

Thirty-One

“READJUST RECIPROCAL RELATIONS WITHOUT ANY RESERVATION OR RESTRICTION”¹



“To them, the law was not a collection of precedents for resolving conflicts, it was a tool for producing unearned income.” — *Norman Roy Grutman*²



DECEMBER 1982 — THE FIRST ATTEMPTS AT A SETTLEMENT AGREEMENT

NOW THAT THE ITALIAN NATIONAL BANK OF LABOR was threatening Felix with legal action, an action that could easily include Penthouse as co-defendant, it was a good opportunity for Penthouse to offer Felix a settlement agreement. Guccione, on International stationery, on behalf of Films and all his other companies, wrote a letter, in English, to Gianni Massaro, granting him the authority to sign on his behalf a settlement that would result in the transference of all rights to *Caligula*, including subsidiary rights, to Penthouse, and a withdrawal of all legal complaints with prejudice, on terms that would be acceptable to Shea & Gould.³ Guccione was careful not to make any mention of a payment. He simply wanted Felix to transfer all rights to Penthouse free of charge.

Penthouse's first draft, from December 1982, offered Felix nothing.⁴ The 11-page draft agreement, for all its verbosity, simply had Felix and Rossellini

1. Transazione Generale (Settlement Agreement), 2 February 1984, article 9. FRC; DDP 94-2, pp. 89-96; DDP 361-2, pp. 9-23.

2. [Norman] Roy Grutman, *Lawyers and Thieves* (New York: Simon & Schuster, 1990), p. 30, writing about his former employer, the legal firm of the infamous Burton Pugach.

3. Guccione: letter to Massaro, 10 December 1982. DDP 360-27, p. 87.

4. Draft Settlement Agreement: December 1982. DDP 360-17, pp. 71-82 and 360-27, pp. 51-62.

withdraw all their suits with prejudice. It cleverly misrepresented Felix's suit as concerning all rights and subsidiary rights, including videocassette rights, which Felix had not even mentioned. The draft Settlement Agreement would have Felix entirely indemnify Penthouse, past, present, and future, though it would still allow Penthouse to pursue legal grievances against Felix indefinitely and without restriction. It had Felix indemnify Penthouse against charges filed by Claude Baks. It named the Supreme Court of the State of New York as having jurisdiction, but it did grant that the earlier contracts would still fall under Italian jurisdiction — which did no good since the Settlement Agreement would supersede and invalidate the earlier agreements. The Settlement would give Penthouse and only Penthouse the authority to decide what constituted a breach of contract. Penthouse would pay \$10 for Felix to countersign a release to this effect.⁵ Felix could not possibly accept such a travesty.

Gianni Massaro drafted a second settlement agreement, this one considerably better, though still unacceptable.⁶ This new settlement falsely stated that Penthouse had been contracted to provide all the financing, which came to more than the approximately ten million dollars reflected in Felix's accounting. Penthouse demanded all rights, none excluded, without any obligation to offer accountings to Felix. Since Felix, in its duty to carry out the production on Penthouse's behalf, had had to make some expenditure of its own, in addition the moneys received from Penthouse, it would have the right to have this covered, though the settlement did not specify how. Any discrepancies between what Penthouse had supplied and the overage that Felix needed to cover were attributed to mere "simple errors of computation." Article D had Penthouse and Felix agree that neither would have the right to ask for information or documentation from the other, though the second half of the sentence contradicted that assertion by stating that Felix would be obligated to produce documentation "upon simple request" from Penthouse. Where Rossellini was expected to add his signature, he instead wrote in large letters: "NO!!!"

The draft settlement includes an itemization of amounts still owing, with the value of the lira set somewhat lower than reality with a formula of £1,420 = \$1. On that day, the exchange rate was actually £1,403.70 = \$1, and so the total on the last line was short by over \$9,600.

5. Draft release between Felix Cinematografica Srl and Penthouse International, Ltd., Penthouse Clubs International Establishment, Penthouse Films International, Ltd., Penthouse Records, Ltd., and Robert C. Guccione, 16 December 1982, unsigned. DDP 360-27, pp. 41-47.

6. Draft Settlement Agreement: 16 December 1982. DDP 360-27, pp. 63-73.

Italian Bank of Labor	£	225,000,000	\$	158,450.70
Biagi Enterprise	£	150,000,000	\$	105,633.80
Titanus Distribution	£	53,000,000	\$	37,323.94
Teresa Ann Savoy	£	30,000,000	\$	21,126.76
Payment of expenses anticipated by Dr. Biagiotti	£	9,413,905	\$	6,629.51
Various professionals	£	73,000,000	\$	51,408.45
Marisa Nannicini [production inspector] balance	£	3,000,000	\$	2,112.68
Tax and social payments	£	70,000,000	\$	49,295.77
Various and unforeseen	£	20,000,000	\$	14,084.51
Anticipated expenses by partners	£	545,186,095	\$	383,933.87
TOTAL		£	1,178,600,000	\$ 830,000.00

This itemized list is startling. We do not know what Biagi Enterprise was nor do we know what function it served on the film. We do soon learn that it had filed charges against Felix for non-payment. It is surprising that Teresa Ann Savoy and Marisa Nannicini had been short-changed. Here again we have a reference to Goffredo Lombardo's Titanus Distribuzione, apparently still owed money from the time when Penthouse had bought out its share!

Something else, though, is even more startling. Felix, one would have calculated, was well over \$2,000,000 in arrears, and yet this list shows only about \$830,000 owing. Penthouse by this time had simply purchased two-thirds of Felix's debts — using, of course, the percentage due to Felix to begin with!

In response to a subsequent meeting with Goldstein, Philip J. Kassel typed up a page of notes on this offer, but he still understood nothing about the background or production or financing of the film, and his suggestions, basically for mutual indemnification, were hardly adequate to address the deficiencies and deceptions of Massaro's draft.⁷ He called for Penthouse to schedule payments of a total of \$2,100,000 in Felix's favor. Franco Rossellini jotted some notes on this document, stating that Penthouse would need to pay the second amount owing to the National Bank of Labor and to pay it in Rossellini's name. He was also curious about the matter of "Claude Backs," as he misspelled it, since he was not familiar with this issue.

The itemized list above also contains the first appearance of the name of Dr Giuseppe Biagiotti in the surviving files.

Penthouse would not agree to pay Felix \$2,100,000, but it did agree to purchase a little over half of Felix's outstanding debts. Giuseppe Biagiotti, serving as Felix's attorney, wrote a letter for Gianni Massaro proposing that Felix

7. Philip J. Kassel: unsigned typed notes, 25 January 1983. DDP 360-27, p. 104.

sell all residual Italian exploitation rights to Classic Film International Srl, which was already owner of 98% of the controlling shares of *Caligola*.⁸ Who was in charge of Classic Film International Srl or how this situation came about is not spelled out in the surviving records. Should Penthouse prefer working through a different company, Classic would assign its controlling shares to that company. Since the film was impounded, giving it, in Italy, a commercial value of zero, the assignment price could be included in an amount of a mere \$50,000. To this amount should be added \$9,000 for the 18% VAT. Should the film, even in a new version, be permitted to screen in Italy, Felix would first recover its costs and thence collect 10% of the net up to 16 August 1984, which would be the fifth anniversary of the Italian premiere. Why the payments would stop at that time is not explained, though it was a concession to Penthouse to help ensure that Felix would never collect. As for the rest of the world, Felix would assign its 35% share to Penthouse for \$770,000 over the course of 12 monthly instalments, which would serve as a guarantee to the Italian National Bank of Labor, ensuring the bank that the transfer was being made so that Felix could repay its debts. There was also the issue of the \$10,000 for the music rights, still unpaid.

Any settlement contract would need to spell out that the film's worldwide net proceeds had yet to cover the costs and liabilities, that the confiscation in Italy continued to impair the value of the proceeds, and that Penthouse, despite market risks, was offering to purchase Felix's 35% share to help mitigate Felix's debts.

Biagiotti's proposal spoke volumes. Contrary to the claim in his letter, the film had by now recovered its costs, but only for Penthouse, and had even earned a profit. Biagiotti's proposal also indicated that Felix was desperate enough to forego its 35% share of net proceeds, which would amount to many millions, in exchange for little over \$770,000, which would not even cover Felix's remaining debts and expenses.

JANUARY 1983 — UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, 81 CIV 3435 (E.W.) (23RD LAWSUIT, CONTINUED)

ROSSELLINI'S ATTORNEY JAY JULIEN was ready to continue his defense, but now at long last he realized the seriousness of the jurisdictional issue. He

8. Giuseppe Biagiotti for Felix/Rossellini: letter to Gianni Massaro, 15 December 1982. An English translation of this letter is at DDP 360–27, pp. 106–107.

requested the court's permission to file an amended complaint. The request was granted, and he filed on 28 January 1983.⁹

Julien made a change concerning the music. In his original July 1981 complaint, he claimed correctly that Felix "owned" the music and that Penthouse had not paid its fee for the use of the music in the soundtrack album. In the amended complaint, he reworded that passage and claimed, wrongly, that Felix owned the *copyright* to the music!¹⁰ He should have left the original "fourth cause of action" alone.

More usefully, in his amended complaint Julien deleted the argument about Penthouse's failure to adhere by the terms of the 1975 Joint Venture Agreement. There were only a few minor changes apart from that, and Clubs was removed as a defendant. Despite removing Clubs, he continued to maintain that Penthouse's claim of an \$18,000,000 budget was part of a malicious conspiracy to demonstrate, falsely, that Felix had not raised its required percentage! As noted, the percentage pertained only to the terminated Felix/Clubs agreement, not to the Felix/Films contract. By deleting Clubs, though, Julien only made matters worse.

