

The Complexity of Cancellation Clauses in Entertainment ^{1, 2}

By Soléne Paillart

ABSTRACT

Cancellation clause defines the terms of a valid cancellation and protect all the work that already been done. Giving that definition, it will make sense that every contract have a cancellation clause well defined especially in the event sector where the event is uncertain until it starts. However, when comparing different types of contracts using a MADM matrix, we observed that many contracts do not protect well both parties in case of termination. Event planner should be really vigilant when using a contract's termination clause.

Key words: Cancellation clause, Event, Music industry, Contract cancellation issue, Event planner, Performance contract.

INTRODUCTION

Event management is a fast growing industry that second only to construction, is probably one of the oldest and most mature applications of the project management processes, dating back to the early Greek and Egyptian civilizations. It includes meetings, seminars, conferences, weddings, festival, and charity. Even though it seems simple, planning an event require an important organization. Event management gathers a million industries.

Event sector is known to be an uncertain sector where you are sure that something will go wrong. Consequently, in that particular sector, contracts must determine clearly what to do in that case. The event is not sure until it is started. As that industry deals with uncertainty, the contract must provide certainty and protect both the client and the event planner from obstacles and it is the reason why a cancellation clause is always needed in the contract.

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Neither part of the contract wants a cancellation to happen because there is many factors and people involved but sometimes it has to be done.

In the event sector cancellation is something that happen often, but it's repercussion are not anticipated well by either party when the procedure is launched. It can become an issue for both parts when things out of their knowledge happen, especially the impact of the procedure.

The aim of this article is to clarify this situation and compare real cases to theory. It is important to provide information to both parties to enable them to act in their best interests; give knowledge about what cancellation clause in the contract should contain; and the impact of cancellation.

This paper will help answer the question: Why Cancellation clauses in a contract are complex? It will be analyzed in detail by answering the questions:

- Why cancellation terms are essential in a contract?
- Why cancellation clause is not used in daily contracts?
- Why it is not a clause present in all contracts?
- Why Entertainment needs the cancellation clause more than other sectors?

METHODOLOGY

Feasible alternatives

Contract is not necessary a written formal document. It is an agreement between 2 people. When you order a drink at a bar, it is a contract. In order to have a legal contract, you need: an offer, consideration and acceptance³. In some contracts, no cancellation or termination clause is needed. For instance, in daily contracts such as ordering a beer at a bar, there is no termination clause. The reason why is that the risk of damages is really low. If you don't pay, you are not allowed in the bar anymore. This is the only risk taken here. In the event sector, this is really different, the damages can be really important and can end your business.

Since cancellation clause in the event sector and its consequences are really diverse according to the type of event; I gathered information from really varied resources. I did my researches in Event planner's website, articles about cancellation clause and how to deal with it, articles about contract laws, and so on.

The main idea that I get from theses resources was that Entertainment industry needs the cancellation clause more than other sectors. In fact, in that sector, they try to avoid a cancellation because the risk is huge. There is a lot of money and time involved. Furthermore there is a lot of competition and a cancellation is not a good image to have for an event planner.

³ See INESON paper titled Contracts laws for events, 2012

Cancellation clause is most needed in the event sector because events are uncertain and something always goes wrong. That is why you need to have review your contract and be sure to be protected. You need insurance, licenses and permits⁴.

The cancellation clause contains the time within the event can be cancelled, the penalties, and the permitted reasons to cancel. For instance, a cooling off period is the possibility for the consumer to return goods without penalty. A breach of contract is the refusal or failure to perform an obligation written and agreed on the contract. After understanding better the purpose for terminating a contract, two alternatives can be defined answering the problem statement:

- Entertainment industry needs the cancellation clause more than other sectors
- Risk is the main factor behind the cancellation clauses needed in entertainment

Development of the feasible alternatives

In order to accept or refuse these alternatives we will use a Multi-Attribute Decision Making Models. The cancellation and termination clause from various resources such as FIDIC, AIA, CONSENSUS and EJCDC were analyzed taken various attributes such as the risk of the contract, the timeliness, the penalties or compensations, and the possibility to terminate the contract for both parties.

For each attribute, a scale of color will help understand and analyze each contract.

