, which would involve pro-active measures of the hosting service provider (without the intervention of the court).

So far, such a system has not been implemented in the French law. Recent decisions from the Cour de cassation rendered the 12th of July clearly stated that such a stay down requires a decision from a judge.

In case the hosting service provider has received an order to implement a filtering system by the judge, the fact no to do so will make it liable as regards torts law.

If the hosting service provider happens to remove a content, which is not illegal, it shall be considered as a breach of the contract with the content provider, despite the fact that the general conditions of the contract authorise the hosting service provide to remove any kind of content at any conditions. Such general conditions may not be opposable to the content provider, as contrary to public order provisions.

VI The role of EU in notice-and-action procedures

23. Should the EU play a role in contributing to the functioning of N&A procedures?

Yes.

Please specify:

A combination of these options.

If the self-regulation may be interesting, it should not be conducted without a minimum of binding rules. In the opposite case, the self-regulation agreements would not be harmonized and would have some consequences on the N&A procedures. Indeed, we would be in the same situation that the one we are experiencing today.
It may be good that the EU provides some binding minimum rules and, on this basis, encourages self-regulation.

24. Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures?

Yes.

See question 5.

25. Do you wish to upload a document with additional comments?

No.

ANNEX

I. PRESENTATION OF TRANS EUROPE EXPERTS

Trans Europe Experts (TEE) is an association that was created in 2009 by five French legal academics who have a particular interest in Europe and realized the growing importance of "experts" for the European institutions:

Bénédicte Fauvarque-Cosson, Professor at Panthéon-Assas (Paris II) University, Co-President of TEE;

Judith Rochfeld, Professor at Panthéon-Sorbonne (Paris I) University, Co-President of TEE;

Denis Mazeaud, Professor at Panthéon-Assas (Paris II) University, Vice President of TEE;

Carole Aubert de Vincelles, Professor at Cergy-Pontoise University, General Secretary of TEE;

Catherine Prieto, Professor at Panthéon-Sorbonne (Paris I) University, Treasurer of TEE.

Trans Europe Experts aims at providing a network contributed to by various French and international universities, legal practitioners, politicians, economists and representatives of NGOs and other organizations, etc. It encourages the active participation of everyone in the elaboration of European law.

MISSIONS

Trans Europe Experts intends to promote the active participation of French experts, along with their European colleagues, in the discussions taking place in Europe, through a federative structure that permits coordinated, reactive and dynamic action.

Trans Europe Experts is composed of a large range of identified visible experts and constitutes an influential network enabling these experts to play a real part in the legal orientations taken in Europe.

The actions of Trans Europe Experts may be categorized as follows:

1. Expertise via a range of experts

The association is divided into different poles of expertise gathering academics, legal practitioners and representatives of the political, economic, social and non-profit sectors. This enables our experts to provide a comprehensive response to calls for expertise and invitations to tender at both European and national level.

2. Raising awareness of legal, social, economic and political sectors on European issues

TEE's experts can be approached for any information regarding European legal issues. Its actions are addressed to a large range of persons: politicians involved in European discussions, public authorities in

charge of European issues (particularly ministries), or representatives of economic and professional groups or associations.

Its mission takes the form of the organization of the European Legal Issues Forum in Paris, which takes place once a year. Contemporary legal issues are presented through a plenary session and workshops are organized around poles of expertise.

3. Organization of an influential network

TEE proposes to coordinate French and European actors who are already active in Europe in order to create an influential network that would be able to increase the presence of lawyers on the European scene. TEE enables them to work together in commissions composed of academics, practitioners and representatives of various institutions or associations.

ORGANIZATION

Experts belong to one or several poles of expertise that correspond to European legal concerns. News poles are created depending on research themes and European legislation.

TEE gathers more than 400 members (academics, *notaires*, *avocats*, solicitors, magistrates, Chamber of Commerce and Industry of Paris' members, Consumers associations, etc).

TEE has reached an influential position in European legal issues very quickly, in particular through its responses to tenders and Green Papers of the European Commission.

