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978-1-009-57317-7 — Behaviour Beyond the Text and the Morality Clause
in Twenty-First-Century Publishing

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Excerpt

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1 Introduction

In 2016, ‘alt-right’ journalist Milo Yiannopoulos was offered a book deal.¹ ‘I met with top execs at Simon & Schuster earlier in the year and spent half an hour trying to shock them with lewd jokes and outrageous opinions’, Yiannopoulos told *The Hollywood Reporter* on announcing the deal. ‘I thought they were going to have me escorted from the building – but instead they offered me a wheelbarrow full of money’ (Bond 2016). The ‘wheelbarrow full of money’ reportedly took the form of a \$250,000 advance (Bond 2016). However, some readers and other agents in the publishing field opposed Yiannopoulos being given a ‘serious’ platform to express his views (Phillips 2019, 158). In the wake of the book deal, *The Chicago Review of Books* announced on Twitter they would not offer review space for any forthcoming Simon & Schuster titles, arguing the deal was a ‘disgusting validation of hate’ (Grady 2017, Stefansky 2016). Some authors expressed hesitancy at continuing their working relationship with Simon & Schuster (Jamieson 2017), an independent bookstore stated they would no longer stock Simon & Schuster titles, and some readers exclaimed on social media they could not support a publisher who platformed the author (Fallon 2016).

The publishing field experienced disruption in the wake of this incident, with members of the industry in conflict about whether or not Yiannopoulos being offered a book deal was acceptable conduct on the part of Simon & Schuster. In early 2017, Simon & Schuster terminated Yiannopoulos’ contract, citing that the manuscript was not of the quality they established in the terms of the publishing agreement (Phillips 2019, 158). Nevertheless, speculation within the industry followed about why the publishing agreement was terminated, as Yiannopoulos’ termination came shortly after he made comments accused to be endorsing ‘child abuse’ (Malkin and Jacobs 2017) which

¹ Alt-right is short for ‘alternative right’, and alt-right views are defined as ‘an ideological grouping associated with extreme conservative or reactionary viewpoints, characterized by a rejection of mainstream politics and by the use of online media to disseminate deliberately controversial content’ (Schuessler 2016). Yiannopoulos is often described as ‘alt-right’ in the media (see, for example, BBC News 2017).

incited further criticism of the author and Simon & Schuster (Deahl 2018). Yiannopoulos summoned Simon & Schuster to court over the termination, expressing the belief that his views beyond the text, as opposed to the quality of the manuscript, were the reason for termination. The court summons, accessible online, states: ‘Simon & Schuster wrongfully, and in bad faith, terminated the contract with Yiannopoulos in violation of its terms and cancelled *Dangerous* under pressure from authors, bookselling accounts, business and special-interest groups, celebrities, and various other self-appointed censors who disagreed with views expressed by Yiannopoulos.’²

With Simon & Schuster citing the quality of the manuscript as the reason for the termination (and, due to the publicised court documentation, the manuscript draft along with the editorial comments are available online for readers to draw their own conclusions on this matter (Belam 2017)), it cannot be conclusively said that Yiannopoulos’ behaviour contributed to the contract’s termination.³ Nevertheless, the Yiannopoulos incident sparked widespread discussions about whether an author’s behaviour beyond the text should or should not affect their publishing career (Deahl 2018, Shulevitz 2019).

Publishers acting to distance themselves from authors displaying problematic behaviours and opinions has become increasingly apparent across the US and UK book publishing industries in the twenty-first century. The term ‘problematic’ can be used to describe those who ‘are assessed to have said or done something unacceptable . . . generally from a social justice perspective especially alert to sexism, heterosexism, homophobia, racism, bullying, and related issues’ (Ng 2020, 623). Schmitz (2015) states that the word ‘problematic’ is ‘one of the indispensable words of our time, a catch-all for any . . . misstep or media mishap that could [have] sexist, racist, or hegemonic implications’. The term was brought into popularity by the ‘Your Fave is

² *Milo Yiannopoulos v. Simon & Schuster Inc.*, New York County Court, 7 July 2017. www.courthousenews.com/wp-content/uploads/2017/07/milo-yiannopoulos.pdf.

