

The redaction of fair cancellation and recording clauses in music event sector^{1, 2}

Chloé Forget

ABSTRACT

Music event sector is highly risky due to the uncertainty and temporary aspects, therefore cancellation and recording clauses are crucial for risk management in music vents contracts. This paper studies the redaction of cancellation and recording clauses in the music event contract. In this article, we analyze five different contract templates (AIA, FIDIC, CONSENSUS, EJCDC and CSI contracts) to figure out which alternative will be the best option to redact fair cancellation and recording clauses between an organizer of event and the artist manager. Our researches demonstrated that the CSI contract is the best template to redact fair cancellation and recording clauses thanks to relation of power abut both parties, that are equals in this contract, and the compensations process, that is fair and fast for both parties.

Keywords: music events; music contract; production contracts; cancellation issue; recording artists; event cancellation; producer responsibilities; event organizer obligations; penalties

INTRODUCTION

Last year I bought two tickets for Shakira’s concert in Paris but just one week before the date, she announced she would not be able to perform the show. It was a complete surprise for me, and, for instance, I didn’t know what was going to happen with the purchase I made but also, I started wondering about other issues. For example, have you ever asked yourself what would happen to both of the parties of a contract if the artist doesn’t show up for his/her show? Have you ever asked yourself if you are authorized to record on video the show with your cell phone? It seems so natural for all of us to go to a concert, enjoy ourselves when our artist arrives on the stage, take photos and videos, post them on our preferred social network, and many other things that we always take for granted.

However, each musical event requires lots of previous work that can take weeks, or even months, for setting up a contract between the artist’s manager and the event organizer. Without a contract, the artist will have no more than a moral obligation to perform the show he/she was paid for and the organizer will have no obligation to protect the copyright of the artist. The artist will lose

¹ Editor’s note: Student papers are authored by graduate or undergraduate students based on coursework at accredited universities or training programs. This paper was prepared for the course “International Contract Management” facilitated by Dr Paul D. Giammalvo of PT Mitratata Citragraha, Jakarta, Indonesia as an Adjunct Professor under contract to SKEMA Business School for the program Master of Science in Project and Programme Management and Business Development. <http://www.skema.edu/programmes/masters-of-science>. For more information on this global program (Lille and Paris in France; Belo Horizonte in Brazil), contact Dr Paul Gardiner, Global Programme Director, at paul.gardiner@skema.edu.

² How to cite this paper: Forget, C. (2019). The redaction of fair cancellation and recording clauses in music event sector, *PM World Journal*, Vol. VIII, Issue VII, August.

his/her artistic property (or at least, part of the revenues for his/her performance) and the organizer will lose money and damage its brand image by paying to someone who is not coming. Hence both parties need to find an agreement and write it down in order to make it applicable in a trial, whenever one of them doesn't fulfill his/her duties. A contract is essential because it warrants that all the parties involved will act as it was previously decided and respect their responsibilities (commitments). According to the article "8 Issues to Know and Address Before Sign a Music Producer Contract" of McDonald, H ³, discussing the terms of a contract is a very difficult task because all the situations should have been considered by the parties, and here is where the main goal of the contract clauses reveals. In particular, the clauses indicate specific situations and will specify the penalties that would be applicable in each particular case. What does make difficult the implementation of cancellation clause and recording clause?

According to the website Symphonic, "Music event are fully part of project management area."⁴ Indeed, each event done in music sector imply a project management structure and its attributes. According to the size of the event, music event can require a portfolio structure to realize the event. For example, a music festival that last several days include several projects, in the way that each concert of this festival may be a project inside this portfolio. What make the project management sector specific for cancellation clause and recording clause?

In this essay, we will focus on two clauses that are essential, but also problematic, for any kind of music event: the cancellation clause and the recording clause. Moreover, it is precisely their essential character what makes them problematic because a lot of things are at stake on their formulation.

For instance, if the artist cancels his/her performance, then, it is very likely that the whole event, that may include more participants, will be canceled immediately as well. Thus, the organizer would have probably to deal with the other commitments that he/she acquired with the stakeholders and with all the clients who paid for the show. In the same way, a recording of the performance, even a partial one, could damage the artist-intellectual property if it is not controlled by a specific regulation provided by the organizer. To avoid these and many other problems, the clauses must be discussed, and penalties must be defined to enforce the duties of both the artist's agent and the organizer.

The purpose of this essay is to evaluate what is the most efficient way of writing down the cancellation and recording clauses for the parties involved in a contract in such a manner that respects, but also enforces, the obligations acquired between each other when they engage in a contract the pursues the common goal of performing and/or organizing a music event.

This essay will answer to: How cancellation and recording clauses can be fairly redacted in a music contract?