To bring reality into conformity with Julien's fantasies, Rossellini deposited the written scores for the *Caligula* music cues with the US Copyright Office, requesting special urgent handling in the matter.¹¹ Julien's office had Felix send the Italian Exchange Office, the Italian Ministry of Foreign Commerce, the Italian Ministry of Tourism and Entertainment, and the People's Bank of Milan a number of documents demonstrating definitively that Penthouse International had defaulted on its contract for music rights, and asked for a new authorization to sell the rights to another party.¹²

Penthouse then made a motion to dismiss the case, primarily because Clubs, an indispensable party, was not named as a defendant.

This forced Julien to backtrack and demonstrate to the court that Clubs was not in fact an indispensable party to the action. This compelled him, after all this time, to read the various Felix/Penthouse contracts, and that is when he finally

9. FRC, DDP 360-26, pp. 45-61.

10. See also Philip J. Kassel of the Jay Julien office: letter to Felix Cinematografica Srl, 28 February 1983. Kassel was also under the misapprehension that Felix owned the music copyright. It was Edizioni Gemelli Musicali that owned the copyright. Felix owned only the exploitation rights. Kassel's letter is at DDP 360-18, p. 5.

11. Request for Special Handling, No. 0047, filed by Franco Rossellini on 14 February 1983 and received by the US Copyright Office that same day. DDP 360-26, p. 41.

12. Davide Costa for Felix Cinematografica Srl: letter to Ufficio Italiano dei Cambi, Ministero del Commercio con l'Estero, Ministero [del] Turismo e Spettacolo, and Banca Popolare di Milano, 10 March 1983. DDP 360-18, pp. 2-3.

understood that the original had been suspended prior to activation. He explained this to Rossellini, who apparently had a difficult time understanding the significance of this revelation. Julien drafted an affidavit for Rossellini to sign, dated 15 March 1983. This was in opposition to the motion to dismiss, and he made some good points. In responding to Penthouse's objections, he noted the letter exhibited by Penthouse to prove that the October 1975 Agreement between Felix and Clubs would be binding whereas the June 1976 Contract between Felix and Films would not. He asserted that it actually stated the exact opposite. He pointed out that Ben Baker's affidavit quoted selectively, employing ellipses. Julien now filled in those ellipses:

acknowledge by signing at the bottom of this letter that you recognize this Joint Production Contract does not constitute the essence of the Joint Venture Agreement ...

signed ...

on October 6, 1975

and that it is only the Joint Venture Agreement dated October 6, 1975 that will be binding between Felix and Penthouse and not this new Joint Production Contract.

acknowledge by signing at the bottom of this letter that you recognize this Joint Production Contract does not constitute the essence of the Joint Venture Agreement between Penthouse Films International Ltd and Felix Cinematografica S.R.L. signed in

New York City on October 6, 1975

and that it is only the Joint Venture Agreement dated October 6, 1975 that will be binding between Felix and Penthouse and not this new Joint Production Contract.

Julien continued eloquently: "Obviously if the letter makes a point of something not constituting the essence of a contract between two parties, it recognizes that there is an agreement between those two parties." Julien also noted that the letter in question, written and signed by Jack H. Silverman, president of Films, was signed on behalf of Films and was typed on International letterhead.

Julien should have left things there, but he followed this with a blunder. He had not been involved in the production of the film, he did not know the background of this particular document. He was at a loss, and sought to find anything that would make sense of the countersigned letter. Rossellini offered him an explanation, one that almost made sense. By the Felix/Films contract of 1976, Felix was to raise \$3,000,000 towards the production. Rossellini correctly recalled that there was a problem: One of his investors, Mario Bregni of PAC, had been kidnapped, making the collection of PAC's contracted \$1,000,000 investment impossible. That was true, yes. Rossellini insisted that Silverman's

cover letter, making the earlier Felix/Clubs contract govern, was a temporary stop-gap measure to hold investments in abeyance until the PAC matter could be resolved, which it was when Bregni was surrendered on 18 September 1976. The problem was that Silverman's cover letter was dated 23 June 1976, whereas Bregni was not kidnapped until 28 July 1976.¹³ Was Rossellini honestly misremembering, or was he being deceitful? We shall never know. With Rossellini's dubious explanation in hand, Julien took a cue from the unexecuted draft assignment of 1977, the one in which Rossellini had written by hand some suggested changes, indicating that Felix had not raised money at first but expected to later on. Julien then made a mess:

At that time I [Rossellini] had been unable to contribute the amount of monies that I was required to contribute pursuant to the agreement between Films and Felix.... The president of Films, Jack H. Silverstein [*sic*], who signed that letter on behalf of Films[,] wanted to make it clear that in the absence of a specified amount of contributions by Felix, the percentage of net profits that Felix would receive would be as had been set forth in the prior, but terminated, agreement with Clubs. That letter was intended only to hold matters in abeyance and to provide for the percentage Felix would receive while it had not contributed its share of monies.

Later in the affidavit he expanded upon this: "When, for a brief period, Felix was unable to contribute its share of production costs, the parties agreed that the participation in profits would be as previously detailed in the Clubs agreement, but very specifically that the participation was between Felix and Films." It would have been better had Julien deleted that statement.

More successfully, Julien referred to the three amendments of the June 1976 contract, and concluded, "There would be no reason whatsoever to amend an agreement which the parties did not intend to be binding."

Julien also attempted to handle the matter of the contentious letter that Kreditor wrote for Rossellini's signature on 21 May 1978, about purported expenditures and the original agreement still being binding:

The "original agreement" was the agreement between Films and Felix. That letter refers to expenditures of Video Sound and Films. Video Sound was a distributor pursuant to a contract. The letter no more negates the production agreement with Films than it negates the distribution agreement with Video Sound, which is still distributing *Caligula*.

13. "Abducted Italian Film Executive Is Released" (AP wire story), *The Independent Press-Telegram* [Long Beach, California] 25 no. 9, Sunday, 19 September 1976, p. A-18.

The problem is that Julien, like Rossellini, did not realize that Video Sound was a shell corporation set up by Penthouse. It is also surprising that Julien asserted that Video Sound was still distributing *Caligula*, since it had never distributed *Caligula* and never would. Julien and Rossellini should have struck that final sentence.

Julien did, though, have a superb argument against the assignment from 1977, by which Rossellini stated that he and Felix had not raised any funds towards the production and was therefore transferring all rights to Penthouse:

That document was never fully executed. The accountant for Films, Kreditor, asked me [Rossellini] to sign it and send it to him and I did so. I then realized it was incorrect and called him and told him it was not to be effective. It was never signed by any defendant. It should also be noted that it is dated 1977 whereas subsequent thereto, on October 27 and again on October 29, 1977, Felix and Films agreed to amend the original agreement dated June 15, 1976[,] between them. Obviously defendants knew that there was no such assignment as referred to in the 1977 document since by letter dated December 24, 1977[,] addressed to Felix, International offered to buy Felix's 35% share of foreign sales of *Caligula* (Exhibit M.) and again on August 12, 1980, International offered to buy 35% of the rights in the exploitation of *Caligula* throughout the world with the exception of Italy.

Though it did not pertain to this particular motion, Julien also denied Penthouse's assertion that Felix had raised no funds towards the production, and he stated he was "prepared to submit evidence showing that contribution."

Julien also cleverly covered a gap in the record:

Defendants' claim that we failed to furnish an accounting of plaintiff's activities. Here again, the facts are otherwise as defendants have acknowledged. By letter dated December 20, 1979, they acknowledge receipt of an accounting of expenditures from January 1, 1978. (Exhibit O.) Obviously we would not have sent an accounting for the period beginning 1978 unless we had previously sent an accounting for the prior period. Defendants also have stated that they found discrepancies in an accounting that had been submitted to the Italian government, a copy of which was sent to the defendants. (Exhibits Q and R.) Thus, they propose that they found discrepancies in an accounting which they now say they never received.

Julien was getting better:

Defendants claim that the action before this Court was instituted only after Clubs brought an action against Felix in Italy. That statement omits the fact that the action by Clubs in Italy was instituted only after

defendants were informed that Felix was charging International with being in default. Thus, by letter dated March 24, 1981, Felix's attorney notified International that because of the latter's default under the contract assigning the music, that all of its rights, if any, to the music were rescinded and terminated. (Exhibit I.)

Though he had little knowledge of the production, Julien was quite expert at reading legal complaints and contracts critically. In court, Penthouse had repeatedly stated that it was Clubs and not Films that had produced *Caligula*. Julien caught them in their own trap, though at the same time he fell into a trap of his own making:

On November 7, 1980, Films registered *Caligula* in the United States Copyright Office naming Films as the assignee and owner of the copyright. (Exhibit 2.) Defendants certainly would not have registered the copyright of *Caligula* as being owned by Films if this were not the fact as Films understood it. It is also particularly noteworthy that an assignment of the copyright of *Caligula* was recorded in the United States Copyright Office on March 31, 1981, purporting to assign it from Films to Clubs.... Thus, after learning of the imminent action by Felix, they recorded the purported assignment.

The above quote contained a howling blunder that would utterly ruin Felix in the end. Julien was unaware that Felix owned the copyright to *Caligula*. He saw nothing wrong with Penthouse's copyright registration and assumed that it would help to bring this up in court. "Defendants certainly would not have registered the copyright of *Caligula* as being owned by Films if this were not the fact as Films understood it," he misstated. Films was fully aware that it did not own the copyright to *Caligula*. Julien should have said: "Defendants certainly would not have registered the copyright of *Caligula* as being owned by Films if this were not the fact as Films *wanted it to be understood*."

