



PRINT MEDIA SA

Section 21 Reg No 1996/018251/08

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The Chairperson
Parliamentary Portfolio Committee: Home Affairs
P. O. Box 15
CAPE TOWN
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Dear Mr Chauke

At the meeting of the Parliamentary Portfolio Committee on Home Affairs on 16 May 2007, the issue as to whether the exemption in section 22(3) of the Films and Publications Act, 55 of 1996 ("the Act") had the effect of exempting newspapers entirely or partially from the provisions of the Act was debated.

Given the importance of the debate Print Media SA has obtained an opinion from its attorneys on this issue. We have enclosed the opinion as we would like to share it with you and we further request that the opinion be tabled to form part of your committee's deliberations.

We would like to once again take this opportunity to thank you for the consultative and participative manner in which you and your committee have engaged Print Media SA on the Films and Publications Amendment Bill.

Yours faithfully

Ingrid Louw
Chief Executive Officer
Print Media SA

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Attention: Ingrid Louw

24 May 2007

BY HAND

Dear Ingrid

CHAIRMAN
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FILM AND PUBLICATIONS AMENDMENT BILL

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FT Newham, BP Niha
SJ Oosthuizen, A Patel
DB Pinnock, JP Rossouw
BT Rubinstein, DM Thompson
ZC Twala, JP van Wyk
MF Whitaker, CI Whitey
DA Wilken, B Williams
JM Wilts-Hawinson

1 Introduction

1.1 At the meeting of the Parliamentary Portfolio Committee on Home Affairs on 16 May 2007, the issue as to whether the exemption in section 22(3) of the Films and Publications Act 65 of 1996 ("the Act") had the effect of exempting newspapers entirely or partially from the provisions of the Act was debated.

1.2 Given the importance of this debate to the members of Print Media SA, I confirm that you require ~~to be furnished~~ with an opinion on the extent of the application of the exemption in section 22(3) and with proposed amendments to the Act in the event of a finding that the exemption in section 22(3) of the Act does exempt newspapers from the provisions of section 27(1) of the Act.

2 The newspaper exemption

2.1 Section 22(3) of the Act provides as follows –

"A newspaper published, and a poster of a newspaper issued as an advertisement of any newspaper, by a publisher who is a member of the Newspaper Press Union of South Africa, shall not be subject to the provisions of the Act."

2.2 It is clear from the provisions of the Act that the exemption in section 22(3) is limited in application in two respects, namely –

2.2.1 the exemption is only of application to published newspapers and to posters of newspapers issued as advertisements; and

2.2.2 the exemption is only of application to newspapers published by publishers who are members of the Newspaper Press Union of South Africa, now known as the Newspaper Association of South Africa (NASA).

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- 2.3 All other publications (including newspapers published by publishers who are not NASA members) fall outside of the exemption and are subject to the classification and other provisions of the Act.
- 2.4 As to the ambit of section 22(3) of the Act regard must be had to the wording of the section itself and in particular to the words "*shall not be subject to the provisions of the Act*". These words in the section are indicative that the legislature intended to exempt newspapers and advertisement posters of newspapers published by NASA members from all of the provisions of the Act and not from some of the Act's provisions. This interpretation is even more compelling when one compares the general exemption under section 22(3) with the other more specific exemptions provided for in the Act.
- 2.5 Accordingly, the language of section 22(3) when contrasted with the provisions of the other more specific exemptions makes it clear that the newspaper exemption is of application to the Act in its entirety whereas the other more specific exemptions are only of application to certain sections in the Act. As such, newspapers and advertisement posters of newspapers published by NASA members are not subject to the provisions of section 27(1) whereas other persons are subject to that section.

3 Suggested Amendments

- 3.1 If the members of Print Media SA are to be made subject to the provisions of section 27(1) of the Act which is currently incorporated in section 24B (1) of the Films and Publications Amendment Bill [B27 -2006] ("the Bill"), the following amendments are required to be made to the Bill, namely –
- 3.1.1 Section 21(c) of the Bill is to be amended to read as follows –
- "Section 22 of the principal Act is hereby amended -*
- (c) by the substitution of subsection (3) with the following subsection:*
- "(3) "Save for the provisions of section 24B (1), a newspaper published, and a poster of a newspaper issued as an advertisement of any newspaper, by a publisher who is a member of the Newspaper Press Union of South Africa, shall not be subject to the provisions of the Act."*
- 3.2 Section 24B (1) of the Bill is to be amended to read as follows -
- 24B (1) - *"Any person who-*
- (a) unlawfully possesses;*
 - (b) creates, produces or in any way contributes to, or assists in, the creation or production of;*
 - (c) imports or in any way takes steps to procure, obtain or access; or in any way knowingly assists in, or facilitates, the importation, procurement, obtaining or accessing of;*
or

(d) *knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed, or assists in making available, exporting, broadcasting or distributing, any film, interactive computer game or publication which contains depictions, descriptions or sequences of child pornography or child abuse or which advocates, advertises, encourages or promotes child pornography or child abuse, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment."*

- 3.3 The definition of "child abuse" in the Bill must be retained in its present form.
- 3.4 The definition of "child pornography" in the Act must be retained in its present form'
- 4 Please call me should you have any queries or should you wish to discuss any aspect of the opinion with me.

Kind regards,

J L MACKENZIE

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PMSA - 23 MAY 2007