

**SUBMISSIONS TO THE AD HOC COMMITTEE ON THE PROTECTION OF
INFORMATION BILL B6-2010 IN THE NATIONAL ASSEMBLY**

SUBMITTED ON BEHALF OF PRINT MEDIA SOUTH AFRICA

25 June 2010

The Committee is requested to note that the parties wish to make an oral presentation during the hearings

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1. Introduction

- 1.1 These submissions on the Protection of Information Bill B6-2010 (“**the Bill**”) are made on behalf of Print Media South Africa (“**PMSA**”). PMSA is an umbrella body that represents the interests of the print media industry in South Africa. The primary objective of PMSA is to provide a forum for unified representation of its members at industry level in respect of all matters that affect the print media.
- 1.2 PMSA is organised into three operating bodies which address the needs of specific sectors: the Newspaper Association of South Africa, the Magazine Publishers Association of South Africa and the Association of Independent Publishers. Collectively, these associations represent over 700 newspaper and magazine titles across South Africa.
- 1.3 The members of PMSA include: ;
- 1.3.1 Associated Magazines (Pty) Limited , the publisher of amongst other titles, *Cosmopolitan, The Oprah Magazine* and *Marie Claire*;
- 1.3.2 Avusa Media Limited, the publisher of amongst other titles, the *Sunday Times, The Times, Sowetan, Sunday World, Business Day, Financial Mail* and *The Herald*;
- 1.3.3 BDFM Publishers (Pty) Ltd, the publisher of *The Business Day* and *Financial Mail*
- 1.3.4 Caxton CTP Limited, the publisher of amongst other titles, *The Citizen, Bona, Rooi Rose, Vrouekeur, People* and *Cleo*;
- 1.3.5 Independent News and Media South Africa Limited, the publisher of amongst other titles, *The Star, The Pretoria News, The Sunday Independent, The Cape Times, Cape Argus,* and *Post*;
- 1.3.6 Media 24 Limited, the publisher of amongst other titles, *City Press, Rapport, Beeld, Daily Sun, Die Son, Sondag Son; Sunday Sun, You* and *Huisgenoot* magazines, *Finweek, Drum, Destiny,* and *FHM* and *Heat* magazines; and
- 1.3.7 M & G Media Limited, the publisher of the *Mail & Guardian*.



- 1.4 A full list of the titles represented by PMSA is attached as **Annexure A** to these submissions.
- 1.5 The Protection of Information Bill was first introduced in Parliament in early 2008 by the then Minister of Intelligence, Ronnie Kasrils in the form of an earlier Bill ("**the 2008 Bill**").¹ Public submissions were invited and considered by the Ad Hoc Committee on Intelligence during 2008. Several aspects of the 2008 Bill, including those raised again in these submissions, were heavily criticised in the submissions made to the Ad Hoc Committee on Intelligence by various non governmental organisations, including media organisations.² In particular, serious concerns were raised about the overbroad definition of "national interest" contained in the Bill; the low threshold of harm which forms the basis of a classification decision; the classification of commercial information belonging to private entities; the absence of an independent oversight mechanism; and the absence of a public interest defence in respect of the offences created by the Bill.
- 1.6 It appears that the drafters of the revised version of the Bill (Bill B 6-2010) have, with respect, failed to give due consideration, or indeed any consideration at all, to the public submissions that were received by the Ad Hoc Committee on Intelligence concerning the previous version of the Bill and its deleterious impact on the right to media freedom. Indeed, not only does the Bill fail to address *any* of the fatal defects identified in the submissions in respect of the 2008 Bill, but, as will be explained below, the Bill contains further draconian, repressive and unjustifiable restrictions on media freedom. Given the extensive process of consultation and engagement that accompanied the deliberations in respect of the 2008 Bill, PMSA is most surprised and dismayed that the drafters of the Bill did not see fit to remedy the defects in the draft legislation, and instead appear to have adopted an approach diametrically at odds with the media's submissions on the 2008 Bill.

¹ The first version of the Bill was Bill B 28 - 2008.

² See in this regard written submissions made by Avusa Media Limited, the Freedom of Expression Institute, the Mail & Guardian, The South African National Editor's Forum, E-TV and jointly by the South African History Archive and the Nelson Mandela Foundation, all of which are available at <http://www.pmg.org.za/report/20080729-public-hearings-protection-information-bill-b28-2008>.



1.7 PMSA submits that aspects of the Bill are unconstitutional in that they offend the values of openness, accountability and transparency underlying the Constitution, and the constitutional rights to freedom of expression, media freedom, and access to information. In particular, PMSA submits that:

1.7.1 **The numerous criminal offences set out in the Bill, which carry punishments of up to 25 years in jail, would capture within their exceedingly wide net the important work of investigative journalists publishing information of public interest. This is because no public interest defence for the publication of classified documents or other protected information is created in the Bill.** For example if a South African newspaper published our equivalent of the Pentagon Papers (the classified United States report that documented the US's involvement in the Vietnam war from 1945 to 1967, and that revealed that successive US Presidents had deceived the public about this involvement),³ the journalists and editors involved could be jailed for up to 25 years, depending on the offence triggered. Furthermore, the offences apply whether or not the information that is published is in the public domain, which runs counter to important domestic and international jurisprudence.

1.7.2 **The Bill permits classification of documents that ought not to be classified at all in a constitutional democracy. This results in excessive secrecy and censorship of political expression. The Bill endorses this secrecy by creating overbroad definitions of concepts such as “national interest”, “security”, “state security” and “national security”; and then allowing classification based on speculative harm to these nebulous concepts.** For instance, the Bill would allow a classifier to keep from public view, on pain of criminal sanction, a document that the classifier thinks *may* be harmful to the “pursuit of justice” or democracy, or the “advancement

³ The New York Times broke the story in 1971, having been leaked the papers by one of the report's contributors. The publication resulted in a celebrated case in which the Supreme Court upheld the right of the newspaper and others to publish the reports: **New York Times v US** 403 US 713 (1971).



of the public good". The Bill creates a world where the thresholds for classifying government information are so low that it is inevitable that there will be a chilling effect on public discourse.

1.7.3 **The Bill undermines the open justice principle by seeking to regulate, again on pain of a criminal offence, access by the public to classified court documents which are before a court.** It does this by insisting that, for instance, a journalist should prove why he or she should be entitled to such information, rather than requiring the government to justify its claim for continued secrecy of the court document.

1.7.4 **The Bill entrenches an appeal process in respect of requests for declassification of documents that is deeply flawed in that no independent appeal body is created to deal with decisions not to declassify documents, but rather leaves this important check and balance in the hands of the minister under whose authority the organ which refused the request for declassification fell.** The conflict of interest is self-evident and ought not to be countenanced.

1.7.5 **The Bill leaves untouched the numerous pieces of legislation other than the Protection of Information Act, 1982, which regulate the classification of information.** These areas of law, which are deeply antithetical to media freedom, will remain firmly intact.

1.8 We structure our submissions as follows:

1.8.1 first, we examine the South African legal background against which the Bill's constitutionality must be assessed;

1.8.2 secondly, we detail and analyse aspects of the Bill that PMSA contends are clearly unconstitutional, under the following heads:

1.8.2.1 the various criminal offences that would hit journalists, and the lack of a public interest and public domain defence in this regard;



- 1.8.2.2 the inevitability of political censorship due to the proposed classification regime, especially the overbroad definitions contained in the Bill; the inapposite protection of commercial information; the speculative harm that is permitted to justify classification; and the lack of independent oversight in regard to requests to declassify information;
- 1.8.2.3 the inroads into the open justice principle through the treatment of classified information by courts; and
- 1.8.2.4 the failure to repeal existing legislation that deals with classified information.



2. The constitutional background

2.1 The values of openness, accountability and transparency

2.1.1 Openness is an underlying value of the Constitution of the Republic of South Africa 108 of 1996 ("**the Constitution**"). Thus section 1(d) provides that the Republic of South Africa is one democratic state founded upon a number of values, including "**a multi-party system of democratic government, to ensure accountability, responsiveness and openness**".

2.1.2 The openness principle permeates the provisions of the Constitution. For instance:

2.1.2.1 section 41(1)(c) provides that all organs of State must "**provide effective, transparent, accountable and coherent government for the Republic as a whole**" and;

2.1.2.2 section 195(1)(g) requires that the public administration of the Republic must foster transparency by providing the public with "**timely, accessible and accurate information**".⁴

2.1.3 Our courts have had occasion to consider these values in the context of information that should be made available to the public. For instance, in **Mthembi-Mahanyele v Mail & Guardian Ltd**,⁵ Lewis JA held:

The State, and its representatives, by virtue of the duties imposed upon them by the Constitution, are accountable to the public. The public has the right to know what the officials of the State do in discharge of their duties.⁶

⁴ This obligation applies to all organs of state: section 195(2) of the Constitution.

⁵ 2004 (6) SA 329 (SCA) at para 66.

⁶ See also **Transnet Ltd v SA Metal Machinery Co (Pty) Ltd**: 2006 (6) SA 285 (SCA) at para 55: "[Transnet Ltd] being an organ of State, is bound by a constitutional obligation to conduct its operations transparently and accountably. Once it enters into a commercial agreement of a public character like the one in issue ... the imperative of transparency and accountability entitles members of the public, in whose interest an organ of State operates, to know what expenditure such an agreement entails". And see **Intertrade Two (Pty) Ltd v MEC for Roads and Public Works, Eastern Cape** 2007 (6) SA 442 (C) at para 4; **South African Broadcasting Corporation v National Director of Public Prosecutions** 2007 (1) SA 523 (CC) at para 28.



2.1.4 In the case of **Independent Newspapers (Pty) Ltd v Minister for Intelligence Services**,⁷ which was concerned with balancing the principle of open justice with national security, Sachs J articulated the value of openness in terms that bear repetition:

An open and democratic society does not view its citizens as enemies. Nor does it see its basic security as being derived from the power of the state to repress those it regards as opponents.⁸

2.1.5 In the case of **S v Geiges**,⁹ where the State sought to have the trial of the seven accused of contravening nuclear non-proliferation laws held *in camera*, Labuschagne J held that the Constitution:

requires courts to observe open justice in the conduct of their proceedings; recognises the central role of the media, in particular, in ensuring open justice; and permits only the narrowest demonstrably justifiable infringement of the right of access to open court proceedings.¹⁰

2.2 The right to freedom of expression and of the media

2.2.1 Freedom of expression is protected by section 16(1) of the Constitution:

(1) Everyone has the right to freedom of expression which includes –
(a) freedom of the press and other media;
(b) freedom to receive or impart information or ideas ...

2.2.1.1 The importance of freedom of expression to an open and democratic society has been reiterated by our courts on numerous occasions. It suffices to mention one of the leading pronouncements of the Constitutional Court, its decision in **South African National Defence Union v Minister of Defence & Another**:¹¹

⁷ 2008 (4) SA 31 (CC) ("**the Masetlha case**").

⁸ At para 155.

⁹ 2007 (2) SACR 507 (T).

¹⁰ At para 61.

¹¹ 1999 (4) SA 469 (CC).



Freedom of expression lies at the heart of democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally.¹²

2.2.2 It should also be emphasised that freedom of the media – expressly protected by section 16(1)(a) of the Constitution – is inextricably connected with the right of the public to receive information and ideas (protected in section 16(1)(b) of the Constitution). It is an aspect of the right to freedom of expression that has received specific emphasis in the judgments of our highest courts:

2.2.2.1 in **Khumalo v Holomisa**,¹³ the Constitutional Court stated as follows:

The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the rights to freedom of information are respected;¹⁴

2.2.2.2 the Supreme Court of Appeal has also articulated the importance of media freedom in our democracy. In the **Bogoshi** case, the Court held that:¹⁵

[W]e must not forget that it is the right, and indeed a vital function, of the press to make available to the community information and criticism about every aspect of public, political, social and economic activity and thus to contribute to the formation of public opinion The press and the rest of the media provide the means by which useful, and sometimes vital, information about the daily affairs of the nation is conveyed to its citizens ...

2.2.2.3 In the recent case of **Brümmer v Minister of Social Development and Others (South African History Archives**

¹² At para 7. The Supreme Court of Appeal has similarly attached great prominence to the right to freedom of expression: see eg **National Media Ltd v Bogoshi** 1998 (4) SA 1195 (SCA) at 1206.

¹³ 2002 (5) SA 401 (CC).

¹⁴ At para 22.

¹⁵ **Bogoshi** (above) at 1209.



Trust and South African Human Rights Commission as Amici Curiae,¹⁶ Ncgobo J (as he then was) held:

The role of the media in a democratic society cannot be gainsaid. Its role includes informing the public about how our government is run, and this information may very well have a bearing on elections. The media therefore has a significant influence in a democratic state.¹⁷

2.2.3 Finally, it bears emphasis that government information, such as that regulated by the Bill, constitutes political speech that lies at the core of any freedom of expression guarantee, and that hence ought to receive heightened protection in our law. Restrictions on this type of speech – unlike, for instance, advertisements, pornographic images or celebrity gossip – impact directly on the nature of our democracy and such restrictions must be compelling to pass constitutional scrutiny.¹⁸

2.3 The right of access to information

2.3.1 Section 32(1) of the Constitution provides as follows:

- (1) **Everyone has the right of access to -**
 - (a) **any information held by the State; and**
 - (b) **any information that is held by another person and that is required for the access or protection of any rights.**

2.3.2 The Promotion of Access to Information Act 2 of 2000 ("**PAIA**") was promulgated to give effect to the constitutional right of access to information. The preamble to PAIA provides that PAIA has been enacted to, inter alia, "**foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information and actively promote a society in which the people of South Africa have effective access to**

¹⁶ 2009 (6) SA 323 (CC) .

¹⁷ At para 63 (footnotes omitted; emphasis added).

¹⁸ E Barendt *Freedom of Speech* (2nd edn, 2006) at 193.



information to enable them to more fully exercise and protect all of their rights".¹⁹

2.3.3 In terms of section 11 of PAIA, a requester must be given access to a record of a public body if the procedural requirements of PAIA are complied with, and access to the record is not refused in terms of a ground of refusal set out in PAIA. There is therefore a presumption of access to information held by public bodies, subject to their entitlement to invoke a ground of refusal recognised under PAIA to resist the provision of access to the information.

2.3.4 As was enunciated by Cameron J in **Van Niekerk v Pretoria City Council**:²⁰

In my view, s 23 [the predecessor to section 32 of the Constitution] entails that public authorities are no longer permitted to "play possum" with members of the public ... The purpose of the Constitution, as manifested in s 23, is to subordinate the organs of State . . . to a new regime of openness and fair dealing with the public.

2.3.5 More recently in **Brümmer** the Constitutional Court stated the following concerning the importance of the right of access to information in our democracy:

The importance of this right [the right of access to information] too, in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the state. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency "must be fostered by providing the public with timely, accessible and accurate information."

Apart from this, access to information is fundamental to the realisation of the rights guaranteed in the Bill of Rights. For example, access to information is crucial to the right to freedom of expression which includes freedom of the press and other media and freedom to receive or impart information or ideas.²¹

¹⁹ See also section 9 (c) and (e) of PAIA.

²⁰ 1997 (3) SA 839 (T) at 850.

²¹ At para 63 and 64.



2.4 National security as a limitation on constitutional rights

2.4.1 It is trite that no right is absolute. The rights to freedom of expression and access to information and the principle of open justice, may all yield to more compelling state interests, provided that such limitations are constitutionally justifiable.

2.4.2 PMSA accepts that one such compelling state interest that is in principle capable of legitimately restricting the constitutional rights of free speech and access to information, is the protection of national security.

2.4.3 In order to pass constitutional muster, such restrictions must comply with the requirements of section 36 of the Constitution:

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right;**
- (b) the importance of the purpose of the limitation;**
- (c) the nature and extent of the limitation;**
- (d) the relation between the limitation and its purpose; and**
- (e) less restrictive means to achieve the purpose.**

2.4.4 In the context of justification under section 36 of the Constitution in respect of the restrictions on fundamental rights contained in a statute, it is plain that **“it is for the legislature ... to establish this justification, and not for the party challenging it to show that it was not justified”**.²²

2.4.5 The point of departure with respect to the Bill is therefore that, although in principle it is legitimate for national security interests to justifiably limit rights, the burden of justification in this context is firmly upon the state. Provisions of the Bill that limit the rights to freedom of expression, media freedom and access to information will therefore not survive constitutional scrutiny unless these restrictions comply

²² **S v Makwanyane and another** 1995 (3) SA 391 (CC) at para 102.



with section 36 of the Constitution. PMSA submits that in the respects outlined below, the Bill fails dismally to meet this threshold test.



3. The unconstitutionality of aspects of the Bill

3.1 Criminal offences that undermine media freedom

3.1.1 PMSA submits that a number of the criminal offences set out in the Bill are unconstitutional in that they disproportionately hamper media freedom. A number of criminal offences are capable of application to investigative journalists:

3.1.1.1 clause 18 of the Bill ("**the continued possession offence**") states as follows:

A person who is in possession of a classified record knowing that such record has been communicated, delivered or made available other than in the manner and for the purposes contemplated in this Act, except where such possession is for any purpose and in any manner authorised by law,²³ must report such possession and return such record to a member of the South African Police Service or the Agency;²⁴

3.1.1.2 in terms of clause 39 any person who fails to comply with clause 18 is guilty of an offence and liable to a fine or to imprisonment for a period not less than three years and not exceeding five years, or to both a fine and such imprisonment;

3.1.1.3 under clause 32 ("**the espionage offence**") a person who unlawfully communicates classified State information "**which the offender knows or ought reasonably to have known or suspected would directly or indirectly benefit another state" (our emphasis) is guilty of an offence. The penalty for the offence varies from **five years to twenty-five years** depending on the level at which the state information which was**

²³ This exception is not helpful to the media because there is no legal authority for the media's publication.

