

# Handling Conflicts in Performing Art Co-Productions: A Managerial Challenge for Contractors<sup>1</sup>

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## ABSTRACT

Because of the increase of co-producers supporting a project in the performing art sector, it becomes more difficult for them to converge their interest and to find common agreements through a co-production contract. Undoubtedly, conflicts and disputes tend to arise. However, most of the time co-producers do not know which dispute resolution method is best adapted to their needs.

That is why this paper will aim at proposing to co-production contractors which dispute resolution method they should choose and how they should handle conflict resolution in their contracts.

The methodology used is a comparative analysis, using multi-attribute decision making, of the different alternates dispute resolution through the performing art's co-production contractors' needs. And, as a result, negotiation followed by mediation, best answer contractors' needs, in terms of cost, speed, privacy and confidentiality, preservation of relationship and adapted to multiple parties.

Thus, co-production contractors in the performing art sector, in case of conflict or dispute should first implement direct negotiation between them. If no mutual agreements are found, then they should go further in a facilitated resolution stage through mediation. They need to have in mind that litigation has always to be chosen in a very last choice and this process has to be contractualized in their co-production contracts in an article "Claim and Dispute".

**Key words:** Conflict, Dispute, Conflict resolution, Dispute resolution, Disagreement, Conflict of interest

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## INTRODUCTION

A project, according to Max WIDEMAN, “encompasses an entire set of activities having a definable starting point and well-defined objectives the delivery of which signal the completion of the project. Projects are usually required to be accomplished within limited resources”.<sup>2</sup>

In that sense, producing a show is a project since producers have the objective to produce a show within a fixed period of time and limited resources.

The producer of the show “La Despida,” that has been represented during the Festival Sens Interdits on October 2017, told me “without the support of all our co-producers, the theatre company Mapa Teatro would never play in France. All the difficulty is to find a common interest and to avoid conflicts”. Indeed, there are four different co-producers engaged for the show “La Despedida”. To succeed in agreeing and implementing a co-production contract, strong competencies in management and conflict management are now required in Performing Art co-production contracts. However, few researchs neither studies have yet been conducted on this subject.

First of all, performing arts point out several artistic ways of expression in which artists perform a live show in front an audience. Under “performing arts”, theatre, dance, live music, circus art, street art, opera, street show and the arts of puppetry are considered.

In this sector, due to the internationalization of the artistical projects and the continuous need for financial support, the most common contract used in order to produce a creation, a show or an event, is the co-production contract.

According to the International co-production manual<sup>3</sup>, “a co-production in the performing arts involves two or more producing partners entering into a contractual agreement to support the creation and distribution of a production or process-orientated project”. The objective of a co-production is to gather the financial means to succeed in financing an artistic project. It is a partnership collaboration between co-producers, who are committed to a common project.

Nowadays, co-producers tend to become more and more numerous in supporting one project. It is undoubtedly positive since it promotes artistic creation. However, the negative side is that, since more parties are engaged in contracts, it becomes more and more difficult to find co-production agreements. What is more, most of the time, because of the lack of time and budget in this sector, co-production agreements are not formal or/and not well contractualized.

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<sup>2</sup> WIDEMAN M., (March 2002). *Wideman comparative glossary of project management terms v3.1*. Retrieved from: [http://www.maxwideman.com/pmglossary/PMG\\_P09.htm](http://www.maxwideman.com/pmglossary/PMG_P09.htm)

<sup>3</sup> CHUNG, M. J., STAINES, J., & TRAVERS, S. (2011). *International co-production manual: the journey which is full of surprises*. Retrieved from [http://www.acpcultures.eu/upload/ocr\\_document/IETM\\_InternationalCo-productionManual\\_2011.pdf](http://www.acpcultures.eu/upload/ocr_document/IETM_InternationalCo-productionManual_2011.pdf)

As Bernard LATARJET stated in his report [Pour un débat sur l'avenir du spectacle du vivant](#)<sup>4</sup>, co-productions tend to become more and more fragmented. There are more co-producers each gathering a lower financial contribution to the project, and thus less engaged in it. Thus, converging co-producers' interests through a co-production contract is becoming more difficult.

Undoubtedly, this trend leads to more conflicts and disputes between co-producers.

However, handling conflict resolution can be very costly for co-producers in the Performing Art sector that work with a tight budget, especially if they do not implement adapted methods and techniques. Because there is still no research done on conflict resolutions adapted to performing art co-productions, co-producers are not aware of the different techniques and methods that exist and may not be able to choose the good one.

Thanks to a comparative analysis of the "best tested and proven" references, the objective of this report is to analyze what are the different conflict resolutions methods and techniques and to recommend which one is the most suitable to performing art co-production, so that they may improve and better address conflicts in co-production contracts.

This paper has been researched and written to answer the following questions:

- 1) Among conflicts resolution techniques that exist, which one is the most suitable for performing art's co-production?
- 2) How to best handle conflicts and disputes in Performing Art's co-production contracts?

## **METHODOLOGY**

There are many dispute resolution methods.

