

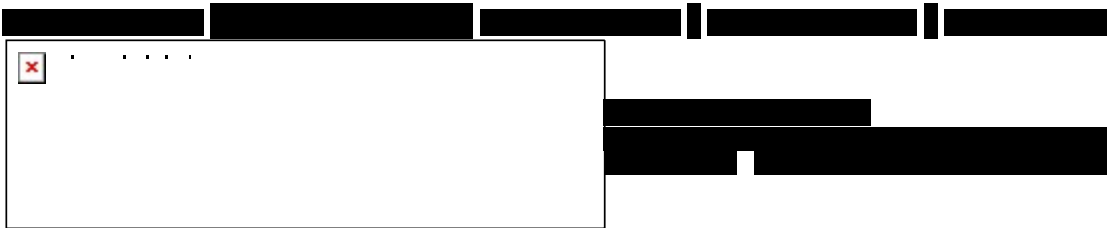
Margot Sheldon

From: [REDACTED]
Sent: Tuesday, 06 July 2021 16:11
To: Margot Sheldon
Subject: FW: Representations on the Copyright Amendment Bill
Attachments: OWEN DEAN CV (curriculum vitae) 2.doc; Reconstituting the Copyright Amendment Bill _ CIP - The Anton Mostert Chair of Intellectual Property.html; Authors, you've got a friend_ _ CIP - The Anton Mostert Chair of Intellectual Property.html; Copyright Blind Spot _ CIP - The Anton Mostert Chair of Intellectual Property.html; Copyright Dark Forces _ CIP - The Anton Mostert Chair of Intellectual Property.html; The Use Fair _ CIP - The Anton Mostert Chair of Intellectual Property.html; Amending Copyright – Footing the Bill _ CIP - The Anton Mostert Chair of Intellectual Property.html

Previous email wrongly addressed.

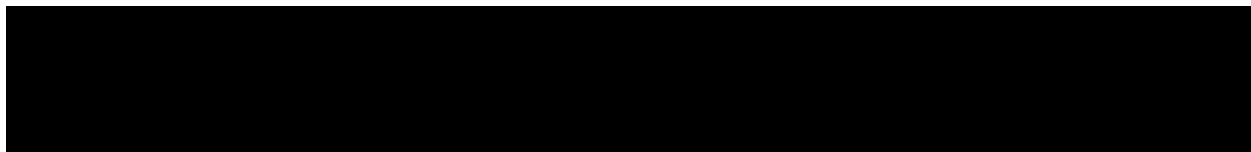
Regards,

Owen Dean



[REDACTED] and the Caribbean

From: Owen Dean



Dear Sir,

1 By way of introducing myself, I am annexing my brief CV. In short I am a specialist copyright attorney, having practised in the field for close to fifty years. During this time I have acted in excess of fifty copyright cases, including the *Lion Sleeps Tonight/Mbube* case and numerous other leading copyright cases. I am an Emeritus Professor at the Stellenbosch University Law Faculty.

2 For purposes of making these representations I have written a series of brief articles covering the issues that President Ramaphosa has directed the Portfolio Committee on Trade and Industry (the 'PC ') to address in reviewing the draft Copyright Amendment Bill. These articles are set out in the catalogue below, which gives the links by means of which they can be accessed. For convenience I am also annexing copies of the articles. These articles have been published on the IPSTELL Blog operated by the Chair of Intellectual Property Law at Stellenbosch University. The Blog, which is a digital publishing facility for articles dealing with Intellectual Property, can be accessed by searching IPSTELL on the Google search facility.

3 The abovementioned articles form a series. This series of articles is an integral part of these representations. The articles form the substantive content of these representations and it is thus essential that they should be read. In the case of each article in the catalogue an indication is given of its subject matter.

4 The catalogue of articles follows:

- **Reconstituting the Copyright Amendment Bill** (Published 14-06-2021)
 - <https://blogs.sun.ac.za/iplaw/2021/06/14/reconstituting-the-copyright-amendment-bill/>

Discusses the flaws in the Bill in general, with emphasis on the Exceptions, and recommends redrafting

- **Authors, you've got a friend?** (Published 31-05-2021)
 - <https://blogs.sun.ac.za/iplaw/2021/05/31/authors-youve-got-a-friend/>

Examines the effects of the Bill, particularly the Exceptions, on authors and their rights

- **Copyright Blind Spot** (Published 19-04-2021)
 - <https://blogs.sun.ac.za/iplaw/2021/04/19/copyright-blind-spot/>

Discusses the Exceptions and how the present Act can be used to grant acceptable exceptions, especially in the case of the Blind

- **Copyright Dark Forces** (Published 24-06-2021)
 - <https://blogs.sun.ac.za/iplaw/2021/06/24/copyright-dark-forces/>

Analyses the motivation of those advocating excessive Exceptions, and the effects that they can have.