Trans Europe Experts is managed by a board of members, composed of the five founding members of the association elected at the General Assembly, as well as two members nominated by the Council.

It is organized around twenty poles of expertise, gathering French and foreign academics, as well as practitioners and representatives of the political, economic, social and non-profits sectors. Each pole is directed by a French academic specialized in that subject and active at a European level. Poles often work together.

The poles of expertise are:

Agri-Food Industry Law directed by **François Collard Dutilleul**, Law Professor at Nantes University and **Cécile Moiroud**, Maître de Conférences at Panthéon-Sorbonne (Paris I) University

Civil Justice directed by **Soraya Amrani-Mekki**, Law Professor at Paris Ouest Nanterre La Défense (Paris X) University

Company Law directed by **Bruno Dondero**, Law Professor at Picardie University and **Bernard Saintourens**, Law Professor at Montesquieu-Bordeaux IV University

Competition Law directed by **Catherine Prieto**, Law Professor at Panthéon-Sorbonne (Paris I) University and **David Bosco**, Law Professor at Nice University

Contract, Consumer and Electronic Commerce Law directed by **Martine Béhar-Touchais**, Law Professor at Paris Descartes (Paris V) University

Criminal Law directed by **David Chilstein**, Professor at Artois University

Discrimination and Fundamental Rights directed by **Stéphanie Hennette-Vauchez**, Law Professor at Paris Ouest Nanterre La Défense (Paris X) University

Environmental Law directed by **François-Guy Trébulle**, Law Professor at Paris Descartes (Paris V) University

Financial Services Law directed by **Luc Grynbaum**, Law Professor at Paris Descartes (Paris V) University

Freedom of Movement directed by **Jean-Sylvestre Bergé**, Law Professor at Paris Ouest Nanterre La Défense (Paris X) University and **Loïc Azoulai**, Law Professor at Panthéon-Assas (Paris II) University and at the European University Institute of Florence

Fundamental Rights and Family Law directed by **Estelle Gallant**, Maître de conferences at Panthéon-Sorbonne (Paris I) University

Health Law directed by **Anne Laude**, Law Professor at Paris Descartes (Paris V) University

Immigration Law directed by **Karine Parrot**, Law Professor at Valenciennes University and **Jean Matringe**, Law Professor at Versailles-Saint-Quentin University

Intellectual Property Law directed by **Célia Zolynski**, Law Professor at Rennes University

International Private Law directed by **Sylvaine Poillot-Peruzzetto**, Law Professor at Toulouse University and **Etienne Pataut**, Law Professor at Panthéon-Sorbonne (Paris I) University

Labour Law directed by **Pascal Lokiec** and **Sophie Robin-Olivier**, Law Professors at Paris Ouest Nanterre La Défense (Paris X) University

Law of Securities directed by **Pierre Crocq**, Law Professor at Panthéon-Assas (Paris II) University

Property Law directed by **Hugues Périnet-Marquet**, Law Professor at Panthéon-Assas (Paris II) University

Public Procurement and Public Services directed by **Stéphane Rodrigues**, maître de conferences at the Sorbonne Law School of Panthéon-Sorbonne (Paris I) University

Tort Law directed by **Jean-Sébastien Borghetti**, Law Professor at Panthéon-Assas (Paris II) University

II. PRESENTATION OF THE CONTRACT, CONSUMER AND ELECTRONIC COMMERCE LAW POLE

This pole is directed by **Martine Béhar-Touchais**, Law Professor at Paris Descartes (Paris V) University.

mo.touchais@wanadoo.fr

The pole of expertise Contracts, Consumer and E-commerce Law is at the heart of the current development of European law.

The single market implies that European consumers can contract with any operator of the European Union, possibly by Internet. France has always been rather protective towards consumers by granting them extensive rights and considers all European consumers should benefit from it against excessive and unfair practices.

Besides, the general theory of contracts could be reformed by European directives related to Consumption and E-Commerce Law. That is why it is essential that French lawyers take part in these European discussions.

This pole has been particularly active since the creation of TEE.