Julien made the situation even worse. Now that he had discovered the fraudulent copyright registration, of which Rossellini had previously been unaware, he was duty-bound to challenge it, and that is what he never did. Felix would never recover from that mistake.

Julien further made mention of the advertising, such as the soundtrack LP, which stated on the cover "A Bob Guccione and Penthouse Films International Ltd Presentation." Julien concluded: "In fact advertising for *Caligula* in all media refers to Films as the producer. When defendants were not attempting to avoid the issues, they recorded that *Caligula* was produced by Films."

He mentioned other items of record: the ceding of rights to Video Sound was signed by Films, Felix, and Video Sound, not by Clubs. He also exhibited a letter

from Silverman as president of Films, dated 22 December 1976, about weekly production expenses paid by Films. Insurance by the Fireman's Fund was paid by Films in the name of Films and Felix, with no mention of Clubs.

Most impressively, Julien brilliantly even utilized Penthouse's fraudulent contract, pre-dated 3 December 1975 (actually written in early November 1980), to his advantage. This was the contract by which Penthouse rewrote history by deleting Felix from the record, making it appear that *Caligula* had been exclusively a Penthouse project. Julien was unaware of the true date and actual reason for this contract, but he nonetheless made full use of it:

At all times, even prior to the agreement with Films, it was recognized by all parties that Clubs would not be the owner of *Caligula*. Thus, by agreement dated December 3, 1975, between International and Films, International was identified as the Owner having all rights in *Caligula* and Films agreed to produce the picture pursuant to the agreement....

Furthermore, Analysis Films Releasing Corporation was sending reports to Films, not to Clubs.

Julien would have performed his job better if he had simply submitted exhibits showing the Forms 990 and W2, from Films and International to various employees. He surely never knew about this evidence and made no attempt to discover it.

Another reason Penthouse gave for dismissing the case was that there were forums other than a federal court in which to file complaints. Julien semi-correctly summarized:¹⁴

This is not so. I have been informed by an attorney in Italy who is licensed as a legal consultant in Italian law by the Appellate Division of New York Supreme Court, First Department, that International, Records and Guccione are not amendable [*sic*] to jurisdiction of Italian Courts.... And a major action here is for copyright infringement which, I am informed, and submit, is subject to federal jurisdiction only.

If only he had known that the "copyright infringement" pertained to the movie itself, and not to the music score, he could have won the case.

Finally, in response to Penthouse's motion to dismiss, Julien argued that:

The action here alleges a contract between Films and Felix. Defendants deny that the contract is operative. I submit that this is an issue that is separate from any claims involving Clubs. If plaintiffs establish their claim, as I firmly believe they can do, a judgment will be enforceable

14. Julien here was referring to Lupoi: telegram to Kalish [*sic*, should be Kassell], 15 March 1983. FRC, DDP 360-26, pp. 6-7.

against Films; it will not involve Clubs. Plaintiffs also allege actions against International, Records and Guccione which are not based on contract, e.g., copyright infringement. These are also completely independent of Clubs.

Julien handed Rossellini his draft to sign, but Rossellini was appalled. He did not understand much of it and thought that Julien had gotten his facts wrong. Predictably, some of the items that worried Rossellini were not the errors, but the verifiable statements of fact. He simply did not remember.

In large scrawls Rossellini added his annotations. Rossellini had not previously been aware of Penthouse's copyright registration. In 18(a) Julien stated "On November 7, 1980. Films registered Caligula in the United States Copyright Office naming Films as the assignee and owner of the copyright. (Exhibit 2)" to which Rossellini responded: "**NEVER SEEN THAT!!!!**" He did not understand why Julien was not contesting Penthouse's copyright claim *in toto*. "Crazy!! I do not mention the fact that I've never gave an assignment????!!!!" On that point Rossellini was entirely correct, and Julien was entirely wrong. It was Julien's duty to add the fraudulent copyright registration to Rossellini's earlier complaint. His failure to do so spelled catastrophe in court battles around the world over the next decade.

Rossellini did not understand the subtlety of Clubs being an alien since its principal place of business was New York. He further added: "If I knew that Penthouse Films had transferred the rights to Club I would have want Club in court!!!" He drew question marks alongside the passages concerning which of the two "original" contracts governed. He could not understand the argument. As for the letter that Silverman had drafted, and which Rossellini signed, stating that the June 1976 contract was not to be binding, Rossellini simply wrote: "never seen before!!" He had no memory of the document. To Julien's statement that "The letter no more negates the production agreement with Films than it negates the distribution agreement with Video Sound which is still distributing *Caligula*," Rossellini correctly wrote, in heavy magic marker: "**What???**"

As for Penthouse's letter of 24 December 1977 offering to purchase Felix's 35 percent share of the film, Rossellini noted: "NEVER." Again, he had no memory of such an offer. He continued drawing question marks in the margin. And he did not understand why Julien declared that the issue of percentages was not relevant to this particular motion. Another marginal question mark showed that Rossellini had no memory of providing Penthouse with any accountings at all. Fortunately, after Julien's statement that "Thus, they now propose that they found discrepancies in an accounting which they now say they never received,"

Rossellini finally understood what Julien was driving at, and wrote, in large letters: “CRAZY!!!,” apparently referring to Penthouse’s behavior. He placed a comment beside Julien’s offer that, “I have stated before and I state again: Plaintiffs agree to make all books and records available for examination by the defendants” — Rossellini’s marginal notation was a concise: “MATTI” (Italian for “CRAZY PEOPLE”).

When Julien got to the section explaining that Films had consistently taken credit for the production, Rossellini noted: “!!!! ??? They don’t show the assignment to Clubs because is written the principal place of business.”

Rossellini’s greatest shock in reading Julien’s draft affidavit was discovering that Penthouse International as sole “Owner” had a contract with Films purportedly dated 3 December 1975. “WHO? WHAT?? TOO MUCH!!”

Similarly, Rossellini was not aware, or did not remember, that Analysis was sending all reports to Films. He was confused by Julien’s reference to all of Penthouse’s production activities being carried out by Films and its parent International. Clearly Rossellini thought he was dealing only with Films. As for Julien’s erroneous reconstruction of events, Rossellini circled the entire page and commented: “I don’t believe it!!”

At the end, Rossellini noted: “TOO MUCH!!!!” What did he mean? That the affidavit was “too much”? Or that Penthouse’s behavior was “too much”? Or that Julien’s mistakes were “too much”? We shall never know.¹⁵

Rossellini must have spent some considerable time with Julien trying to understand the draft affidavit. In the end, though, he signed it on 15 March 1983. Half a year later he would lose on a technicality. Had Rossellini added to his complaint a charge of copyright infringement by means of a fraudulent registration, he may well have won his case, but he did not, and so he lost.

12 APRIL 1983 — A NEW BEGINNING

BACK IN JUNE 1982 Felix wished to square things away with PAC, which had, after a number of years of continuous losses, finally had the smallest net profit of £22,231,841 (US\$18,496.95).¹⁶ Rossellini pointed out that once the film was definitively seized, Felix had paid PAC the minimum guarantee, thus

15. Strangely, when Penthouse later exhibited this affirmation in a different case (86 Civ. 6183 (WCC)) on 24 April 1987, it included some but not all of these handwritten annotations. Thus we are left to wonder who penned some of these comments and when. FRC.

16. Luigi Lirici, *Relazione del collegio dei sindaci al bilancio della P.A.C. S.r.l. chiuso al 31/12/1981*, 29 March 1982. DDP 360–27, pp. 74–86.

ending its commitments.¹⁷ Felix also asked for a full report of proceeds. Then in mid-April 1983, despite the family feud that had resulted from Fellini's *La città delle donne*, Franco Rossellini was willing to enter into negotiations once again with his cousin Renzo. Felix and Gaumont Italia agreed to distribute a new self-censored version of *Caligola*.¹⁸ Gaumont would provide a guaranteed minimum if Felix could furnish 150 prints and 300 previews. Provided that the censorship visa would be granted, the film would be back in distribution by July 1983.

A complication arose, for the Gaumont employee put in charge of this new assignment was Giulio C. Mauro who had coordinated the "midnight raid" of 5 February 1979 and who had also arranged for a CRI (color-reversal intermediate) from Rank Film Laboratories in 1978.¹⁹ He had never been paid for his \$25,000 worth of work. It was Franco who had hired him, and Guccione sometime in the first half of 1982 assured Mauro by telephone that he had forwarded that amount to Franco specifically to take care of that matter.

Information also came in from Pietro Bregni of PAC, who was worried about being reimbursed for his company's expenses of £132,515,769 (US\$90,899.78), expenses that included invoices dating back to July 1976 and all of which had been guaranteed by Penthouse. He was also worried about the rumors that had reached his ears that "the film in question either is being or is about to be pirated" and made available to Italian retailers.²⁰ He had not yet been able to identify the pirate. Within hours after he posted his letter, though, his employee Alessandro Silvestri discovered the identity of the person offering pirated videos: Gianni Massaro! It was either Massaro "or persons entrusted by him" who had been making the rounds, promising Italian video retailers that the movie would soon be available to them.²¹

None of the above even hints at the true extent of the negotiations between the cousins' companies, for Renzo's Gaumont was negotiating to purchase Franco's Felix. Penthouse soon got wind of this and sent a telex:

17. Davide Costa, sole administrator of Felix Cinematografica Srl: letter to PAC, 18 June 1982. DDP 360-27, pp. 36-37.

18. Edoardo Cecchi for Gaumont SpA: letter to Felix Cinematografica Srl, 12 April 1983. DDP 360-27, pp. 27-28.

19. Giulio C. Mauro for Gaumont SpA: letter to Rossellini, 26 April 1983. DDP 360-27, p. 30.

20. Pietro Bregni, sole administrator of PAC: letter to Felix Cinematografica Srl with copies to Guccione, Penthouse Films International, Penthouse International Limited, and Penthouse Clubs International Establishment, 26 April 1983. DDP 360-27, pp. 32-35.