- Green = Good
- Yellow = Could be better
- Red = Not Good

Here is the MADM matrix

⁴ See Eventful Ventures website, 2017

Cancellation/ Termination Clauses	FIDIC	AIA	CONSENSUS	EJCDC
Risk	Medium	High Do not define "reasonable and overhead profit", and "damages".	Low	Low
Timeliness	14 days	7 days & requires a certification from a third party.	21 days & requires 2 notices.	7 days
Penalties/Com pensations	Unpaid balance sum should be compensating by contractor or owner depending on the cost of unfinished work.	Unpaid balance sum should be compensating by contractor or owner depending on the cost of unfinished work. Contractor can receive "reasonable overhead and profit".	Consensus allows a separate premium to be awarded. The amount is to be agreed at the time of contracting according to risk and interest for each party. The premium may be construed as a penalty.	Contractor should be paid for work done, expenses maid for the project, damages, fees of subcontractors and supplier, expenses due to termination.
Termination for both parties	YES	YES	YES	NO (only for the owner, no details about contractors)

Selection of the criteria

This analysis shows that there is not contract that is 100% without risk for either the contractor or the owner. AIA is really risky as the contract doesn't define what neither "damages" nor "reasonable overhead profit" are. If this is not defined, it can be high amount of money. Furthermore CONSENSUS contract definition of owner's breach is broader than AIA. CONSENSUS is the only contract that allows recovery of profit on work not performed.

Based on the analysis, I am eliminating all options that have red such as AIA and EJCDC. AIA has a high risk, and EJCDC has a non-availability of terminate a contract for both parties. Consequently, the two accepted contracts are FIDIC and CONSENSUS.

FINDINGS

Analysis and comparison of the alternatives

Risk	
Low	3
Medium	2
High	1

Timeliness	
7 days	3
7 days + requires certification from a third party	2
14 days	1
21 days	1
More than 30	0

Termination	
YES	3
NO	0

Penalties/Compensations	
Premium according to risk/interest of each party	3
Paid for work done and other expenses	2
Unpaid balance sum should be compensate	1
Unpaid balance sum should be compensate + reasonable and overhead profit	1
No compensations	0

Attribute	FIDIC	AIA	CONSENSUS	EJCDC
Risk	0,5	0	1	1
Timeliness	0,33	0,67	0,33	1
Compensations/penalties	0,33	0,33	1	0,67
Termination	1	1	1	0
TOTAL	2,16	2	3,33	2,67

Selection of the preferred alternative

As described above, the analysis eliminates AIA and strongly advice to use Consensus type of contract.

Ratio scale: $3,33/2 = 1,665 \times 100 = 166,5\%$.

What we can conclude is that CONSENSUS is a better choice by 166,5%. Consequently, my recommendation is to use Consensus type of contract. Looking at the analysis, we can prove that the two alternatives are right. Entertainment industry needs the cancellation clause more than other sectors and risk is the main factor behind the cancellation clauses needed in entertainment.

Performance monitoring and post-evaluation of results

Attribute	Step 1		Step 2			FIDIC		AIA		CONSENSUS		EJCDC	
	Relative rank		Normalized weight (A)			(B)	(A)x(B)	(C)	(A)x(C)	(D)	(A)x(D)	(E)	(A)x(E)
Termination	4	4/10	=	0,4	1	0,4	1	0,4	1	0,4	0	0	
Risk	3	3/10	=	0,3	0,5	0,15	0	0	1	0,3	1	0,3	
Compensation/Penalties	2	2/10	=	0,2	0,33	0,066	0,33	0,066	1	0,2	0,67	0,134	
Timeliness	1	1/10	=	0,1	0,33	0,033	0,67	0,067	0,33	0,033	1	0,1	
SUM	10		SUM	1	2,16	0,649	2	0,533	3,33	0,933	2,67	0,534	

Above, we can find a more detailed analysis showing again that CONSENSUS is the right contract to adopt. It is in this type of contract that both parties are the most protected in case of cancellation or termination of the project. Consequently, the more suitable contract in terms of termination clause is Consensus. Both parties are well protected in this contract.

CONCLUSION

As the analysis demonstrated, cancellation clauses are essential in a contract. The cancellation clause contains the time when an event can be cancelled, the penalties, and the permitted reasons to cancel. It is not used in daily contracts because the risk taken is low whereas in entertainment the risk taken is often high. It is the main factor behind the cancellation clauses needed in that sector. The complexity of an event is that it gathers a lot of contracts (security, venue, music, food and beverage). If one is cancelled, it can be the entire event cancelled. Entertainment contracts contain two clauses that other contracts don't have: an exclusivity clause and a rider (specific needs for the talent)⁵. Cancellation must not be a habit for the event planner; it can influence its reputation⁶. However, since this sector is more risky than others, the chosen contract should really be adapted to each type of event.

⁵ See T.GREENWELL, L.A. DANZEY-BUSSELL & D.SHONK paper titled Managing Sport Events, 2014

⁶ See H. McDonald paper titled How to cancel your show or concert

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About the Author



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Solène Paillart is an Msc student from SKEMA Business School. She is currently studying Project Programme Management & Business Development. Before that, she studied 4 years global management in the same business school. French native but raised in Poland, she grew up in a multicultural environment. It was thus only natural she decided to study abroad. She studied in Fundação dom cabral in Brazil, and in North Carolina State University in the USA. She has experience in event project management for being responsible of the event section of two associations from her university: the moviemaker organization and the humanitarian organization. As a project manager student, she recently obtained PRINCE 2 and Agile PM certifications.