³ While no morality clause is present in Milo Yiannopoulos’ contract issued in 2016, Somers (2018), reporting for *Publishers’ Lunch*, asserts the presence of a morality clause in some Simon & Schuster contracts in 2018.

Problematic’ blog founded in 2010 (Clayman Pye 2022, 167),⁴ a blog that, in the words of its founder, ‘contained long lists of celebrities’ regrettable (racist, sexist, homophobic, transphobic, ethnophobic, ableist and so on) statements and actions – the stuff that gets people canceled’ (Kaplan 2021). Sánchez Abril and Greene (2017) observe the need for ‘associates’ to distance themselves from individuals associated with such behaviour across industries: ‘In a society in which insensitivity and intolerance are the subjects of widespread public shaming ... Associates of the politically incorrect often receive immense pressure to denounce the questionable behavior, or risk being perceived as condoning it’ (24).

Such ‘public shaming’ often occurs on social media (and, in the case of publishing, via reader review sites such as Goodreads), meaning criticisms of and accusations towards authors can be seen publicly, often before being picked up by the media. Sánchez Abril and Greene’s observation that organisations can be seen as ‘condoning’ behaviour suggests that publishers could also be viewed as ‘condoning’ the behaviours and views exhibited by their authors. Indeed, this notion was apparently felt by Simon & Schuster before they decided to terminate Milo Yiannopoulos’ memoir, officially stating they have never ‘condoned discrimination or hate speech’, and instead sought to publish ‘authors with greatly varying, and frequently controversial opinions’ (Stefansky 2016).

One practice has emerged across industries to allow contracting parties to exit agreements with contracted individuals should they behave in a way the contracting party deem to be ‘reprehensible’: the morality clause (Pinguelo and Cedrone 2009, 358, 351). The definition of ‘morality clause’ can and does differ from contract to contract. For the purposes of this Element, the definition put forward by Pinguelo and Cedrone in their seminal discussion on the morality clause is appropriate:

[A morality clause] is a contractual provision that gives one contracting party (usually a company) the unilateral right to terminate the agreement, or take punitive action against the

⁴ At the time of writing in 2023, the blog has been inactive for approximately seven years.

other party in the event that such other party engages in reprehensible behaviour or conduct that may negatively impact his or her public image and, by association, the public image of the contracting company. (351)

The morality clause has appeared in publishing agreements across the US and the UK throughout the twenty-first century, from Random House Children's Books in the early 2000s in the UK (Jones 2008), HarperCollins US in 2010 (Novelists Inc. 2010), and Simon & Schuster and Penguin Random House in 2018 (Somers 2018). This Element is an investigation of the emergence of the morality clause in the book publishing industry, as well as the increased focus on author behaviour beyond the text more generally in the twenty-first century. It asks: why has the morality clause emerged in publishing agreements, and what impact does its presence have on agents in the publishing field? This Element ultimately presents the argument that the changing author–reader relationship (driven by advances in social media alongside twenty-first-century social contexts) means that an author's behaviour beyond the text is more visible than ever and can act as a paratextual threshold to their work. This, in turn, has created a perceived need for the morality clause in publishing agreements as the life of the author beyond the text can negatively impact associated publisher reputation and finances should audiences demonstrate widescale disapproval of an author's behaviour. Such a dynamic is, I argue, indicative of a changing habitus as experienced by authors, editors, and literary agents in the publishing field, the morality clause's presence and the increased focus on authors' behaviour beyond the text placing new expectations on authorship in the twenty-first century.