21. Alessandro Silvestri, distribution coordinator, Gaumont SpA: letter to Rossellini, 26 April 1983. DDP 360-27, p. 31.

IT HAS COME TO OUR ATTENTION THAT YOU ARE DEALING WITH FRANCO ROSSELLINI WITH RESPECT TO THE PROPOSED PURCHASE OF A CORPORATION KNOWN AS FELIX CINEMATOGRAFICA [sic] SRL.

IN THAT REGARD, PLEASE BE ADVISED THAT LITIGATION PRESENTLY EXISTS BETWEEN FELIX AND CERTAIN OF THE PENTHOUSE COMPANIES, BOTH IN ITALY AND IN THE UNITED STATES, AND THAT FURTHER LITIGATION IS LIKELY TO FOLLOW.

WE INFORM YOU THAT FELIX IS THE OWNER OF TEN PERCENT OF THE NET PROFITS, IF ANY, TO BE DERIVED FROM THE FILM CALIGULA AND THAT SUCH TEN PERCENT, IF EARNED, SHALL BE RETAINED TO THE EXTENT OF DAMAGES AND EXPENSES RESULTING FROM ANY LITIGATION. YOU ARE FURTHER INFORMED THAT BY LETTER OF 26 APRIL 1983 THE P.A.C. SOCIETY OF ROME DEMANDED FROM US THE PAYMENT OF £132,515,679, PLUS INTEREST, AS AN ORIGINAL UNPAID OBLIGATION OF FELIX CINEMATOGRAFICA [sic] FOR WHICH IT WAS ASSERTED PENTHOUSE COMPANIES ARE GUARANTORS.

ANYTHING CONTRARY TO THE FOREGOING OF WHICH YOU HAVE BEEN ADVISED WE NOW, AND IN THE FUTURE, SHALL CONTEST. ANY ALLEGATIONS TO THE CONTRARY IN OUR REGARD DO NOT CORRESPOND TO THE TRUTH.

WE KINDLY REQUEST THAT YOU TAKE NOTE OF ALL APPEARING ABOVE.²²

That spelled the end of Gaumont's purchase of Felix. It is here that Penthouse explicitly stated its intention of withholding Felix's share of proceeds as a retainer against current and future suits, which meant, simply, that Penthouse had no intention of ever paying Felix a penny of its share of the proceeds. With that arrangement, it would be impossible for Felix to prevail.

There was another problem even more serious, as Mario Bregni of PAC gently reminded Renzo Rossellini: PAC had exclusive rights to distribute *Caligola* in Italy.²³ That put an end to the negotiations between the cousins, at least for the time being.

22. Penthouse International: telex to Renzo Rossellini of Gaumont, 4 May 1983. DDP 360–27, p. 40.

23. Edoardo Cecchi for Gaumont SpA: letter to Felix Cinematografica Srl, 6 May 1983, quoting from a letter from Mario Bregni of PAC to Renzo Rossellini of Gaumont SpA. DDP 360–27, p. 29.

6 MAY 1983 — ANOTHER ATTEMPT AT A DRAFT SETTLEMENT AGREEMENT

THIS TIME FELIX AUTHORED THE DRAFT, which was not a complete agreement but only "Points of Paramount Importance for a Serious Resumption of Negotiations and for the Prompt Amicable Settlement of Any Dispute."²⁴ Here Felix insisted that Guccione and Penthouse must pay off all Felix's remaining debts, must settle the legal dispute with Biagi enterprises, and must account for all revenues. Felix would then be willing to assign all non-Italian shares to Penthouse, and that would forever end all litigation between the Guccione side and the Rossellini side. Interestingly, this document quoted yet a different figure for Penthouse's expenditures to date: £10,000,000,000, which at the time equalled \$6,865,793.78. That figure included six and a half years' worth of post-production costs, legal costs, and release costs. Felix and Penthouse did not disclose how much of that money actually had actually gone into the movie's budget, an unfortunate oversight, since the contracts were based on production costs, not post-production costs.

Yet we do know something else: Penthouse purchased all but about \$830,000 of Felix's remaining debts at about this time (see above).

1 AUGUST 1983 — GETTING WORRIED

SOMETIME AROUND JULY 1983 there was an incident. Let us look at an unauthorized biography of Doris Duke:

During the early years of the battle between the temperamental Italians [Rossellini and Guccione], Franco was beaten to within an inch of his life. Guccione was blamed, and ever since that mugging incident, Franco wisely ventured out only in the company of one or more bodyguards.²⁵

Doris Duke recognized that Rossellini was no longer safe in his apartment. She now offered him a haven at a colonial mansion, "House Number 49," on her farm property. The lease commenced on 1 August 1983 and ran for a year at a price of \$1,400 per month plus telephone charges.²⁶ Predictably, Rossellini,

24. Punti di fondamentale importanza per una seria ripresa delle trattative e per il sollecito bonario componimento di ogni controversia, 6 May 1983. DDP 360-27, pp. 48-50.

25. Tom Valentine and Patrick Mahn, *Daddy's Duchess: The Unauthorized Biography of Doris Duke* (Secaucus, NJ: Lyle Stuart, 1987), p. 174.

26. Lease between Doris Duke and Rossellini, 1 August 1983. Duke Family Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University, box 61, file 5 (DFP 61-5).

without an income, was almost never to make any rental or telephone payments during his several years of residence there.²⁷

19 SEPTEMBER 1983 — THE JUDGMENT

JUSTICE EDWARD WEINFELD expounded upon the subtleties of “indispensable parties,” which prior to legal reforms been used to stymie litigation. He summarized the case perhaps as best he could, though he did make mistakes.

Weinfeld concluded Rossellini/Julien’s interpretations of the two most contentious documents constituted “a position not readily apparent from the express language contained therein.” Somewhat baffled by the conflicting claims, he stated:

Each group contends that one or more documents bearing its signature was understood to be without effect.... Whatever the fact as to the reason why the Joint Production Contract of June 1976 was executed, the issue need not be resolved on this motion, but the conflict has bearing on whether Clubs is an indispensable party. Essentially, what is at issue is whether the Joint Venture Agreement of October 1975 or the Joint Production Contract of June 1976 governs the production and exploitation of the film and the rights of the participants to the distribution of its earnings. Under the former, the defendants contend plaintiffs are limited to ten percent of the net profits, whereas under the latter, plaintiffs claim to be entitled to thirty-five percent....

This was a reduction of Felix’s total grievances to a single grievance concerning percentages, which was by no means Felix’s greatest concern. Weinfeld correctly ascertained that Felix’s original complaint, when set against its revised complaint, led to a serious legal problem, especially since, with or without Clubs as a defendant, the damages claimed were identical.

Each and every cause of action was asserted without differentiation as against all defendants, including Clubs; all defendants including Clubs were referred to “collectively as ‘Penthouse’”; all acts that allegedly deprived plaintiffs of their rights were attributed to all defendants without distinction; and the injunctive and monetary relief sought was the same as against all defendants. Thus plaintiffs’ position on this motion, that the claims against the instant defendants made in the original complaint were “completely independent of the claim against Clubs,” is contrary to the record.... However phrased or cast the claim may be, what cannot be downed is that it arises out of the production,

27. Duke Farms: bill for \$17,500.65 addressed to Rossellini, 15 August 1984. DFP 61–5, p. 12.

exploitation, and financing of *Caligula* and Clubs' asserted rights to the picture, which plaintiffs dispute.... The sharp conflict as to which of two documents constitutes the parties' basic agreement can be determined only upon a consideration of the nucleus of all facts and circumstances attendant upon their execution. In short, those two agreements are so interrelated that the issue as to whether, as plaintiffs contend and defendants deny, the June 1976 contract superseded the Joint Venture Agreement should be resolved in action where Clubs is a party.

Overall, Weinfeld granted Penthouse's motion to dismiss based on the technicality that Clubs was an indispensable party to prove which contract was operative, and to integrate Clubs would be to "destroy" diversity jurisdiction.

It seemed that Felix was doomed, and yet there was a glimmer of hope. Weinfeld had been able to get Penthouse to agree to another forum:

Plaintiffs have an available forum to litigate their claims against Clubs and the other defendants. Clubs, in response to the Court's inquiry upon the argument of this motion, has consented, in the event the motion to dismiss is granted, to personal jurisdiction in the Supreme Court of the State of New York solely in connection with the claims alleged by plaintiffs in their original and amended complaint. New York State clearly is a satisfactory and proper forum in which to resolve this litigation, particularly since the other defendants are New York corporations and the individual defendant is a resident and citizen of that State....