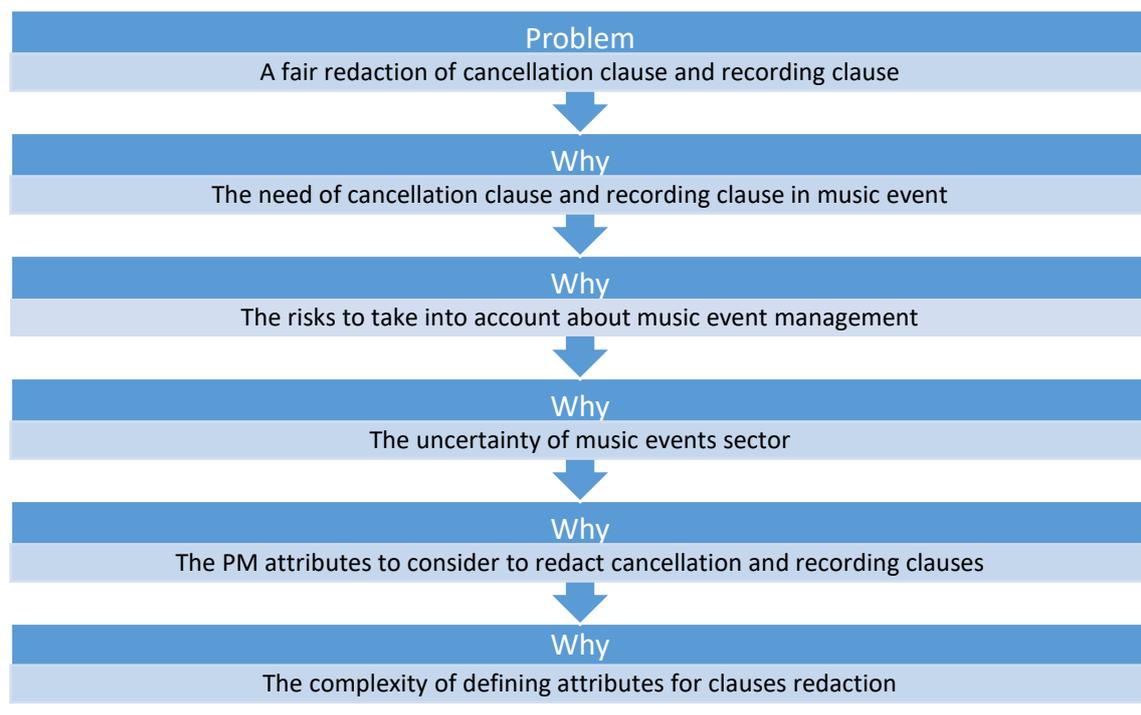
This question will be analyzed by using the Five Whys Funnel Analysis thanks to the following questions:^[1]_[SEP]

- 1) Why do we need the cancellation clause and recording clause?

³ McDonald, H. (2009, May 16). 8 Issues to Know and Address Before Sign a Music Producer Contract. Retrieved from <https://www.thebalancecareers.com/before-you-sign-a-music-producer-contract-2460647>

⁴ Legal Contracts for Music Producers | Symphonic Distribution. (2018, September 21). Retrieved from <http://blog.symphonicdistribution.com/2017/06/legal-contracts-music-producers/>

- 2) Why are there risks in music events?
- 3) Why music events are uncertain sectors?
- 4) Why music contracts need to consider project management attributes in order to redact cancellation clause and recording clauses?
- 5) Why is it complex to define the most important attributes for cancellation and recording clauses in music events?^[SEP]



METHODOLOGY

IDENTIFYING THE FEASIBLE ALTERNATIVES

A contract is defined as an agreement between two parties or more. According to the website Event Juice, “In order for a contract to be legally binding, there must be an offer (a job offer, an offer to buy/sell a product, or provide a service), there must be consideration for that offer (defined as legal value), and that offer must be accepted”⁵. When an artist manager and an organizer want to work together to realize music events, they meet and agree on their collaboration for this event. By involving themselves we can imagine they have a moral obligation one to another. But in case of disagreement, a moral obligation between both parties will not be enough efficient to deal with cancellation issue or copyright protection issue. Music events is a very specific sector about these

⁵ Contract Law for Events | eventjuice (2012, August 30). Retrieved from <http://eventjuice.co.uk/contract-law-for-events-part-1/>

two clauses due to high uncertainty that manage this sector and the temporary aspect of the relationship between the stakeholders. Artists and organizers meet for a specific event that will last a specific period of time, and when the event will be done, they will go back to their professional life, long relationship is not the first immediate motivation that people have for working together. Consequently, the temporary and uncertainty aspects of music event sector, moral obligation is not enough to preserve the smooth functioning of a music event. According to Solène Paillart⁶, music events need to be ruled by a formal contract between both parties, and need to include a cancellation clause that will specify the risk, the time to announce a cancellation, the penalties for the one who did the cancellation, the reasons that are authorized to cancel the contract; and a copyright protection clause that will fix the penalties, the risk, the condition to broadcast and reproduce the show (to who? How? When?).

To answer to our problem statement, we chose to support our comparison analysis on the five main contract book templates and evaluate which one would be the best alternatives in order to redact fair clauses:

- AIA contract
- FIDIC contract
- CONSENSUS contract
- EJCDC contract
- CSI contract

In order to assess and evaluate our alternatives, we will use a multi-attribute decision making model. The multi attribute model is relevant in that case because it will allow us to compare different attributes of our five alternatives contract book and analyzed which one fits best to redact a music contract. Music events is specific sector, in the way that it works as project do, with a specific period (a start and an end), involving external stakeholders, and the damages engage a large network of stakeholders. Consequently, for cancellation clause, we will use the following attributes: time, risk, termination for the several parties of the contract, and penalties; relationship between parties, ease of implementation of clauses and transparency; and for recording clause, we will use the following attributes: risk, valid reasons to record, penalties.