²⁴ The effect of clause 18 is that a journalist who, for instance, comes into the possession of classified information, must, on pain of imprisonment, report this possession and return the record (presumably immediately) to the SAPS or the relevant security agency. This betrays a narrow understanding of the role of the media in investigating significant matters of public interest that may be contained in such a record. The effect of clause 18 is to criminalise continued possession of classified information. We note that possession of classified information is not a crime in the United Kingdom or the United States and there is also no duty to report the possession of classified information in either of these jurisdictions.



communicated was classified. Importantly, the 2008 Bill required the person to communicate the information "**with the intention to give advantage to another state**".²⁵ This requirement has now been removed and hence the potential for the crime to be applied to investigative journalists is enhanced;

3.1.1.4 the offence created under clause 33 ("**the hostile activity offence**") has been expanded in the same way as the espionage offence. Clause 33 makes it an offence to communicate information "**which the offender knows or ought reasonably to have known or suspected would directly or indirectly prejudice the State**". The penalty for the offence varies from **five years to twenty-five years** depending on the level at which the state information which was communicated was classified. The 2008 Bill required intention for this offence, and its removal enhances the potential for the offence to be applied to investigative journalists.

3.1.1.5 under clause 35(1) ("**the access offence**"), a person who "**intentionally accesses**" any classified information without authority is guilty of an offence, and may be imprisoned for 10 years;²⁶

3.1.1.6 clause 38 of the Bill ("**the disclosure offence**") is the provision most obviously engaged by the publication of classified information by the media:

Any person who discloses classified information or information referred to in section 11(3)(g) outside of the manner and purposes of this Act, except where such disclosure is for a purpose and in a manner authorised by law, is guilty of an offence and liable on conviction to imprisonment for a period not less than three years but not exceeding five years, subject to section 1(6);

²⁵ Clause 39 of the 2008 Bill.

²⁶ While this offence, especially in light of its heading ("**Interception of or interference with classified information**") is probably not designed to ensnare journalists, there is no definition of "access". It would accordingly hit a journalist who is provided by a source with a copy of a classified document, or who is provided with an electronic file containing such information; in these circumstances, the journalist could be argued to have "**accessed**" the document.



3.1.1.7 under clause 43 of the Bill ("the general state security offence"):

(1) Any person who has in his or her possession or under his or her control or at his or her disposal information which he or she knows or reasonably should know is a State security matter, and who

- (a) discloses such information to any person other than a person to whom he or she is authorised to disclose it or to whom it may lawfully be disclosed;
- (b) publishes or uses such information in any manner or for any purpose which is prejudicial to the security interests of the State;
- (c) retains such information when he or she has no right to retain it or when it is contrary to his or her duty to retain it, or neglects of (sic) fails to comply with any directions issued by lawful authority with regard to the return of (sic) disposal thereof; or
- (d) neglects or fails to take proper care of such information, or so to conduct himself or herself as not to endanger the safety thereof,

is guilty of an offence and liable to conviction or imprisonment for a period not less than five years but not exceeding 10 years, subject to section 1(6), or, if it is proved that the publication of (sic) disclosure of such information took place for the purpose of its being disclosed to a foreign state to imprisonment, for a period not less than 10 years but not exceeding 15 years, subject to section 1(6). (own emphasis).

3.1.1.8 under clause 46(8), a person who discloses any classified information in contravention of a court order or direction is guilty of an offence, and may be sentenced to **five years** imprisonment.

3.1.2 It is noteworthy that the Bill goes further than the 2008 Bill by prescribing minimum sentences in respect of most of the offences set out in the Bill (this is subject to the court's discretion in clause 1(6)). This exacerbates the consequences for journalists and materially contributes to the chilling effect on freedom of expression.

3.1.3 Apart from severe and, we submit, disproportionate penalties that are attached to these offences,²⁷ and the fatal defects with the

²⁷ For instance, the equivalent offences in Australia under the Crimes Act, 1914, are subject to imprisonment for a period of two years in relation to the disclosure offence, and six months in relation to the retention of possession offence.



classification regime (such as the definitions which trigger classification, which we discuss below), we submit that the main constitutional difficulties that arise from these criminal offences from the perspective of media freedom are that the Bill neither legislates a public interest defence nor a public domain defence. We submit that such defences would cater for the rights of investigative journalists and (subject to addressing the other difficulties with the classification regime mentioned below) would cure the constitutional defects in the legislation.

The need for a public interest defence

3.1.4 In probably the most significant omission from the perspective of media freedom and the constitutional imperative of holding the government to account, the Bill does not provide for an explicit public interest defence to any of the offences we have outlined (nor is such a defence implicit). PMSA submits that the case for a public interest defence is overwhelming. Such a defence would allow a journalist who publishes classified information to argue that the disclosure was justified, for instance because it revealed evidence of significant incompetence, criminality, wrongdoing, abuse of authority or hypocrisy on the part of government officials. It is noteworthy that in the **Explanatory Note on the 2008 Bill** which was issued by the Ministry of Intelligence on 13 June 2008, it was stated that "**the Minister has no objection to the inclusion of a public interest exemption**".²⁸ It is unfortunate that this salutary approach has not filtered through to the Bill.

3.1.5 We submit that public interest is already a defence in a number of contexts in our law that are analogous:

3.1.5.1 **Section 46 of PAIA** governs the mandatory disclosure of information in the public interest. It states as follows:

²⁸ At para 120.7.



Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in... section 41(1)(a) or (b), if:

(a) the disclosure of the record would reveal evidence of —

(i) a substantial contravention of, or failure to comply with, the law; or

(ii) an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

3.1.5.2 The effect of this provision of PAIA is that, inter alia, section 41 (the provision that regulates the disclosure of records concerning defence, security and international relation) may be overridden if it is in the public interest. We contend that, if documents can be released under PAIA in the public interest despite the threat that the contents pose to national security, it would be anomalous and inequitable in parallel circumstances to criminalise the access, disclosure and continued possession of classified documents that are significant for the public.²⁹

3.1.5.3 The criminal offence of publishing hate speech, contained in **section 29(1) of the Films and Publications Act of 1996**, also contains a public interest override. Section 29(4) provides that the offence of knowingly distributing a publication which advocates hatred based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm, does not apply to a publication which "**amounts to a bona fide discussion, argument or opinion on a matter of public interest**". This has the effect that in respect of categories of speech which are regarded as so antithetical to our democracy that they do not

²⁹ The philosophy of the Protected Disclosures Act 26 of 2000 is also apposite in this context. The Act allows employees to make certain disclosures about their employers which are in the public interest (e.g. that a criminal offence has been committed or that a person has failed to comply with his legal obligations: section 1 of the Act), without suffering reprisals, even, in some circumstances, where disclosure is made to the public at large (section 9).



even receive constitutional protection (such as hate speech), there is nevertheless a statutory public interest override.

3.1.5.4 That a publication is in the public interest already functions as a defence to an infringement of privacy at common law, even in circumstances where the media has obtained the information illegally. In the *locus classicus* of **Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another**,³⁰ the Appellate Division held as follows:

It might well be that, if in the case of information obtained by means of an unlawful intrusion the nature of the information were such that there were overriding grounds in favour of the public being informed thereof, the Court would conclude that publication of the information should be permitted, despite its source or the manner in which it was obtained.³¹

3.1.5.5 And in **Tshabalala-Msimang v the Sunday Times**,³² the High Court held as follows:

This is a case where the need for the truth, is in fact overwhelming... The overwhelming public interest points in the direction of informing the public about the contents incorporated in the medical records in relation to the first applicant, albeit that the medical records may have been unlawfully obtained.³³

3.1.6 It is submitted that the decision of Yacoob J in the **Masetlha** case is compelling in this context. The case was not concerned with criminal liability on the part of the media for publishing classified documents, but rather whether such documents should be made public. The decision of Yacoob J nevertheless illustrates the potency of a public interest-based analysis in national security cases:

On the other hand, the circumstances in which an intelligence agency came to improperly and unlawfully infringe upon the privacy of an innocent citizen are not

³⁰ 1993 (2) SA 451 (A).

³¹ At 463. See also **MEC for Health, Mpumalanga v M-Net** 2002 (6) SA 714 (T) at para 27.

³² 2008 (6) SA 102 (W).

³³ At para 50. English breach of confidence law also recognises a public interest defence: see eg **Attorney-General v Guardian Newspapers (No 2)** ("the Spycatcher case") [1988] 2 All ER 545) at 659 (the public interest in maintaining government confidentiality must be weighed against the public interest of disclosure). A similar principle applies in Australian law: see **The Commonwealth of Australia v John Fairfax & Sons Ltd** 147 CLR 39 (1980) at 52.



merely matters of public curiosity. They would be issues of immense public interest. The degree of public interest is an important factor to be put into the balance and would, in my view, not be of insignificant weight if the interest is one that must be fulfilled...³⁴

The public importance of and interest in these events can neither be gainsaid nor over-emphasised. A member of the public was unlawfully and improperly harassed and he and his family suffered an egregious and inexcusable invasion of privacy. All this consequent upon secret government action. The public is entitled to know all except that which cannot be revealed on account of important national security considerations. I would put the strong public interest to know as well as the extent to which the material is already in the public domain on the one side of the scale and the appropriate weight to be attached to the government objection on the other side of the scale in order to determine where the balance falls in the interests of justice enquiry. ...³⁵

The starting point of the enquiry into whether the document should be released is that it was of great public importance and justified considerable public interest.³⁶

3.1.7 We note that the positions in the United Kingdom and the United States of America have been trenchantly criticised by commentators because of the failure in those jurisdictions to legislate for a public interest defence in the context of disclosing secret government information.³⁷ As one commentator has said of the position under the OSA in the United Kingdom:

The absence of a public interest defence for the media will contribute to a climate of caution and inhibit legitimate discussion for fear of breaching the [OSA].³⁸

3.1.8 The House of Lords (now England's Supreme Court) has considered whether the OSA is defective in not providing a public interest

³⁴ At para 88.

³⁵ At para 103.

³⁶ At para 121. Although Yacoob J's decision was a minority decision, his analysis illustrates for present purposes the importance of ensuring that a public interest defence to the disclosure of classified information should be crafted, lest the media is chilled from disclosing matters of immense public significance for fear of the severe penalties that may ensue.

³⁷ See e.g. D Feldman *Civil Liberties and Human Rights in England and Wales* (2nd edn, 2002) at 894-5; H Fenwick and G Phillipson *Media Freedom under the Human Rights Act* (2006) at 947-8; Barendt (above) at 196; S Sandler 'National Security versus Free Speech' (1989) 15 *Brooklyn Journal of International Law* 711 at 751.

³⁸ S Palmer 'Tightening Secrecy Law: The Official Secrets Act 1989' 1990 *Public Law* 243 at 255.



defence for a former member of the security services who had published information that he contended showed that the intelligence services were being abused. Although the House of Lords held that such a defence was not required as a matter of freedom of expression,³⁹ its context is limited to a disclosure by a member of the security services, which is treated differently under the OSA to disclosures by third parties. And the comments of Lord Hope are, we submit, encouraging for the development of a public interest defence in the latter context:

Institutions tend to protect their own and to resist criticism from wherever it may come. Where this occurs it may require the injection of a breath of fresh air from outside before institutional defects are recognised and rectified.⁴⁰

3.1.9 We note that Canada has introduced a public interest defence, albeit in the context of disclosures by members of the security services. **Section 15 of the Security of Information Act, 1985** states that:

- (1) **No person is guilty of an offence under section 13 or 14 [the disclosure sections] if the person establishes that he or she acted in the public interest.**
- (2) **Subject to subsection (4), a person acts in the public interest if:**
 - (a) **the person acts for the purpose of disclosing an offence under an Act of Parliament that he or she reasonably believes has been, is being or is about to be committed by another person in the purported performance of that person's duties and functions for, or on behalf of, the Government of Canada; and**
 - (b) **the public interest in the disclosure outweighs the public interest in non-disclosure.**
- (3) **In deciding whether the public interest in the disclosure outweighs the public interest in non-disclosure, a judge or court must consider:**
 - (a) **whether the extent of the disclosure is no more than is reasonably necessary to disclose the alleged offence or prevent the commission or continuation of the alleged offence, as the case may be;**
 - (b) **the seriousness of the alleged offence;**
 - (c) **whether the person resorted to other reasonably accessible alternatives before making the disclosure**

³⁹ **R v Shayler** [2002] 2 WLR 754. The House reached this conclusion because the OSA contained procedures for such disclosures, which were subject to judicial review (at para 36).

⁴⁰ At para 70.



and, in doing so, whether the person complied with any relevant guidelines, policies or laws that applied to the person;

- (d) whether the person had reasonable grounds to believe that the disclosure would be in the public interest;**
- (e) the public interest intended to be served by the disclosure;**
- (f) the extent of the harm or risk of harm created by the disclosure; and**
- (g) the existence of exigent circumstances justifying the disclosure.⁴¹**

3.1.10 PMSA submits that the failure to provide for a defence of public interest – at least to members of the public and the media, as opposed to members of the security forces – coupled with the vagaries of the offences created and the severe penalties involved, will create a chilling effect on freedom of expression. This will drastically undermine public discourse, discussion and debate on matters of political speech, which ought to receive heightened protection.

3.1.11 The reason provided by the drafters of the revised version of the Bill for failing to include a public interest defence (despite the fact that the proposals to include this defence had already been accepted by the previous minister) is that such a defence would create legal uncertainty.⁴² PMSA submits that this concern is misplaced because, as set out above, our courts are well versed in applying the public interest defence in a range of contexts in our law and would accordingly be able to develop similar jurisprudence to address any public interest defence included in the Bill. In any event, the desire to create legal certainty cannot outweigh the public and the media's constitutional right to freedom of expression.

3.1.12 It has also been suggested by some members of the drafting team that a public interest defence is unnecessary because such a

⁴¹ Section 15(5) goes on to provide that the member of the service must first have provided all relevant information to certain government functionaries, and not have received a response within a reasonable time.

⁴² This statement was made in the Presentation to the Ad Hoc Committee on the Bill dated 7 May 2010. A copy of the presentation is available at www.pmg.org.za (Accessed on 2 June 2010).



defence already exists under the common law.⁴³ This suggestion is, with respect, incorrect. There is no general common law defence of 'public interest' which is available to a person accused of committing a statutory offence. If a public interest defence is not specifically included in the Bill it will not be open to the public and the media to raise such a defence.

The public domain defence

3.1.13 The Bill also should be amended to allow the media to argue the defence of public domain. This defence postulates that where the information is already in the public domain, future restrictions on its publication would be futile. In such circumstances, we submit that it would not be correct to argue that harm to national security would likely ensue from the republication of the information. It cannot be competent to convict, for instance, a journalist who publishes classified information in circumstances where the information is already in the public domain, as a result of a disclosure by someone other than the journalist himself.⁴⁴ PMSA accepts that the public domain defence would not avail the party who *first* places the material in the public domain, but that ought not to limit the rights of journalists to republish the information.

3.1.14 The public domain doctrine in this context is well-rehearsed in international law and is also beginning to receive acknowledgement in our jurisprudence. We begin with the position in South African law and then discuss a few of the leading cases in England and in the jurisprudence of the European Court of Human Rights.

South Africa

⁴³ This suggestion was made during the briefing of the Ad Hoc Committee by the Minister of State Security on 7 May 2010. A minute of the briefing is available at www.pmg.org.za (Accessed on 2 June 2010).

⁴⁴ We submit that it matters not whether the public domain principle is regarded as a defence to the crime or a factor that negatives harm.



3.1.14.1 It is basic to the principle of confidentiality that information cannot be protected once it loses its secrecy. This is recognised in **section 37(2)(a) of PAIA**, which provides that, although an information officer of a public body may in general refuse a request for access to a record if the disclosure of the record would constitute an action for breach of a duty of confidence, he or she may not refuse to disclose if the records consists of information "**already publicly available**". The principle is also recognised in South African law relating to commercial confidentiality,⁴⁵ and in our law of privacy.⁴⁶

3.1.14.2 The Constitutional Court has also recently recognised that the concept of public domain is an important factor in determining whether classified documents before a court should be released to the public. In **Masetlha**, Moseneke DCJ for the majority of the Court held:

In deciding whether documents ought to be disclosed or not, a court will have regard to all germane factors which include the nature of the proceedings; the extent and character of the materials sought to be kept confidential; the connection of the information to national security; the grounds advanced for claiming disclosure or for refusing it; whether the information is already in the public domain and if so, in what circumstances it reached the public domain; for how long and to what extent it has been in the public domain; and, finally, the impact of the disclosure or non-disclosure on the ultimate fairness of the proceedings before a court. These factors are neither comprehensive nor dispositive of the enquiry.⁴⁷ (our emphasis)

And, in relation to one specific document:

In any event, it is evident from the voluminous press clippings placed before us that the issues covered by the conclusions are all well within the public domain and media discourse and are not worthy of any confidentiality protection.⁴⁸

⁴⁵ See e.g. **Valunet Solutions Inc t/a Dinkum USA v eTel Communications Solutions (Pty) Ltd** 2005 (3) SA 494 (W) at para 17.

