

Anti-SLAPP

Media & Entertainment Law
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Konomark - Most rights sharable.

SLAPP

- “strategic lawsuit against public participation”
- Goal is not to win
- Goal is to silence critics

SLAPP – frequent claims

- Defamation
- Invasion of Privacy
- Intentional Interference with Contract
- Intentional Interference with Prospective Economic Advantage
- Intentional Infliction of Emotional Distress
- Intellectual property (copyright, trademark)

Anti-SLAPP

- Procedural law
- Designed to prevent the civil litigation system from being used to effectively silence critics, regardless of underlying merits

Anti-SLAPP statutes

- California
- Colorado
- District of Columbia
- Florida
- Georgia
- Illinois
- Indiana
- Massachusetts
- Michigan
- New Jersey
- New York
- North Carolina
- Ohio
- Pennsylvania
- Texas
- Virginia
- Washington

California Anti-SLAPP

- 425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

California Anti-SLAPP

- 425.16. (b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

California Anti-SLAPP

- Defendant must show that the plaintiff is suing because of an "act in furtherance of [defendant's] right of petition or free speech under the United States or California Constitution in connection with a public issue."

California Anti-SLAPP

- “any act in furtherance” covers any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

Applicability online

- A publicly accessible website qualifies as a public forum.
 - Barrett v. Rosenthal, 146 P.3d 510, 514 n.4 (Cal. 2006)
- The website need not allow comments or have other interactivity with the public, so long as it is available to the public
 - Wilbanks v. Wolk, 121 Cal. App. 4th 883, 897 (Cal. Ct. App. 2001).

Getting fees and costs

- With a few exceptions “a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion”