FREEDOM OF EXPRESSION INSTITUTE

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29 August 2006

Hein Brand, Managing Director, Media24, hbrand@media24.com

Jan Malherbe, Media24 Newspapers Chief Executive, jmalherbe@media24.com

Neil Jansen, Human Resources General Manager, Media24, njansen@media24.com

Dear Messrs Brand, Malherbe and Jansen

Re: Media24's threats against your former employee, David Lewis

We are dismayed that Media24 has sought to muzzle one of your former employees, David Lewis, with threats of a defamation suit and of being interdicted by yourselves.

Mr Lewis had been an employee of Media24, working as a page sub for certain of its Cape Town publications. He has complained of racial divisions in the newsroom in which he worked and of various forms of racism in the company. We do not wish to engage with the merits of this complaint.

In June this year, a group calling itself the Alternative Media Forum began distributing a leaflet entitled "Ja Baas!" The leaflet refers to Media 24's publications and claims that, "Naspers and Media24 is a racist and prejudiced company, here only for a quick buck. It has paid lip service to diversity and equality in the workplace and continues to discriminate." (The allegations in this leaflet, too, it is not our objective to engage with or to prove or disprove.)

Your company responded to this leaflet by sending Mr Lewis an attorney's letter (from Jan S. De Villiers Attorneys, dated 26 June 2006) which claims that he is distributing the pamphlet and accusing him of defaming Media24. The attorney's letter threatens Mr Lewis with an urgent application for an interdict to prevent him from distributing the pamphlets and notes that Media24 "reserves the right to institute an action for damages" against Mr Lewis for "the defamatory remarks" in the pamphlet. We find both the tone and substance of the attorney's letter to be intimidatory and an attempt to violate the free expression of a member of the public.

Section 16 of the South African Constitution guarantees all South African citizens the right to free expression when it states:

"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;
(c) freedom of artistic creativity; and
(d) academic freedom and freedom of scientific research."

This right has, furthermore, been upheld in numerous court judgements – including in judgements issued by the Constitutional Court, the highest court in South Africa. For example, the Supreme Court of Appeals made a strong statement in affirming the right to freedom of expression in the Bogoshi case, just as the Constitutional Court did in the Holomisa case.

As a media company ("Africa's leading publishing group," as you refer to yourselves), you should understand the critical importance of freedom of expression in the South African context and the need to vigorously guard it from any and all sectors of our society that might seek to subvert it. It is not a right that should be undermined – certainly not by the media whose very existence and work are dependant on the highest respect of and adherence to this right.

It is extremely disconcerting, therefore, that Media24 has chosen to resort to threats (such as those contained in your attorney's letter) in order to silence a journalist and, in so doing, is undermining a value and right that it should be protecting and defending.

Recently, the media came out in full support of protests launched by the Freedom of Expression Institute, South African National Editors Forum and the Media Institute of Southern Africa against the Film and Publications Amendment Bill. A number of your media jumped on the bandwagon too. And, through Sanef, a number of your editors and senior journalists have taken a strong position on the matter of freedom of expression. One of your own publications, *City Press*, stated that:

> "The price of freedom is eternal vigilance. Politicians will always try to limit the powers of the media. Even in well-established democracies, politicians still try to take away rights by arguing that some rights are not good for citizens. It is for this reason that we should all jealously guard the freedoms that we have secured through our supreme law – the Constitution."

It is sad to note that while we are all concerned about politicians taking away the rights of the media, some media want to take away the right to free expression of journalists and other citizens. To "jealously guard the freedoms that we have secured through … the Constitution" means securing those freedoms for all people, not just ourselves. The Western Cape convenor of Sanef (and one of your columnists and a former editor of one of your publications), Lizette Rabe, wrote more than one column on News24 about the Bill. In one, she correctly wrote: "Freedom of expression and freedom of the media is a fundamental part of any definition about democracy." We wonder what her response would be to your attempts at subverting the free expression of your former employee.

We want also to point out that your accusations of defamation against Mr Lewis are as worrying as they are spurious. Wits journalism professor, Anton Harber, wrote last month, "Defamation will be the battleground for the media freedom wars of the foreseeable future." It seems that Media24 is intent on proving Professor Harber correct – but in ways that we doubt even he expected. The use of the defamation stick on your part is an indication of your desperation in wanting to silence Mr Lewis' criticism (correct or not) of your company.

You also realise, of course, that Mr Lewis is easily able to use the defences of truth, public interest and fair comment in this case – despite your attorney's claim that the pamphlet "exceed[s] the parameters of fair comment". We doubt that you would want to come up against these defences in court – the very defences that you as a media institution would rely on were you to be sued for defamation.

Furthermore, we are of the opinion that companies and other non-natural persons cannot be defamed under the law. As such, your accusation against Mr Lewis is clearly meant simply to

intimidate him into self-censorship, another theme that many of your senior journalists have been writing a lot about recently.

As an institution that works for the protection of freedom of expression in South Africa and the rest of the African continent, we cannot allow such intimidation – whether it is of the media or of individual journalists. We have, therefore, pledged our support to Mr Lewis in his attempts to defend himself against your charges and attempts at intimidation.

We encourage you to spare yourselves the embarrassment of being viewed as a media institution that wants to subvert freedom of expression. You should immediately give Mr Lewis an assurance of the withdrawal of the attorney's letter and an assurance that you do not plan to take any legal action against him. Your failure to do so will certainly result in a view developing of Media24 as being hypocritical on the question of free expression and of supporting it only in respect of itself but without consideration of that right for other people.

If you wish to discuss this matter further, please do not hesitate to contact either of us.

Yours sincerely

Na'eem Jeenah
Head: Anti-Censorship Programme

Simon Delaney
Head: Law Clinic