DEVELOPMENT OF THE FEASIBLE ALTERNATIVES

To accept or reject these alternatives, we will use two MADM (Multi-Attribute Decision Making Models) matrix. I will detail below each attribute. The first one will allow us to analyze the cancellation clause, using attributes as time⁷, risk, termination for the several parties of the contract⁸, and penalties. The second matrix will be used to analyze the recording clause, with the

⁶ Paillart, S. (2018). The Complexity of Cancellation Clauses in Entertainment, PM World Journal, Volume VII, Issue VI - June. Available online at <https://pmworldjournal.net/wp-content/uploads/2018/06/pmwj71-Jun2018-Paillart-complexity-of-cancellation-clauses-in-entertainment-student-paper.pdf>

⁷ Rocket Lawyer. (n.d.). Music Performance & Entertainment Contract - Agreement Template | Rocket Lawyer. Retrieved from <https://www.rocketlawyer.com/document/musical-performance-contract.rl#/>

⁸ Arnosky, A. (2013, March 19). How to (Legally) Break Free From Your Industry Contracts | Performer Mag. Retrieved from <http://performermag.com/band-management/contracts-law/how-to-legally-break-free-from-your-industry-contracts/>

following attributes: risk, valid reasons to record⁹, penalties. We used several resources as the following contracts template books FIDIC, AIA, CONSENSUS, CSI and EJCDC, we will use them to compare all these attributes in a MADM matrix.

We will discuss the relevance of each criteria we chose to develop in order to evaluate our alternatives.

Risk: The probability and the impact that one or both parties' interests is prejudiced by an unfair contract that will not have the same consideration for both parties' interests.

Termination for both parties: According to Rocket Lawyer, "both parties should have the opportunity to agree on breaking a contract by common consent and discuss by themselves the conditions"¹⁰ of breaking the contract. A common consent could be more efficient and in the best interest of both parties than rather follow predetermined conditions that could not fit to the current context.

Penalties and damages: If one or both parties want to end up the contract, a predetermined amount of penalties should be considered in order to don't prejudiced to the parties that have already done a part of their work or engage some financial resources.

Valid reasons¹¹: One of the uncertain parameters of a music event is the way and the authorization to record the show and the use of this record. The valid reasons will define a framework to authorize, or not, the record of the event and the authorization of reproducing, or not, this record. If the parties of the contract do not respect this framework, penalties can be required.

Timeliness: In case of conflict between parties, and if penalties are applied, the timeliness will determine when and how the penalties for damages will be applied. According to Barnosky A., "as project management, especially in entertainment sector, is based on a strong temporary aspect"¹² the time to fulfill the payment of penalties is a crucial attribute for both parties.

Flexibility of discussion¹³: Project management for music events needs a lot of modifications and changes all along the project, flexibility in discussions between parties could resolve some problems in a more effective way. Some kind of contract allow more informal discussions and favorize informal agreements than very strict options.

⁹ Paillart, S. (2018). The Complexity of Cancellation Clauses in Entertainment, PM World Journal, Volume VII, Issue VI - June. Available online at <https://pmworldjournal.net/wp-content/uploads/2018/06/pmwj71-Jun2018-Paillart-complexity-of-cancellation-clauses-in-entertainment-student-paper.pdf>

¹⁰ Rocket Lawyer. (n.d.). Music Performance & Entertainment Contract - Agreement Template | Rocket Lawyer. Retrieved from <https://www.rocketlawyer.com/document/musical-performance-contract.rl/#/>

¹¹ Barnosky, A. (2013, March 19). How to (Legally) Break Free From Your Industry Contracts | Performer Mag. Retrieved from <http://performermag.com/band-management/contracts-law/how-to-legally-break-free-from-your-industry-contracts/>

¹² Barnosky, A. (2013, March 19). How to (Legally) Break Free From Your Industry Contracts | Performer Mag. Retrieved from <http://performermag.com/band-management/contracts-law/how-to-legally-break-free-from-your-industry-contracts/>

¹³ Rocket Lawyer. (n.d.). Music Performance & Entertainment Contract - Agreement Template | Rocket Lawyer. Retrieved from <https://www.rocketlawyer.com/document/musical-performance-contract.rl/#/>

Impact on relationship: To develop a good relationship between both parties, they need to feel considered as equals about their interest’s protection. Some contracts favorize one party more than the other one and provoke unbalanced situations.

Ease of implementation: Project management has temporary aspect but at the same time to be well structured to be efficient. A high ease of implementation would make the clauses clear and easier to apply, in other words, the easier is the implementation, the more efficient would be the project.

Transparency: Both parties need clear clause, and transparency about their rights and their duties, to make conversations easier and get better results.

For each attribute we decided to compare in our MADM matrix, we choose to use a scale of color to get a better and easier understanding of our matrix:

- **Green** = Excellent situation
- **Yellow** = Acceptable (not really good but no bad either)
- **Red** = Bad situation

| Cancellation clause | FIDIC | AIA | CONSENSUS | EJCDC | CSI |
|-------------------------------------|---|---|--|--|---|
| Risk | Medium | High (do not define the reasonable and overhead profit) | Low | Low | Medium |
| Timeliness | 14 days | 7 days & requires a certification from a 3 rd party | 21 days & requires 2 notices | 7 days | 14 days ¹⁴ |
| Compensation damages | Unpaid balance sum should be compensating or owner depending on the cost of unfinished work | Unpaid balance should be compensating by the contractor depending on the cost of the unfinished work. Contractor receive “reasonable overhead and profit” | Allow 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 | Contracts would be paid for work done and fees/expenses engaged with subcontractors and suppliers. | Unpaid balance sum should be compensating or owner depending on the cost of unfinished work |
| Termination for both parties | YES | YES | YES | NO (only for the owner, no details about the contractor) | YES |
| Flexibility | Possibilities of informal discussion | Not flexible | Possibilities of informal discussion | No flexibility | Flexible and encourage discussions |
| Relationship | Fairness in relation interest | More advantageous to the contractor that make an unbalanced situation | Fairness in relation interest | The contractor is much more advantage and the artist will be more susceptible of damages | Fairness is one of the core value of CSI contract |