Entirely apart from New York State Courts, there is another forum available to plaintiffs with respect to whatever claims they may have against Clubs. Several days before plaintiffs filed this lawsuit Clubs instituted an action in Italy before the Tribunal of Rome for an accounting by plaintiffs of funds allegedly disbursed by them in the production of *Caligula* based upon the Joint Venture Agreement. Plaintiffs are free to interpose in that proceeding whatever defenses or counterclaims they may have against Clubs. For reasons that are not altogether clear on this record they prefer to continue with this litigation before this Court, eschewing both the Italian and New York State courts. Thus plaintiffs urge that the case should proceed in this Court without Clubs and argue that should they fail to sustain their claim that the Joint Production Contract is the controlling document, then Clubs may commence a separate action in another available forum or proceed with its pending suit in Italy. This suggests a sheer waste, not only of the litigants' time and effort and the imposition of additional and unnecessary heavy legal fees and expenses upon defendants and Clubs, but, surely equally as important, a squandering of judicial time and effort. It simply defies common sense to countenance such a situation. It

would be unfair to the defendants and contrary to public policy and the public interest.

As for the non-payment of music rights: "The claim is so clearly based upon a breach of contract that further discussion is not warranted."

DECEMBER 1983 — APPEASING THE CENSORS

BY NOW AN APPEAL WAS WELL UNDERWAY. The catastrophic 1982 ruling of the Bologna Court of Appeals, which had confirmed *Caligola's* impoundment for obscenity, and which confirmed Rossellini's felony as well as Tinto Brass's culpability, had been taken to the Supreme Court of Cassation. Rossellini was sufficiently confident in a partial victory that he began work on a new version of the film, one that would expunge every frame of Guccione and Lui's "additional scenes."

Since the court had seized only circulating prints, but declined to seize other prints or negatives, Rossellini still had access to his master materials. Further, the courts had established an unusual precedent. When *RoGoPaG* was unappealably banned in 1963, the court a few months later closed an eye and pretended that a retitled edition, *Laviamoci il cervello* (Let's Brainwash Ourselves), was a different film and permitted its release. The same thing happened later that year with *L'ape regina* (Queen Bee), which the court permitted when its title was changed to *Una storia moderna* (A Modern Story).²⁸ As we know, that was also the time that Tinto Brass's unappealably banned *In capo al mondo* (To the Ends of the Earth) was legally released under the new title *Chi lavora è perduto* (Whoever Works Is Lost).

Rossellini took advantage of those precedent-setting decisions to re-edit *Caligola*. He had the laboratory, Technospes International SpA, write to the Italian Ministry of Tourism and Entertainment, explaining that it retained negatives on *Caligola* and that it had never received a seizure order.²⁹

To re-edit a censor-friendly version of the film, Rossellini hired an editor of exploitation films, Enzo Micarelli.³⁰ To assist the new editor, Rossellini assigned his bodyguard, Enzo Natale.

28. "Italy Lifts Ban on another Film," *Daily Variety* 121 no 62, Monday, 2 December 1963, pp. 1, 4.

29. Technospes International Spa: letter to the Ministero del Turismo e dello Spettacolo, 5 December 1983. DDP 360-22, p. 2.

30. He had edited *L'harem* (The Harem, 1967), *Il seme dell'uomo* (The Seed of Man, 1969), *Qualcosa striscia nel buio* (Something Creeping in the Dark), *Il castello della paura* (Frankenstein's Castle of Freaks, 1973), *Il profumo della signora in nero* (The Perfume of the Lady in Black, 1974), and *Nove ospiti*

There was little prerequisite for artistic ability in Micarelli's job, for all he needed to do was delete the portions that had so upset the censors — but he did more. Rossellini had access to some unused sequences, and he also had access to at least some of Tinto Brass's half-finished rough cut. This leaves us flabbergasted. Russell Lloyd's crew had entirely dismantled Brass's rough cut and put it back into preliminary assembly. Rossellini must have ordered a copy before Lloyd's crew members had a chance to get their hands on it. We are left to wonder why he made a copy. Did he secretly fear that he and Penthouse would lose the case against Brass? If so, then running off a copy of the rough cut was a wise thing to do, for it would save months of work later on if Brass were called back to resume his duties. There is also the possibility that Rossellini, who had never before overruled a director, was simply upset at the needless uproar in the editing suites, and hoped eventually to bring Brass back into the fold to create a saleable version of the film. A third possibility is that Rossellini was simply gathering evidence as a potential exhibit in legal proceedings. It is impossible for us to know for certain.

With these weapons in hand, Rossellini and the two Enzos were able to perform some rescue work. For the first time, the public would be permitted to see the movie open with the beginning of the first scene, with Brass's preferred takes rather than the outtakes screened until that time. Beginnings and endings of shots that Nino Baragli had trimmed in order to pick up the pace were now restored, revealing a greater context and helping to establish the characters. These differences were subtle, amounting only to a second or two here and there, but they made a world of difference. The editors were also able to restore little pieces of shots and scenes that had long been missing, and with new dubbing they were also able to repair a few lines of dialogue, bringing them back into conformity with what the actors had actually spoken on camera. Guccione's personally commissioned gold medallion, of course, could not be used anywhere. The result was 147 minutes and 38 seconds.

11 DECEMBER 1983 — NEGOTIATIONS

IF FELIX WERE BROKE, it would be in Penthouse's interest to keep fighting until the studio had used up all its funds and could fight back no more. Once that happened, Penthouse could claim all rights. Penthouse, though, learned how Rossellini was able to pay for his lawyers. How Penthouse divined this behind-

per un delitto (Nine Guests for a Crime, 1977). It appears that the revision of *Caligula* was his final job in the movie business.

the-scenes information would seem to be a mystery. Hold that thought. Penthouse now needed a new strategy

Penthouse's Italian lawyer, Gianni Massaro, now offered three proposals for a settlement agreement, rather more reasonable than what Penthouse had offered a year before.³¹ Massaro consulted with a lawyer for Felix, Giuseppe Biagiotti, and offered three options, which Biagiotti summarized for Rossellini. The first option was 100% of proceeds until Felix's \$830,000 debts were covered, after which proceeds would be split Penthouse 25% and Felix 75%, which was surprisingly generous, indicating that Penthouse had recouped and was not expecting much more in the way of profits. The second proposal was an immediate deposit of \$300,000 into Felix's account, over three monthly instalments, then residual payments of \$630,000 and 100% of government contributions from proceeds. The third, and least likely, proposal was \$830,000 to Felix with "Acquisition by Penthouse Italia with acknowledgement to Felix of subsequent 25%." This shows that Penthouse, worried about losing the film, and wishing to control even Italian rights, set up a separate Italian corporation. Penthouse Italia planned to purchase PAC's distribution contract and would pay Felix a 25 percent royalty. In no option did Massaro offer to retract Penthouse's fraudulent copyright registration. In all options Massaro would earn a small percentage of net Italian proceeds, probably one-half of one per cent.

Something, though, is suspicious. As we have learned, never before or since has a film been banned in Italy *after* it had been tested in the courts and found unobjectionable. *Caligola* was and remains the sole exception, the only film whose judicial verdict of not-guilty was appealed to guilty, with a ruling that not even a censored version could be released. This unique case in Italian law was never contested by Penthouse. Of course, Penthouse had no stake at the time in the Italian proceeds, but it nonetheless should have stood up for its business partner and offered legal assistance. Penthouse remained curiously silent about the matter throughout the protracted proceedings.

Now suddenly Biagiotti relayed the news: "Massaro affirms the possibility of also unblocking in short order the sequestered version of the film, so as to assign the new edition, more expurgated, for television exploitation." Thus we see that after the partnership between Penthouse and Felix had ended, and after Penthouse had taken control of any future Italian release, Penthouse made it known that it could probably reverse the court's decision, overturn the sequestration order, and release the uncut film to cinemas! No one who reads through these documents should be blamed for suspecting that Penthouse was

31. Biagiotti, "Ipotesi di accordo dall'Avv. Massaro," 11 December 1983. FRC.

somehow behind the unusual legal proceedings of 1979 and 1980. Even if this were all coincidental (and it may well have been), the government's ban of the film devastated Felix and drained its already dwindling supply of money. That served only to help Penthouse.

Penthouse and Felix discussed a 50% co-ownership of the Italian television version of the film. There was also discussion about declaring that the total production cost of the film was exactly \$11,000,000, a figure Penthouse pulled out of a hat.

Rossellini was agreeable to such arrangements, and even went further. If Penthouse would pay off all of Felix's debts, Felix would accept 10% royalties rather than 35%.³² He would also want a monthly stipend of \$50,000 against future royalties. Rossellini was tired and in no mood to fight for what was rightfully his. This offer to accept reduced royalties was a horrible move, for reasons that soon become obvious.

THE TWENTY-NINTH AND THIRTIETH CALIGULA LAWSUITS

JUST AFTER THE START OF THE RAPPROCHEMENT, Massaro killed all the trust when he left a stream of messages on the Ministry of Tourism and Entertainment's answering machine insisting that Felix's application for a censor visa for Micarelli's new version of *Caligola* was fraudulent.³³ Massaro stated forcefully that *Caligola* had US nationality and was a Penthouse production, as per the 1975 Joint Venture Agreement, and that Felix had merely a 10% share. He argued that Felix had no right to duplicate or make unauthorized use of the film, which was unfair competition with Penthouse, to say nothing of usurpation of Penthouse's materials, which Felix had obtained by underhanded means.³⁴

Rossellini and his lawyers understood that Penthouse was again acting in bad faith. Felix filed civil charges against Guccione and the various Penthouse entities, including Clubs, in the Supreme Court of the State of New York, County of New York, on 2 January 1984.³⁵ Essentially this was a repeat of the previous

32. Lupoi: telex to Kreditor of Penthouse: 23 December 1980. DDP 360-26, pp. 95-96.

33. Lupoi: telegram to Massaro, 19 January 1984. DDP 360-22, p. 16. See also Massaro: telex to Lupoi, 23 January 1984, DDP 360-28, p. 25; and especially Alla Pretura Penale di Roma, Atto di Querela, nd (circa 24 January 1984), DDP 361-2, pp. 25-28.

