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Could Louis Tomlinson or Harry Styles Have a Legal Case Against HBO Over 'Euphoria' Animated Sex Scene?

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Matt Sayles/Invision/AP

Harry Styles and Louis Tomlinson of One Direction perform at the American Music Awards at the Microsoft Theater on Nov. 22, 2015 in Los Angeles.

[Louis Tomlinson](#) made it clear that he was not in any way involved with the explicit animated sequence in Sunday's (June 30) episode of HBO's teen drama *Euphoria*, which depicted an imagined sex scene between himself and former [One Direction](#) bandmate [Harry Styles](#).

In the animated, minute-long flashback scene, character Kat Hernandez writes graphic fan-fic about the same-sex 1D duo getting intimate, creating the subgenre of "Larry Stylinson" fan fiction -- which in real life [did become popular](#) among Directioners at the group's mid-'10s peak -- in the process. On Monday, Tomlinson wrote of the scene, "I can categorically say that I was not contacted nor did I approve it," in response.

But, other than clarifying that he nothing to do with the scene, could he do anything to legally respond to it? Though Tomlinson has not threatened to take legal action over the scene -- spokespeople for HBO, Tomlinson and Styles had not returned requests for comment at press time -- *Billboard* reached out to several intellectual property attorneys to find out if the animated romp is the kind of speech protected under the First Amendment.

"First of all, this is a First Amendment-protected work," Brian Caplan, an intellectual property lawyer at the New York firm Reitler Kailas & Rosenblatt LLC tells *Billboard* about his assessment of the legal protections afforded this kind of parody. Caplan, who has represented the Lumineers and the estates of James Brown and George Gershwin, was speaking as a legal expert, with no first-hand knowledge of the HBO series' internal legal deliberations. "The only types of claims would be over right of publicity or defamation claims."

Caplan explains that in terms of right of publicity, the images are not being used for commercial purposes -- even if they appear on a pay-cable channel series -- adding that there are a "number of defenses" that would make a defamation claim fail. Specifically, he says, a number of states have found that claiming that someone is gay is no longer considered to be defamatory, though the statutes still differ on a state-by-state basis.

More importantly, he says, the scene is clearly a parody. "The fact is the person is having a fantasy in the show, so nobody would take what appears on the screen to be a

statement of fact," he says. "To be defamatory it must be a statement of fact, such as 'this person has broken the law repeatedly,' but this is not a statement of fact, it's a depiction."

He notes that *South Park* engages in this type of parody all the time, including a 2005 episode, "[Trapped in the Closet](#)," during which an animated R. Kelly begged actors Tom Cruise and John Travolta to "come out of the closet."

Peter Scoolidge, an intellectual property attorney at Scoolidge, Peters, Russotti & Fox, LLP, concurs with Caplan's assessment, explaining that an artist has a right of publicity that allows them to control the use of their likeness and prevent someone else from profiting from using their image for profit. "People didn't just tune in to see this one clip," he says; Scoolidge also has no first-hand knowledge and was speaking in general legal terms. "The show has other commercial appeal and they probably wouldn't be able to do anything to stop this."

He suspects that the legal team at HBO took time to vet the question and concluded that the scene did not require them to get a release from the singers, and that it would not present a legal problem. "I'm sure it was on their radar and they probably felt pretty confident that they had a good First Amendment protection," he says, noting that book publishers and media organizations have legal departments that clear such matters after careful analysis.

And, as Caplan points out, HBO didn't have a legal obligation to contact Tomlinson because the scene was not defamatory and didn't violate the singers' right of publicity. "People sue frivolously all the time, but do I think he [Tomlinson] would lose if he sued? Absolutely."