¹⁴ Contracts Solution Inc. (n.d.). Core values - CSI. Retrieved from <http://contractsolutions-inc.com/about-csi/>

| | | | | | |
|-------------------------------|--|--|---|--|--|
| Ease of implementation | Easy to implement | Not easy to implement because so much detailed and the need of a third party | Not easy to apply because of law details | Easy to implement, clear clauses | Not easy because very detailed and specific |
| Transparency | Clear and transparent for both parties | Not comprehensible enough | Not comprehensible but high transparency for both parties | Comprehensible clauses, but not transparent for both parties | Very transparent for both parties but not very comprehensive |

Table 1. Multi-Attribute matrix for cancellation clause (by authors)¹⁵

| Recording Clause | CONSENSUS | AIA | FIDIC | CSI | EJCDC |
|------------------|---|--|---|---|---|
| Risk | High (Focus more on organizer position and how overcome the copyright of the artist, not very protective) | Low (the artist will be well protected with this contracts). “If you are the owner, you will probably prefer ConsensusDOCS. If you are the architect, your best bet is still the AIA documents.” ⁽¹⁶⁾ | Medium | Medium | Low (“the reasonableness of the AIA and EJCDC clauses” ⁽⁸⁾) |
| Penalties | “The Owner can use the documents provided he pays all sums due (Article 10.1.2) [and the] owner agrees to indemnify the architect for post-construction use of documents. (Article 10.1.3).” ⁽¹⁷⁾ | The artist can account on punitive damages will be paid by the organizer “The Owner must indemnify the architect against third party claims arising from the owner’s unauthorized use of documents. (Article 7.3.1).” ⁽⁷⁾ | The party who want to make a claim has 28 days to do so and FIDIC’s orientation is about negotiation and not court. “The indemnifying Party may conduct (at this cost) negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim”. ⁽⁶⁾ | Both parties will be considered as equals in damages compensation and the artist’s creation will be well protected as intellectual property by “reasonable compensation covering the damages done by unappropriated use of intellectual property” ¹⁸ | The artist will be protected and indemnified correctly “Owner shall indemnify and hold harmless Engineer and Engineer’s Consultants from all claims, damages, [...] use, reuse, or modification” ⁽⁹⁾ |

¹⁵ Table 1. Best practices attributes for cancellation clause (by authors)

¹⁶ FIDIC. (n.d.). Copyright | International Federation of Consulting Engineers. Retrieved from <http://fidic.org/node/767>

¹⁷ Dewey Brumback, M. (2011, October 6). Copyright Protection under ConsensusDOCS and AIA-which is better? (Law note). Retrieved from <http://constructionlawnc.com/2011/10/06/copyright-formcontracts/>

¹⁸ Contracts Solution Inc. (n.d.). Core values - CSI. Retrieved from <http://contractsolutions-inc.com/about-csi/>

| | | | | | |
|---------------|---|---|--|--|---|
| Valid reasons | Focus on the organizer perspective, not on artist perspective. "The Owner receives ownership (except copyrights) of all documents, drawings, and data prepared by the architect or consultants for the Project, upon final payment for all sums due in the event of termination" ⁽⁷⁾ | The artist gets more consideration: "the architect and consultants are the owners of their respective instruments of service, retaining all rights, including copyrights (Article 7.2)." ⁽⁷⁾ | Make the client powerful than the artist but understand and let a door open to discussion when there is a conflict about re-utilization of personal concepts: "Only in a very few cases could there be any legitimate reason for a Client to prevent a Consultant from re-using the product of his services". ⁽⁶⁾ | Very protective of the intellectual property of the artist, focus on fairness and respect of properties for both parties. | Very protective to the artist "Engineer shall retain an ownership and property interest therein (including the right to reuse at the discretion of the Engineer) whether or not the Project is completed". ⁽⁹⁾ |
| Flexibility | Possibilities of informal agreements ⁽¹²⁾ | Not flexible at all, needs a 3 rd party | Possibilities of informal agreements between parties | No flexible at all | Highly flexible and encourage discussions and informal agreements between parties |
| Relationship | Fairness in relation interest, in artist intellectual property protection ²⁰ | More advantageous to the organizer that make an unbalanced situation | Fairness in relation interest, in artist intellectual property protection | The organizer is much more advantaged and the artist will be more susceptible of damages with unappropriated use ²¹ | Fairness is one of the core value of CSI contract, focus on respecting both interest |

¹⁹ Holland, K. (2002, November). Copyright Infringement of Design Documents | Expert Commentary | IRMI.com. Retrieved from <https://www.irmi.com/articles/expert-commentary/copyright-infringement-of-design-documents>

⁹ Gillies, M. A., Heckman, R. H., & Perlberg, B. M. (n.d.). A Matrix of Selected Clauses in Three Standard Form Contracts. Retrieved from <https://www.consensusdocs.org/News/Download/5ff14be3-7c0a-4d86-88cf-9fb100fa7798?name=Comparison-of-30-Clauses-in-ConsensusDOCS-and-AIA-Documents.pdf>

²⁰ Gillies, M. A., Heckman, R. H., & Perlberg, B. M. (n.d.). A Matrix of Selected Clauses in Three Standard Form Contracts. Retrieved from <https://www.consensusdocs.org/News/Download/5ff14be3-7c0a-4d86-88cf-9fb100fa7798?name=Comparison-of-30-Clauses-in-ConsensusDOCS-and-AIA-Documents.pdf>

