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VIA HAND DELIVERY

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

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DISTRICT OF COLUMBIA
COURTS

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 and Oral Argument heard on June 19, 2008

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 and its oral argument heard on June 19, 2008.

In *Sinclair v. TubeSockTedD*, Case No. 08-0434 (JDB) (D.D.C. Feb. 10, 2009), the U.S. District Court for the District of Columbia rejected a libel plaintiff's efforts to compel the disclosure of anonymous Internet speakers from third-party website operators. The District Court also dismissed the plaintiff's defamation complaint.

The District Court recognized that the First Amendment protection for anonymous speech extends to Internet speech. *Id.* at 3. The Court therefore held that a qualified First Amendment privilege applies to third-party discovery requests seeking the disclosure of anonymous Internet speakers. *Id.* at 4.

The Court specifically held that as a threshold matter, under either of the prevailing qualified privilege tests set forth in *Dendrite Int'l v. Doe*, 775 A.2d 756 (N.J. Super. Ct. App. Div. 2001) or *Doe v. Cahill*, 884 A.2d 451 (Del. 2005), the privilege cannot be overcome unless the plaintiff brings a sufficient defamation claim. *Id.* at 5. The Court then determined that it had neither subject matter jurisdiction nor personal jurisdiction. *Id.* at 5-6. Regarding the latter, the Court found that the complaint failed to allege facts demonstrating sufficient contacts with the forum, and held that the fact that the statements can be downloaded and viewed in the District was insufficient to establish personal jurisdiction even if the plaintiff resided in the District. *Id.*

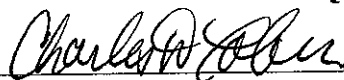
at 6-7. The Court went on to question the viability of the defamation claim under both the *Dendrite* and *Cahill* standards, noting that the plaintiff failed to allege sufficient damages or actual malice. *Id.* at 7-8.

In this action, the *Sinclair* decision is additional support for SIIA's arguments that (i) the First Amendment protects John Doe's communication with SIIA (SIIA's brief section V.A.1-3, pp. 13-23), (ii) Solers, Inc. failed to establish sufficient actual harm (V.A.4.a., pp. 24-26), and (iii) the Superior Court did not have personal jurisdiction over John Doe (V.B.2., pp. 30-31).

We enclose four copies of the *Sinclair* decision and three copies of this letter as required by Rule 28(k). Thank you for your assistance.

Sincerely,

HOLLAND & KNIGHT LLP



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Software & Information Industry
Association

Enclosures

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