34. Massaro: telex to Lupoi, 19 January 1984. DDP 360-28, pp. 26-27.

35. Several photocopies are included in FRC. An original draft is included in DDP 360-27, pp. 132-148; and a second original is at DDP 361-3, pp. 8-23.

federal suit, almost verbatim, but with each complaint aimed at a specific entity — Films, Clubs, Records, Guccione, International.

Felix declined to respond to Massaro's continued queries. Massaro sent a telex to Rossellini on 13 January 1984:³⁶

Your silence together with other findings leads me to conclude that any possibility of agreement previously stated by you has passed.

The present, with the frankness I always give to you, that if you retain interest of putting value, I, beyond the rights and interests to defend Penthouse and third parties, also have the duty and professional responsibility that leads me sorrowfully to resume my full freedom of action with respect thereto.

Lupoi sent an offended telex in reply, stating his client's intention to sue for defamation.³⁷ He urged Massaro to retract his claim of Felix's fraud in order to mitigate his liabilities. Massaro's response was two pages of vicious sarcasm:

...The settlement proposals that you consider unacceptable were solicited and articulated directly by Mr Franco Rossellini and by Felix together with the intervention of Felix's counsel Dr Giuseppe Biagiotti and the attorney Bruno della Ragione, both persons of full credibility and professionalism....

Mr Franco Rossellini has bombarded me with telephone calls up to this very morning, confirming his adhesion and strong will to conclude the agreement in question, and alleges as his only reason for adjournment his own state of illness...

In the past, I have been informed of his renunciation of (or exemption from) certain pending litigations between Felix and the Penthouse Group...

I am not in a position to say that you represent or have represented Felix in the legal proceedings related to the prosecution of abusive utilization of the film "Caligula" on the part of that company. I am in a position to say the contrary. I am convinced that you may have contacted Felix's lawyer about this issue...

Another similar settlement was, however, several times set, articulated, discussed, presented, and solicited by Mr Franco Rossellini directly to Mr Bob Guccione in New York in December 1982, without any intervention from you or from your activity, ever, and it was accompanied by the insistent documented prayer of Mr Franco Rossellini of supporting the purchase...

36. Massaro: telex to Rossellini, 13 January 1984; and Massaro: telex to Lupoi, 23 January 1984. DDP 360-22, pp. 23-24.

37. Lupoi: telegram to Massaro, 19 January 1984. DDP 360-22, pp. 26-27.

I do not understand, in addition to your intervention, your evaluation with adjectives, nouns, and adverbs regarding agreements that you do not know...

I take note, to all effect, seeing that you assume full responsibility about the permanent closure, as a consequence of what you intended with your intervention, of any dealing of amicable settlement between the parties...

There has been no interference from me in the administrative procedure for obtaining the censor visa of the film "I, Caligula"...

There is and will continue to be my firm opposition in the interest of those legitimately so entitled, and in particular, among others, of OMNI Production, the PAC agent for the distribution of the film "Caligula" in Italy, in every venue, to the abusive duplication of the utilization of the said film itself, adapted among other things (in an evident activity of unfair competition in addition to usurpation of every kind and liable to any judicial qualification) from material in the property of the Penthouse company, produced with its own money; manipulation taken place against the will of the said Penthouse and of its lawful agents as well as of its authors and codirectors, on the basis of possession of material obtained by method and purpose on which judicial finding shall be sought...

As for the declaration of noncompliance to the reality of the contractual documentation on the origin of the film and of its nationality, I cannot but reconfirm to you what is well known to you, if only by your participation in the American legal proceedings, i.e., in my opinion, the terms and conditions governing the actual relationship on the production of the film "Caligula" are those referred to in the Joint Venture Agreement and subsequent integrations (put in action in the USA by Felix itself — and, as it appears, with your assistance), and not those already, as it is said to me, were subject to the Ministry of Tourism and Entertainment...

I take note of the mandate conferred to you to promote a lawsuit against me for defamation with the above-mentioned motivation. Regardless of your personal and exclusive legal theory of the crime of defamation that you by all evidence have taken, I remain particularly troubled, frightened, and almost anguished, awaiting initiatives that in merit you wish to adopt and in hopeful expectation of indications of the names of the persons to whom I ought to address "proper" denial "to mitigate" — how kind of you — "my liabilities." I reserve, as I may ever, to be allowed to submit the entire question to any authority interested in the case...

I intend, however, formally to state and object that your telex corresponds to the precise will to interfere in the free exercise of my professional activity of the protection of the interests and rights of my

clients, so seriously injured, in the context of unacceptable behavior as that of your client who, up to this very morning, implored me to defer the final meeting for the formalization of the settlement, on account of his declared state of illness and of his declared necessity to being admitted for a little intervention at the Quisiana Clinic today.

At this point there are no conditions, subjective or objective, for any type of understanding with your client, nor for contact with your office so suddenly and unexpectedly reappearing on the scene.

With best wishes.³⁸

In a follow-up message, Massaro sarcastically asked Lupoi for the names of the directors of the Ministry of Tourism and Entertainment to whom he should "address contrite denials."³⁹

Rossellini filed the promised defamation charges against Massaro in Italy. By the end of January, Felix responded to Massaro's claim in court.

Rossellini scribbled a memo to himself.⁴⁰ It makes for interesting reading, and it contains information we have not been able to verify:

Points in the Felix-Penthouse controversy

1. When the Ministry of Foreign Commerce gave a negative reply, Penthouse said its investment was \$18,000,000 and from then on it denied showing the Italian profits from the 35% that, up to today, amount to more than \$20,000,000 dollars.

2. They went back to Massaro and sought to extort a settlement.

3. As soon as Renzo and Gaumont helped me republish the film, Massaro acquired from a phantom company, OMNI Productions, PAC's copy of *Caligula* and by acquiring censor visas for lousy foreign films they are distributing the film in the entire southern territory.

4. Knowing that I was about to obtain the censorship approval, Massaro started trying to intimidate the Ministry and he is trying to stop my negotiations. They set my car on fire.

It is clear that another principal interest in the film not to get Italian nationality is the fact that, once granted, I have the right to go and check their financial reports.

AND CASSETTE SALES — I filed criminal charges.

— It's been 2 months that *I, Caligula* has been awaiting approval.

38. Massaro: telex to Lupoi, 23 January 1984. DDP 360–28, pp. 26–27.

39. *Ibid.*

40. Rossellini, Punti controversia Felix-Penthouse, nd (circa mid-January 1984). DDP 361–2, pp. 2–5 (contains Rossellini's annotations).

Rossellini and his lawyers quickly backed down and were negotiating once again. The next draft agreement, dated 29 January 1984,⁴¹ incorporated Felix’s offer to collect only 10% of net proceeds rather than 35%. The reduction would amount to many millions, but Felix would give it up in exchange for a nominal price of only \$150,000. This reduction in royalties was “in recognition of additional costs incurred,” namely the purchase of some of Felix’s debts, by the Guccione Group. Lupoi was agreeable to the deal, since it ensured that, if nothing else, at least his own fees would now at last be paid.

Let us now examine the logic of this curious agreement. After Penthouse’s 1977 repayment of the \$1,000,000 loan from the Italian National Bank of Labor, Felix had still been in debt to its other creditors for somewhat over \$2,000,000. Penthouse had withheld Felix’s 35% net share for three years now. Surely by this time that 35% amounted to more than \$3,000,000, more than enough for Felix to extinguish its debts. Instead of paying Felix, Penthouse simply purchased two-thirds of Felix’s remaining debts, in the end reducing Felix’s \$3,352,941 contribution (and debt!) to less than \$830,000. Penthouse could now semi-truthfully state that it had effectively paid nearly the entire production cost of *Caligula* — though it never mentioned that it had done so only several years after the fact, and with Felix’s money.

Now Felix agreed to be paid only 10% of net proceeds. Lest we forget, according to the abandoned October 1975 Joint Venture Agreement, should a party default it would still be entitled to a 10% net share. Penthouse would henceforth argue that this settlement proved that it was the 1975 Joint Venture Agreement that had been operative all along, and that it further proved that Felix had indeed defaulted and was therefore owed nothing.

JANUARY 1984 — BRASS, VIDAL, AND FELIX FINALLY SETTLE (8TH LAWSUIT)

IN THE MEANTIME, the 1977 case filed by Tinto Brass against Felix Cinematografica, with a further summons and charges against Gore Vidal, finally came to a close. The case had been moved to the Civil Court on 27 May 1983 and was decided on 26 January 1984.⁴² Since Brass had officially

41. Progetto di Accordo, 29 January 1984. FRC. See also Parti Contraenti, 31 January 1984, FRC, DDP 361–2, pp. 6–7 (contains Rossellini’s annotations).

42. *Giovanni Tinto Brass contro Felix Cinematografica Srl, Penthouse Films International, Ltd., and Eugene Luther Vidal*. Tribunale Civile di Roma, Sez. 2°, Ruolo generale 1697 (26 January 1984). Dr Antonio Pannunzio, president; Dr Mario Ragusa, judge; Dr Attilio De Lazaro, reporting judge. Emanuele Golino, for Plaintiff, Massimo Ferrara Santamaria, Ermidio Mede, and Augusto Quattrini, for Defendants. GVP 64–2745.

discontinued his suits against Felix and Penthouse on 10 February 1982, there was nothing for the Civil Court to do in that regard two years later. Brass had summoned Fiorenzo Carpi and Masolino d'Amico to court, but since he brought no charges against them, there was nothing for the court to do. The matter was different when it came to Vidal's countersuit that he was not the author of the screenplay and that his name must not appear in any form in connection with the film. Felix did not wish to screen the film for the court, Brass and Felix did not make their interrogatories, and no side in the proceedings wished to exhibit Vidal's script. Without this evidence, the three-judge college was rendered incapable of making an informed decision and so dismissed the case.