²¹ Contracts Solution Inc. (n.d.). Core values - CSI. Retrieved from <http://contractsolutions-inc.com/about-csi/>

| | | | | | |
|-------------------------------|---|--|---|---|--|
| Ease of implementation | Easy to define authorization context to reproduce | Not easy to implement because so much detailed and the need of a third party | Not easy to apply because of law details and a difficult context definition | Easy to define authorization context to reproduce | Not easy because very detailed and specific regulation |
| Transparency | Clear and transparent for both parties | Not clear enough about authorization of recording, and the limits of the context | Not clear but high transparency for both parties | Clear clauses, but not transparent for both parties | Very transparent for both parties but not very comprehensive because of a lack of definition authorization |

Table 2. Multi-attributes matrix for recording clause²²

SELECTION OF THE CRITERIA

For the cancellation clause analysis, the MADM matrix help us to see that only two contracts here can be considered as good alternative, the FIDIC and the Consensus contract. Indeed, AIA contract don't give a well definition of the "reasonable and overhead profit", otherwise, in case of disagreements, the amount of money asked by the other party can be not affordable. In that way, the AIA contract represents a high risk. On the other hand, EJCDC contract doesn't allow to terminate a contract for both parties, it allows it only for the owner, hence the contract is not efficient for both parties. The CSI contract does not allow an efficient damages compensation by not considering both parties on equal status; this strategy represents a relevant risk for the artist's interest. There is no contract document that ensures no risk at all for both parties, the organizer as the artist. Yet, the AIA and EJCDC are risky and not efficient contract, so we decide to keep only the FIDIC and ConsensusDocs contracts to follow our analysis.

For the recording clause, the MADM matrix guide us to eliminate one of the alternatives, the ConsensusDocs. Indeed, the ConsensusDocs contract represents a high risk for the artist because he doesn't protect him efficiently and focus on more on the organizer's view and interest. The AIA and EJCDC looks to be the two best alternatives, but the FIDIC contract doesn't represent a high risk of danger for both parties, the artist and the organizer. So, at the end of the day, we will only keep the following three alternatives: AIA, EJCDC, CSI and FIDIC.

²² Table 2. Multi-attributes matrix for recording clause (by authors)

FINDINGS

Analysis and comparison of the alternatives

| Criteria | Risk | Timeless | Penalties | Termination for both parties | Flexibility | Relationship | Ease of implementation | Transparency | Total score |
|------------------------------|------|----------|-----------|------------------------------|-------------|--------------|------------------------|--------------|-------------|
| Risk | X | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 7 |
| Timeless | 0 | X | 0 | 0 | 1 | 1 | 1 | 1 | 4 |
| Penalties/Compensation | 0 | 1 | X | 0 | 1 | 1 | 1 | 1 | 5 |
| Termination for both parties | 0 | 1 | 1 | X | 1 | 1 | 1 | 1 | 6 |
| Flexibility | 0 | 0 | 0 | 0 | X | 1 | 1 | 1 | 3 |
| Relationship | 0 | 0 | 0 | 0 | 0 | X | 1 | 1 | 2 |
| Ease of implementation | 0 | 0 | 0 | 0 | 0 | 0 | X | 0 | 0 |
| Transparency | 0 | 0 | 0 | 0 | 0 | 0 | 1 | X | 1 |

Table 3. Multi-Attribute Decision Making (By Author)²³

To order the criteria we use to analyze our four alternatives, we used this matrix. The most important attribute is the risk, then the penalties, the termination for both parties and eventually the timeless. The risk can be evaluated in a high, medium or low risk, if the risk is high, the clause is jeopardized. The penalties are categorized in five elements: a premium according to the interest of each party, the payment for the work already done, an unpaid balance sum, an unpaid balance sum and overhead profit, and eventually no compensation at all. About the termination for both parties' attribute, the classification is easier, is possible or it is not possible. If it is not an option possible, that may lead to a higher risk. The timeless attribute could be defined in five time period: less than 7 days, 7 days and it requires the certification from a third party, 14 days, 21 days, and more than 30 days. The shorter it is, the better it is, a timeless too important would include a higher risk for both parties.

²³ Table 3. Multi-Attribute Decision Making (By Author)

| | | |
|------------------------------|--|---|
| Impact on relationship | Fair | 3 |
| | No impact | 2 |
| | Negative | 1 |
| Risk | High | 3 |
| | Medium | 2 |
| | Low | 1 |
| Termination for both parties | YES | 3 |
| | NO | 0 |
| Compensation for damages | Premium according to risk/interest of each parties | 3 |
| | Paid for work done and other expenses | 2 |
| | Unpaid balance sum should be compensated | 1 |
| | Unpaid balance sum should be compensated + reasonable and overhead profit | 1 |
| | No compensation | 0 |
| Flexibility | Flexible and encourage discussion between parties | 3 |
| | Allow informal discussion between parties | 2 |
| | Not flexible at all | 1 |
| Transparency | Transparent and comprehensible | 3 |
| | Comprehensible but not easy to transparency | 2 |
| | Not transparent | 1 |
| Valid reasons | Very protective of intellectual property | 3 |
| | Reproduce without agreement in the project context | 2 |
| | Reproduction without agreement for commercial use out of the project context | 1 |
| | No reproduction at all authorized | 0 |
| Timeliness | 7 days | 3 |
| | 7 days + certification from a 3 rd party | 2 |
| | 14 days | 1 |
| | 21 days | 1 |
| | More than 30 days | 0 |
| Ease of implementation | Easy to implement tanks to the clarity | 3 |
| | Not easy to apply due to 3 rd arty | 2 |
| | Not easy due to law details/ lack of definition | 1 |

