

Talent Contracts in the Wake of #MeToo and #TimesUp

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No story rocked the entertainment industry in 2017 more than the stunning allegations of sexual assault against previously-powerful men. While the long-term ramifications of the #MeToo and #TimesUp movements are still playing out in Hollywood and on Madison Avenue, the industry has responded by zooming in on old contractual provisions like the “morals clause” and the new “inclusion rider” provision.

Designed to protect a producer’s investment, the morals clause allows the producer to terminate the performer and recoup payment if the performer engages in scandalous, offensive or criminal behavior. It is based on the premise that a film or television performer’s or product endorser’s salary is based on his or her ability to deliver box office results, ratings or create a positive association between audiences and the brand. This rationale is undermined, if not shattered, when performers engage in morally repugnant behavior that offends those very audiences.

The inclusion of moral clauses in talent contracts has ebbed and flowed over the years, but as a result of the watershed #MeToo and #TimesUp movements, producers are now insisting on them for performers of every stature. In the event of unscrupulous behavior by a performer, a morals clause not only protects against a potential public relations backlash, it can also prevent the costly expense cost of reshooting or rewriting projects midstream or, being forced to pay the performer. For example, Kevin Spacey reportedly did not have a morals clause in his contract for House of Cards, forcing Netflix to pay his full fee for the final season, even after removing him from the show.

In particular, these movements have focused attention on the triggering events for a morals clause. Relying on a criminal conviction or arrest as the trigger leaves producers exposed to substantial losses, since the criminal justice system can move at a slow pace and, as demonstrated by the #MeToo movement, obtaining an arrest or conviction can remain difficult even with multiple, credible accusations. Drafters of morals clauses will renew their focus on the actions themselves, the credible reporting of those actions and their immediate impact on a production.

These movements have also shed light on how gender and ethnic imbalances can perpetuate a system that protects and empowers abusers. The movement for equality in pay and representation for women and other underrepresented groups have crystallized in the “inclusion rider,” which requires increased diversity in staffing cast and crew. Frances McDormand championed this concept in her 2018 Academy Award acceptance speech, resulting in many top stars calling for these riders and commitments by producers to honor these demands. Studios, networks and marketers will likely see increased demand for such socially-minded contractual clauses.

Key Takeaways

- Studios, networks, agencies and marketers are negotiating for stronger and broader morals clauses in talent contracts in the wake of the #MeToo revelations.
- Given the financial stakes, negotiations over morals clauses will likely become more protracted.

- Talent representatives are seeking inclusion riders in talent contracts that seek equal representation in staffing and casting for productions.
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