⁴⁶ See generally J Neethling, JM Potgieter & PJ Visser *Neethling's Law of Personality* (2nd edn, 2003).

⁴⁷ Masetlha at para 55.

⁴⁸ At para 62.



3.1.14.3 Also in the **Masetlha** case, Yacoob J (in a minority judgment) held:

If the information is already lawfully in the public domain there can, in my view, be no reason for its non-disclosure.⁴⁹ (our emphasis).

And later:

The public is entitled to know all except that which cannot be revealed on account of important national security considerations. I would put the strong public interest to know as well as the extent to which the material is already in the public domain on the one side of the scale and the appropriate weight to be attached to the government objection on the other side of the scale in order to determine where the balance falls in the interests of justice enquiry.⁵⁰ (our emphasis)

The United Kingdom and the European Court of Human Rights

3.1.15 The public domain doctrine in the context of national security restrictions has been especially prominent in the jurisprudence of the English courts and in the European Court of Human Rights.

3.1.15.1 The leading case is the famous case of **Attorney-General v Guardian Newspapers (No 2)** ("the Spycatcher case"), where the House of Lords was requested by the government to interdict the distribution of a book by a former MI5 agent, the contents of which contained names of colleagues, details of operational techniques, and of specific operations (including a plan by MI6 to assassinate President Nasser of Egypt). The book had already been widely published worldwide. Lord Keith held that:

[G]eneral publication in this country would not bring about any significant damage to the public interest All such secrets as the book may contain have been revealed to any intelligence services whose interests are opposed to that of the United Kingdom.⁵¹

⁴⁹ At para 91.

⁵⁰ At para 103.

⁵¹ At 642. See also Lord Griffiths at 652, who stated that if the injunction had been issued, "**the law would indeed be an ass, for it would seek to deny to our citizens the right to be informed of matters which are freely available throughout the rest of the world**".



3.1.15.2 Lord Goff's decision is also instructive:

[T]he principle of confidentiality only applies to information to the extent that it is confidential [O]nce it has entered ... the public domain ... then, as a general rule, the principle of confidentiality can have no application to it.⁵²

3.1.15.3 As for European law, in **Vereniging Weekblad Bluf! v Netherlands**,⁵³ the European Court on Human Rights held that the Netherlands had infringed article 10 (the free speech guarantee) of the European Convention of Human Rights where its courts ordered the withdrawal of an issue of a magazine containing a report on the internal security service dated six years before the issue. The Court held that withdrawal of the magazine could no longer be regarded as necessary to safeguard national security, as the information was already in the public domain.⁵⁴ The Court noted that 2,500 copies of the magazine had already been sold in Amsterdam and that the media had commented on the information in the report.⁵⁵

3.1.16 PMSA submits that in light of this jurisprudence, the Bill should specifically recognise a public domain defence.

⁵² At 659.

⁵³ (1995) 20 EHRR 189.

⁵⁴ At 203.

⁵⁵ See also **Weber v Switzerland** (1990) 12 EHRR 508; **Observer and Guardian v UK** (1992) 14 EHRR 153.



3.2 **The defective classification regime proposed by the Bill**

3.2.1 The Bill envisages that once information is classified, its accessibility to members of the public and its disclosure is drastically limited.⁵⁶ The classification of information therefore constitutes a clear limitation on both the rights of access to information and the right to freedom of expression, and in effect, censorship of political speech, the most important category of speech in a democracy. We submit that in at least four respects, this regime suffers from fatal constitutional flaws:

3.2.1.1 first, some definitions that are of crucial importance to the scheme of the Bill are overbroad and hence offend the principle of legality;

3.2.1.2 secondly, the unprecedented ability to classify commercial information has no place whatsoever in a law of this nature and intolerably threatens freedom of expression and access to information;

3.2.1.3 thirdly, the tests that the Bill suggests should be employed to classify information are set at impermissibly low thresholds of harm, with the result that over-classification of information – with the attendant deleterious effects this has on the freedoms of expression and information – will be the norm; and

3.2.1.4 fourthly, the classification regime contains a number of provisions that will inevitably result in over-classification and hence censorship.

A: Overbroad definitions

3.2.2 PMSA submits that various definitions that lie at the core of the Bill are so wide as to be utterly unworkable and offensive to the principle of legality, and the rights to free speech, media freedom and access to information. We first examine the relevant legal principles in this

⁵⁶ Clauses 18, 32, 33, 38 and 46(1) of the Bill.



regard, and then turn to consider the definitions that we regard as problematic.

- 3.2.3 The doctrine of legality, which is a foundational principle in our Constitution,⁵⁷ requires that laws must be clear and accessible. In **Affordable Medicines Trust and Others v Minister of Health and Others**,⁵⁸ the Constitutional Court endorsed the proposition that laws must be drafted with sufficient precision to allow those who are tasked with their implementation to have reasonable certainty about the conduct that is required of them.⁵⁹
- 3.2.4 Similarly, the requirement in section 36 of the Constitution that a limitation on fundamental rights may only occur in terms of a law of general application has the result that the clarity and precision of core terms employed in a statute must be interrogated. Thus in **De Reuck v Director of Public Prosecutions, Witwatersrand Local Division**,⁶⁰ the Constitutional Court was called upon to examine the clarity of the definition of “**child pornography**” for purposes of the Films and Publications Act.⁶¹ The Court held that the crisp issue for the determination of whether the definition qualified as a law of general application was whether it was stated in a clear and accessible manner.⁶²
- 3.2.5 Related to this principle, laws that sweep within their net of liability both constitutionally legitimate and illegitimate activity, are regarded as being overbroad.⁶³ There is a useful parallel in a free speech context in this regard in the jurisprudence of the Supreme Court of the United States of America. For instance, in **Reno v American**

⁵⁷ Section 1(c) of the Constitution.

⁵⁸ 2006 (3) SA 247 (CC).

⁵⁹ At para 108.

⁶⁰ 2004 (1) SA 406 (CC).

⁶¹ Act 65 of 1996.

⁶² **De Reuck** at para 57.

⁶³ Cf Mokgoro J in **Case v Minister of Safety and Security; Curtis v Minister of Safety and Security** 1996 (3) SA 617 (CC) at para 49: “**To determine whether a law is overbroad, a court must consider the means used ... in relation to its constitutionally legitimate underlying objectives. If the impact of the law is not proportionate with such objectives, that law may be deemed overbroad.**”



Civil Liberties Union⁶⁴ the Court considered the effect of vague statutes on the right to free speech. The case concerned a challenge to the Communications Decency Act ("**CDA**"), which prohibited transmission of "**indecent**" material to minors. The CDA was challenged on the basis that it was vague and constituted an unjustifiable limitation on the rights of freedom of expression and due process. The Court held that the CDA constituted an unjustifiable limitation on free speech and that "**the many ambiguities concerning the scope of ... coverage render it problematic for purposes of the First Amendment**".⁶⁵ The Court also noted that:

[T]he CDA is a content-based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech.

3.2.6 When measured against these tests, the key definitions in the Bill fail dismally.

3.2.7 It is at the outset important to appreciate that "information" and "State information" are widely defined in the Bill.

3.2.8 "**Information**" is defined in clause 1 as:

any facts, particulars or details of any kind, whether true or false, and contained in any form, whether material or not, including, but not limited to—

(a) documents, records, data, communications and the like, whether in paper, electronic, digital, audio-visual format, DVD, microform C, microphone, microfilm and microfiche form or format or any other form or format; and

(b) conversations, opinions, intellectual knowledge, voice communications and the like not contained in material or physical form or format;

3.2.9 The definition of "information" – the source of all the other definitions in the Bill relating to information – thus includes information that has not been reduced to material form, such as "**conversations, opinions, intellectual knowledge**".⁶⁶ It is difficult to see how such

⁶⁴ 521 US 844 (1997).

⁶⁵ At 870.

⁶⁶ Clause 1 of the Bill.



information, which is not capable of classification can be protected without censorship becoming the rule as opposed to the exception.

3.2.10 The Bill defines “sensitive information” as information that must be protected from disclosure in order to prevent the *national interest* of South Africa from being harmed.⁶⁷ This definition is pivotal: the first step that must be satisfied before information is classified is that it must be sensitive information.

3.2.11 “National interest”, a definition which then becomes the epicentre of the classification regime, is in turn defined in exceedingly broad terms in clause 11 of the Bill.⁶⁸

(1) The national interest of the Republic includes-

- (a) all matters relating to the advancement of the public good; and**
- (b) all matters relating to the protection and preservation of all things owned or maintained for the public by the State.**

(2) The national interest is multi-faceted and includes —

- (a) the survival and security of the State and the people of South Africa; and**
- (b) the pursuit of justice, democracy, economic growth, free trade, a stable monetary system and sound international relations.**

(3) Matters in the national interest include —

- (a) security from all forms of crime;**
- (b) protection against attacks or incursions on the Republic or acts of foreign interference;**
- (c) defence and security plans and operations;**
- (d) details of criminal investigations and police and law enforcement methods;**
- (e) significant political and economic relations with international organisations and foreign governments;**
- (f) economic, scientific or technological matters vital to the Republic’s stability, security, integrity and development;**
- (g) all matters that are subject to mandatory protection in terms of sections 34 to 42 of the Promotion of Access to Information Act, whether in classified form or not.**

3.2.12 We pause here to note that, rather than dramatically curtailing the definition of “national interest” as proposed in submissions in respect

⁶⁷ Clause 1 of the Bill.

⁶⁸ We submit below that the breadth of this definition, read with other provisions of the Bill, renders the definition unconstitutional.



of the 2008 Bill, the definition in fact expands upon that overbroad definition by adding all records that are subject to mandatory protection in terms of sections 34 – 42 of PAIA. These sections of PAIA include mandatory protection for the following categories of information:

- 3.2.12.1 section 34 protects the personal information of a person, including a deceased individual;
- 3.2.12.2 section 35 protects the information of the South African Revenue Service from disclosure if it was obtained for the purpose of enforcing revenue legislation;
- 3.2.12.3 section 36 prevents the disclosure of commercially sensitive information belonging to a third party, including trade secrets, financial, commercial, scientific or technical information the disclosure of which would cause harm to the third party;
- 3.2.12.4 section 37 protects information belonging to a third party the disclosure of which would breach a duty of confidence owed to that third party by the person from whom the information is requested;
- 3.2.12.5 section 38 protects information the disclosure of which would endanger the life or physical safety of an individual;
- 3.2.12.6 section 39 protects information contained in a police docket which may not be disclosed to an accused person for purposes of a bail hearing; and
- 3.2.12.7 section 40 protects legally privileged information.
- 3.2.13 Although PMSA accepts that the term "national interest" is one that does not lend itself to precise definition, it is submitted that given the breadth of the definition of national interest in the Bill, it will be difficult, if not impossible, for government officials charged with the duty of classifying information, to properly ascertain which information ought to be classified. There exists a real danger that such an official



would – albeit acting in good faith – engage in over-classification, fortified by the breadth of the definition of “national interest”. To take two examples of obvious overbreadth, clause 11(1)(a) states that the “national interest” includes **“all matters relating to the advancement of the public good”**, and clause 11(2)(b) proclaims that the concept also includes **“the pursuit of justice [and] democracy”**. Such concepts – and so many others contained in the definition – are so broad as to potentially cover all conceivable aspects of a citizen’s existence in our democracy. The definition needs to be sufficiently precise to be capable of application; in its current form, it simply gives no precision or particularity whatsoever.

3.2.14 As for the Bill’s extension of the definition to include certain information already protected under PAIA, this inclusion is patently absurd. For instance, it cannot sensibly be argued that a deceased person’s personal information (which would include that person’s identity number, name, address, and so forth) is a matter of national interest, nor a company’s trade secrets and the like. PMSA submits that the Bill’s extension of the concept of “national interest” in this manner, and indeed the very breadth of the definition itself, betrays an obsession with secrecy that cannot be countenanced in a democracy.

3.2.15 The submission that the concept of “national interest” is so overbroad as to be constitutionally impermissible is consonant with the opinion expressed by the **Ministerial Review Commission on Intelligence (“MRCI”)** in respect of the 2008 Bill, which contained substantially the same definition. The MRCI submitted that the definition of “national interest” was defined **“so broadly that the term encompasses almost everything”**, and certain of the phrases listed within its definition are **“capable of many interpretations”**; consequently it is



"inevitable that there will be significant inconsistencies between the classifications made by different officials".⁶⁹

3.2.16 The other operative definition that is important for classification is "security". This is also defined impermissibly broadly as:

to be protected against danger, loss or harm, and is a condition that results from the establishment and maintenance of protective measures that ensure a state of inviolability from hostile acts.⁷⁰

3.2.17 The concept of "national security" as defined in the Bill fares no better than these definitions. The drafters of the Bill have substantially amended the narrow definition of national security which was contained in the 2008 version of the Bill and which was arguably defensible.⁷¹ The new definition of "national security" in clause 1 of the Bill encompasses:

The resolve of South Africans as individuals and as a nation to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life, and includes protection of the people and occupants of the Republic from hostile acts of foreign intervention, terrorism and related activities, espionage and violence, whether directed from, or committed within, the Republic or not, and includes the carrying out of the Republic's responsibilities to any foreign country in relation to any of the matters referred to in this definition.

3.2.18 As with the definition of "national interest" and "security", the definition of "national security" embraces a wide range of matters which PMSA submits ought not to fall within the compass of national security. There are two fundamental problems with the definition.

⁶⁹ MRCI Memorandum on the Protection of Information Bill, 25 April 2008 at 9-10 ("**the MRCI Memorandum**"). Indeed, the MRCI submits that a functionary that must classify information under the Bill will face insurmountable problems in determining how best to classify a document: he or she is enjoined to have regard to "**a complex array of principles, criteria and guidelines**" and this is not conducive to sound decision-making (at 11-12).

⁷⁰ Clause 1 of the Bill.

⁷¹ The definition of national security contained in the 2008 Bill was as follows:

The protection of the people and occupants of the Republic from hostile acts of foreign intervention, terrorism, espionage, sabotage and violence, whether directed from, or committed within, the Republic or not, and includes the carrying out of the Republic's responsibilities to any foreign country in relation to any of the matters referred to in this definition.



First, the portion that states that national security includes: "**[t]he resolve of South Africans as individuals and as a nation to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life**" renders the definition nebulous. The concepts referred to are entirely out of place in legislation of this kind, and are clearly open to abuse. Furthermore, the definition envisages an extremely broad category of issues that could be deemed to be national security issues. The second problem is that the list of issues of national security contained in the definition is not exhaustive but merely lists some examples of issues that might indicate "the resolve of South Africans as individuals and as a nation to live as equals".

- 3.2.19 A further problematic definition is that of a "**State security matter**", disclosure of which triggers a criminal offence punishable by a minimum of 10 and a maximum of 15 years imprisonment (see above). This is defined in the Bill as:

[A]ny matter which is dealt with by the Agency or which relates to the functions of the Agency or to the relationship existing between any person and the Agency

- 3.2.20 This definition is impermissibly vague and overbroad as it essentially covers every aspect of any matter that relates to the activities of the security services.⁷² And, exacerbating this position, the definition covers information which is not necessarily classified and as such may not carry any markings that indicate that it is the type of information that may not be disclosed.

- 3.2.21 PMSA recommends that the definitions of "national interest", "security" and "state security matter" should be replaced with a single, narrow and defensible definition of "national security matter": the definition of this concept should be restricted to those matters that properly pertain to national security.

⁷² "Agency" is defined in clause 1 as including the State Security Agency, the National Intelligence Agency, the South African Secret Service, Electronic Communications Security (Pty) Ltd (COMSEC) and the South African National Academy for Intelligence.



3.2.22 It is instructive in this context to emphasise the **Joint Statement issued on 6 December 2004 by the United Nations' Special Rapporteur** on Freedom of Opinion, the Organisation for Security and Cooperation in Europe's representative on Freedom of the Media, and the Organisation of African States' Special Rapporteur on Freedom of Expression, where the Special Rapporteurs cautioned that secrecy laws should define "national security" precisely.⁷³

3.2.23 This sentiment is echoed in the **Johannesburg Principles on National Security, Freedom of Expression and Access to Information ("the Johannesburg Principles")**, which were adopted on 1 October 1995 by an international group of experts in human rights, national security and international law, and are based on international and regional human rights standards. The Johannesburg Principles have been endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression.⁷⁴

3.2.24 **Principle 2(a) of the Johannesburg Principles** provides that:

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government. (our emphasis).

3.2.25 In terms of **Principle 12**, a government must designate

only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest (own emphasis).

3.2.26 The definitions of "**national security**", "**security**", "**state security matter**" and "**national interest**" fail this test in every respect, and must be eliminated from the Bill. Rather, the Bill should employ the concept of national security that was contained in clause 1 of the

⁷³ Available at <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1> (Accessed on 9 June 2010).

⁷⁴ Available at <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> (Accessed on 9 June 2010).



2008 Bill, as the centrepiece for the classification of information. Thus the first criterion for State information to be classified ought to be, in PMSA's view, that it relates to national security, narrowly defined.