Table 4. Scoring attributes (By authors) 24

²⁴ Table 4. Scoring attributes (By authors)

The risk attribute measures the probability and the impact of one contract cancellation clause on the good realization of the project. Higher is the probability and the impact, higher is the risk. The risk attributes consider as the probability as the impact for calculating the level of risk. Timeliness measures the time that the clause includes to realize the termination of the contract and the time hoped for obtaining penalties/compensation. The penalties attribute allows us to estimate the penalties forecasted in each contract for this kind of case, high is the compensation and better it is. Eventually, the termination for both parties' attribute is important to consider also because it confirms us the possibility for both parties of the contract to end the contract by common consent.

| Cancellation clause ²⁵ | FIDIC | AIA | Consensus | CSI | EJCDC |
|-----------------------------------|-------|-----|-----------|-----|-------|
| Risk | 2 | 1 | 3 | 2 | 3 |
| Timeliness | 1 | 2 | 1 | 2 | 3 |
| Penalties | 1 | 1 | 3 | 2 | 2 |
| Termination for both parties | 3 | 3 | 3 | 3 | 1 |
| Flexibility | 2 | 1 | 2 | 1 | 3 |
| Relationship | 3 | 1 | 3 | 1 | 3 |
| Ease of implementation | 1 | 2 | 2 | 3 | 2 |
| Transparency | 3 | 1 | 2 | 3 | 3 |
| SUM | 16 | 12 | 19 | 17 | 20 |

Table 5. Relative Weighting Technique for cancellation clause (By authors)²⁶

These tables give us a clear view of the different options and about the importance of each criteria we can clearly see that the AIA and the FIDIC contract should be eliminated of the possible alternatives. The MADA analysis and the score rate indicate us that Consensus contract is the best alternative²⁷.

We will use the same process for the recording clause.

²⁵ Paillart, S. (2018). The Complexity of Cancellation Clauses in Entertainment, PM World Journal, Volume VII, Issue VI - June. Paillart, S. (2018). The Complexity of Cancellation Clauses in Entertainment, PM World Journal, Volume VII, Issue VI - June. Available online at <https://pmworldjournal.net/wp-content/uploads/2018/06/pmwj71-Jun2018-Paillart-complexity-of-cancellation-clauses-in-entertainment-student-paper.pdf>

²⁶ Table 5. Relative Weighting Technique for cancellation clause (By authors)

²⁷ Dewey Brumback, M. (2011, October 6). Copyright Protection under ConsensusDOCS and AIA-which is better? (Law note). Retrieved from <http://constructionlawnc.com/2011/10/06/copyright-formcontracts/>

| Criteria | Total score | Normalized weight (A) | FIDIC | AIA | CONSENSUS | CSI | EJCDC |
|------------------------------|-------------|-----------------------|----------------|---------------|--------------|-------------|--------------|
| Risk | 7 | 0,26 | 0,0409 | 0,019 | 0,032 | 0,032 | 0,039 |
| Timeliness | 4 | 0,15 | 0,0078 | 0,021 | 0,009 | 0,019 | 0,022 |
| Penalties | 5 | 0,19 | 0,0292 | 0,013 | 0,012 | 0,023 | 0,019 |
| Termination for both parties | 6 | 0,22 | 0,0351 | 0,048 | 0,042 | 0,042 | 0,011 |
| Flexibility | 3 | 0,11 | 0,0117 | 0,008 | 0,014 | 0,007 | 0,017 |
| Relationship | 2 | 0,086 | 0,00976 | 0,0045 | 0,04 | 0,01 | 0,01 |
| Ease of implementation | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transparency | 1 | 0,04 | 0,0039 | 0,003 | 0,007 | 0,007 | 0,006 |
| SUM | 28 | 1 | 0,13836 | 0,1165 | 0,116 | 0,14 | 0,124 |

Table 6. Compensatory Model Technique 2: Additive Weighting Technique (By author)²⁸

| Criteria | Risk | Timeless | Penalties | Termination for both parties | Flexibility | Relationship | Ease of implementation | Transparency | Total score |
|------------------------|------|----------|-----------|------------------------------|-------------|--------------|------------------------|--------------|-------------|
| Risk | X | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 7 |
| Timeless | 0 | X | 0 | 0 | 1 | 1 | 1 | 1 | 4 |
| Penalties/Compensation | 0 | 1 | X | 0 | 1 | 1 | 1 | 1 | 5 |
| Valid reasons | 0 | 1 | 1 | X | 1 | 1 | 1 | 1 | 6 |
| Flexibility | 0 | 0 | 0 | 0 | X | 1 | 1 | 1 | 3 |
| Relationship | 0 | 0 | 0 | 0 | 0 | X | 1 | 1 | 2 |
| Ease of implementation | 0 | 0 | 0 | 0 | 0 | 0 | X | 0 | 0 |
| Transparency | 0 | 0 | 0 | 0 | 0 | 0 | 1 | X | 1 |

Table 7. Relative Weighting Technique for recording clause (By authors)²⁹

To order the importance of the criteria we use to analyze our four alternatives, we used this matrix. The most important attribute is the risk, then the penalties, and eventually the valid reason for recording. The risk can be evaluated in a high, medium or low risk, if the risk is high, the clause is jeopardized. The penalties are categorized in four elements³⁰: a compensation for all the potential damages, a compensation for damages done, a compensation for damages done with the

²⁸ Table 6. Relative Weighting Technique for recording clause (By authors)

²⁹ Table 7. Relative Weighting Technique for recording clause (By authors)

³⁰ Holland, K. (2002, November). Copyright Infringement of Design Documents | Expert Commentary | IRMI.com. Retrieved from <https://www.irmi.com/articles/expert-commentary/copyright-infringement-of-design-documents>

approval of a 3rd party, and eventually no compensation at all. The last attribute, the valid reasons for recording without agreements, could be defined by the use made of the recording elements: authorization to reproduce with an agreement of the artist, reproduce without agreement in the project context, reproduction without agreement for commercial use out of the project context and eventually no reproduction at all authorized.