- **The Use Fair** (Published 24-06-2021)
 - <https://blogs.sun.ac.za/iplaw/2021/06/24/the-use-fair/>

Discusses the undesirability and untoward consequences of the excessive Exceptions

- **Amending Copyright - Footing the Bill** (Published 05-07-2021)
 - <https://blogs.sun.ac.za/iplaw/2021/07/05/amending-copyright-footing-the-bill/>

Analyses how the excessive Exceptions are in contravention of the international treaties and the Bill of Rights

5 I have conducted a dialogue in regard to the Bill with Mr Krish Naidoo, legal advisor to the ANC. This dialogue has culminated in my making a formal recommendation to him that the Bill should be revised and redrafted by a new drafting committee composed of true experts in copyright law. The text of my recommendation, contained in an email to him dated 7 July 2021, is set out below. Mr Naidoo has undertaken to place this recommendation before the Minister of Trade and Industries. This recommendation is also an integral to these representations and should be read as part of them.

6 The following is the text of my recommendation to Mr Naidoo:

Subject: RE: RE: Minister Ebrahim Patel

Dear Krish,

The Minister remains silent with regard to his expressed wish to speak to me. I would very much like to discuss with him a proposition that I will raise below. .

Judge Richard Goldstone is undoubtedly well-known to you. For the sake of completeness, I will remind you that he was one of the leading advocates in South Africa. He was appointed to the bench in the then TPD, where he served with distinction. During this time he handed down some outstanding copyright and other IP judgments. He was promoted to the Constitutional Court as a member of the first panel of judges of that court. After serving his term on that bench, his international repute as a jurist of the highest order led to him being appointed a Prosecutor at the International Criminal Court. He has now retired from that position and has returned to South Africa, where his legal expertise is once again available. He is without doubt one of South Africa's outstanding jurists.

*On 29 June 2021 the Academy of Science of South Africa (AASAf) held a Copyright Amendment Bill Workshop in the form of a webinar. Judge Goldstone acted as the Chairman of this Workshop. He was obviously chosen because of his expertise in both copyright and constitutional law, both of which are germane to the current discourse on the Bill, in addition to his judicial experience. In preparation for his role in this workshop he made a study of the Bill and the issues around it. In correspondence that I conducted with him regarding the workshop he expressed himself as follows about the Bill: **"The Bill does indeed appear in a number of respects to be flawed. I just hope that the otherwise unfortunate delay caused by retagging the Bill will be used to fix some of the problems."***

You are well aware that I have for years been expressing the view that the Bill is fundamentally flawed and should be substantially redrafted by a drafting committee of true experts in copyright law with experience and expertise in the practice of the law. Judge Goldstone is ad idem with this view. I point out that he has delved into the Bill and its issues at a late stage and has formulated his own independent view of the matter based on his considerable experience and expertise in all relevant areas. The unbiased view of such an eminent jurist cannot be ignored. It is apparent that I am not a voice in the wilderness in proclaiming my own views on the matter.

In pursuing a dialogue with Judge Goldstone I asked him whether he would be willing to chair an expert drafting committee with the mandate to redraft the Bill and eradicate the numerous flaws, inconsistencies and anomalies in it. He replied that he would certainly be willing to consider such a position if it was offered to him. I believe that such a committee would deliver a good product.

It must be emphasised that, although the Fair Use issue is the most problematic issue in the Bill, it and the other matters raised by the President in his directive to Parliament are by no means the only defects in the Bill. There are many other problematic areas of the Bill that require to be addressed. The retagging of the Bill creates the opportunity for the entire Bill to be reviewed and addressed by a re-drafting committee.

The re-drafting of the Bill will clearly delay the passing of the Bill. However, this can be mitigated by having recourse to the Minister's powers under section 13 of the Copyright Act as discussed in my article Copyright Blind Spot which I forwarded to you. This measure can be used to provide at least interim relief to the blind and handicapped and in any other areas that may be considered to be urgent. The Regulations in question could be drafted by the proposed expert drafting committee. A delayed competent first class Bill is better and more in the public interest than a hurriedly passed seriously flawed Bill, which, with respect, would be an irresponsible act.

To sum up, I propose that the Bill be reviewed and re-drafted by a committee comprising true copyright experts under the leadership and chairmanship of Judge Goldstone. The merits of this proposal are clear. The Minister and Parliament can surely not knowingly pass a defective Bill! This would be a breach of their public duty. If it should happen, the Bill will surely become the subject of an application to the Constitutional Court to set it aside. Such an application would delay the implementation of the Bill and the amendment of the Act for a far longer period than would be occasioned by re-drafting the Bill, if not indefinitely. It would also incur substantial expenses by all concerned, including the State.

I would be grateful if you would put this proposal to the Minister and I would be happy to discuss it with him should he take up his expressed intention of engaging in discussions with me. In view of his obvious interest and concern in the matter I suggest that it may be appropriate to apprise the President of this proposal."

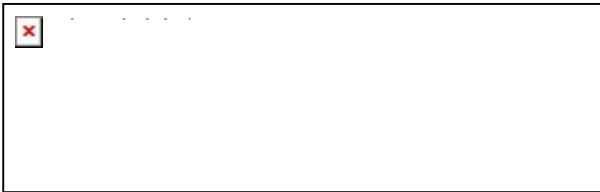
7 I would be grateful if they PC would give due consideration to my representations set out above. When the PC conducts hearings on this matter I would appreciate it if I could be given an opportunity to address it.

Regards,

Owen Dean.

Regards,

Owen Dean



Cape Town, South Africa
Post [REDACTED]

Please click [here](#) for information on the effect of COVID-19 on IP Offices and Courts across Africa and the Caribbean

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