B: The misplaced protection of commercial information

- 3.2.27 The Bill defines "**commercial information**" as commercial, business, financial or industrial information held by the state. Such information qualifies for protection via classification if the disclosure of the information would prejudice the interests of the organ of state or organisation or individual who gave the information to the organ of state, or⁷⁵ if such disclosure could endanger the national interest of South Africa.⁷⁶
- 3.2.28 We submit that the classification of State information should be limited to instances where the State has a clear interest in the protection of the information concerned, for reasons that impact on national security (narrowly defined). For this reason, while it may in principle and in exceptional circumstances be defensible for classification to take place of commercial information pertaining to an organ of state, this protection ought in our submission not to extend to commercial information of private individuals and entities in the possession of the State. The definition of "commercial information" clearly encapsulates the latter and this catches within its broad net a plethora of information that ought not to be kept secret under legislation designed to protect the national security of the republic.
- 3.2.29 The same flawed philosophy informs the addition of certain matters which are commercial in nature to the definition of "national interest", via the incorporation in clause 11(3)(g) of sections 35, 36 and 37 of PAIA (see above).
- 3.2.30 Startlingly, clause 48(1)(f) of the Bill goes even further than seeking to protect non-State commercial information in the possession of the State. This provision empowers the Minister to make regulations regarding "**a procedure for the classification and protection of commercial information not in the hands of the State**". Such a

⁷⁵ Clause 12(1)) of the Bill does not indicate whether these circumstances are conjunctive or disjunctive; we assume that the latter is contemplated.

⁷⁶ Clause 12(1) of the Bill.



power will result in the dramatic curtailment of the flow of information, and result in a state classification regime being imported into the boardrooms of corporations and other entities. There is no place for such a system in an open and democratic society based on transparency and accountability.

- 3.2.31 In PMSA's submission, private individuals and entities are granted sufficient protection in respect of commercial information by PAIA and the common law. It is therefore not only unnecessary to use the moment of the Bill to create an additional layer of protection in this regard, but it is also disproportionate to criminalise the disclosure of such commercial information on pain of severe prison sentences.
- 3.2.32 **Sections 36 and 37 of PAIA** authorise refusal of access to records pertaining to certain commercial information of private entities. PAIA also provides protection to private entities in the form of the third party procedure.⁷⁷ This third party procedure requires that in the event that a request is made of an organ of state or a private body for a private entity's commercial information, the private entity must be notified of the request and given an opportunity to make representations.
- 3.2.33 The common law also provides various remedies to private entities, both in contract and in delict, to prevent disclosure of their confidential information, or to redress the consequences of such a disclosure.⁷⁸
- 3.2.34 Moreover, South Africa is a party to the International Covenant on Civil and Political Rights ("**the ICCPR**") and is bound to uphold the right to freedom of expression, which is guaranteed under **article 19 of the ICCPR**. Indeed, clause 6(i)(ii) of the Bill specifically states that the measures effected under the Bill must be consistent with article 19 of the ICCPR as well as South Africa's international obligations.

⁷⁷ Sections 47-8 of PAIA...

⁷⁸ See generally HJO van Heerden & J Neethling *Unlawful Competition* (1995); S van der Merwe, LJ van Huyssteen, MFB Reinecke & GF Lubbe *Contract: General Principles* (2003); J Neethling, JM Potgieter & PJ Visser *Law of Delict* (5th edn, 2006).



- 3.2.35 The Human Rights Committee ("**the HRC**") is the body charged with interpreting and overseeing the implementation of the ICCPR by state parties. In its 2001 concluding observations on Uzbekistan's state report, the HRC noted with concern that the Uzbekistan Law on Protection of State Secrets included in its definition of "**state secrets and other secrets**" issues relating to science, banking and the commercial sector.⁷⁹ The HRC stated that this rendered the restrictions on freedom of expression too wide to be consistent with article 19 and requested that Uzbekistan amend the law to reduce the types of issues defined as state secrets.
- 3.2.36 We submit that the HRC's comments are of direct application to the unprecedented attempt by the drafters of the Bill to seek to permit the classification of commercial information, whether of the organ of state concerned or other entities. PMSA submits that it would therefore be inconsistent with South Africa's international obligations for commercial information to be protected in the manner envisaged in the Bill.
- 3.2.37 It also appears that with respect to classification of commercial information, the Bill is not in line with international practice in that the relevant laws in the United Kingdom,⁸⁰ the United States of America⁸¹ and Canada⁸² relating to classification of state information, do not protect and seek to classify commercial information. This casts serious doubt on the need for such information to be protected via classification and the criminalisation of conduct relating to disclosure of commercial information.
- 3.2.38 We accordingly suggest that the category of commercial information be removed from the Bill, or dramatically tailored.

⁷⁹ Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.UZB.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.UZB.En?Opendocument) (Accessed on 9 June 2010).

⁸⁰ Official Secrets Act, 1989 ("**the OSA**").

⁸¹ Executive Order 13526 of December 29, 2009 ("**the Executive Order**"). This Executive Order replaced Executive Order 13292 of March 25, 2003, on which the Bill seems to have been modelled. Executive Order 13292 did not protect commercial information.

⁸² Security of Information Act, 1985 ("**the Security of Information Act**").



C: Impermissibly speculative levels of classification

3.2.39 The Bill prescribes classification levels that are ostensibly designed to protect information at successive levels of confidentiality.

3.2.40 Clause 15 of the Bill prescribes three classification levels:⁸³

3.2.40.1 **"Confidential"** information is:

sensitive information, the unlawful disclosure of which may be harmful to the security or national interest of the state or could prejudice South Africa in its international relations; and

commercial information, the disclosure of which may cause financial loss to an entity or may prejudice an entity in its relations with its clients, competitors, contractors and suppliers;

3.2.40.2 **"Secret"** information is:

sensitive information, the disclosure of which may endanger the security or national interest of the Republic or could jeopardise the international relations of the Republic;

commercial information, the disclosure of which may cause serious financial loss to an entity; and

personal information, the disclosure of which may endanger the physical security of a person;

3.2.40.3 **"Top Secret"** information is:

sensitive information, the disclosure of which may cause serious or irreparable harm to the national interest of the Republic or may cause other states to sever diplomatic relations with the Republic;

commercial information, the disclosure of which may have disastrous results with regard to the future existence of an entity, or may cause serious and irreparable harm to the security or interests of the State; and

⁸³ Compare the Minimum Information Security Standards approved by the Cabinet on 4 December 1996 ("**MISS**"), where the categories are substantially similar, save that the "*Restricted*" category has now been jettisoned. For a comparison of the threshold classification levels in the Bill and in MISS, see Annexure B.



personal information, the disclosure of which may endanger the life of the individual concerned.

- 3.2.41 PMSA submits that the tests for determining the degree of harm that may arise from the disclosure of information are in all cases above set at an impermissibly low bar for all three classification levels.
- 3.2.42 What all the thresholds for classification have in common is the insistence by the drafters that speculative harm will suffice for classification and hence political censorship. Thus a document, for instance, will be classified as “Top Secret” if its disclosure “**may cause serious or irreparable harm**” to “**the national interest**”; it will be classified as “Secret” if its disclosure “**may endanger**” the “**security or national interest**”; and it will be classified as “Confidential” if its disclosure “**may be harmful**” to the “**security or national interest**”.
- 3.2.42.1 The Bill’s reliance on such low threshold tests for harm is unconstitutional.
- 3.2.42.2 In our free speech jurisprudence, in analogous contexts such as contempt of court, our courts have clearly required a high degree of harm before imposing liability. The Bill runs counter to these developments. Moreover, internationally, in other jurisdictions and under regional and international law instruments, there is sensitivity to the constitutional significance of imposing a high degree of harm before imposing criminal liability for the disclosure of classified documents.
- 3.2.43 We examine analogous jurisprudence and the tests adopted in some foreign jurisdictions below.
- (i) Analogous South African case law*
- 3.2.44 In **S v Mamabolo (e-TV and other intervening)**⁸⁴ the Constitutional Court was faced with a challenge to the constitutionality of the

⁸⁴ 2001 (3) SA 409 (CC).



common law crime of scandalising the court (a form of contempt of court). The Court held that when evaluating an allegedly scandalising statement, the appropriate test was to consider "**what the effect of the statement was likely to have been**" and that this was "**an objective test, applied with the standard measure of reasonableness**".⁸⁵ The Court in this case therefore circumscribed the test for scandalising as "**whether the offending conduct, viewed contextually, really was likely to damage the administration of justice**".⁸⁶ The Court therefore crafted a constitutionally-compliant harm test for determining whether the *actus reus* of the crime of scandalising the court is satisfied.

3.2.45 In **Laugh It Off Promotions CC v SAB International (Finance) BV t/a Sabmark International**,⁸⁷ the Constitutional Court considered the appropriate interpretation of section 34(1)(c) of the Trade Marks Act 194 of 1993. The Court held that striking the appropriate balance between the right to freedom of expression and the interests of trade mark owners required that in order to succeed with an action under section 34(1)(c) "**the owner of the mark bears the onus to demonstrate a likelihood of substantial harm or detriment**".⁸⁸

3.2.46 In **Midi-Television (Pty) Ltd t/a e-TV v Director of Public Prosecutions (Western Cape)**,⁸⁹ the Supreme Court of Appeal dealt with an application by the Director of Public Prosecutions ("**DPP**") for an order prohibiting e-TV from broadcasting a television documentary relating to a prominent criminal case. The DPP argued that broadcasting the documentary would harm the administration of justice. The Court, in considering the appropriate balance to be struck between the right to freedom of expression and the right to a fair trial, examined the legal position with regard to pre-publication

⁸⁵ At para 43.

⁸⁶ At para 45.

⁸⁷ 2006 (1) SA 144 CC.

⁸⁸ At para 50; our emphasis. Indeed, even in the context of child pornography, the Constitutional Court, in **De Reuck** discussing whether the criminalisation of child pornography was a legitimate objective, expressed itself as follows: "**[T]here is a reasonably apprehended risk of harm from child pornography**" (at para 65).

⁸⁹ See above.



bans in the United Kingdom, Canada and Australia. The Court observed that in all these jurisdictions, a ban on publication would not be permitted in the absence of a **"demonstrable relationship between the publication and the prejudice that it might cause to the administration of justice; substantial prejudice if it occurs; and a real risk that the prejudice will occur."**⁹⁰ The Court held that the same position as applied in these foreign jurisdictions should be adopted in South Africa and that **"mere speculation or conjecture that the prejudice might occur"** is not sufficient; the test is now that **"a publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place"**.⁹¹ Nugent JA opined that the same test would be applicable **"whenever the exercise of press freedom is sought to be restricted in protection of another right"**.⁹²

3.2.47 In the Constitutional Court decision in the **Masetlha** case, Sachs J, with respect correctly, articulated an appropriate harm test that should apply in a national security context:

In answering [the question of whether documents should be redacted and then released to the public], it is important not to deal with hypothetical damage that could be caused to national security if certain types of information were to be revealed, but rather to verify whether on the facts a real risk exists that non-trivial harm could result. More particularly, it has to be asked whether more harm could well result from disclosure than from non-disclosure.⁹³ (our emphasis).

(ii) The provisions of PAIA

⁹⁰ At paras 15-16.

⁹¹ At para 19.

⁹² At para 20.

⁹³ **Masetlha** at para 165. The judgment of Sachs J is a minority judgment. The majority of the Court did not articulate the appropriate test for determining whether harm would result from the disclosure of the classified information, although Moseneke DCJ for the majority of the Court stated, in relation to one of the documents sought to be kept secret, that the Court was **"unable to identify the threat the disclosure ... would pose to our collective safety and security"** (at para 62).



3.2.48 PAIA provides various grounds on which a request for access to information may be refused. **Section 41** specifically caters for protection of information relating to defence, security and international relations; it states in section 41(1)(a) that access to information may be refused if its disclosure:

- (a) **could reasonably be expected to cause prejudice to –**
(i) **the defence of the Republic;**
(ii) **the security of the Republic; or**
(iii) **...the international relations of the Republic.** (our emphasis).

3.2.49 Again, this terminology contrasts sharply with that adopted by the drafters of the Bill. The notion of "**could reasonably be expected**" is a far higher test than that adopted in the Bill. Indeed, in **Transnet Limited and Another v SA Metal Machinery Co (Pty) Ltd**⁹⁴ the Supreme Court of Appeal was called upon to interpret the identical phrase ("**could reasonably be expected**") in the context of section 36(1)(c) of PAIA, which deals with a ground of refusal of the disclosure of information to protect the commercial information of a third party. Howie P for the Court held that, taking into account the fact that access to information is a fundamental right, the term "**could reasonably be expected**" must be interpreted as referring to an occurrence that is probable and not merely possible and that, accordingly, the consequences guarded against in section 36(1)(c) of PAIA are those "(i) **that could be expected as probable** (ii) **if reasonable grounds exist for that expectation.**"⁹⁵

3.2.50 The Bill should in this regard cohere with the PAIA test, which we submit, correctly strikes the balance between expression, free speech and access to information on the one hand, and national security on the other in its formulation of the threshold harm test.

3.2.51 The free speech jurisprudence that we have considered impels the result, we submit, that the right to freedom of expression (and the

⁹⁴ 2006 (6) SA 285 (SCA).

⁹⁵ At paras 39 -42. See also the Australian Freedom of Information Act, 1982 ("**FIA**"), which is analogous to PAIA. Section 33(1) of FIA allows for a document to be withheld if its disclosure "**would, or could reasonably be expected to, cause damage**" to the security or defence of the Commonwealth, or its international relations.



related right of access to information) can only be limited by reference to (a narrowly-defined conception of) national security if, at least:

- 3.2.51.1 the harm sought to be avoided is at least demonstrable and substantial; and
 - 3.2.51.2 the harm is reasonably likely to occur, i.e. the classifying functionary expects such harm to occur as a probability, and reasonable grounds exist for such an expectation.
- 3.2.52 Thus, for instance, we submit that a document should not be classified as “Confidential” unless there is a reasonable likelihood that its disclosure will harm national security; or “Secret”, unless there is a reasonable likelihood that its disclosure will endanger national security; or “Top Secret”, unless there is a reasonable likelihood that its disclosure will cause serious and irreparable harm to national security.
- 3.2.53 In addition to our domestic free speech jurisprudence in this regard, we submit that the legal position in foreign jurisdictions supports the proposition that the degree of harm threshold should be set at a high level, to safeguard constitutional rights. We briefly examine the position in the United States of America, the United Kingdom and New Zealand, and then turn to an examination of regional and international law.

(iii) The position in the United States of America

- 3.2.54 In the United States of America, classification of documents is not governed by a specific piece of legislation; it is instead dealt with through Executive Orders issued by the President from time to time that are binding on administrative officials. The current Executive Order that deals with classification of documents is **Executive Order 13526 of December 29, 2009 (“the Executive Order”)**.



- 3.2.55 The Executive Order provides for three levels of classification, i.e. "confidential", "secret" and "top secret".⁹⁶ All three levels of classification require as a threshold that documents may only be classified if their unauthorised disclosure "**reasonably could be expected**" to cause various levels of harm to national security,⁹⁷ and the classification authority must be able to identify or describe the damage that reasonably could be expected to occur.⁹⁸
- 3.2.56 This is a far more desirable standard than the thresholds adopted in the Bill. Thus, for example, under clause 15 of the Bill, a record will be classified as "secret" if it "**may endanger the security or national interest**" of South Africa. Under the Executive Order, the threshold that applies is that the disclosure of the record "**reasonably could be expected to cause serious damage to the national security**"; further, a US classifying authority will have to identify or describe the harm in question.
- 3.2.57 The case law of the US Supreme Court in this context also suggests that a significant harm threshold should be employed in order to ensure that the First Amendment's protection of freedom of expression is properly taken into account. In **New York Times Company v United States (the Pentagon papers case)**,⁹⁹ the government sought an injunction preventing the *New York Times* and the *Washington Post* from publishing excerpts from a classified historical study on the Vietnam war on the basis that the publication would endanger national security. The newspapers resisted the application on the ground of First Amendment protection.
- 3.2.58 The decision of Justice Brennan is particularly apposite in the present context. He reasoned as follows:

⁹⁶ Section 1.2 of the Executive Order.

⁹⁷ "**Exceptionally grave damage**" in the case of "**top secret**" classifications, "**serious damage**" in the case of "secret" classifications; and "**damage**" in the case of "confidential" classifications (section 1.2 of the Executive Order).

⁹⁸ Section 1.1 of the Executive Order.

⁹⁹ 403 US 713 (1971).



The entire thrust of the Government's claim throughout these cases has been that publication of the material sought to be enjoined "could", or "might", or "may" prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result. ...

Thus, only government allegation and proof that publication must inevitably, directly, and immediately cause the occurrence of an event kindred to imperilling the safety of a transport already at sea can support even the issuance of an interim restraining order.¹⁰⁰ (our emphasis).

3.2.59 Justice Stewart's comments are also worth noting. He expressed the view that the US government could not obtain an injunction as it had not shown that publication of the classified information would result in **"direct, immediate and irreparable harm"**.¹⁰¹

3.2.60 PMSA submits that the US position supports the proposition that the speculative test for harm that the Bill presently adopts is an unjustifiable limitation if freedom of expression and access to information.

(iv) The position in New Zealand

3.2.61 In New Zealand, the classification of documents is dealt with through a government classification policy.¹⁰²

3.2.62 In regard to national security, the classification policy provides that the standards are as follows:

3.2.62.1 "Restricted": the compromise of information would be likely to affect the national interests in an adverse manner;

3.2.62.2 "Confidential": the compromise of information would damage national interests in a significant manner;

¹⁰⁰ At 726-7.

