



6 December 2011

Mr LT Landers
Chairperson
Parliamentary Portfolio committee on Justice and Constitutional Development

By e-mail: llanders@parliament.gov.za

Dear Mr Landers

PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL

- 1 The Prevention and Combating of Trafficking in Persons Bill ("the Bill") came to MWEB's attention in late November 2011.
- 2 MWEB has serious concerns about the implications of s8(2)(a), s8(3) and s8(4) of the Bill for internet service providers ("ISPs"), including significant concerns about the Bill's Constitutionality.
- 3 We understand that the industry as a whole is also extremely worried about this Bill and that the Internet Service Providers Association ("ISPA") is currently in the process of drafting urgent representations on the Bill.
- 4 MWEB prepared, in the short time available, written representations, which we e-mailed to Engela Steyn and Sarel Robbertse at the Department of Justice at 15h32 today (Tuesday 6 December 2011).
- 5 However, Mr Robbertse indicated to us by reply e-mail that Ms Steyn are on her way to Cape Town, that the Bill is currently before the Parliamentary Portfolio Committee on Justice and Constitutional Development ("the Portfolio Committee") and that he believes that the Portfolio Committee is in the process of finalising the Bill.
- 6 In the circumstances, **MWEB hereby urgently requests an opportunity to make oral representations to the Portfolio Committee at an appropriate time prior to the finalisation of the Bill.** Please let us know urgently when would be suitable.
- 7 Furthermore, given the seriousness of our concerns, MWEB requests that the Portfolio Committee does not finalise the Bill until it has meaningfully considered and addressed our concerns.
- 8 Whilst we understand that the Portfolio Committee may wish to finalise the Bill as soon as possible, we believe that any (small) gains achieved by rushing the finalisation of the Bill are likely to end up being eroded by costly and time-consuming procedural challenges.



- 9 MWEB has, hurriedly this afternoon, prepared drafting proposals to address our concerns about s8(2)(a), s8(3) and s8(4) of the Bill. We request, as a minimum, that the Portfolio Committee consider MWEB's written representations and drafting proposals. Our drafting proposals are set out in **Annexure A**.
- 10 Given the urgency of this matter, I would appreciate it if you could contact me on my mobile phone.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wilmar Hannie', written over a horizontal line.

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MWEB Connect (Pty) Ltd

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ANNEXURE A: MWEB'S PROPOSED AMENDMENTS TO S8(2) TO (4) OF THE PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL

Conduct facilitating trafficking in persons

- (2) An internet service provider operating in the Republic —
- [(a) must take all reasonable steps to prevent the use of its service for the hosting of information referred to in subsection (1)(c); and]**
- [b(a)]** that has actual knowledge that any internet address on its server contains information referred to in subsection (1)(c) must —
- (i) without delay report that internet address, as well as the particulars of the person maintaining or in any manner contributing to that internet address, to the South African Police Service;
- (ii) take all reasonable steps to preserve any evidence for purposes of investigation and prosecution by the relevant authorities; and
- [(iii)] [without delay take all reasonable steps to prevent access to that internet address by any person]**
- (b) who has cached or stored third party data which will be used to facilitate or promote trafficking in persons must expeditiously remove or disable access to that data pursuant to the receipt by that service provider of a court order or take-down notification in that regard in accordance with section 77 of the Electronic Communications and Transactions Act, 25 of 2002.
- [(3) An internet service provider who which fails to comply with the provisions of subsection (2) is guilty of an offence.]**
- [(4)**
- (a) **A finding by a court that an internet service provider has contravened subsection (2) serves as a ground for the revocation or cancellation of that licence.**
- (b) **The clerk or registrar of the court which made the finding referred to in paragraph (a) must, in writing, notify the authority that granted the licence of the finding.**
- (c) **The authority that granted the licence must review the licence and, where necessary, revoke or cancel the licence.]**