

D.C. Court of Appeals Accords Robust First Amendment Protection to Anonymous Internet Speech

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On January 12, the District of Columbia Court of Appeals held that a software industry trade association cannot be compelled to reveal its anonymous Internet source based on mere allegations of harm from defamation. The case relates to an anonymous tip provided to the trade association via its website, which alleged that a Virginia-based company, Solers Inc., was using unlicensed computer software. The trade association, following its own investigation into the charge, notified Solers of the alleged violation. In response, Solers asserted that it was not infringing software copyrights and filed a defamation action against the anonymous informant. Solers sought the informant's identity and location via a third-party subpoena served on the trade association, which the trade association opposed based on its promise of confidentiality to sources. Throughout the next several years of litigation, the sole harm that Solers was ever able to identify from the alleged defamation was money it expended to respond to the trade association.

On appeal, Wiley Rein filed an *amicus* brief on behalf of the Business Software Alliance, a software industry association that also solicits anonymous tips that are invaluable to its effort to uncover and redress software piracy. Communications Litigation Chair Andrew G. McBride, and associate Claire J. Evans filed the brief. The brief urged the D.C. Court of Appeals to quash the subpoena because Solers had failed to come forward with evidence of harm that was sufficient to overcome the First Amendment right of Internet users to speak anonymously. Specifically, the brief argued that the cost of investigating charges of corporate wrongdoing is not sufficient harm

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to overcome a Internet user's right to engage in anonymous speech.

The Court of Appeals reversed the decision of the trial court and accepted the position pressed by Wiley Rein on behalf of the Business Software Alliance. Specifically, the court noted that, although the "expenditure of company resources to investigate [the] claims may have been reasonable and prudent," to allow such damages to support enforcement of a subpoena "would mean that a corporate plaintiff may overcome a speaker's First Amendment right to anonymity with little more than an allegation of defamation and its own decision to expend money in response."

Andrew G. McBride said of the decision: "It is a victory for the right to speak anonymously on the Internet. The D.C. Court of Appeals has joined a number of jurisdictions in imposing a stringent test for unveiling the identity of an anonymous speaker for purposes of a lawsuit based on protected speech."

Wiley Rein's *amicus* brief can be found [here](#).

The D.C. Court of Appeals decision can be found [here](#).