¹⁰¹ At 730. See also **US v The Progressive Inc** 467 F.Supp 990 (1979) at 1000: the government had shown that there was a likelihood of "*direct, immediate and irreparable injury to our nation and its people*"; **Stillman v Central Intelligence Agency** 2007 WL 1020814 (DDC): "**Stillman's manuscript could reasonably be expected to cause serious damage to national security**".

¹⁰² The government policy entitled Security in the Government Sector is available at <http://www.security.govt.nz/sigs/html/index.html> (Accessed on 9 June 2010).



3.2.62.3 "Secret": the compromise of information would damage national interests in a serious manner; and

3.2.62.4 "Top Secret": the compromise of information would damage national interests in an exceptionally grave manner.

3.2.63 These tests are even more stringent than a test based on "**likelihood**" of harm, and indicate how in other jurisdictions, the endorsement of speculative harm adopted in the Bill would not be countenanced. Certainly the high thresholds demanded in New Zealand are highly protective of freedom of speech and access to information.

(v) The position in the United Kingdom

3.2.64 **Section 5 of the Official Secrets Act, 1989 ("the OSA")** deals with information resulting from unauthorised disclosures or information entrusted in confidence. It provides:

(2) [T]he person into whose possession the information, document or article [protected against disclosure] has come is guilty of an offence if he discloses it without lawful authority knowing, or having reasonable cause to believe, that it is protected against disclosure by the foregoing provisions of this Act and that it has come into his possession as mentioned in subsection (1) above.

(3) In the case of information or a document or article protected against disclosure by sections 1 to 3¹⁰³ above, a person does not commit an offence under subsection (2) above unless -

(a) the disclosure by him is damaging; and

(b) he makes it knowing, or having reasonable cause to believe, that it would be damaging;

and the question whether a disclosure is damaging shall be determined for the purposes of this subsection as it would be in relation to a disclosure of that information, document or article by a Crown servant in contravention of section 1(3), 2(1) or 3(1) above (our emphasis).

3.2.65 In terms of section 1(4) of the OSA, a disclosure is damaging if:

¹⁰³ These sections deal with security and intelligence, defence and international relations.



- (a) it causes damage to the work of, or of any part of, the security and intelligence services; or
- (b) it is of information or a document or other article which is such that its unauthorised disclosure would be likely to cause such damage or which falls within a class or description of information, documents or articles the unauthorised disclosure of which would be likely to have that effect (our emphasis).

3.2.66 Again, the harm test adopted for criminal liability to ensue is a likelihood of damage.¹⁰⁴

3.2.67 There is also support in regional and international instruments for the higher threshold test that we suggest should be adopted:

(vi) The African Charter on Human and Peoples' Rights

3.2.68 South Africa is a state party to the African Charter on Human and Peoples' Rights ("ACHPR"). **Article 9 of the ACHPR** provides that:

- (1) **Every individual shall have the right to receive information.**
- (2) **Every individual shall have the right to express and disseminate his opinions within the law.**

3.2.69 In its **Declaration on Principles on Freedom of Expression in Africa**,¹⁰⁵ the African Commission on Human and Peoples' Rights states that:

Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression¹⁰⁶ (our emphasis).

(vii) The Johannesburg Principles

3.2.70 The Johannesburg Principles are also supportive of a high threshold for the likelihood of harm. Principle 1.2 provides that:

¹⁰⁴ See also **Lord Advocate v The Scotsman** [1990] 1 AC 812 (HL) at 821, where the Court stated that the government could not "*insist on confidentiality as regards governmental matters unless it could demonstrate the likelihood of such damage being caused by disclosure*" (our emphasis).

¹⁰⁵ Available at http://www.achpr.org/english/declarations/declaration_freedom_exp_en.html (Accessed on 9 June 2010).

¹⁰⁶ Principle XIII.



Any restriction on information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.¹⁰⁷ (our emphasis).

3.2.71 Principle 1.3 elaborates on Principle 1.2 and states that:

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;**
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and**
- (c) the restriction is compatible with democratic principles (our emphasis).**

3.2.72 It is of significance that clause 21(1) of the Bill adopts a higher threshold for the harm test in regard to decisions by functionaries whether to continue the classification of a record. In this context, the test is whether the declassification “**is likely to cause significant and demonstrable harm to the national interest**”. Subject to what we have said above in relation to “national interest”, this provision of the Bill appears to strike the correct balance between national security and constitutional rights.

3.2.73 It is anomalous that higher threshold tests for harm are adopted in the context of whether to continue with a classification; these same tests should apply to the original decision as to whether a document should be classified.¹⁰⁸

3.2.74 In view of the above, we submit that the current harm tests in clause 15 require urgent amendment to ensure that records will only be classified if the harm to national security sought to be prevented thereby is at least reasonably likely to occur,¹⁰⁹ substantial and demonstrable. Only a test of this nature will in this context strike the correct balance between the rights to freedom of expression and

¹⁰⁷ See also Principle 11.

¹⁰⁸ The MRCI makes a similar point at 15.

¹⁰⁹ A similar test of “*likely to cause*” harm was advocated in the Explanatory Notes on the 2008 Bill dated 10 June 2008 at 56.



access to information on the one hand, and the government's legitimate interest in safeguarding certain matters of importance to the state on the other.



D: Miscellaneous problems with the classification and declassification regime

3.2.75 There are various difficulties with the discretion and power vested in the Minister under the Bill which have the potential to lead to substantial censorship of information that ought not to be classified. These difficulties include the following:

(i) Independent oversight mechanism

3.2.75.1 We submit that in order to guard against the problem of over-classification, an independent and expert oversight body accountable to Parliament should be created for periodic review of classified documentation, and to hear appeals from decisions of the heads of organs of state. In the United States, for instance, an Information Security Oversight Office ("ISOO") which is outside of the national intelligence, defence and security structure, performs a number of functions. **Section 5.2 of the Executive Order** lists the ISOO's primary functions as the following:

- (1) develop directives for the implementation of this order;
- (2) oversee agency actions to ensure compliance with this order and its implementing directives;
- (3) review and approve agency implementing regulations prior to their issuance to ensure their consistency with this order and directives issued under section 5.1(a) of this order;
- (4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities ...
- (5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the National Security Advisor;
- (6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order; ...
- (7) ...
- (8) report at least annually to the President on the implementation of this order;



(9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

3.2.75.2 The oversight mechanism in New Zealand is also apposite. In terms of **section 28(1) of the Official Information Act 1982**, a person who is aggrieved by a refusal of a request for information under the Act (including a refusal that is based on the classified nature of the information requested) may submit their grievance to the Ombudsman concerned. The Ombudsman may review the documents in question and make a recommendation that the documents be released.¹¹⁰ All organs of state have a duty to comply with the Ombudsman's recommendation;¹¹¹

(ii) Bulk classification

3.2.75.3 Clause 7(1) of the Bill vests in the Minister an overbroad discretion to prescribe "broad categories and subcategories of information that may be classified, downgraded and declassified", and to prescribe "national information security standards and procedures for the categorisation, classification, downgrading and declassification of information". To the extent that this provision (which suffers from the twin defects of vesting in the Minister an overbroad discretion and paying lip service to public participation)¹¹² contemplates that all documents and information fall to be classified automatically once they form part of a certain category of information, this is

¹¹⁰ Section 30 (1) of the Official Information Act.

¹¹¹ Section 32 of the Official Information Act. Section 31(a) of the Act states an Ombudsman may not recommend that the information be made available if the Prime Minister certifies that this would be likely to prejudice national security.

¹¹² Clause 7(3)(b) provides that in relation to the determination of categories, the Minister has a discretion as to whether to consider any comments received after publication of the proposed categorisation in the Gazette. First, there should be no discretion: the Minister should be obliged to give proper consideration to all comments received. See section 4(3) of the Promotion of Administrative Justice Act 3 of 2000. Secondly, there is no public participation procedure in regard to the prescription of national information security standards and procedures. Thirdly, the legislation should in any event prescribe time frames in regard to giving notice to the public and considering its comments.



not a proportionate restriction on the constitutional rights of free speech and access to information.

3.2.75.4

Clauses 14(2), 16(5) and 16(6) of the Bill provide for the classification of broad categories and subcategories of information, files, integral file blocks, file series or categories of information, and permits all individual items that fall within such a classified group of documents to be automatically classified. This approach to bulk classification is dangerously restrictive of access to information and free speech. The classification of any document that does not have the potential to harm a narrowly defined concept of national security is patently unjustifiable. The mere fact that bulk classification would be expedient or administratively efficient cannot serve as a justification for limitation of fundamental rights.



3.3 Inroads into the open justice principle

3.3.1 Clause 46 of the Bill deals with protection of State information before courts. We reproduce clause 46 below for ease of reference:

- (2) **Classified information that is placed before a court may not be disclosed to persons not authorised to receive such information unless a court, in the interests of justice, and upon considering issues of national security, national interest of the republic referred to in section 11 and any other law, orders full or limited disclosure, with or without conditions.**
- (3) **Unless a court orders the disclosure of classified information or orders the limited or conditional disclosure of information, the court must issue directions for the proper protection of such information during the course of legal proceedings, which may include:
 - (a) the holding of proceedings or part thereof *in camera*;
 - (b) the protection from disclosure and publication of those portions of the record containing the classified information; or
 - (c) the implementation of measures to confine disclosure to those specifically authorised to receive the information.**
- (4) **A court may not order the disclosure of classified information without taking reasonable steps to obtain the written or oral submissions of the classification authority that made the classifications in question or alternatively to obtain the submissions of the Director-General of the Agency..**
- (5) **The submissions referred to in sub section (3) may not be publicly disclosed, any hearing held in relation to the determination referred to sub section (1) must be held *in camera* and any person not authorised to receive such information may not attend such hearings unless authorised by a court.**
- (6) **A court may, if it considers it appropriate, seek the written or oral submissions of interested parties, persons and organisations but may not disclose the actual classified information to such persons or parties prior to its order to disclose the information in terms of sub-section (1).**
- (7) **A classification authority, or the Director-General of the Agency as the case may be in consultation with the Minister, must declassify information required in legal**



proceedings, either in whole or in part, unless it is strictly necessary to maintain the classification in terms of this Act ...

- (8) In addition to the measures set out in this section a court in criminal proceedings has the same powers as those conferred upon a court under section 154(1(and (4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), and the said section applies with the necessary changes.
- (9) Any person who discloses or publishes any classified information in contravention of an order or direction issued by a court in terms of this section is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.
- (10) The head of an organ of state may apply to a court for an order restricting the disclosure of unclassified State information that is part of, or is intended to be part of, an open court record, which, if publicly disclosed or published may undermine the national interest;
- (11) A court hearing such an application may –
 - (a) determine its own procedures and may impose limitations on the disclosure of the information in question pending its decision to restrict disclosure or not; and
 - (b) if it considers appropriate, invite written or oral submissions from other interested parties.
- (12) A court which acts in terms of this section must endeavour to accommodate the principle of open justice to as great an extent as possible without risking or compromising the national interest).¹¹³

3.3.2 PMSA submits that clause 46 fails to give proper effect to the principle of open justice. It is necessary at this juncture to consider the potency of this principle in our law, before examining how in material respects clause 46 falls foul of this jurisprudence.

¹¹³ We have criticised the concept of "national interest" above.



3.3.3 The open justice principle was recognised in the South African common law even before the enactment of the Constitution.¹¹⁴ It was first alluded to by the Constitutional Court in **S v Mamabolo**.¹¹⁵

Since time immemorial and in many divergent cultures it has been accepted that the business of adjudication concerns not only the immediate litigants but is a matter of public concern which, for its credibility, is done in the open where all can see. Of course this openness seeks to ensure that the citizenry know what is happening, such knowledge in turn being a means towards the next objective: so that the people can discuss, endorse, criticise, applaud or castigate the conduct of their courts and, ultimately such free and frank debate about judicial proceedings serve more than one vital public purpose. Self-evidently such informed and vocal public scrutiny promotes impartiality, accessibility and effectiveness, three of the more important aspirational attributes prescribed for the judiciary by the Constitution

However, such vocal public scrutiny performs another important constitutional function. It constitutes a democratic check on the judiciary. The judiciary exercises public power and it is right that there be an appropriate check on such power.¹¹⁶

3.3.4 The leading case that examines the interaction between the open justice principle and classified or otherwise secret documents is the recent decision of the Constitutional Court in the **Masetlha** case. As Moseneke DCJ acknowledged in that case in terms accepted by the full Court:

The constitutional imperative of dispensing justice in the open is captured in several provisions of the Bill of Rights ...

This systemic requirement of openness in our society flows from the very founding values of our Constitution, which enjoin our society to establish democratic government under the sway of constitutional supremacy and the rule of law in order, amongst other things, to ensure transparency, accountability and responsiveness in the way courts and all organs of state function ...

From the right to open justice flows the media's right to gain access to, observe and report on, the administration of justice and the right to have access to papers and written arguments

¹¹⁴ See e.g. **Botha v Minister van Wet en Order en Andere** 1990 (3) SA 937 (W).

¹¹⁵ **Mamabolo** (above) at paras 28-9.

¹¹⁶ For equivalent foreign law, see **Richmond Newspapers Inc v Virginia** 448 US 555 (1980) at 570-2; **Edmonton Journal v Attorney General for Alberta, Attorney General of Canada and Attorney General of Ontario** [1989] 2 SCR 1326, 64 DLR (4th) 577; **Named Person v Vancouver Sun** 2007 SCC 43.



which are an integral part of court proceedings subject to such limitations as may be warranted on a case-by-case basis in order to ensure a fair trial (our emphasis).¹¹⁷

3.3.5 The Constitutional Court in the **Masetlha** case also set out the proper considerations to be adopted when national security interests are invoked to seek to withhold court documents from the public. In each case:

[T]he Court will have to weigh the competing rights or interests carefully with the view to ensuring that the limitation it places on open justice is properly tailored and proportioned to the end it seeks to attain.¹¹⁸ ...

[T]he starting point is that court proceedings and so too court records must be open to the public.¹¹⁹

3.3.6 It follows that clause 46 of the Bill must now be assessed in light of the guidance provided by the Constitutional Court in its open justice jurisprudence, and particularly the **Masetlha** case.

3.3.7 Clause 46 fails to pass constitutional muster in material respects, which we outline below:

3.3.7.1 first, clause 46(1) of the Bill, which provides that classified information that is placed before a court may not be disclosed to any person not authorised to receive this information unless a Court orders full or limited disclosure, undermines the principle of open justice that our Courts have been at pains to emphasis (see above):

3.3.7.1.1 as Moseneke DCJ accepted in the **Masetlha** case, "**I accept that the default position is one of openness**".¹²⁰
Moseneke DCJ continued:

In each case, the Court will have to weigh the competing rights or interests carefully with the view to ensuring that the limitation that it places on open justice is properly tailored and proportioned to the end it seeks to

¹¹⁷ At paras 39-41. See also **South African Broadcasting Corporation** at paras 31-2.

¹¹⁸ **Masetlha** (above) at para 45.

¹¹⁹ At para 54.

¹²⁰ **Masetlha** at para 43.



attain. In the end, the contours of our constitutional rights are shaped by the justifiable limitation that the context presents and the law permits ...

it is so that a party that contends for a restriction of a right protected in the Bill of Rights **must place before the Court material which justifies the limitations sought ...** at the end of the day, a Court is obliged to have regard to all factual matter and factors before it in order to decide whether the limitation on the right to open courtrooms passes constitutional muster.¹²¹

3.3.7.1.2

clause 46(1) of the Bill undermines the right to open justice because the starting point it envisages is that classified information before a court may not be disclosed unless a Court orders disclosure. This is inconsonant with the position adopted in our jurisprudence in regard to a limitation of constitutional rights. As the Court stated in the **Masetlha** case:

I agree with the submission made by Independent Newspapers that ordinarily, the starting point is that court proceedings and so too court records must be open to the public. A mere classification of a document within a Court record as "confidential" or "secret" or even "top secret" under the operative intelligence legislation or the mere ipse dixit of the minister concerned does not place such documents beyond the reach of the Courts. Once the documents are placed before a court they are susceptible to its scrutiny and direction as to whether the public should be granted or denied access ...

It follows that **where a government official object to disclosure of a part of the record before court on grounds of national security**, the court is properly seized with the matter and is obliged to consider all relevant circumstances and to decide whether it is in the interests of justice for the documents to be kept secret and away from any other parties, the media or the public¹²²;

3.3.7.1.3

PMSA therefore submits that clause 46(1) of the Bill - indeed the entire structure of clause 46 - does not proceed from the appropriate point of departure. The rule should be that all documents placed before the Courts, whether

¹²¹ At paras 45-6.

¹²² **Masetlha** at paras 54-5.



classified or not, should be open to the public, unless a court in the interests of justice, whether on application of an organ of state or *mero motu*, ultimately decides to limit such disclosure;

3.3.7.2 secondly, clause 46(4) of the Bill states that the submissions which courts are compelled to seek under clause 46(3) from the classification authority, may not be publicly disclosed, that any hearing in relation to the determination as to whether the documents should be disclosed must be held *in camera*, and that no person who is not authorised to do so may attend the hearings (unless authorised by a court):

3.3.7.2.1 PMSA submits that the injunction that the hearing in relation to whether documents should be disclosed should always take place *in camera*, and the absolute rule that the submissions as to why the documents should be kept secret should itself not be disclosed, in addition to fettering of courts' discretion, constitute drastic interferences with the right to open justice. As the jurisprudence makes plain, even in the case of classified documents that are before courts, the general principle is that hearings take place in the open and that documents that are relevant to such hearings (such as heads of argument and the record of the matter, with any sensitive material redacted) must be accessible by the public;

3.3.7.2.2 for instance, in the **Masetlha** case referred to above, the Minister objected to the disclosure of certain information (some of which was classified) under cover of a notice setting out in broad terms the reasons for the Minister's objection to such disclosure. This notice was part of the Court record, and accordingly publicly available. Similarly, the Constitutional Court's hearing in **Masetlha** into whether the documents objected to by the Minister should be disclosed, was rightly conducted in the open;



3.3.7.3 thirdly, PMSA submits that clause 46(5) of the Bill also does not accord with the jurisprudence of the Constitutional Court in the **Masetlha** case. Although the majority of the Constitutional Court rejected an interlocutory application by the intervening party to have conditional disclosure of the documents sought to be restricted by the Minister in order to prepare its case, Moseneke DCJ stated as follows in this context:

I do not mean to lay down an inflexible rule. There will be instances where a party will point to what appears to be a lack of authority or to an improper exercise of authority or to some other unjustifiable conduct on the part of a public official claiming confidentiality of information. In that event, it may well be in the interests of justice to permit the party concerned and her or his legal representatives, subject to appropriate conditions, to gain access to the sealed part of the record or information for purposes of posing an informed challenge to the confidentiality claim of the public official concerned¹²³,

3.3.7.3.1 in light of the guidance provided by Moseneke DCJ for the majority of the Constitutional Court, the blanket approach to the issue adopted in clause 46(5) of the Bill – that courts may not disclose the actual classified information to any party prior to a court order to disclose information to the public – is overly-broad;¹²⁴

3.3.7.4 fourthly, clause 46(9) of the Bill is also unconstitutional. It is objectionable to allow the head of an organ of state to apply to court for an order restricting the disclosure of unclassified State information that is contended *may* harm the "*national interest*" (a concept that is so exceedingly vague as to itself be unconstitutional).¹²⁵ And the speculative nature of the test envisaged in clause 46(9) is not constitutionally compliant. The

¹²³ At para 32, our emphasis.

¹²⁴ There is also foreign case authority that supports the proposition that in some circumstances, conditional access should be provided to counsel of media organisations who wish to make submissions on whether documents before courts should remain sealed: see e.g. **R v Dell** (2005) 194 CCC (3d) 321 at paras 65-74.

¹²⁵ See above.



same arguments we have made above in relation to the tests for the classification of documents apply in this context;¹²⁶

3.3.7.4.1

finally, the criminal offence which is created in clause 46(8) of the Bill – which also doubles the period of imprisonment compared to the 2008 Bill, from five years to 10 – is unnecessary. The crime of contempt of court which will be triggered, in the ordinary course, if a court order is contravened. In this regard, clause 46(8) of the Bill would result in a person who has violated a court order being liable in two respects: for the crime of contempt of court as well as for violating clause 46(8) of the Bill.

¹²⁶ See above.



3.4 **The Bill leaves untouched other repressive classification laws**

3.4.1 There are several pieces of national legislation dealing with the confidentiality and classification of State information. PMSA is concerned that the Bill does not propose to repeal any of these provisions.¹²⁷ As it presently stands, therefore, parallel systems of classification of information will exist, despite clause 17 of the Bill, which provides that the decision to classify information must be based solely on the guidelines and criteria set out in the Bill and the policies and regulations made in terms of the Bill.¹²⁸

3.4.2 Further, while the Bill will hopefully provide enhanced protection for the media, the classification regimes or powers in existing pieces of legislation will remain restrictive of the rights to access to information and free speech. We mention below a selection of some existing legislation that will apparently continue in force following the enactment of the Bill:

Defence Act 42 of 2002

3.4.3 **Section 104 of the Defence Act** provides for offences under the Act. Section 104(7) prohibits the disclosure, without authority, of information classified in terms of this act.

3.4.4 It is also an offence, in terms of **section 104(19)(a) of the Defence Act**, without proper authority, to gain access to "**classified information from specific classified facilities, installations of instruments of the Department [of Defence]**".

3.4.5 The Defence Act is otherwise silent in regard to classified information – including how it is defined, the standards for its classification, and the procedure for classification.

Intelligence Services Act 65 of 2002

¹²⁷ The only legislation that the Bill seeks to repeal is the Protection of Information Act, and section 83(3)(c) of the Defence Act 42 of 2002.

¹²⁸ Although the Minister may exempt an organ of State from the application of the Bill on good cause shown (clause 3(2)).



- 3.4.6 **Section 10(3)(d) of the Intelligence Services Act** provides for the issue of "*functional directives*" by the director-general of intelligence and the chief executive officer of the South African National Academy of Intelligence for the "**protection of classified information**".
- 3.4.7 Currently, the Intelligence Services Regulations (published in Government Gazette number 25592 under Government Notice number 1505 on 16 October 2003) provide for the classification of documents. However, it appears that only portions of the regulations are publicly available and that the regulations concerning classification of documents are not made public.

The National Supplies Procurement Act 89 of 1970

- 3.4.8 Although the National Supplies Procurement Act does not refer to the concept of "classified information", it contains excessively wide prohibitions on the disclosure of information, *inter alia*:

No person shall disclose to any person any information in relation to any goods or any service referred to in an arrangement or order made or issued under section 2 or 3(1) [which deals with the powers of the Minister of Trade and Industry in regard to the manufacture, production and acquisition of goods, and the acquisition, hiring or supply of services], or any statement, comment or rumour calculated directly or indirectly to convey such information or anything purporting to be such information;¹²⁹ and

Whenever the Minister [of Trade and Industry] deems it necessary or expedient in the public interest, he may by notice in the *Gazette*, or by written notice to a particular person or particular persons, prohibit the disclosure of any information in relation to any goods or service, or of any statement, comment or rumour calculated directly or indirectly to convey such information.¹³⁰

- 3.4.9 These prohibitions are clearly overbroad and unconstitutional, but will remain in force despite the Bill's salutary purposes. Such existing restrictions serve as a stark reminder that the drafters of the Bill

¹²⁹ Section 8A.

¹³⁰ Section 8B.



should – in addition to examining other laws that permit the classification and hence censorship of information – also be carefully considering other restrictive provisions in the area of national security law that, in light of the approach adopted in the Bill to classified information, should now be repealed.



4. Conclusion

4.1 We have submitted that the Bill is in many respects a welcome change to the national security landscape in South Africa.

4.2 However, in significant and crucial respects, the Bill does not properly calibrate the interests of openness and transparency, and the rights to open justice, freedom of speech, and access to information, with national security concerns. Indeed, in its present form, the Bill will result in widespread and unjustifiable censorship, will undermine investigative journalism, and will result in little oversight for classification decisions. These adverse consequences must be avoided at all costs, given the overall significance of the Bill to our constitutional project.

4.3 It is appropriate to conclude with reference to the comments of two justices of the US Supreme Court in the leading **Pentagon Papers** case, which we submit apply with even greater logic in South Africa:

Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health. On public questions there should be uninhibited, robust, and wide-open debate¹³¹ ...

[Classification] is an awesome responsibility requiring judgment and wisdom of a high order...[A] very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion...[T]he hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained¹³² (own emphasis).

4.4 The Bill has the potential to play a significant role in transforming our society from a culture of secrecy and repression to one of transparency, accountability and responsiveness, and to become a leading precedent for open and democratic governments the world over. To achieve these goals and the desirable objectives it articulates, the Bill must properly

¹³¹ At 724 (Justice Douglas).

¹³² At 729 (Justice Stewart).



respect openness, free speech, and access to information, in the various ways that we have suggested.

Dr Dario Milo, Okyerebea Ampofo-Anti and Duncan Wild

WEBBER WENTZEL ATTORNEYS

on behalf of Print Media South Africa

25 June 2010



Jun-10

ABBREVIATIONS

MD Morning Daily, Mo-Fri	BIM Bi-Monthly	T Tuesday
AD Afternoon Daily, Mo-Fri	BiW Bi-Weekly	W Wednesday
Wk Weekly	BIA 2x a Year	Th Thursday
Mt Monthly	Q Quaterly	Fr Friday
F Fortnightly	M Monday	Sat Saturday

NEWSPAPER ASSOCIATION (46)

URBAN DAILY NEWSPAPERS

(21)

TITLE	PROPRIETOR	FRQ	LAN
Beeld	Media 24 Bpk	MD	A
Burger, Die	Media 24 Bpk	MD	A
Business Day	BDFM Publishers (Pty) Ltd	MD	E
Cape Argus, The	Independent Newspapers (Pty) Ltd	AD	E
Cape Times	Independent Newspapers (Pty) Ltd	MD	E
Citizen, The	Caxton Publishers & Printers Ltd	MD	E
Daily Dispatch	Dispatch Media (Pty) Ltd	MD	E
Daily News, The	Independent Newspapers (Pty) Ltd	AD	E
Daily Sun	Media 24 Bpk	MD	E
Diamond Fields Advertiser	Independent Newspapers (Pty) Ltd	MD	E
Herald, The	Avusa Ltd	MD	E
Isolezwe	Independent Newspapers (Pty) Ltd	MD	Z
Mercury, The	Independent Newspapers (Pty) Ltd	MD	E
Pretoria News	Independent Newspapers (Pty) Ltd	MD	E
Sake Beeld	Media 24 Bpk	MD	A
Son, Die	Media 24	MD	A
Sowetan	Avusa Ltd	MD	E
Star, The	Independent Newspapers (Pty) Ltd	AD	E
Times, The	Avusa Ltd	MD	E
Volksblad, Die	Media 24 Bpk	MD	A
Witness, The	Natal Witness P & P Co (Pty) Ltd	MD	E

URBAN WEEKLY NEWSPAPERS

Weekly Editions

(2)

Post	Independent Newspapers (Pty) Ltd	W, Fri	E
UmAfrika	The Natal Witness Printing & Publishing Co. (Pty)	W	Z

TITLE PROPRIETOR FRQ LAN

Saturday Editions

(11)

Burger, Die	Media 24 Bpk	Sat	A
Citizen, The	Caxton Publishers & Printers Ltd	Sat	E
Independent on Saturday, The	Independent Newspapers (Pty) Ltd	Sat	E
Naweek Beeld	Media 24 Bpk	Sat	A
Pretoria News	Independent Newspapers (Pty) Ltd	Sat	E
Saturday Dispatch	Dispatch Media (Pty) Ltd	Sat	E
Saturday Star, The	Independent Newspapers (Pty) Ltd	Sat	E
Volksblad, Die	Media 24 Bpk	Sat	A
Weekend Argus on Saturday	Independent Newspapers (Pty) Ltd	Sat	E
Weekend Post on Saturday	Avusa Ltd	Sat	E
Weekend Witness, The	Natal Witness P & P Co (Pty) Ltd	Sat	E

Sunday Editions

(8)

City Press	RCP Media Limited	Sun	E
Rapport	RCP Media Limited	Sun	A
Sunday Independent, The	Independent Newspapers (Pty) Ltd	Sun	E
Sunday Sun	RCP Media Limited	Sun	E
Sunday Times	Avusa Ltd	Sun	E

Sunday Tribune	Independent Newspapers (Pty) Ltd	Sun	E
Sunday World	Avusa Ltd	Sun	E
Weekend Argus on Sunday	Independent Newspapers (Pty) Ltd	Sun	E

INDEPENDENT NATIONAL WEEKLY NEWSPAPERS

African Times	African Times	Tu, Thu, Sat	C
China Express, The	China Express SA (Pty) Ltd	Tu, Fr	C
China News	China News (Pty) Ltd	Mo, We, Fr	C
Mail & Guardian	M & G Media Limited	Fr	E

INDEPENDENT NATIONAL DAILY NEWSPAPERS

The Namibian	Daily
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COMMUNITY NEWSPAPERS

(195)

TITLE	PROPRIETOR	FRQ	LAN
African Reporter	Springs Advertiser (Pty) Ltd	W	E
Agri Review	Picasso Headline (Pty) Ltd	Monthly	B
Alex News	Caxton Publishers & Printers Ltd	F	E
Alberton Record	Caxton Publishers & Printers Ltd	W	B
Algoa Sun	Avusa Ltd	W	E
Athlone News	Independent Newspapers (Pty) Ltd	W	E
Atlantic Sun	Independent Newspapers (Pty) Ltd	W	E
Barateiro	CTP Limited	M	P
Barberton Times	CTP Limited	W	B
Bedfordview & Edenvale News	Caxton Publishers & Printers Ltd	W	B
Benoni City Times	Caxton Publishers & Printers Ltd	W	B
Berea Mail	The Highway Mail (Pty) Ltd	W	E
Bloemnuus	Media 24 Bpk	W	B
Bolander	Independent Newspapers (Pty) Ltd	W	E
Bonus	Caxton Publishers & Printers Ltd	W	B
Boksburg Advertiser	Caxton Publishers & Printers Ltd	W	B
Bosvelders	Northern Media Group	W	E,A
Brakpan Herald	Caxton Publishers & Printers Ltd	W	B
Breedrivier Gazette	Media 24 Bpk	W	B
Brits Pos	Caxton Publishers & Printers Ltd	W	B
Caledon Kontreinuus	Overberg Media	W	B
Cape Towner, The	Independent Newspapers (Pty) Ltd	W	E
Capricorn Voice	Northern Media Group	W	B
Carletonville Herald	Mooivaal Media	W	B
Chatsworth Rising Sun	Rising Sun Community Newspapers (Pty) Ltd	W	E
Chiawelo Urban News	Caxton Publishers & Printers Ltd	W	E
City Vision (Cape Town)	Media 24 Bpk	W	Xh, E
City Vision (Jhb)	Media 24 Bpk	W	E

City Vision (Langa/Gugulethu/Nyanga)	Media 24 Bpk	W	Xh, E
Conaro Chronicle	Caxton Publishers & Printers Ltd	W	E
Constantiaberg Bulletin	Independent Newspapers (Pty) Ltd	W	E
Corridor Gazette	CTP Limited	W	B
Daller, The	Caxton Publishers & Printers Ltd	W	B
Diepkloof Urban News	Caxton Publishers & Printers Ltd	W	E
District Mail/Distrikspos	Boland Koerante Edms Bpk	W	B
Dobsonville Urban News	Caxton Publishers & Printers Ltd	W	E
East Griqualand Herald	Sky Blue Media	W	E
Echo, The	The Natal Witness Printing & Publishing Co. (Pty)	W	E, Z
Eikestadnuus	Boland Koerante Edms Bpk	W	B
Eldorado Park Urban News	Caxton Publishers & Printers Ltd	W	E
Estcourt & Midland News	Caxton Publishers & Printers Ltd	W	B
Express	Media 24 Bpk	W	E
False Bay Echo	Independent Newspapers (Pty) Ltd	W	E
Fourways Review	Caxton Publishers & Printers Ltd	W	E
Gemsbok Advertiser	Caxton Publishers & Printers Ltd	W	B
George Herald	Group Editors Co (Pty) Ltd	W	B
Germiston City News	Caxton Publishers & Printers Ltd	W	B
Go! & Express East London	Avusa Ltd	W	B
Goudveld Forum	Media 24 Bpk	W	B
Grahamstown Shoppa This Week	Picasso Headline (Pty) Ltd	W	E
Heidelberg / Nigel Heraut	Heraut Publishers (Pty) Ltd.	W	B
Helderberg Sun	Independent Newspapers (Pty) Ltd	W	E
Helderpos/Heldermail	Boland Koerante Edms Bpk	W	B
Hermanus Times	Boland Koerante Edms Bpk	W	B
Highveld Herald/Hoevelder	Hoeveld Pers (Edms) Bpk	W	B
Highway Mail	The Highway Mail (Pty) Ltd	W	E
Hilltop, The	The Highway Mail (Pty) Ltd	W	E
Ilizwi	Picasso Headline (Pty) Ltd	W	B
Indabazethu	Picasso Headline (Pty) Ltd	W	B
Jabavu Urban News	Caxton Publishers & Printers Ltd	W	E
Joburg East Express	Caxton Publishers & Printers Ltd	W	E
Kempton Express	Caxton Publishers & Printers Ltd	W	B
Klerksdorp Record	Caxton Publishers & Printers Ltd	W	B
Kouga Express	Media 24 Bpk	W	B
Knysna Plett Herald	Group Editors Co (Pty) Ltd	W	B
Kroonnuus	Media 24 Bpk	W	B
Krugersdorp News	Caxton Publishers & Printers Ltd	W	B
Ladysmith Gazette	Caxton Publishers & Printers Ltd	W	E
Lentswe	Caxton Publishers & Printers Ltd	W	E