What now appears to be a minor detail is actually of the utmost importance. Though Felix had requested that Penthouse Clubs be integrated into the suit back in 1977, we should note the names of the defendants. Penthouse Clubs is not among them. Instead, Penthouse Films takes its place. As far as the litigants and the court were concerned, the two firms, Clubs and Films, were one in the same.

That was the last of the pre-release conflicts, and it ended without any drama.

FEBRUARY 1984 — ROSSELLINI FOUND GUILTY — AGAIN (12TH LAWSUIT)

THE BOLOGNA APPEALS COURT'S 1982 sentence, finding *Caligola* obscene and Rossellini and Brass guilty under the Criminal Code, now reached the Supreme Court of Cassation, which dismissed the charges against Brass, arguing that since he was not permitted to edit the film, he bore no culpability for the result.⁴³ In all other terms, though, the Supreme Court of Cassation upheld Bologna's rulings. Rossellini was a felon, and *Caligola* was condemned.

PENTHOUSE ALLOWS *I, CALIGULA*, 2 FEBRUARY 1984

PENTHOUSE AND MASSARO withdrew their objections to *Io Caligola*.⁴⁴ Felix's lawyer Piero Cerroni drafted a telex for Massaro to sign, addressed to the Ministry of Tourism and Entertainment, explaining that after a discussion of the "misunderstanding," Penthouse no longer had any objections to the Italian government issuing a permit to the revised version of the film.

43. "Definitiva per «Caligola» l'accusa di oscenità," *Il Messaggero*, Sunday, 5 February 1984, p. 14. DDP 360–28, p. 19.

44. Massaro: telex to Ministero del Turismo e dello Spettacolo, 2 February 1984. DDP 361–2, p. 24.

SETTLEMENT AGREEMENT, 2 FEBRUARY 1984

AFTER A SERIES OF NEGOTIATIONS, there was an out-of-court settlement (*Transazione Generale*), and all parties were agreeable.⁴⁵

Penthouse Italia did not ultimately make use of its purchase of the *Caligola* distribution rights from PAC. Instead, Guccione hastily founded OMNI Production S.r.l., an Italian firm that would do this. With this new corporation in place, a Guccione interest would earn proceeds. Guccione and the various Penthouse entities in the first place, PAC in the second place, and Felix and Rossellini in the third place, came to an understanding. They agreed that the governing contract had been the June 1976 contract and its amendments. They made no mention of the earlier October 1975 contract. Felix was now free to distribute the re-edited *I, Caligula* (*Io Caligola*) throughout Italy and its territories, provided that the dialogue be largely re-recorded and the film be re-edited, as had already been done. Penthouse made the further demand that Bruno Nicolai's music not be used in *I, Caligula*.

The clause about Felix's requirement to substitute the music was rather peculiar, yet Rossellini was happy to accept, for it gave him an opportunity to put his late father's music to use. After all, he had inherited half of the rights to his father's vast music catalogue and could, and did, fit that music to the film to replace Nicolai's. By making this demand to substitute the music, Penthouse wished to appear as though it owned not only utilization rights, but all music rights including copyrights. Once Penthouse created this illusion, it would go to court to argue that Felix had no control over any part of the original *Caligula* since it could not show the film without first clearing the music rights through Penthouse.

In the subsequent March 1984 contract between OMNI and Felix,⁴⁶ OMNI would retain 100 percent of the earnings until its own debts were extinguished, and only then begin reimbursing Felix. Presumably OMNI's debts consisted of the remaining balance of PAC's \$1,000,000 investment.

Let us think this through, though, and let us think this through more carefully than Rossellini and his lawyers ever thought it through. Had Penthouse

45. *Transazione Generale* (Settlement Agreement): Penthouse International, Ltd., Penthouse Films International, Ltd., Penthouse Clubs International Establishment, Penthouse Records, Ltd., Robert Guccione ("Penthouse Group"); P.A.C. Produzioni Atlas Consorziate Srl ("PAC"); OMNI Production Srl ("OMNI"); Felix Cinematografica Srl and Franco Rossellini ("Felix Group"). Gianni Massaro represented the Penthouse Group. Maurizio Lupoi represented the Felix Group. 2 February 1984. FRC, DDP 94-2, pp. 89-96. Several drafts with annotations are at DDP 361-2, pp. 9-23. The certified English translation, by Accent on Language, is found in FRC.

46. "Film italiano di ns. produzione 'CALIGOLA,'" March 1984. FRC.

paid Felix its 35% share of boxoffice proceeds, that would likely have come to at least \$3,000,000. So, in essence, Penthouse took Felix's profits and used them to purchase over two-thirds of Felix's debts, leaving Felix with nothing but \$830,000 of debt, against which Penthouse would pay only \$170,000, which vanished in a flash, as we shall soon discover.

All lawsuits would hereby be discontinued, including Rossellini's defamation suit against Massaro. In consideration of Penthouse's payment of much of Felix's debts, Felix would earn only a 10% share on distribution outside of Italy. Article 14(a) was worded carefully:

...in consideration of costs sustained by the Penthouse Group greater than those originally estimated, the amount of profit pertaining to Felix in regard to distribution of the film *Caligola* outside Italy... is determined, with legal effect ex tunc [from that time], at 10% of 100% of the net producing amount, collected or due for collection by the Penthouse Group.

This wording did not provide the reason for Felix's reduced percentage, which would lead to the belief that Felix had indeed defaulted on its investment. Moreover, this 10% would be proceeds after deductions of all distribution-related expenses, defined broadly. There is a further problem with 14(a), for its interpretation by US courts would be different from its interpretation by Italian courts. The percentages apply to "distribution." Since the specific type of distribution is not specified, according to US law that would mean any and all distribution, in any format, theatrical or nontheatrical. Italian law was different: "distribution" meant any and all distribution, in any format, theatrical or nontheatrical, *once the appropriate government permits were issued*. This disparity in US and Italian interpretations would lead to years of relentless legal conflicts.

Article 14(d) muddled the waters even more. This concerned deductions from receipts. One deduction would be "the costs of distribution and any relative legal costs incurred directly by the Penthouse Group." A *separate* deduction would be "the costs incurred by the Penthouse Group for the printing of positive copies, for the rental of movie houses and for advertising." This was redundant, as distribution is covered twice. This was unquestionably a typographical error that nobody caught. Two words should have been struck: "the costs of ~~distribution and~~ any relative legal costs incurred directly by the Penthouse Group." Had that correction been made, 14(d) would have clarified 14(a) and everyone would have been spared countless headaches, for 14(d) would have made it clear that "distribution" referred only to distribution in cinemas, since "distribution" was defined strictly as the costs of printing positive copies and

rental of movie houses. That would have been correct, for the Italian government had not yet authorized distribution for television or home video or any other nontheatrical medium.

Penthouse would pay Felix \$150,000 to give up the bulk of its royalties. The agreement decided upon the total cost of the production of the film, and though it was not explicitly stated, this total cost necessarily included all the post-production, distribution, and legal costs. This was "definitively set at US\$11,000,000." Penthouse would submit semi-annual financial statements to the Lupoi office by 30 April 1984, and thenceforward by the end of every August and every February, and would make its books open to inspection. Should Penthouse's statements short-change Felix by 3 percent or more, Penthouse would foot the entire bill for the verification. Penthouse would pay the \$10,000 owing for music rights, and would pay a further \$10,000 as a fine. All parties agreed and signed on 28 February 1984, though the document was pre-dated 2 February 1984.

There was one haunting oversight, and that was the issue of copyright. Felix should not have signed this settlement unless it included a term spelling out the copyright issue: Felix should have required Penthouse either to withdraw its copyright claim or to purchase copyright ownership. Unfortunately, Franco Rossellini's lawyers did not recognize that Penthouse's copyright claim was illegal or even inappropriate, and Franco Rossellini himself, true to form, had by this time completely forgotten about the matter. Technically speaking, by the terms of the Settlement Agreement the copyright should no longer have been an issue. The June 1976 contract made it clear that Felix was producer, that Penthouse was the investor, and that Penthouse would acquire only utilization rights rather than the underlying intellectual-property rights. The June 1976 contract said nothing about copyright, which by default meant that the copyright was exclusively Felix's. This new Settlement Agreement had all parties agree that the June 1976 contract and its amendments had been binding, and by those documents Felix had legally held the copyright. Nothing in the Settlement Agreement modified that portion of the earlier understanding. Nonetheless, it was a mistake on Felix's part not to require Penthouse to disclaim copyright ownership. It was a mistake from which Felix and Rossellini would never be able to recover. By Italian law, the Settlement Agreement confirmed Felix's copyright ownership. US law was a different matter. US law did not recognize the Berne Copyright Convention or Italian copyright laws. In the US, copyright was largely determined by private contract. Since Penthouse had claimed copyright, and since Felix did not contest Penthouse's claim in court when it had the

opportunity to do so, a US court would consider that Felix had dropped the matter and that Penthouse's copyright registration would remain valid.

