

# Hollywood divided as 'morality clauses' return to contracts in wake of Weinstein

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By [Harriet Alexander](#), NEW YORK

**I**t was, the studio executives must have conceded, a costly mistake.

Kevin Spacey was lined up to star in the sixth and final season of *House of Cards*, Netflix's blockbuster political drama. But when actor Anthony Rapp accused Spacey in October of making a frightening sexual advance towards him in 1986, when he was 14, Netflix knew they could not go ahead with filming.

Spacey was dropped from *House of Cards* and a forthcoming Gore Vidal film in which he starred, shot for Netflix in Italy over the summer, was canned.

Because he did not have a "morality clause" in his contract, however, he was still paid for both. The debacle reportedly cost Netflix \$39 million (£28 million).

Since Harvey Weinstein's spectacular fall from grace in September, the floodgates have opened and a roll call of Hollywood studio executives and actors have suddenly found themselves out of work – and their projects on hold.

The financial damage inflicted on the industry is so great that many studios are now beginning to insist on "morality clauses" – contractual agreements that mean a person could be dismissed from a project without pay if they misbehave. They could even, some lawyers think, be liable for the costs incurred.

"If I'm a studio, I want the biggest, broadest morality clause I can get," said Ed McPherson, founder of Los Angeles law firm McPherson Rane and a specialist in entertainment law.

"But as an artist, I'm worried – what infraction falls into this? It's easy to say it applies in a Weinstein scenario. But some clauses mention the behaviour that would 'shock, insult or offend the community or public morals'. What does that mean? If you yell at someone in the street?"

He told the Telegraph that an A-list actor would have much more leeway in negotiating the clause out of the contract.

If you're Tom Cruise or Meryl Streep, sure. As with everything, it depends on the star power. But most studios aren't going to willingly budge on it."

Morality clauses are not new – they were first used in 1921, when the public backlash against Paramount following the arrest of Roscoe “Fatty” Arbuckle on charges of rape and murder drove Universal Studios, one of Paramount’s competitors, to insert clauses insisting on good behaviour in their contracts.

The clause stated: “[H]e (she) will not do or commit anything tending to degrade him (her) in society or bring him (her) into public hatred, contempt, scorn or ridicule, or tending to shock, insult or offend the community or outrage public morals or decency, or tending to the prejudice of the Universal Film Manufacturing Company or the motion picture industry.”

Any breach of the provision would permit Universal to unilaterally terminate the agreement with five days’ notice.

The next year, similar clauses entered the professional sports world when the Yankees amended their agreement with Babe Ruth, insisting that he must agree to “abstain entirely from the use of intoxicating liquors and ... shall not during the training and playing season in each year stay up later than 1am.”

In the 1940s the lives of stars such as Ava Gardner, Joan Crawford, Judy Garland and Jean Harlow were tightly controlled by the studios which “owned” them, with many of the women being forced to have abortions if they fell pregnant. But the end of the “studio system” in the late 1940s changed that and “morality clauses” were no longer common.

Now, the turmoil in Hollywood has forced studios to re-evaluate, and consider insisting on such clauses for all their contracts.

“They were around, and then I stopped seeing them,” said David Fink, partner in Los Angeles law firm Kelley Drye, and a specialist in media and entertainment law.

“And now they’re back.”

Mr Fink, who has represented multiple television companies and film studios, including Fox Searchlight Pictures and Warner Bros, said that Hollywood executives were seeking to minimise financial risk in the current “Me Too” climate.

They’re investing a bunch of money in a project,” he said. “They want the freedom to protect their investment.”

Fox is one of many studios The Hollywood Reporter says is trying to insert broad morality clauses into its talent deals. The clause states that Fox can end any contract “if the talent engages in conduct that results in adverse publicity or notoriety or risks bringing the talent into public disrepute, contempt, scandal or ridicule.”

Paramount Studios is also reviewing its codes of conducts, the industry journal said, while several smaller distributors are looking into legal clauses that would enable them to pull out of a project if a key individual in a film - whether during or before the term of

the contract - committed or is charged with an act considered under state or federal laws to be a felony, or crime of “moral turpitude”.

Their use divides opinion. Some see it as a sensible insurance policy. Others believe it is too broad a brush.

“I’m not surprised that employers are scrabbling for this,” said David Ring, a lawyer described by Vanity Fair as “California’s go-to attorney for sexual abuse victims”.

He said: “The problem is, they are often drafted too broadly.

“If it’s truly aimed at stopping sexual harassment and sexual assault, then that’s a good thing. The clauses are more effective if they are drafted with specificity.”

Porta di Rossi, the wife of Ellen de Generes, told in her book how she was forced to accept a sweeping “morality clause” in a L’Oréal campaign contract she signed around the time she was a regular on *Ally McBeal* in the late 1990s. The clause called for her to pay back any money earned from the campaign if she was found in any way to have violated the morality agreement.

At the time, she had not publicly disclosed her sexuality, only coming out in 2005 and while the clause did not mention homosexuality Di Rossi nevertheless feared her sexuality might be deemed to be a breach.

“The clause cited examples like public drunkenness, arrests, et cetera but I knew that it would include homosexuality,” de Rossi wrote.

“The wording of the contract was vague, and I was unsure what would constitute a breach of the contract and how ‘morality’ was defined. The whole thing made me sick.”

But Mr Fink, the film studio specialist lawyer, said the studios were wise to inset the clauses. “Of course there’s fear on the talent side that it’s just an easy excuse to fire someone. Anybody can make an accusation up, or say something that is not necessarily true.

“But the danger of false accusations is not a danger of the moral clause itself.

“And the studios have an investment. Of course the studios are going to push for the moral clauses – they don’t want their project to be held hostage by somebody who did something wrong. And they don’t have any incentive to deliberately destroy the project, like getting rid of someone without real cause.

“Ultimately, anybody in Hollywood right now is wise to be paying a lot more attention to their conduct.”