



# Buying & Selling Intellectual Property

## HOW I DID IT

**Producer Proteus Spann is capitalizing on the rights he owns to author E. Lynn Harris's catalog of books**

### A MUSICAL ADAPTATION OF BEST-SELLING AUTHOR

E. Lynn Harris's 1994 novel *Invisible Life*, a coming-of-age story about a man who discovers he is gay, has been reborn as a musical featuring a score by Motown legends Nickolas Ashford and Valerie Simpson. The musical adaptation, which has been in development for several years, was presented as an Actors' Equity-approved showcase in June at Harlem's Apollo Theater. This is just the beginning—a film adaption has been in the works, according to the show's producer and co-director Proteus Spann of Proteus E2 Productions, who owns the intellectual property rights to Harris's catalog of 18 books.

A fan of the novel, Spann met Harris through a mutual friend and the two hit it off. Harris even offered to give Spann the option for *Invisible Life* for free for six months so that he could develop it into a movie. A book option

means that you are paying to have the exclusive option of purchasing the film rights at a future predetermined date for a specified price. For example, you might pay \$500 today to have the option to buy the film rights in 18 months for \$200,000.

"Two weeks later Lynn called me to say that *Empire's* Lee Daniels wants the rights to *Invisible Life*. So, you can't have it.' Friendship is friendship, but business is business. And Halle Berry had just won an Oscar for *Monster's Ball*, which Lee directed. But I knew I still wanted it. I came in with the highest bid, and that's how I got the first option. I quadrupled [Daniels's] bid; actually, it was five times his offer.

"One of the things I did when the option for *Invisible Life* was up after a year, I started buying the intellectual property rights for the trilogy [*Invisible Life*, *Just As I* ▶

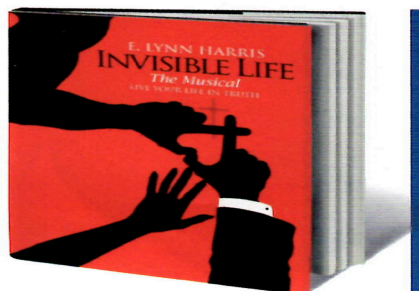


## Small Biz

Am, and *Survive With Me*] instead of optioning the books," says Spann. "So, I paid Lynn for the intellectual property rights to his books. I own all of the rights other than publishing. No one does that anymore. That's how old Hollywood did it," explains Spann. "After about five to six years I bought the rights to Lynn's entire catalog while he was still alive."

Like any property, intellectual property can be bought and sold. In such a transaction, the seller gets paid for the IP he or she has created or developed and the buyer—as the new owner—is free to commercialize the IP in whatever way he or she chooses. The legal term for such a transfer of ownership is assignment. Once the IP has been assigned, unless special arrangements are entered into, the seller will lose ownership of the IP and the right to use it.

IP rights cover creations both artistic and commercial. Copyright protects books, movies, music, paintings, photographs, software, etc. and gives the copyright holder exclusive rights to control reproduction or adaptation of such works for a certain period of time. Patents protect inventions. Trademarks protect words, names, or symbols identifying goods made or sold, distinguishing them from others. The U.S. Patent and Trademark Office ([www.uspto.gov](http://www.uspto.gov)) and the U.S. Copyright Office ([www.copyright.gov](http://www.copyright.gov)) administer IP laws and rules.



SPANN ADAPTED HARRIS'S BOOK INTO A MUSICAL STAGE PLAY.

Having a good IP attorney is crucial. "You need someone who is good at writing contracts," says Spann. License agreements and transfer of ownership that involves contractual agreements in many cases will override provisions on IP laws that might conflict with what is being agreed upon.

When you're dealing in intellectual property, there are a lot of legal pitfalls that arise. If you don't structure the option or purchase agreement properly, there's a chance that you aren't actually getting the rights you need to make and release a feature film, cautions Spann.

An attorney knowledgeable about licensing, distributing, buying, and selling intellectual property can help you protect and better manage your rights. Ask for referrals. Also, check with the American Bar Association ([www.americanbar.org](http://www.americanbar.org)) and the National Bar Association ([www.nationalbar.org](http://www.nationalbar.org)).

In addition to the purchase price, it is customary for the author to receive net profit participation, generally 5% to 10%, for the motion picture. "After about the fourth purchase agreement I felt that there should be a back-end deal on the movies," adds Spann, so "a percentage of the net profits from a movie would go to Lynn." Harris was fearful of the Hollywood system because of what happened to *Cheetah Girls* series author Deborah Gregory, notes Spann. "She didn't make any money [beyond the initial \$125,000 received for option fees]. That franchise has made millions of dollars."

However, Spann's ownership of the IP rights didn't dissuade Harris's family from suing Spann when the author died in 2009. "In America you can take someone to court for just about anything. In Hollywood when you are in any kind of litigation, everybody abandons you. They have other things to do and litigation can take awhile. This one took three years," he says before a judge ruled he was the rightful owner of the rights and not Harris's estate or his heirs.

Spann believes Harris's brand has the potential to make millions. Becoming a *New York Times* bestselling author takes more than popularity from just one group or one race, it takes having a very diverse and broad fan base. "Lynn has a huge following in other countries. I have people as far as Japan who are interested in his work. So, we're talking a worldwide brand," adds Spann.

Ultimately, he wants to turn the books into films. "I have *Invisible Life* (The Movie) script ready to go. Another one of Lynn's books, *Not A Day Goes By* is a movie script that is ready to go and is being developed as a TV series due to the success of *Empire*," says Spann. "But my goal with *Invisible Life* (The Musical) is to do a limited tour [D.C., Atlanta, L.A., Chicago] and come back to New York in 2016 to put up a full production and then take it to Broadway." Spann claims, "There has never been a musical or a play that has gone from the Apollo Theater to the Broadway stage. I would like to be the first person to do that."

—Carolyn M. Brown