

SLAPPED: A Tool for Activists

Part 2: What is a cyberSLAPP?



A cyberSLAPP is a lawsuit that is filed based on an individual's online free speech, such as posting a blog or leaving a comment on a review website. CyberSLAPPs typically involve a person who posted anonymous criticisms of a corporation or public figure on the Internet. Much like a standard SLAPP suit, a cyberSLAPP usually has no legal merit, and the underlying goal is the same – to chill free speech by initiating an intimidating and costly lawsuit.

However, cyberSLAPPs may also have an additional goal – to reveal the identity of the anonymous critic. Once the cyberSLAPP is filed, the plaintiff will subpoena the Website or Internet Service Provider (ISP) to reveal the identity of the anonymous critic, hoping to intimidate others from voicing their opinions in the future.¹

Some ISPs may have policies regarding the privacy of their registered users. This policy may state that they will send the user an email informing him or her that someone is seeking, through the courts, to discover their identity, and that the ISP will not act for a specific time period so the user may take legal action to attempt to preserve his or her anonymity.²

Though your protections are not limitless, the U.S. Supreme Court has also acknowledged that your ability to speak anonymously online is “an aspect of the freedom of speech protected by the First Amendment.”³

Tips to Defend Against a cyberSLAPP

Large corporations and public figures are increasingly suing individuals who exercise their First Amendment rights by posting critical opinions on Internet forums such as message boards, review sites, blogs, or in chat rooms. Although the vast majority of these SLAPP suits has no legal merit and will be unsuccessful in court, it is important to be aware of potential ways to defend yourself. Below are some tips to help defend against cyberSLAPPs:

Protecting Anonymous Internet Speech

- Be proactive in maintaining your anonymity online. The Digital Media Law Project has compiled resources that address strategies for maintaining anonymity online. [link to: <http://www.dmlp.org/legal-guide/how-maintain-your-anonymity-online>]
- Additionally, if you become aware of a subpoena to reveal your identity, consult an attorney as soon as possible about protecting your anonymity.

Immunity from Reposting Content or Hosting User Comments

- Another way to defend against a cyberSLAPP is to rely on protections granted through the Communications Decency Act.⁴ Section 230 may help shield liability from a variety

of cyberSLAPP claims, such as defamation, negligent misrepresentation, interference with business, breach of contract, and emotional distress.

- Section 230 of the Communications Decency Act provides that users and providers of interactive computer services, including the Internet, are immune from civil liability for publishing material written by someone else.⁵ For example, if an online news publication published an editorial written by an anonymous blogger, the online news source could use this to shield itself from liability. Additionally, Section 230 can be used to shield bloggers who host comments on their blogs.⁶ Section 230 may even shield you from liability if you make professional edits to the material you publish.⁷

References:

1. See <http://www.cyberslapp.org/>.
2. California Anti-SLAPP Project, CyberSLAPPs: Being Sued for Speech Online, *available at* <http://www.casp.net/sued-for-freedom-of-speech-california/slapp-being-sued-for-first-amendment-online/>; *see also* Digital Media Law Project, Potential Legal Challenges to anonymity, *available at* <http://www.dmlp.org/legal-guide/potential-legal-challenges-anonymity>.
3. *McIntyre v. Ohio Elections Comm'n.*, 514 U.S. 334, 342 (1995); *see also Reno v. ACLU*, 521 U.S. 844 (1997) (holding in part that online speech should receive the same First Amendment protection as offline speech).
4. 47 U.S. Code § 230.
5. Electronic Frontier Foundation, Legal Guide for Bloggers: Section 230 Protections, *available at* <https://www.eff.org/issues/bloggers/legal/liability/230>; *see also* 47 U.S. Code §230(c)(1) and (e)(3).
6. *See* Electronic Frontier Foundation, Section 230 of the Communications Decency Act, *available at* <https://www.eff.org/issues/cda230>.
7. Electronic Frontier Foundation, Legal Guide for Bloggers: Section 230 Protections, *available at* <https://www.eff.org/issues/bloggers/legal/liability/230>.

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