According to the [Guild of project controls Compendium and references](#), Alternates dispute resolution (ADR) are "Procedures or processes (such as arbitration, conciliation, mediation) that are voluntarily adopted to resolve controversies (or to settle disagreements) before taking recourse to legal action (litigation)."<sup>5</sup> Indeed, in dispute resolution having recourse to legal action is very costly and time-consuming. Litigation has to be taken as a very last choice.

The most common ADR methods are:

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<sup>4</sup> LATARJET, B. (2004). *Pour un débat sur l'avenir du spectacle du vivant* (Rep.). Paris: Ministère de la Culture et de la communication.

<sup>5</sup> *Guild of project controls Compendium and references*  
Retrieved from <http://www.planningplanet.com/guild/GPCCAR-modules>

### 1.1. **Negotiation:**

Through this process, parties will attempt to resolve their conflicts alone, without the support of a third neutral party, through direct negotiations. Negotiation is unstructured and not formal. Parties have the total control over the process. Because parties directly negotiate each other, relationships can be damaged in case of no agreement.

### 1.2. **Neutral Advisor:**

Through this process, a neutral third party investigates the issue raised and makes a report on it. Each party “gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved”.<sup>3</sup> Standing neutral process is particularly useful for complex disputes that require technical competences. However, in the case where it is a personal issue between parties (and not technical), this method may not be required.

### 1.3. **Mediation:**

Mediation is a neutral third party that “helps the parties try to reach a mutually acceptable resolution of the dispute”<sup>3</sup>. The mediator does not decide but helps the parties to settle the dispute. Thus, parties still have control over the resolution process and it tends to be more flexible than other non-binding and private binding resolution method. The difference with the Neutral Advisor is that the mediator does not give its opinion over the dispute. In a case where parties want to preserve their relationship, mediation is particularly appropriate. However, this process is not free and implies costs for parties.

### 1.4. **Arbitration**

Through this process, a neutral person (the arbitrator) “hears arguments and evidence from each side and then decides the outcome of the dispute”. In case of a binding arbitration, parties may call for a trial if they disagree with the arbitrator solution. However, in the case of a non-binding arbitration parties do not have this right. Arbitration is usually more expensive than mediation.

### 1.5. **Mini-trial**

This is a private process where a neutral third party can give his opinion, as a trial. He “*advises the parties, after the presentations are complete, concerning the apparent strengths and weaknesses of the cases. The neutral then assists the parties in negotiating a settlement at this point, somewhat like a mediator. The concept is to get top-level management to sit through and listen carefully to both their own best case as well as that of the other side and to reach a management decision that is based upon a realistic appraisal of both positions.*”<sup>6</sup> Mini-trial is less expensive than arbitration.

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<sup>6</sup> *Guild of project controls Compendium and references*

In order to decide which alternates dispute resolution is best suitable for the performing art's sector, I will identify what are co-producers' needs:

- **Cost:**

The cost is the first criterion for the co-production contractors. Indeed, performing art sector is really limited to financial resources. Co-production contractors invest money in a show and they will not be willing to spend even more money to resolve a conflict.

- **Speed:**

Co-producers have a specified limited time to produce a show. In case of conflicts, time spending on the resolution will delay the progress of their work, resulting in a decrease of the show's quality. That is why co-production contractors will not be willing to spend a lot of their time on dispute resolution.

- **Privacy and Confidentiality:**

A show is a public event. Co-producers have their reputation engaged in this project. The more the show will successful, the more they will be renowned in the sector. Moreover, it can taint the reputation of the show also. So high privacy and confidentiality regarding any conflicts and disputes among co-producers are needed.

- **Preservation of relationships:**

Co-production contractors are linked to a common project. They work together and most of the time, in the performing art sector, they have closed relationship. And even if they are not so close, because this sector is small, they have to preserve and implement good relationships. Indeed there is a high probability for co-producers to collaborate together again on other projects.

- **Adapted to multiple parties:**

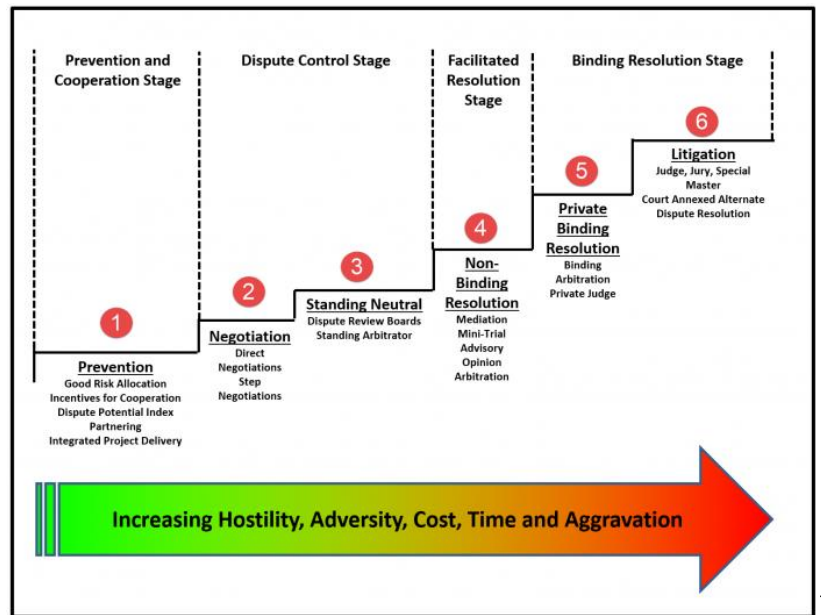
As explained in the introduction, there are more and more parties linked in a co-production contract. Thus, contractors need a method that can be adapted to numerous parties.