TITLE	PROPRIETOR	FRQ	LAN
Letaba Herald	Caxton Publishers & Printers Ltd	W	B
Lowvelder, The/Die Laevelder	Caxton Publishers & Printers Ltd	2xW	B
Mail, The	Caxton Publishers & Printers Ltd	W	E
Maluti	Media 24 Bpk	W	B
Maritzburg Sun	The Highway Mail (Pty) Ltd	W	E
Meadowlands Urban News	Caxton Publishers & Printers Ltd	W	E
Metro-Burger Mitchell's Plain	Media 24 Bpk	W	A
Merebank Rising Sun	Rising Sun Community Newspapers (Pty) Ltd	W	E
Meyerton Ster	Mooivaal Media	W	B
Mid South Coast Mail	Caxton Publishers & Printers Ltd	BiW, Fr	E
Middelburg Observer	Caxton Publishers & Printers Ltd	W	B
Midrand Reporter	Caxton Publishers & Printers Ltd	W	E
Midweek Record	Caxton Publishers & Printers Ltd	2xW	B
Mirror, The	The Natal Witness Printing & Publishing Co. (Pty)	W	E
Mopani News	Caxton Publishers & Printers Ltd	W	E
Mosselbay Advertiser	Group Editors Co (Pty) Ltd	W	B
Mpumalanga News	Caxton Publishers & Printers Ltd	W	E
Newcastle & District Advertiser	Caxton Publishers & Printers Ltd	W	B
Noord Vrystaatse Gazette	Mooivaal Media	W	B
Noordkaap	Media 24 Bpk	W	B
Noordwes Gazette	Mooivaal Media	W	B
Noordwester, Die	Caxton Publishers & Printers Ltd	W	B
North Eastern Tribune	Caxton Publishers & Printers Ltd	W	E
Northcliff & Melville Times	Caxton Publishers & Printers Ltd	W	B
Northern Natal Courier	Caxton Publishers & Printers Ltd	W	E, Z
Northern Review	Caxton Publishers & Printers Ltd	W	B
Northglen News	The Highway Mail (Pty) Ltd	W	E
Northside Chronicle	Caxton Publishers & Printers Ltd	W	E
Ons Stad	Media 24 Bpk	W	B
Orlando Urban News	Caxton Publishers & Printers Ltd	W	E
Oudtshoorn Courant	Group Editors (Pty) Ltd	W	B
Outlook	Load Publishers	W	E
Our Times	Picasso Headline (Pty) Ltd	W	B
Overport Rising Sun	Rising Sun Community Newspapers (Pty) Ltd	W	E

Paarl Post	Boland Koerante Edms Bpk	W	B
Palabora & Hoedspruit Herald	Caxton Publishers & Printers Ltd	W	B
PE Express	Media 24 Bpk	W	B
People's Post Athlone	Media 24 Bpk	W	E
People's Post Claremont/Rondebosch	Media 24 Bpk	W	E
People's Post Constantia/Wynberg	Media 24 Bpk	W	E
People's Post City Edition	Media 24 Bpk	W	E
People's Post False Bay	Media 24 Bpk	W	E
People's Post Grassy Park	Media 24 Bpk	W	E
People's Post Lansdowne	Media 24 Bpk	W	E
People's Post Retreat	Media 24 Bpk	W	E
Phoenix Sun	Rising Sun Community Newspapers (Pty) Ltd	W	E
Pimville Urban News	Caxton Publishers & Printers Ltd	W	E
Plainsman	Independent Newspapers (Pty) Ltd	W	E
Potchefstroom Herald	Mooivaal Media	W	B
Protea Urban News	Caxton Publishers & Printers Ltd	W	E
QwaQwa News	Media 24 Bpk	W	B
Queensburgh News	The Highway Mail (Pty) Ltd	2xW	E
Randburg Sun	Caxton Publishers & Printers Ltd	W	E
Randfontein Herald	Caxton Publishers & Printers Ltd	W	B
Rekord Centurion	Capital Media (Pty) Ltd	W	B
Rekord Mamelodi	Capital Media (Pty) Ltd	W	B
Rekord Moot	Capital Media (Pty) Ltd	W	B
Rekord Noord / North	Capital Media (Pty) Ltd	W	B
Rekord Noweto	Capital Media (Pty) Ltd	W	B
Rekord Oos / East	Capital Media (Pty) Ltd	W	B
Rekord Sentraal / Central	Capital Media (Pty) Ltd	W	B
Rekord Wesnuus / West News	Capital Media (Pty) Ltd	W	B
Representative, The	Avusa Ltd	W	E
Ridge Times	Echo Ridge	W	B
Roodepoort Record	Caxton Publishers & Printers Ltd	W	B
Rosebank Killarney Gazette	Caxton Publishers & Printers Ltd	W	E
Rustenburg Herout/Herald	Caxton Publishers & Printers Ltd	W	B
Sandton Chronicle	Caxton Publishers & Printers Ltd	W	E
Sasolburg Ster	Mooivaal Media	W	B
Secunda & Bethal Echo, The	De Echo (Pty) Ltd	W	B
Sentinel News	Independent Newspapers (Pty) Ltd	BiM	E

TITLE	PROPRIETOR	FRQ	LAN
South Coast Fever	Sky Blue Media	W	B
South Coast Herald	Caxton Publishers & Printers Ltd	W	E
South Coast Sun	Caxton Publishers & Printers Ltd	W	E
Southern Courier	Caxton Publishers & Printers Ltd	W	B
Southern Mail	Independent Newspapers (Pty) Ltd	W	E
Southern Suburbs Tatler	Independent Newspapers (Pty) Ltd	W	E
Southlands Sun	The Highway Mail (Pty) Ltd	W	E
Springs & Brakpan Advertiser	Springs Advertiser (Pty) Ltd	W	B
Standerton Advertiser	Standerton Pr Works (Pty) Ltd	W	B
Steelburger	Caxton Publishers & Printers Ltd	W	E
Stellalander	Noordwes Koerante (Pty) Ltd	W	B
Stellenbosch Gazette	Eikestadnuus Bpk	W	B
Streeknuus	Caxton Publishers & Printers Ltd	W	B
Suid-Kaap Forum	Group Editors (Pty) Ltd	W	B
Swartlander	Boland Newspapers (Pty) Ltd	W	B
Tabletalk	Independent Newspapers (Pty) Ltd	W	E
Talk of the Town	Picasso Headline (Pty) Ltd	W	E
Tembisan	Caxton Publishers & Printers Ltd	W	E
Times of Ladysmith inc	Caxton Publishers & Printers Ltd	W	B
Times of Newcastle inc Inkanyezi	Caxton Publishers & Printers Ltd	W	E, Z
Tygerburger Bellville	Media 24 Bpk	W	B
Tygerburger Brackenfell	Media 24 Bpk	W	B
Tygerburger Durbanville	Media 24 Bpk	W	B
Tygerburger Eersterivier / Blue Downs	Media 24 Bpk	W	B
Tygerburger Elsiesrivier	Media 24 Bpk	W	B
Tygerburger Goodwood/Pineland	Media 24 Bpk	W	B
Tygerburger Kraaifontein	Media 24 Bpk	W	B
Tygerburger Kuilsrivier	Media 24 Bpk	W	B
Tygerburger Kus/ Coast	Media 24 Bpk	W	B
Tygerburger Milnerton	Media 24 Bpk	W	B
Tygerburger Parow	Media 24 Bpk	W	B
Tygerburger Ravensmead / Belhar	Media 24 Bpk	W	B
Tygerburger Tableview	Media 24 Bpk	W	B
Tygartalk Bellville/ Durbanville	Independent Newspapers (Pty) Ltd	W	B
Tygartalk Goodwood/ Parow	Independent Newspapers (Pty) Ltd	W	B
UD News/Nuus	Media 24 Bpk	W	B
Umthatha Herald	Sky Blue Media	Fortnightly	B
Umzinto Rising Sun	Rising Sun Community Newspapers (Pty) Ltd	W	E

Vaal Vision	Mooivaal Media	W	E
Vaal Weekly	Mooivaal Media	W	E
Vanderbijlpark Ster	Mooivaal Media	W	B
Vereeniging Ster	Mooivaal Media	W	B
Vaalweekblad	Mooivaal Media	W	B
Village Talk	Lincroft Books (Pty) Ltd	W	E
Vista	Media 24 Bpk	2xW	B
Vryheid Herald	Caxton Publishers & Printers Ltd	W	B
Vrystaat	Media 24 Bpk	W	B
Vukani	Independent Newspapers (Pty) Ltd	W	E, Xh
Weskus Nuus/West Coast News	Boland Koerante Edms Bpk	W	B
Weslander, Die	Boland Koerante Edms Bpk	W	B
Wild Coast Herald	Picasso Headline (Pty) Ltd	W	E
Witbank News/Nuus	Caxton Publishers & Printers Ltd	W	B
Worcester Standard & Advertiser	Boland Koerante Edms Bpk	W	B
Zola Urban News	Caxton Publishers & Printers Ltd	W	E
Zululand Observer	Caxton Publishers & Printers Ltd	2xW	B

	Magazine Membership	
Publisher Name	Publisher Website	Title Name
John Bown Publishing (Pty) Ltd	www.johnbrowngroup.co.uk	Fresh Living Magazine
	www.vetlink.co.za	VetNews-- NON ABC
3S Media Holdings	www.media3s.co.za	Emergency Services SA
3S Media Holdings	www.media3s.co.za	IMIESA
3S Media Holdings	www.media3s.co.za	Resource
3S Media Holdings	www.media3s.co.za	SA Conference Directory
3S Media Holdings	www.media3s.co.za	Water and Sanitation Africa
3S Media Holdings	www.media3s.co.za	Meeting SA
3S Media Holdings	www.media3s.co.za	SA Irrigation/ SA Besproeiing (Non ABC)
3S Media Holdings	www.media3s.co.za	Transport World Africa
8 Ink Media (Pty)Ltd	http://www.8inkmedia.com/	National Geographic Kids
8 Ink Media (Pty)Ltd	http://www.8inkmedia.com/	National Geographic Traveller
8 Ink Media (Pty)Ltd	http://www.8inkmedia.com/	Real Simple
8 Ink Media (Pty)Ltd	http://www.8inkmedia.com/	Seventeen
AA Travel Guides (Not ABC)	www.aatravel.co.za	AA-Hotels,Lodges,Guest Houses & B&B's (Not ABC)
AA Travel Guides (Not ABC)	www.aatravel.co.za	AA-Self-Catering Getaways (Not ABC)
AA Travel Guides (Not ABC)	www.aatravel.co.za	South Africa's Best
Absolute Media	www.absolutemedia.co.za	C Magazine
Absolute Media	www.absolutemedia.co.za	the Diplomat
Absolute Media	www.absolutemedia.co.za	Absolute nails
Absolute Media	www.absolutemedia.co.za	The Business Woman
Absolute Media	www.absolutemedia.co.za	Sparkle
Africa Geographic (Pty) Ltd	www.africageographic.com	Africa Birds and Birding
Africa Geographic (Pty) Ltd	www.africageographic.com	Africa Geographic
Africa Spirit Media	www.bluetrainmag.co.za	Blue Train The
African Sky Publishing (Pty) Ltd	www.dekat.co.za	DEKAT
African Sky Publishing (Pty) Ltd (Non ABC)	www.dekat.co.za	Nursing Update (Non ABC)
AgriConnect (Pty) Ltd	www.dairymail.co.za	Dairy Mail, The
AgriConnect (Pty) Ltd	www.dairymail.co.za	The Horseman
AgriConnect (Pty) Ltd	www.dairymail.co.za	Nafu Farmer
Alchemy Publishing (Pty) Ltd (Media 24)	www.alchemymedia.co.za	BABA & Kleuter
Alchemy Publishing (Pty) Ltd (Media 24)	www.alchemymedia.co.za	Your Baby
Alchemy Publishing (Pty) Ltd (Media 24)	www.alchemymedia.co.za	Your Child
Alchemy Publishing (Pty) Ltd (Media 24)	www.alchemymedia.co.za	Your Pregnancy
Architect and Builder		Architect and Builder
Atoll Media (Pty)Ltd	www.atollmedia.co.za	Blunt
Atoll Media (Pty)Ltd	www.atollmedia.co.za	Saltwater Girl
Atoll Media (Pty)Ltd	www.atollmedia.co.za	Zigzag
Audio Video		Audio Video
Avusa Media	www.avusa.co.za	Avocado/Avokado
Avusa Media	www.avusa.co.za	Built
Avusa Media	www.avusa.co.za	Computing SA
Avusa Media	www.avusa.co.za	Elle
Avusa Media	www.avusa.co.za	Elle Decoration
Avusa Media	www.avusa.co.za	MIMS - Index of Veterinary Specialists
Avusa Media	www.avusa.co.za	Garden Route Living

Avusa Media	www.avusa.co.za	Longevity
Avusa Media	www.avusa.co.za	MIMS Guide to OTC Products
Avusa Media	www.avusa.co.za	Pursuit
Avusa Media	www.avusa.co.za	SA Home Owner
Avusa Media	www.avusa.co.za	SA Mining
Avusa Media (Sunday Times)	www.avusa.co.za	Soccer Life 442
Avusa Media (Sunday Times)	www.avusa.co.za	Stuff Magazine
Back Page Publications		Amakhosi Magazine
BDFM Publishers / AVUSA MEDAI		Financial Mail
Bell-Roberts Publishing	www.bell-roberts.co.za	Art South Africa
Bike Promotions (pty) Ltd		BIKE SA
Bonisani Publications		Hardware Africa
Brand Africa Media	www.brandmagazine.co.za	Brand Magazine
Brooke Patttrick Publications (pty) Ltd	www.brookepatrick.com	Civil Engineering Contract, The
Brooke Patttrick Publications (pty) Ltd	www.brookepatrick.com	Plant Equipment & Hire
Business Brief Publishing(Pty)Ltd		Business Brief
Business Century Publishing	www.maverick.co.za	Maverick
Business MAGS24		Analytical Reporter
Business MAGS24		DIY Trade News
Business MAGS24		Advantage
Business MAGS24		Environmental Management
Business MAGS24		Hire SA
Business MAGS24		Front Shop
Business MAGS24		Leading Architect & Design
Business MAGS24		Money Marketing
Business MAGS24		SA Gardening
Business MAGS24		Tuin Paleis
Business Product Review CC	www.which.co.za	Which? Business Equipment
Business Product Review CC	www.which.co.za	Which? Industrial
Cape Media Corporation	www.capemedia.co.za	Achiever
Cape Media Corporation	www.capemedia.co.za	Black Business Quarterly
Cape Media Corporation	www.capemedia.co.za	BBQ Scorecard
Cape Media Corporation	www.capemedia.co.za	Blue Chip
Cape Media Corporation	www.capemedia.co.za	Energy (FOPRECAST)
Cape Media Corporation	www.capemedia.co.za	Explore South Africa
Cape Media Corporation	www.exploreonline.co.za	Explore L'Afrique
Cape Media Corporation	www.capemedia.co.za	Explore Namibia
Cape Media Corporation	www.capemedia.co.za	Leadership
Cape Media Corporation	www.capemedia.co.za	Leadership in HIV/Aids
Cape Media Corporation	www.capemedia.co.za	Opportunity
Cape Media Corporation	www.capemedia.co.za	Road Ahead, The
Cape Media Corporation	www.capemedia.co.za	Service (Leadership in Local Government)
Cape Media Corporation (Non ABC)	www.capemedia.co.za	Shipyear (Non ABC)
Cape Media Corporation (Non ABC)	www.capemedia.co.za	UBANTU
Cape Media Corporation (Non ABC)	www.capemedia.co.za	vuvuzela TLS
Car Trader (Pty) Ltd, The		Auto Trader
Carpe Diem Media	www.carpediem.co.za	Finesse
Carpe Diem Media	www.carpediem.co.za	Soul
Caxton Ltd	www.caxton.co.za	Bona
Caxton Ltd	www.caxton.co.za	Essentials
Caxton Ltd	www.caxton.co.za	Farmer's Weekly

