

Charles D. Tobin
(202) 419-2539
charles.tobin@hklaw.com

December 13, 2007

Via Hand Delivery

Clerk, District of Columbia Court of Appeals
Moultrie Courthouse
500 Indiana Ave., N.W.
Washington, D.C. 20001

**Re: Solers, Inc. v. Doe, et al. (07-CV-00159)
Notice of Supplemental Authority in Support of
Intervenor-Appellee's Brief Filed on September 19, 2007**

Dear Sir or Madam:

Pursuant to Court of Appeals Rule 28(k), Intervenor-Appellee Software & Information Industry Association ("SIIA") respectfully brings to the Court's attention this supplemental authority to SIIA's brief filed with the Court on September 19, 2007.

In *Mobilisa, Inc. v. Doe I*, -- P.3d --, 2007 WL 4167007 (Ariz. App. Div. 1, Nov. 27, 2007), an Arizona appellate court held that the First Amendment protects anonymous e-mail communications transmitted over the Internet. Specifically, the Court held that in order to compel a third party to disclose the identity of the sender of an anonymous internet communication – including an anonymous e-mail – a party is required to show: (1) the anonymous speaker was given adequate notice and a reasonable opportunity to respond to the discovery request, (2) the plaintiff can produce evidence that would permit the cause of action to survive a motion for summary judgment, and (3) a balance of the parties' competing interests, including the plaintiff's demonstrated inability to obtain the information elsewhere, favors disclosure. *Id.* at *7. The appellate court remanded the *Mobilisa* case to the trial court to determine whether the balance of interests favored disclosure.

This precedent is additional support for SIIA's general argument that the qualified First Amendment privilege applies to anonymous communications, including emails, sent to a limited audience (SIIA's brief section V.A.3.a. (pp.19-21)). The precedent also supports SIIA's specific argument that the Superior Court properly found that the balance of interests favors SIIA's ability to protect the sender of an anonymous internet communication, and that the First Amendment

Clerk, District of Columbia Court of Appeals
December 13, 2007
Page 2

protects John Doe's communication with SIIA under the facts of this case (SIIA's brief section V.A.4.c. (pp. 27-28)).

Additionally, in *Reunion Indus., Inc. v. Doe 1*, 2007 WL 1453491 (Pa. Comm. Pl. September 21, 2007), the Court entered an order granting a motion for protective order barring further discovery to learn the identity of an anonymous internet communicator. The Court held the plaintiff to a summary judgment standard – including a prima facie showing that pecuniary loss did in fact result – in balancing the First Amendment protections of anonymous speech against interests furthered through state libel laws.

This precedent is additional support for SIIA's general argument that the First Amendment protects John Doe's communication with SIIA (SIIA's brief section V.A.1-3 (pp. 13-23)). This precedent also provides support for SIIA's specific argument that Solers failed to produce evidence, as required to overcome the qualified First Amendment privilege, to support a finding that the corporation suffered any pecuniary harm (SIIA's brief section V.A.4.a. (pp. 24-26)).

We enclose three copies of this letter and four copies of the supplemental authorities, as required by Rule 28(k). Thank you for your kind assistance.

Sincerely yours,

HOLLAND & KNIGHT LLP



Charles D. Tobin DC Bar #455593
Counsel for Intervenor-Appellee
Software & Information Industry Association

Enclosures (3 copies of this letter)

cc: Daniel J. Tobin, Counsel for Appellant Solers, Inc.