As for cancellation clause, the risk attribute measures the probability and the impact of one contract cancellation clause on the good realization of the project. Lower is the probability and the impact, lower is the risk. The risk attributes consider as the probability as the impact for calculating the level of risk. Valid reasons define the justification used by the party to record and the relevance of the impact that could have on the parties. Indeed, if the clause authorizes one of the parties to record the artists without agreements and to reproduce it for an external use of the project, the impact will be higher for the artist. Eventually, and as in the cancellation clause, the penalties attribute allows us to estimate the penalties forecasted in each contract for this kind of case, high is the compensation and better it is. If the compensation will be high and give without the need of an external judge, the grade of the attribute will be higher.

| Recording clause | CONSENSUS | AIA | FIDIC | CSI | EJCDC |
|------------------------|-----------|-----|-------|-----|-------|
| Risk | 1 | 3 | 2 | 2 | 3 |
| Penalties | 1 | 2 | 3 | 3 | 3 |
| Valid reasons | 1 | 3 | 2 | 3 | 3 |
| Flexibility | 2 | 1 | 2 | 2 | 3 |
| Relationship | 3 | 1 | 3 | 1 | 3 |
| Ease of implementation | 3 | 2 | 1 | 3 | 1 |
| Transparency | 3 | 1 | 2 | 2 | 1 |
| SUM | 14 | 13 | 15 | 16 | 17 |

Table 8. Relative Weighting Technique for cancellation clause (By authors)³¹

³¹ Table 8. Relative Weighting Technique for cancellation clause (By authors)

| Criteria | Total score | Normalized weight (A) | CONSENSUS | AIA | FIDIC | CSI | EJCDC |
|------------------------|-------------|-----------------------|-----------|-------|-------|-------|-------|
| Risk | 7 | 0,304 | 0,022 | 0,07 | 0,041 | 0,041 | 0,057 |
| Penalties | 5 | 0,217 | 0,016 | 0,033 | 0,043 | 0,043 | 0,041 |
| Valid reasons | 6 | 0,261 | 0,019 | 0,060 | 0,035 | 0,049 | 0,046 |
| Flexibility | 3 | 0,130 | 0,019 | 0,010 | 0,017 | 0,017 | 0,024 |
| Relationship | 2 | 0,086 | 0,012 | 0,05 | 0,024 | 0,04 | 0,045 |
| Ease of implementation | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transparency | 1 | 0,043 | 0,009 | 0,003 | 0,005 | 0,006 | 0,003 |
| SUM | 24 | 1 | 0,085 | 0,226 | 0,165 | 0,196 | 0,216 |

Table 9. Relative Weighting Technique for cancellation clause (By authors)³²

Selection of the preferred alternative

Thanks to these tables and our analysis, we observed that we obtained different results for the cancellation clause and the recording clause.

For cancellation clause we can clearly eliminate EJCDC that have a higher risk than the other types of contracts, FIDIC and CSI. As we mentioned before, the most important criteria in our selection of alternative is about the risk for both parties. The EJCDC contract has a high-risk rate, so we should eliminate this alternative. The CSI has a low risk rate and is a better option, so between the three options, we would prefer to use CSI because he offers termination by common consent for both parties and offers a better path for compensation damages.

For recording clause, we will primarily eliminate the CONSENSUS³³ contract due to its high-risk rate, the most important attribute, its low level of compensation for damages and the risk for recording justification. As we mentioned in our comparative analysis, the most important criteria for recording clause is risk, following by penalties and then valid reasons. According to this order, AIA, seems to be the best alternative thanks to its high score for the two most important criteria, the risk and the penalties, and an acceptable for the last criteria, the valid reason. The three other alternatives EJCDC, CSI and FDIC are still acceptable alternatives but not the best ones.

As a result, we can conclude that the best alternative for cancellation contract is FIDIC type and for recording clause the AIA type. But for both clauses, FIDIC remains an acceptable alternative, whereas, AIA is clearly eliminated of the possible alternatives for recording clause. Consequently, by considering both clauses, we prefer the CSI type of contract that allow a minimum risk for both parties, a fair system of compensation and that is respectful of both parties' intellectual properties.

³² Table 9. Relative Weighting Technique for cancellation clause (By authors)

³³ Holland, K. (2002, November). Copyright Infringement of Design Documents | Expert Commentary | IRMI.com.

Retrieved from <https://www.irmi.com/articles/expert-commentary/copyright-infringement-of-design-documents>

CONCLUSIONS

After completing a detailed analysis of both clauses and the four type of contracts, we can advise you to select the CSI contract for your next music event. This contract will ensure for you as organizer, and for the artist you contract, a fair partnership by: minimizing the risk of a cancellation or an unauthorized reproduction of the music event, forecasting fair penalties for you and the artist's party of the contract and in an acceptable time to deal with the compensation issue, only one week, allowing termination by common consent for your contract with the artist and by accepting the reproduction of the music event in your project context without the agreement of your artist.

