

Michael Jackson Estate Sues Over New HBO Documentary

By Mark Litwak

The Michael Jackson estate has sued HBO over its new and very controversial documentary *Leaving Neverland* that recently premiered at the recent Sundance Film Festival. The documentary tells the story of Michael Jackson's long-running relationships with two boys, aged 7 and 10, and their families. Now in their 30s, the men claim they were sexually abused by Jackson. The four-hour film is set to air March 3rd and 4th on HBO.

The film has been called both shocking and brutal in its revelations. It has also been criticized for being one sided by not allowing the Jackson's estate and family an opportunity to refute the allegations. The documentary pays little attention to the fact that the alleged victims' lawsuits against the Jackson estate were dismissed although on appeal. Moreover, Jackson was acquitted of allegations of child molestation back in 2005 with a unanimous jury verdict after a trial in Santa Maria, California. The Plaintiffs contend that HBO and the filmmaker failed to contact two other persons identified as victims of Jackson's abuse who have publicly stated that the allegations that they were abused are false.

Since Michael Jackson died in 2009, his estate cannot sue for defamation as the right to protect one's reputation is considered a personal right that is not inherited by one's heirs. Essentially anyone can defame the dead with impunity. This is one reason why scandalous tell all books about celebrities are often published after their subjects die. Furthermore, celebrities have a much higher burden to bear to prevail in a defamation action. They must prove that the defendant acted with actual malice, meaning that the defendant intentionally defamed another or acted with reckless disregard for the truth. Plaintiffs often find it difficult to prove that a defendant acted with actual malice. So even if Michael Jackson was alive, he might have a difficult time proving he has been defamed.

While the Jackson estate acknowledges it cannot sue for defamation, it pins its case on allegations that HBO violated a non-disparagement clause that was part of a license to air Jackson's first-ever televised concert performance back in 1992. According to the Plaintiffs, that two-hour television show was HBO's highest-rated special ever, with approximately 3.7 million U.S. households tuning in.

In the agreement for that show, HBO promised that it "shall not make any disparaging remarks concerning Performer or any of his representatives, agents, or business practices or do any act that may harm or disparage or cause to lower in esteem the reputation or public image of Performer..." This provision was attached as part of a confidentiality exhibit to the license. It is not clear whether a court would deem such a provision to preclude HBO from ever saying anything disparaging of Michael Jackson, including matters unrelated to that concert. The lawsuit alleges that HBO is so desperate to catch up with new competitors like Netflix that it is willing to ignore journalistic standards and violate its agreement with Jackson in order to air compelling content.

Read the lawsuit here. <https://www.marklitwak.com/uploads/2/2/1/9/22193936/mj-petition.pdf>

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