It has very quickly been awarded a Framework contract by the European Parliament after answering an invitation to tender. It has consequently responded to several calls from the Parliament (Framework Directive on consumers' rights, Optional Instruments).

In 2010, five working groups were formed so as to answer the Commission's Green Paper on European Law of Contracts (consultation launched on July 1st 2010): three groups in the Contract Law Pole, one group in the Property Law Pole and one group in the International Private Law pole. These groups prepared very detailed answers that were sent separately to the European Commission under the names of their authors, members of TEE. A sixth answer was elaborated as a synthesis of the first five answers and was published by the association itself as the Volume 1 of the TEE Collection (edited by the Société de Législation Comparée).

Another working group of the Contract Law pole met regularly so as to follow the work of a group of experts designated by the European Commission on European Law of Contract. After the Regulation Proposition on European Common Law of sale was published (October 11st, 2011), this group still meets with representatives of the Chamber of Commerce and Industry of Paris and regularly sends the results of its discussions to the European Commission.

At the end of 2011, an important study on optional instruments (including the Regulation Proposition on European Common Law of Sale) was delivered to the European Parliament. This study was led by Bénédicte Fauvarque-Cosson and Martine Béhar-Touchais. Fifty participants from various backgrounds and from 15 Member States took part in it by answering a detailed questionnaire written in conjunction with the European Parliament.

In November 2011, another working group was formed to study "online gambling" with a view to establish a report that is about to be sent to the Commission.

The pole also participated in TEE's response to the Commission's public consultation on collective actions that was launched by 3 General Directions: Justice, Health and Consumption, Competition. The result of this study, directed by Catherine Prieto, has been published in the TEE Collection (Volume 2, éd. Société de Législation Comparée).

III. PRESENTATION OF THE INTELLECTUAL PROPERTY LAW POLE

This pole is directed by **Célia Zolynski**, Law Professor at Rennes University.

celiazolynski@gmail.com

The Intellectual Property Law pole aims at promoting exchange and expertise on potential evolutions of EU legislation concerning copyright and related rights, trademark and patent law, and its translation in national law. This pole of expertise is mainly composed of legal academics who are experts on intellectual property. It also relies, either permanently or punctually, on the expertise of a range of legal practitioners or specialists on questions that appear in the course of consultations.

In March 2011, in association with the CERDI Laboratory (Paris-Sud XI) and the DANTE Laboratory (Versailles-Saint-Quentin University), the pole responded to the public consultation on the evaluation of Directive 2004/48/CE on the enforcement of intellectual property rights.

In November 2011, the pole responded to the Commission's Green Paper on the online distribution of audiovisual works. The pole's response will soon be published in the TEE Collection (Volume 6, éd. Société de Législation Comparée).

In July 2011, the IP pole was selected by the European Parliament and was awarded a Framework Contract related to external expertise in the field of intellectual property rights. The Pole was selected for two lots: the first one deals with copyrights and neighbouring rights and the second one deals with intellectual property, including patents, trademark, designs and models (IP/C/JURI/FWC/2011-01 et IP/C/JURI/FWC/2011-02).

Furthermore, the IP Pole organizes and participates in many scientific events. Every year, the IP pole takes an active part in the TEE Annual Forum dedicated to "European legal challenges" which takes place at the Chamber of Commerce and Industry of Paris. For its 2010 edition, the workshop was dedicated to the European challenges of digitisation of creations. In 2011, debates targeted the fight against online counterfeiting.

On May 1st 2011, the IP Pole also organised a workshop dedicated to the « the implication of online intermediaries in the fight against counterfeiting » in association with the CERDI Research Laboratory (contributions to be published, Coll. Trans Europe Experts, Volume 6, Ed. Société de Législation Comparée, 2012).

In 2012, the pole's workshop was dedicated to the European Code on Copyright Project (cf. "Pour un code européen du droit d'auteur?", LPA 2012/130 pp. 55-60).

The pole's experts are also often auditioned or consulted, either individually or together, by national and European authorities.