1.1 Key Incidents: Author Behaviour beyond the Text

This section presents 'key incidents' that illustrate objections to perceived problematic behaviour across the US and UK publishing industries. I have deemed the following examples 'key incidents' due to the attention they received; namely, media and trade publication coverage due to, for instance, a mass negative reaction from audiences. This section does not comprise a comprehensive list; instead, it gives a brief account of selected incidents to

contextualise later analysis of problematic behaviour and the emergence of the morality clause in the publishing field.

High-profile progressive social movements have created a renewed, heightened awareness of social inequalities across the creative industries (Ali 2023, Brook et al. 2020, chap. 9). In late 2017, Tarana Burke's #MeToo movement rose to prominence, and the world grappled with instances of sexual abuse, assault, harassment, and injustice that were often otherwise brushed under the rug (Williams et al. 2019, 374). Perhaps most publicised is the movement's impact in Hollywood, which subsequently sparked the revival of the morality clause in the film industry (Sheikha 2019). A similar disruption occurred within the publishing field, with authors losing their positions throughout the height of the #MeToo movement. For example, online news publication *Vox* curated a list of individuals in the media industry (amongst others) accused of sexual assault, abuse, or harassment (North 2017). Authors Junot Díaz and Sherman Alexie are named on the list (North 2017). Junot Díaz stepped down as chairman of the Pulitzer Prize after harassment accusations (he was reinstated after an independent review; Flood 2018a), while The Institute of American Indian Arts revoked a scholarship in Alexie's name following harassment allegations (Bullen 2022, Flood 2018b). Outside of the *Vox* list, in 2021 W. W. Norton halted the publication of Blake Bailey's Phillip Roth biography in the US after Bailey faced multiple sexual assault allegations (Anthony 2021). The title was later published by Skyhorse Publishing and by Vintage UK (Anthony 2021). The initial action taken against these figures – and many others – suggests an awareness from book publishers and creative organisations that some audiences demonstrate a lack of tolerance for problematic behaviour associated with the #MeToo movement. Each author listed here has, in various ways, acted to reposition themselves in the field, but this does not change the fact that the combining forces of the #MeToo movement and pressure from audiences altered their position in the first place. In these examples, whether the morality clause was used or not is unclear – although some reports suggest that Bailey's contract was terminated in this way (Clark 2022). Alter (2018), observing the impact of the #MeToo movement in the US publishing industry, states: 'As allegations of sexual harassment sweep through the publishing industry – resulting in canceled book deals,

boycotts by bookstores and expulsions from writers' conferences – publishers, agents and editors are grappling with how to tackle the issue ... publishing and promoting a book by an author accused of misconduct can have other negative ramifications.' Lipton (2020) makes a similar observation: 'In the age of the #MeToo movement, several authors have found their agents or editors cutting ties with them because they don't want to be associated with authors who have, or are getting, a bad reputation in the industry' (118).

As discussed previously, the incident with Milo Yiannopoulos highlighted an instance of behaviour beyond the text leading to audience objections ahead of publication. Another case of an author's behaviour beyond the text leading to objections prior to publication is that of Julie Burchill and Little, Brown. In this case, the behaviour was linked to the decision from the publisher, with Little, Brown stating that Burchill's 'Islamophobic' (Bland 2021) comments were 'not defensible from a moral or intellectual standpoint' when announcing the termination of the contract (Nugent 2020). J. K. Rowling has also faced criticisms for being 'problematic' (Romano 2020). Rowling's social media posts and written work expressing her views about transgender women caused a split amongst her fans (Velasco 2020, 4), with some readers stating they would boycott Rowling's work as a result (Chilton 2020).

Publishing staff have also expressed objections to perceived problematic behaviour exhibited by authors. Protests from publisher employees occurred in 2020 and 2021, including staff at Hachette US protesting the publication of a memoir from Woody Allen due to the sexual assault allegations made against him (Williams 2020), staff at Hachette UK threatening to walk out over the publishing of J. K. Rowling's 2020 title in the wake of her comments regarding transgender women (Cowdrey 2020), and staff at Penguin Random House Canada protesting the continued publication of psychologist Jordan Peterson (Flood 2020b).