Cancellation clause and recording clause are essential clauses to contract an artist for a music event. The high risk of the entertainment sector due to the uncertainty of the area and the temporal factor of the relationship between an organizer and an artist force you to adopt these two clauses in your contract with the artist to make that both will respect their compromise.

Consequently, we recommend you apply a cancellation clause and a recording clause as part of your contract with the artist you employ for the music event you prepare and to use the CSI type of contract to redact the two clauses in order to protect your interest and the interest of your partners for the music event.

BIBLIOGRAPHY

1. Three Contracts Every Music Producer Should Know. (2017, February 9). Retrieved from <https://www.digitalmusicnews.com/2015/07/30/three-contracts-that-every-music-producer-should-know/>
2. Knab, C. (n.d.). A Sample Producer's Contract. Retrieved from <http://www.musicbizacademy.com/knab/articles/producercontract.htm>
3. Music Production Company and Producer Contract (9). (n.d.). Retrieved from <https://www.scribd.com/doc/34983638/Music-Production-Company-and-Producer-Contract-9>
4. A Guide To Contracts For Producers I. (n.d.) Retrieved from <https://www.soundonsound.com/music-business/guide-contracts-producers>
5. Legal Contracts for Music Producers I Symphonic Distribution. (2018, September 21). Retrieved from <http://blog.symphonicdistribution.com/2017/06/legal-contracts-music-producers/>
6. McDonald, H. (2009, May 16). 8 Issues to Know and Address Before Sign a Music Producer Contract. Retrieved from <https://www.thebalancecareers.com/before-you-sign-a-music-producer-contract-2460647>
7. Recording Contracts Explained (n.d.) Retrieved from <https://www.soundonsound.com/music-business/recording-contracts-explained>

8. theMU – Contracts. (n.d.) Retrieved from <https://www.musiciansunion.org.uk/Home/Advice/Your-Career/Legal/Contracts>
9. Terms and Conditions I Entertainment Nation. (n.d.) Retrieved from <https://www.entertainment-nation.co.uk/terms>
10. Contract Law for Events | eventjuice (2012, August 30). Retrieved from <http://eventjuice.co.uk/contract-law-for-events-part-1/>
11. Mallela J., & Sadasivam S. (2011, December). Work zone road user cost concepts and applications. Retrieved from <https://ops.fhwa.dot.gov/wz/resources/publications/fhwahop12005/fhwahop12005.pdf>
12. Sidebar, & NRLRC. (n.d.). WHAT TO DO IF AN OWNER OR GENERAL CONTRACTOR WANTS TO TERMINATE YOUR CONTRACT BEFORE YOU HAVE STARTED WORK OR WITHOUT ANY FAULT ON YOUR PART. Retrieved from http://www.nrlrc.net/content/membersonly/sidebar/1210_sidebar_contract_termination.pdf
13. Paillart, S. (2018). The Complexity of Cancellation Clauses in Entertainment, *PM World Journal*, Volume VII, Issue VI – June. Paillart, S. (2018). The Complexity of Cancellation Clauses in Entertainment, *PM World Journal*, Volume VII, Issue VI – June. Available online at <https://peworldjournal.net/wp-content/uploads/2018/06/pmwj71-Jun2018-Paillart-complexity-of-cancellation-clauses-in-entertainment-student-paper.pdf>
14. FIDIC. (n.d.). Copyright | International Federation of Consulting Engineers. Retrieved from <http://fidic.org/node/767>
15. Dewey Brumback, M. (2011, October 6). Copyright Protection under ConsensusDOCS and AIA—which is better? (Law note). Retrieved from <http://constructionlawnc.com/2011/10/06/copyright-formcontracts/>
16. Holland, K. (2002, November). Copyright Infringement of Design Documents | Expert Commentary | IRMI.com. Retrieved from <https://www.irmi.com/articles/expert-commentary/copyright-infringement-of-design-documents>
17. Gillies, M. A., Heckman, R. H., & Perlberg, B. M. (n.d.). A Matrix of Selected Clauses in Three Standard Form Contracts. Retrieved from <https://www.consensusdocs.org/News/Download/5ff14be3-7c0a-4d86-88cf-9fb100fa7798?name=Comparison-of-30-Clauses-in-ConsensusDOCS-and-AIA-Documents.pdf>
18. Rocket Lawyer. (n.d.). Music Performance & Entertainment Contract - Agreement Template | Rocket Lawyer. Retrieved from <https://www.rocketlawyer.com/document/musical-performance-contract.rl/#/>
19. Barnosky, A. (2013, March 19). How to (Legally) Break Free From Your Industry Contracts | Performer Mag. Retrieved from <http://performermag.com/band-management/contracts-law/how-to-legally-break-free-from-your-industry-contracts/>
20. Contracts Solution Inc. (n.d.). Core values - CSI. Retrieved from <http://contractsolutions-inc.com/about-csi/>

About the Author



Chloé Forget

Paris, France



Chloé Forget is an Msc student from SKEMA Business School. She is currently studying Project Program Management & Business Development. Before that, she studied 4 years global management in the same business school. French native but she grew up in a multicultural environment thanks to her travels (Spain, the UK, Germany, Tunisia, Morocco, Turkey, Peru, ...). 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 project management for being responsible for a music festival in France and in development of new products in a tourism agency in Mexico. As a project management student, she recently obtained PRINCE 2, Agile PM and IPMA certifications.

Chloé lives in Paris and can be contacted by email at chloe.forget@skema.edu