Thanks to these 5 criteria I will recommend which alternate dispute resolution, co-productions contractors should choose.

## FINDINGS

### 1. Analysis and Comparison of the ADR

The Guild of project controls Compendium and references classifies ADR into 6 major steps of escalating a dispute resolution:



The more an ADR is on the right, the more it is costly, time-consuming and hostile in relationships. This graphic will be the basis of the analysis and comparison of the alternatives.

What is more, articles from the Dispute Resolution Magazine of American Bar Association had been a useful basis to identify and score the needs of the co-production contractors, especially the tables "Rating ways to achieve clients' goals" and "Assessing the likelihood of overcoming impediments to settlement"<sup>8</sup>.

In order to select the best method to resolve conflicts in performing art co-production, we created the following table to compare the 5 ADR methods identified, based on the 2 references quoted above.

<sup>7</sup> *Guild of project controls Compendium and references*

Retrieved from <http://www.planningplanet.com/guild/GPCCAR-modules>

<sup>8</sup> FRANK E. A. SANDER and STEPHEN B. GOLDBERG. *ABA Journal*. Vol. 79, No. 11 (NOVEMBER 1993), pp. 66-68

Published by: [American Bar Association](http://American Bar Association)

Table 1: Rating score model to achieve co-production contractors’ needs

	Negotiation	Neutral Advisor	Mediation	Arbitration	Mini-trial
Minimize cost	4	3	3	1	2
Speed	4	3	3	1	2
Privacy and Confidentiality	4	2	3	3	3
Preservation of relationships	2	1	3	1	2
Adapted to multiple parties	2	2	3	2	2
	16	11	15	8	11

This table compares the extent to which each alternates dispute resolution method satisfies the needs.

- 1= Unlikely to reach the needs
- 2= Somewhat
- 3= Substantially
- 4= Very Substantially

## 2. Negotiation: preferred ADR

In order to decide which dispute resolution method is best suitable to co-production contractors, we created the following table:

Table 2: Classification of the ADR methods

Criteria	Criteria’s range	Alternative option’s range
Cost	1	Negotiation > Neutral Advisor > Mini-trial > Arbitration Mediation
Speed	2	Negotiation > Neutral Advisor > Arbitration > Mini-Trial Mediation
Privacy and Confidentiality	3	Negotiation > Mediation > Neutral Advisor Arbitration Mini-trial
Preservation of Relationships	4	Mediation > Negotiation > Neutral Advisor Mini trial Arbitration
Adapted to multiple parties	5	Mediation > all other ADR

Following the table 1 and 2, we decided to classify the dispute resolution methods as follow:

Negotiation > Mediation > Neutral Advisor > Mini-trial > Arbitration

## CONCLUSION

This paper aimed at responding to the following questions:

- 1) Among conflicts resolution techniques that exist, which one is the most suitable for performing art's co-production?
- 2) How to best handle conflicts and disputes in Performing Art's co-production contracts?

Thanks to this analysis, we can conclude that the most suitable conflict resolution technique to performing art's co-production is the Negotiation between parties.

Negotiation best answers co-production contractors' needs, which are: minimizing cost, speed, privacy and confidentiality over the conflict, preservation of their relationships and adapted to multiple parties.

However, depending on the conflict and the context, negotiation between parties may not be appropriate or successful. That is why, the article on "Claims and Dispute "co-production contracts should first advise the negotiation between parties. And In the case where no common agreement is reached, the second step should be the Mediation.

Moreover, as we can see the figure "Illustrating the escalation steps of the ADR process", the first stage in dispute resolution process, is Prevention. By having a well-written contract concerning the article "Claim and Dispute", parties would be more able to succeed in their conflict resolution.

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## About the Author



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**Marine Kuhn** is currently studying in SKEMA Business School Paris, major in Project and Programme Management and Business Development (PPMBD) and International Marketing and Business Development (IMBD). She will be graduated in April 2018. She joined SKEMA Business School for her Master degree 1 and she spends the second semester in Suzhou on the Chinese campus of SKEMA. Before joining SKEMA Business School, Marine KUHN studied two year technical courses in Marketing and Sales and had been enrolled in an exchange programme for 1 year in Norway.

Thanks to her professional experiences, she has a lot of competencies in communication, sponsorship, partnership and event organization. She realized a 6 months internship in GL events, the international leader in the event sector. From September 2016 to February 2017, she was Project Manager Assistant for SIRHA 2016. SIRHA is the world biggest exhibition for food and hospitality industries. She was in charge of the French bakery cup. Then, from April to June 2017, she realised an internship in the organization of the music fest “Ardèche Aluna Festival”. She was in charge of the 42 exhibitors.

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