

"Shark Hunter"

By Michael D. Harris

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Entertainment attorney and author Mark Litwak has made a career out of hunting down the Hollywood sharks who prey on young filmmakers naïve in the ways of Tinseltown.

Now, in an effort to help those budding auteurs develop some measure of self-defense, Mr. Litwak has just published his third book, "Dealmaking in the Film & Television Industry" (Silman-James Press). He describes it as "a sort of consumer guide to the entertainment business.

"This is an industry where there are a lot of predators," says Mr. Litwak, a Santa Monica sole practitioner and a University of West Los Angeles law professor, as well as a prolific writer. "There's a constant new wave of neophyte filmmakers coming in. And many of them get badly exploited."

"That's where I come in," says Mr. Litwak. "My specialty is going after the distributors who cheat filmmakers through creative accounting."

Mr. Litwak's legal roots lay in public interest law. After receiving his J.D. from the University of San Diego in 1977, he went to work for consumer rights crusader Ralph Nader and the New York Public Interest Research Group.

"I would say this book is unique in that it's the first entertainment law book written for a lay audience," says Mr. Litwak, who in a previous incarnation was a film producer. "It explains the various types of deals structured in the business and what pitfalls people need to watch out for."

One of the most common pitfalls, he says, is the danger of young filmmakers being held liable if they defame someone or infringe on someone's copyright.

To protect themselves, he says, "filmmakers always need to ask to be added to the distributor's errors & omissions" insurance policy. He notes if a filmmaker asks to be added, the request is almost always granted. "But if the filmmakers don't ask..."

Another piece of advice Mr. Litwak gives to rookie filmmakers is "to water down the warranties."

By that, he means when a studio buys a property such as a screenplay, it wants the writer to make certain warranties or promises such as that the material doesn't infringe on anyone's copyright or invade anyone's privacy.

"Now a filmmaker is much better off giving a warranty based on their best belief," Mr. Litwak says. "It's possible they could be mistaken, but if they have an honest belief, they won't be held liable. But the buyers usually like an absolute warranty. So if the filmmaker gives an absolute warranty and it then turns out he has defamed someone inadvertently, the writer will be liable."

"So, don't promise any more than you have to," he says. "It minimizes your chances of being held liable."

A third piece of advice Mr. Litwak prescribes to the wannabe Scorseses and Coppolas is to always ask for a clause in their contracts that calls for binding arbitration and reimbursement of attorney's fees.

"Because many of the disputes that arise – such as a breach of contract dispute where a producer fails to pay talent – the amount of money in question isn't enough to justify litigation," Mr. Litwak says. "And the most you can get in small claims court is \$5,000."

"So if you have a screenwriter screwed out of \$30,000, it's hard to find an attorney to take that case on contingency. And they can't recover it on their own. So they have no remedy. But if they can go to binding arbitration, then they have a remedy that's quick and relatively inexpensive."

Mr. Litwak says such a clause will be added to the contract only if the filmmaker or the writer insists it be added.

"If a writer is making a deal with a studio, typically an arbitration clause is not there, since it's to the advantage of the wealthier party to force disputes into litigation," which can put a tremendous financial strain on the less moneyed party.

In his experience, Mr. Litwak says, the major studios are more honorable than the smaller distributors.

"Sometimes there are major problems with the big companies, but in my opinion, some of the smaller companies are some of the worst and most flagrant violators," he says.

"The larger companies screw you up front – they drive a very tough bargain – so they don't have to breach the contract," he says. "A lot of the smaller companies will sign contracts with promises of profits from the back end and then they breach those contracts. And most filmmakers can't take them to task."

"That's where I can help and where hopefully this book can help, too," he says.

Prior to "Dealmaking," Mr. Litwak wrote two other books, "Reel Power" and "Courtroom Crusaders." His fourth book, "Contracts in the Motion Picture and Television Industry" will be published in several weeks. His fifth book, "Self-Defense for Writers and Filmmakers," is set to be published later this year, and he is working on a sixth book, "The Multimedia Producers' Guide."