Caxton Ltd	www.caxton.co.za	Food and Home Entertaining
Caxton Ltd	www.caxton.co.za	Living and Loving
Caxton Ltd	www.caxton.co.za	Mense
Caxton Ltd	www.caxton.co.za	People
Caxton Ltd	www.caxton.co.za	Rooi Rose
Caxton Ltd	www.caxton.co.za	SA Country Life
Caxton Ltd	www.caxton.co.za	SA Garden and Home
Caxton Ltd	www.caxton.co.za	Clio
Caxton Ltd	www.caxton.co.za	Vroue Keur
Caxton Ltd	www.caxton.co.za	Woman and Home
Caxton Ltd	www.caxton.co.za	Your Family
Cement & Concrete Institute	www.cnci.org.za	Concrete Trends
Chapel Lande Media		Prestige
Charmont Media	www.focusontransport.co.za	Focus on Transport & Logistics
Conde Naste Independent Magazines (Pty) Ltd	www.houseandgarden.co.za	Conde Naste House & Garden
Conde Naste Independent Magazines (Pty) Ltd	www.houseandgarden.co.za	Glamour
Conde Naste Independent Magazines (Pty) Ltd	www.houseandgarden.co.za	GQ
Contact Publications (Pty) Ltd	www.secpub.co.za	Incentive World (Not ABC)
Contact Publications (Pty) Ltd (Non Abc)	www.secpub.co.za	SA Conference, Exhibition & Events Guide-- NON ABC
Contact Publications (Pty) Ltd (Non Abc)	www.secpub.co.za	Security Focus (Not ABC)
Converge (Pty) Ltd	www.goodtaste.co.za	Good Taste
COSA Communications	www.riskasa.co.za	RISKsa Magazine
Creamer Media (Pty) Ltd	www.engineeringnews.co.za	Engineering News
Creamer Media (Pty) Ltd	www.engineeringnews.co.za	Mining Weekly
Customized Communication		South African Travel Guide
Designed04 CC	www.onesmallseed.com	onesmallseed
Desk link Media	www.classicfeel.co.za	Classicfeel
Doddington Direct CC-- NON ABC	www.avspecialist.tv	Av Specialist-- NON ABC
EE Publishers (Pty) Ltd	www.eepublishers.co.za	Energize
EE Publishers (Pty) Ltd	www.eepublishers.co.za	Engineering IT
EE Publishers (Pty) Ltd	www.eepublishers.co.za	Position IT
EE Publishers (Pty) Ltd	www.eepublishers.co.za	Vector Journal
EE Publishers (Pty) Ltd (Non ABC)	www.eepublishers.co.za	Energize Journal (Non ABC)
Famous Publishing CC	www.famouspublishing.co.za	Ridge, The
Full Circle Magazine		Full circle magazine
Future Publishing (Pty) Ltd	www.futurepublishers.co.za	African Sporting Gazette
Future Publishing (Pty) Ltd	www.futurepublishers.co.za	Automobile
Future Publishing (Pty) Ltd	www.futurepublishers.co.za	Dainfern
Future Publishing (Pty) Ltd	www.futurepublishers.co.za	Property Professional
Future Publishing (Pty) Ltd	www.futurepublishers.co.za	Toyota Zone
Future Publishing (Pty) Ltd	www.futurepublishers.co.za	The journal
Future Publishing (Pty) Ltd (Non ABC)	www.futurepublishers.co.za	Endangered Wildlife Trust- Vision - NON ABC
Future Publishing (Pty) Ltd (Non ABC)	www.futurepublishers.co.za	Dainfurn Luxury Life
Future Publishing (Pty) Ltd (Non ABC)	www.futurepublishers.co.za	SA Inbound-- NON ABC
Green Space Publishing house CC		Simply Green
Health & Medical Publishing Group (Pty) Ltd	www.hmpg.co.za	Continuing Medical Education Journal
Health & Medical Publishing Group (Pty) Ltd	www.hmpg.co.za	South African Medical Journal
Health Bytes CC		Health IQ

Highbury Safika Media (Pty) Ltd	www.hsm.co.za	One Africa, One Voice
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	AA Traveler/AA Reisinger
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	African Decisions
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Cape Etc
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Equinox
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Expressions
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Fancourt Lifestyle & Leisure
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Miles Per Hour (MPH)
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	National Golf Network
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Expressions
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Fifteen
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	SA Rugby
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	SA Wedding Album
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	SA Travel Planner (Factfiler)
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Signature
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	Southern Sun update
Highbury Safika Media (Pty) Ltd	www.soccer.co.za	Sowetan Soccer Magazine
Intelligence Publishing (Pty) Ltd (Panorama)	www.intelligence.co.za	Computeractive
Intelligence Publishing (Pty) Ltd (Panorama)	www.intelligence.co.za	Hype
Intelligence Publishing (Pty) Ltd (Panorama)	www.intelligence.co.za	SL Magazine
Intelligence Publishing (Pty) Ltd (Panorama)	www.intelligence.co.za	PC Format
Intelligence Publishing (Pty) Ltd (Panorama) (Non ABC)	www.intelligence.co.za	GEAR (Non ABC)
Intelligence Publishing (Pty) Ltd (Panorama) (Non ABC)	www.intelligence.co.za	T3 (Non ABC)
Highbury Safika Media (Pty) Ltd	www.hsm.co.za	JSE _
Highbury Safika Media (Pty) Ltd (Non ABC)	www.hsm.co.za	African Communications-- NON ABC
Highbury Safika Media (Pty) Ltd (Non ABC)	www.hsm.co.za	Foschini Club- NON ABC
IHS SA (PTY) LTD	www.ihs.co.za	Business equipment Buyer
IHS SA (PTY) LTD	www.ihs.co.za	Industrial Buyer (FEM)
IHS SA (PTY) LTD	www.foodreview.co.za	Promotions & Events
IHS SA (PTY) LTD	www.foodreview.co.za	South Africa Food Review
Infocus Buplisher CC		Your Business Magazine
Institute of Municipal Finance Officers	www.imfo.co.za	IMFO
Interactive Africa (Pty)Ltd	www.interactiveafrica.com	Vodaworld Magazine
Interactive Africa (Pty)Ltd		Design Indaba
Isikhova Publishing & Communications	www.isikhova.co.za	SA Jewellery News
iTWeb Ltd	www.itweb.co.za	Brainstorm
iTWeb Ltd	www.itweb.co.za	I T Web
iTWeb Ltd	www.itweb.co.za	Digital Life
iTWeb Ltd	www.itweb.co.za	Mindshift
iTWeb Ltd	www.itweb.co.za	Unwired
Mafube Publishing (Pty) Ltd	www.enterprise/magazine.co.za	Baby Gro
Mafube Publishing (Pty) Ltd	www.enterprise/magazine.co.za	Beautiful Brides
Mafube Publishing (Pty) Ltd	www.enterprise/magazine.co.za	By The Way
Mafube Publishing (Pty) Ltd	www.enterprise/magazine.co.za	Enterprise Magazine
Mafube Publishing (Pty) Ltd (Non ABC)	www.enterprise/magazine.co.za	Enterprise200 & Dir of Black Professionals-NON ABC
JCA Management Services		Voyge of the planets
Kommal Publishing(Pty) Ltd		Sutra
Kwenta Medai (Pty) Ltd	www.kwentamedia.co.za	Mamas & Papas

Law Society of SA	www.derebus.org.za	De Rebus
Lindiwe Communications (Pty) Ltd	www.rbmag.co.za	RB Magazine
Lloyds Publishing (Non ABC)	www.lloydsgroup.net	Transport & Construction-- NON ABC
Lloyds Publishing (Non ABC)	www.lloydsgroup.net	Your Contact-- NON ABC
Lone hill Trading (Pty) Ltd	www.thegardener.co.za	Gardener, The
Malnor Publishers (Pty) Ltd	www.malnormags.co.za	SA Builder
Manwees (Pty) Ltd	www.manwees.co.za	Manwees
Media 24 Magazine- divison os Naspers (pty) Ltd		SA Hunter/Jagter
Media in Africa	www.florsinafrica.co.za	Floors in Africa
Media in Africa	www.intiem.co.za	Intiem / Intimacy
Media in Africa		Walls& Roofs in Africa
Media in Africa		25°
Media Nova (Pty) Ltd	www.thepropertymag.com	Property Magazine, The (Cape)
Media Nova (Pty) Ltd	www.thepropertymag.com	Property Magazine, The (Jhb)
Media Nova (Pty) Ltd	www.sandtonmag.co.za	Sandton
Media Nova (Pty) Ltd	www.thepropertymag.com	Property Magazine, The (KZN)
Media24	www.woman360.com	Sarie
Media24	www.media24.co.za	TV Plus
Media24 (Magazines)	www.media24.co.za	Weg/ Ry (Drive Out)
Media24 (Magazines)	www.media24.co.za	Drum
Media24 (Magazines)	www.woman360.com	Fairlady
Media24 (Magazines)	www.woman360.com	Fairlady Bride
Media24 (Magazines)	www.media24.co.za	Femina
Media24 (Magazines)	www.media24.co.za	Huisgenoot
Media24 (Magazines)	www.media24.co.za	Huisgenoot Pols / You Pulse
Media24 (Magazines)	www.media24.co.za	Ideas/Idees
Media24 (Magazines)	www.media24.co.za	InStyle SA
Media24 (Magazines)	www.media24.co.za	Landbouweekblad
Media24 (Magazines)	www.media24.co.za	Leef
Media24 (Magazines)	www.media24.co.za	Maxpower SA
Media24 (Magazines)	www.woman360.com	Sarie Bruid
Media24 (Magazines)	www.woman360.com	Sarie Kos
Media24 (Magazines)	www.media24.co.za	Top Car/Top Motor
Media24 (Magazines)	www.media24.co.za	topBike
Media24 (Magazines)	www.woman360.com	True Love Babe
Media24 (Magazines)	www.woman360.com	True Love Bride
Media24 (Magazines)	www.media24.co.za	Tuis Home
Media24 (Magazines)	www.media24.co.za	Tuis Opknop (Special Edition)
Media24 (Magazines)	www.media24.co.za	Visi Afrikaan
Media24 (Magazines)	www.media24.co.za	Visi English
Media24 (Magazines)	www.media24.co.za	WEG
Media24 (Magazines)	www.media24.co.za	Weg/Go
Media24 (Magazines)	www.media24.co.za	Weg/Ry
Media24 (Magazines)	www.media24.co.za	Weg/Sleep
Media24 (Magazines)	www.media24.co.za	You
Media24 (Magazines)(woman 360)	www.media24.co.za	Psychologies
Medpharm Publications (Pty) Ltd	www.medpharm.co.za	SA Family Practice
MIMS (Division of Avusa Media)	www.johncom.co.za	Mims Fees
MIMS (Division of Avusa Media)	www.johncom.co.za	MDR-MIMS Desk reference (Not ABC)
MIMS (Division of Avusa Media)	www.johncom.co.za	OTC-Guide to over the counter medications(Not ABC)
Ndalo Media		Destiny Magazine

New Highway Publishing (Media 24)	www.new-highway.co.za	Lewis Stores Club Magazine
New Media Publishing (Media 24)	www.newmediapub.co.za	A-Plus
New Media Publishing (Media 24)	www.bravobravo.co.za	Bravo
New Media Publishing (Media 24)	www.newmediapub.co.za	Dish Africa
New Media Publishing (Media 24)	www.newmediapub.co.za	Multichoice - Dish/ Skottel
New Media Publishing (Media 24)	www.newmediapub.co.za	Eat In
New Media Publishing (Media 24)	www.newmediapub.co.za	Eat Out
New Media Publishing (Media 24)	www.newmediapub.co.za	Edgars Club Magazine
New Media Publishing (Media 24)	www.newmediapub.co.za	Front Cover
New Media Publishing (Media 24)	www.newmediapub.co.za	HIP2B2
New Media Publishing (Media 24)	www.newmediapub.co.za	Mango Juice
New Media Publishing (Media 24)	www.newmediapub.co.za	Mercedes
New Media Publishing (Media 24)	www.newmediapub.co.za	Mercedes Benz Transport
New Media Publishing (Media 24)	www.newmediapub.co.za	Pesula
New Media Publishing (Media 24)	www.newmediapub.co.za	Plascon Colour
New Media Publishing (Media 24)	www.newmediapub.co.za	Prive
New Media Publishing (Media 24)	www.newmediapub.co.za	ROOTS (FNB)- (Not ABC)
	www.speed&sound.co.za	Speed and Sound
Overdrive Publishing CC	www.speed&sound.co.za	VDUB- (Not ABC)
New Media Publishing (Media 24)	www.newmediapub.co.za	Taste (woolworths)
New Media Publishing (Media 24)	www.newmediapub.co.za	Time Out
Now Media (Pty) Ltd	www.nowmedia.co.za	Travel News Weekly
Now Media (Pty) Ltd - Lugan Investments	www.nowmedia.co.za	Business Travel Now
Now Media (Pty) Ltd Trading as Lugan Investments	www.nowmedia.co.za	Freight & Trading Weekly
Now Media (Pty) Ltd Trading as Lugan Investments	www.nowmedia.co.za	Southern African Tourism Update
Osgard Media	www.hrfuture.net	HR Future
Osgard Media	www.hrfuture.net	South African Travel Guide
Panorama Publications (Pty) Ltd	www.epets.co.za	Animaltalk
Panorama Publications (Pty) Ltd	www.epets.co.za	Catslife
Panorama Publications (Pty) Ltd	www.epets.co.za	Dog Directory
Panorama Publications (Pty) Ltd	www.epets.co.za	GEAR (Non ABC)
Panorama Publications (Pty) Ltd	www.epets.co.za	HQ
Panorama Publications (Pty) Ltd	www.epets.co.za	HYPE
Panorama Publications (Pty) Ltd	www.epets.co.za	PC Format
Panorama Publications (Pty) Ltd	www.epets.co.za	Skyways
Pharmaceutical Society of SA	www.pssa.co.za	SA Pharmaceutical Journal
Picasso Headline (Pty) Ltd	www.picasso.co.za	African Leader
Picasso Headline (Pty) Ltd	www.picasso.co.za	ACUMEN

Picasso Headline (Pty) Ltd	www.picasso.co.za	Digest of South African Architecture
Picasso Headline (Pty) Ltd	www.picasso.co.za	Extreme Sport Angling _ Sold to new publisher
Picasso Headline (Pty) Ltd	www.picasso.co.za	SA School Collection
Picasso Headline (Pty) Ltd	www.picasso.co.za	Khanya
Picasso Headline (Pty) Ltd	www.picasso.co.za	Kulula.com comic life (touchline media
Picasso Headline (Pty) Ltd	www.picasso.co.za	TLC
Picasso Headline (Pty) Ltd	www.picasso.co.za	Stud breeder SA / Bi annual
Picasso Headline (Pty) Ltd	www.picasso.co.za	Progress (discontinued
Picasso Headline (Pty) Ltd	www.picasso.co.za	Journal of SA Architecture
Picasso Headline (Pty) Ltd	www.picasso.co.za	South African Golfers Yearbook
Picasso Headline (Pty) Ltd (Non ABC)	www.picasso.co.za	Namibian Top Companies-- NON ABC (Under review)
Picasso Headline (Pty) Ltd (Non ABC)	www.picasso.co.za	New Agenda-- NON ABC
Publishing Partnership, The	www.tppsa.co.za	Bounce / Bankmed
Publishing Partnership, The	www.tppsa.co.za	Clicks Club Card
Publishing Partnership, The	www.tppsa.co.za	Heart
Publishing Partnership, The	www.tppsa.co.za	Icon
Publishing Partnership, The	www.tppsa.co.za	Jet Club
Publishing Partnership, The	www.tppsa.co.za	Life Magazine
Publishing Partnership, The	www.tppsa.co.za	Nedbank Golf Challenge
Publishing Partnership, The	www.tppsa.co.za	Obrigado(Vida Obrigado)
Publishing Partnership, The	www.tppsa.co.za	(Pulse) NAME CHANGE TO PLAY
Publishing Partnership, The	www.tppsa.co.za	Private Edition
Publishing Partnership, The	www.tppsa.co.za	Sea Rescue
Publishing Partnership, The	www.tppsa.co.za	Subaru
Quantum Publishers	www.quantumpublishers.co.za	JD Group Club Magazines (A)
Quantum Publishers	www.quantumpublishers.co.za	JD Group Club Magazines (B)
R & V Business Services		South Africa's Best
Ramsay Media(Pty) Ltd	www.sisyapublishing.co.za	Altitude
Ramsay Media(Pty) Ltd	www.cartoday.com	Car
Ramsay Media(Pty) Ltd	www.cartoday.com	Complete Golfer
Ramsay Media(Pty) Ltd	www.cartoday.com	Getaway
Ramsay Media(Pty) Ltd	www.cartoday.com	Hotel & Restaurant
Ramsay Media(Pty) Ltd	www.cartoday.com	Popular Mechanics
Ramsay Media(Pty) Ltd	www.cartoday.com	Mooiloop
Ramsay Media(Pty) Ltd	www.cartoday.com	Wiel
Ramsay Media(Pty) Ltd	www.cartoday.com	Wine
Readers Digest Australia		Reader's Digest
SA Man (PTY) Ltd		Magnum
SA Veterinary Association(Vet Link) (Non ABC)	www.sava.co.za	VetNews-- NON ABC
SAICA , South African Institute of Chartered Accountants	www.accountancysa.org.za	Accountancy SA
SAICE/SAISA South African Institute of Civil Engineering	www.civils.org.za	Civil Engineering
SAICE/SAISA South African Institute of Civil Engineering	www.civils.org.za	Jouranl of South African Civil Engineering
Sales Guru Publishing		Sales Guru
SARP Uitgerwers	www.servamus.co.za	Servamus
Siyaya Publishing (Pty) Ltd/ TCB Publishing	www.cartoday.com	Wine
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Smart Business Solutions (Pty) Ltd	www.entrepreneur.za.com	Entrepreneur

Space grow Investment Holdings Ltd	www.wrappedmag.com	Wrapped
Succeed SA Magazine (Pty) Ltd	www.succeed.co.za	Succeed Magazine
Sun Circle Publishers (pty) Ltd	www.screenaftica.com	Screen Africa
Supermarket & Retailer CC	www.supermarket.co.za	Supermarket and Retailer
Supermarket & Retailer CC	www.supermarket.co.za	Wholesale Business (Incorp C-Store)
Swift Publications CC	www.auto-eng.co.za	Auto Forum, Informed Innovative
Swift Publications CC	www.auto-eng.co.za	Auto Engineering and Spares
Systems Publishers (Pty) Ltd	www.crn.co.za	CRN
Systems Publishers (Pty) Ltd	www.crn.co.za	Marketing Mix
TCB Publishing/	www.altitudemag.co.za	AboutTime
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Thought 24Media24 (Magazines)	www.media24.co.za	Move!
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Tip Publishing	www.wildcard.co.za	WILD
TLG Publishing (Pty) Ltd	www.raising-kids.co.za	Raising Kids
Top Companies Publishing (Pty) Ltd		South Africa's Top 500 Best Companies
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