As highlighted by these key incidents, perceived problematic behaviours demonstrated by authors outside of their publications are something that audiences have been particularly attuned to in the 2010s and 2020s. The many key incidents from 2010 onwards, as well as the progressive social movements that emerged in the 2010s, led me to establish the timeframe of this Element; its analysis specifically captures the years 2010–21. The year

2010 also coincides with the rapid development of social media's role in the publishing industry (see Chapter 2) and saw one of the earliest morality clauses in the publishing industry being contested (see Chapters 3 and 4).

1.2 A History of the Morality Clause: From 1920s Hollywood to Twenty-First-Century Book Publishing

Looking at early uses of the morality clause across creative industries presents insights into its use in the twenty-first-century publishing industry, as some of the present-day concerns surrounding morality clause usage have been present since its inception in the twentieth century.

In 1921, silent film-star Roscoe 'Fatty' Arbuckle was arrested on charges of sexual assault and murder after signing a multi-million-dollar contract for future productions with Paramount Pictures (*New York Times* 1921, 8). In response, Universal Studios inserted a morality clause in contracts for actors in their employ, hoping to avoid the financial and reputational repercussions Paramount Pictures faced. As reported by the *New York Times*, this first morality clause in the film industry reads as follows:

The actor (actress) agrees to conduct himself (herself) with due regard to public conventions and morals and agrees that he (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. In the event that the actor (actress) violates any term or provision of this paragraph, then the Universal Film Manufacturing company has the right to cancel and annul this contract by giving five (5) days' notice to the actor (actress) of its intention to do so.
 (*New York Times* 1921, 8)

Cooley et al. (2008) observe that during the early twentieth century there existed an 'intense public scrutiny of morality within the motion picture industry' (3), triggered by scandals such as Arbuckle's. Gallagher (2016)

also notes that during the early twentieth century it was ‘hypothesized that film ticket sales had declined because of the perception that “stars” were leading “sinful, off-screen lives”’ (93). Such an observation implies that audiences have long demonstrated their potential power as a consumer when an artist displays behaviour they disapprove of, paralleling the situation Sánchez Abril and Greene (2017) outline in the twenty-first century, highlighting the ‘scrutiny’ and ‘public shaming’ that are suffered by organisations associated with individuals exhibiting problematic behaviour (24). The terms included in the Universal Studios morality clause such as ‘public hatred’ and ‘contempt’ (*New York Times* 1921, 8) could refer to a wide number of behaviours that may potentially provoke negative public responses, none of which are made clear or defined. Such vagueness or ambiguity of the morality clause is addressed in scholarly work on the clause across entertainment industries (Epstein 2015, Katz 2011, Kressler 2005, Pinguelo and Cedrone 2009, Sánchez Abril and Greene 2017, Sheikha 2019). As is acknowledged by Pinguelo and Cedrone (2009), there is often a power imbalance between the contracted talent and the contracting company, with the latter typically inclined to include wide-reaching, ambiguous morality clauses in order to offer themselves the most ‘protection’ (352).

In 1931, actress and singer Mary Lewis attempted to sue Pathé Company for breach of contract after they cancelled her upcoming films (Dougan 1977, 275). Pathé responded that they terminated her contract due to Lewis violating the morality clause in her contractual agreement. Pathé claimed Lewis ‘[became] intoxicated and involved in a scandal, and became the subject of comment by publications’ (Dougan 1977, 275, *New York Times* 1931, 26). Dougan (2018) highlights the ambiguity regarding Lewis’ alleged behaviour and the economic crisis facing the film industry at the time:

As the Depression deepened and audiences thinned, the movie industry was in crisis due to too many musical ‘talkie’ films. Lewis’s films were cancelled, and Mary sued for breach of contract. Pathé claimed she had violated the ‘morals clause’ and cited some unspecified incident. One known episode was when she collapsed or was hauled off the stage during

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a Sunday evening national radio show ... Lewis further suffered from the repercussions of her divorce. (282)

The Lewis case highlights two objections still present against morality clause usage in the twenty-first century, particularly across the entertainment industries. Pathé may have cited the morality clause as the reason for termination, yet the cancellation of the films Lewis was due to star in came during a time of industry struggle (Dougan 2018, 282). The possibility of abuse of power from organisations attempting to retain profits by citing the morality clause as the reason for termination when the decision is in fact driven by financial motivation is a worry present across industries today. As Sánchez Abril and Greene (2017) argue, 'If employers and other contracting parties are given unlimited discretion to interpret broad, all-encompassing morals clauses, they could quite easily use these clauses to terminate an economically disappointing relationship under the pretence of moral objection' (42).

In 2018, one literary agent speaking to *Publishers Weekly* expressed a similar concern about the morality clause: 'Maybe [the publisher] signs up three books for \$1 million, and the first book doesn't do so well, and they use this clause to get around what's legal and fair' (Deahl 2018). While this hypothetical scenario is one that in reality may be difficult to prove should it reach the courtroom, it highlights an overarching 'fear' of the morality clause, echoed in interviews for this Element (see Chapter 3). As Lipton (2020) notes: 'It can be difficult for an author to prove that the publisher actually cancelled a contract because of morality concerns rather than concerns about satisfactory writing' (118). The Lewis case also highlights the ever-changing definitions of what constitutes good 'moral behaviour', as well as the wide scope of the clause – even if Pathé did indeed terminate the agreement due to her behaviour, her actions are a world away from Arbuckle's alleged actions that triggered morality clause usage in Hollywood ten years prior. The difference in moral standards expected of men and women in the industry at this time may well have had an impact on what behaviour would trigger a clause for Lewis but perhaps not for a male colleague. Lewis' case highlights the significance of social contexts when examining the use of the morality clause in any given industry.

Morality clause use continued throughout the twentieth century (see, for example, Epstein's (2015) discussion of the 'Hollywood Ten' and the morality clause (76)), and its use particularly increased within 'talent contracts' (Pinguelo and Cedrone 2009, 356). Osborn Hill (2010) summarises an organisation's perceived need for a morality clause when working with celebrities in the context of endorsement contracts: 'The hope is that the public will become comfortable with the product because they are comfortable with the celebrity spokesperson. However . . . when the celebrity starts behaving in a way that is likely to offend the purchasing public, the negative public perception may also be transferred to the product' (14). The 'transference' of public perception from the 'celebrity' to the 'product' is similar to the author and the publisher brand being closely associated (Gardiner 2000, 67), as discussed in Chapters 2 and 3. The morality clause then became a point of focus in Hollywood in the twenty-first century. Acknowledging the #MeToo movement's impact on the film industry from 2017 onwards, Sheikha (2019) observes that 'A mere social media hashtag [#MeToo] instilled fear into the hearts of prominent male celebrities . . . The upper echelon of Hollywood took notice and scrambled for a means to distance themselves from toxic talent and terminate their existing contracts' (204).

In the immediate wake of the #MeToo movement, hundreds of individuals lost 'powerful' positions due to alleged sexual misconduct (Carlsen et al. 2018), and scholars such as Morris (2019) have advised organisations in the US to utilise 'morals clauses' due to the impact of the #MeToo movement (46).

Much scholarly work on the morality clause revolves around its historic and post-#MeToo inclusion in the film industries (Davidson 2020, Gallagher 2016, Sheikha 2019), sport contracts (J. Murray 2018, Zariello 2015), and within the wider entertainment and creative industries – such as TV personality, endorsement, and fashion contracts (Kressler 2005, Pinguelo and Cedrone 2009). These works also place particular emphasis on the clause's presence in the United States, where it is more widely used. A study that fleetingly mentions the use of the morality clause in UK publishing is that of Pinguelo and Cedrone (2009, 365), alluding to the clause being introduced in UK publishing in the early 2000s via Random House Children's Books (Jones 2008). Other uses of the clause in the