Rossellini at last was able to go ahead with the revised edition of the film.⁴⁷ With the new Settlement Agreement in hand, Felix dropped all its federal and state charges "with prejudice" (dismissing its right to pursue any of its claims). Felix's US lawyer, Jay Julien, drafted a contract whereby Felix would pay him for his services by surrendering 25% of his *Caligula* income to him.⁴⁸ The Italian stipulation consists of a letter from Rossellini to Myerson, dated 15 March 1984:

With this present letter we confirm the instructions that have been given to you, in our interest, by Professor Maurizio Lupoi in New York on 2 June 1984; i.e. that each payment, at your expense in relation to the Settlement Agreement reached among PAC, OMNI, and us, will have to be legitimately made by you under the terms and in the manner required by contractual agreements, by bank account number 135-42337541, special customers' account, authorized by the Italian Ministry of Foreign Commerce, at BANKERS TRUST COMPANY, 529 Fifth Avenue, New York NY 10017, made payable to Professor Maurizio Lupoi in his capacity as proprietor of the Lupoi Law Office.

With our best wishes.⁴⁹

The US stipulation was dated 24 April 1984 and signed on the 30th.⁵⁰ This Settlement Agreement was a "novation," replacing earlier obligations with newer ones, replacing an earlier party (PAC) with a newer one (OMNI), mutually agreed upon by all parties and legally binding. This novation was held in suspension until approved by the Italian Exchange Office on 10 May 1984 (permit number 403982). OMNI and PAC drafted a flyer for distribution at the May 1984 Cannes festival and added their heading to an older window card (*locandina*). These two official announcements contradict much of the above agreement.⁵¹

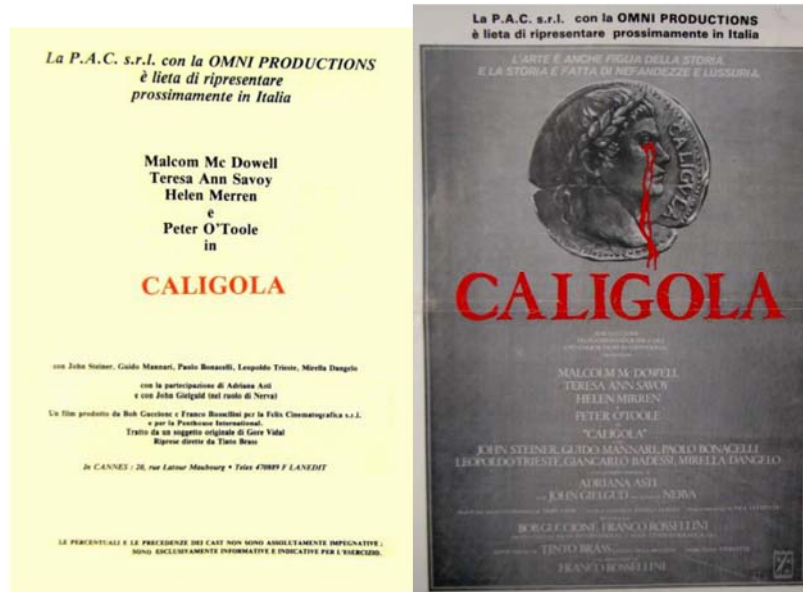
47. Felix Cinematografica Srl: letter to Technicolor SpA, 15 March 1984. DDP 360–27, p. 26.

48. Assignment between Felix Cinematografica Srl and Franco Rossellini (Assignor) and Jay Julien (Assignee), March 1984. DDP 361–4, p. 86.

49. Rossellini as Il Procuratore Speciale for Felix Cinematografica Srl: letter to Meyerson [sic] of Penthouse Films International Ltd, 15 March 1984. DDP 360–21, p. 14.

50. Stipulation, filed 30 April 1984, *Felix Cinematografica Srl and Franco Rossellini v Penthouse International, Ltd., Penthouse Films International, Ltd., Penthouse Clubs International Establishment, Penthouse Records, Ltd., and Robert Guccione*, Supreme Court of the State of New York – County of New York, index 10249/8. FRC.

51. Two "Caligola" flyers at DDP 360–18, pp. 13–14.



To celebrate this Settlement Agreement, Franco Rossellini and his guests were invited to attend a banquet at Bob Guccione’s Manhattan townhouse.⁵² The business relationship was back to normal, and all would proceed smoothly — except, of course, that it didn’t. Once this settlement was concluded, Doris Duke ceased her loans for Franco Rossellini’s legal fees⁵³ and would soon be expecting reimbursement, which would never be forthcoming.

There was now a serious breach of security and confidentiality. On 2 May 1984 Preston E. Koster of the Morgan Bank wrote a confidential letter to Doris Duke:⁵⁴ “I am sorry to have to send the attached letter to Franco Rossellini concerning his outstanding loan, but I am sure you understand our position in this matter.” The enclosed letter was a demand for immediate repayment of the \$110,000 loan plus \$3,284.25 interest.⁵⁵ The matter was worrisome enough, and of course Duke would repay the loan herself and hold Rossellini in default personally.

What made matters yet even more perilous was the next sentence in Koster’s letter to Duke: “A copy of the letter has also been forwarded to Sam

52. Adriano Magistretti: telephone conversation with RS, 1 December 2014.

53. There is no direct evidence of this, but it does become painfully evident that for the next several years Rossellini was not receiving any significant financial assistance.

54. Preston E. Koster for the Morgan Bank: confidential letter to Duke, 2 May 1984. DDP 94-2, p. 81.

55. Koster for the Morgan Guaranty Trust Company: letter to Rossellini, 2 May 1984. DDP 94-2, p. 82.

Greenspoon.” Samuel N. Greenspoon was Doris Duke’s attorney, a partner in the firm of Grutman Miller Greenspoon Hendler & Levin. Grutman was Norman Roy Grutman, the principal outside counsel for Bob Guccione and Penthouse. Greenspoon himself was an attorney for Bob Guccione and Penthouse,⁵⁶ and Grutman was also an attorney for Doris Duke.⁵⁷ This was a blatant conflict of interest. The firm that was representing Rossellini’s intercessor was also representing his adversary. Ideally Franco Rossellini should never have agreed to Doris Duke’s financial help or to her offer of a rental house, but he did not realize the peril he was in, inside Duke’s secured estate as well as outside. Unaware that Greenspoon was Grutman’s partner and Penthouse’s attorney, he began sketching out notes to present to him.⁵⁸ Soon enough he realized what was wrong, and there is no evidence that he spoke further with Greenspoon.

Rossellini should have left immediately, but Duke’s property was his only safe haven, the only place he could feel secure from marauders. He was in no position to leave or to refuse Duke’s assistance, and thus he was no longer so much her friend as her slave, and treated as such. The law firm should have recused itself from any matters dealing with Rossellini, however incidentally, but it was happy to violate that basic professional norm. Duke, for her part, should have hired a different attorney to handle anything even marginally associated with Rossellini. She declined to separate the matters, and that put Greenspoon and Grutman in the enviable position of representing parties on both sides of a conflict. How honorably the attorneys behaved in that unusual circumstance is anyone’s guess. We should keep in mind, though, a different case, one in which Grutman directly represented two opponents, the televangelist Jerry Falwell and Jim Bakker’s PTL (Praise The Lord) ministry, which came as quite a surprise to Bakker when he learned about this after Falwell’s takeover.⁵⁹ We should also keep this background in mind when we evaluate what did and did not happen next.

56. See, for example, *Penthouse International, Ltd., v Playboy Enterprises, Inc.*, 663 F. 2d 371, 28 October 1981, <http://openjurist.org/663/f2d/371/penthouse-international-ltd-v-playboy-enterprises-inc>.

57. *Penthouse International, Ltd., Plaintiff-Appellant, Cross-Appellee, and Norman Roy Grutman, Intervenor-Appellant, v Playboy Enterprises, Inc., and Playboy Publications, Inc., Defendants-Appellees, Cross-Appellants*, 663 F.2d 371 (2nd Cir. 1981), <http://federal-circuits.vlex.com/vid/penthouse-norman-grutman-playboy-37642464>. See also David Margolick, “Roy Grutman Is Dead at 63; Lawyer for Celebrity Clients,” *The New York Times*, Tuesday, 28 June 1994, p. A15.

58. Rossellini, “Greenspoon” and “Far Notare a Greenspoon,” handwritten notes, nd (circa May 1984). DDP 361–4, pp. 92–93.

59. “Bakker Sues Lawyer, Charges He Tricked Him to Resign,” *The Chicago Tribune*, 17 March 1988, http://articles.chicagotribune.com/1988-03-17/news/8803010472_1_jim-toms-roy-grutman-tammy-faye.

THE THIRTY-FIRST CALIGULA LAWSUIT

THE REAPPEARANCE OF DON GETZ

IN THE MEANTIME, five years after having been dismissed on trumped-up charges, Don Getz filed suit against Penthouse in March 1984, claiming wrongful termination, and claiming that he had been "defrauded by Penthouse's use of various corporate entities to conceal the true party to the contract." He sought damages under the Racketeering Influenced and Corrupt Organizations (RICO) Act. He alleged at least two acts of mail fraud and wire fraud. The Supreme Court of the State of New York dismissed Getz's case since he had missed the three-year statute of limitations.⁶⁰ Getz would now work for Felix.

THE NEW VERSION

GIANNI MASSARO EITHER FAILED in his quest to reverse the seizure order or he neglected to pursue it. Thus it would be the new, censored edition that would be released. On 29 March 1984 the Italian Ministry of Tourism and Entertainment granted approval to *I, Caligula (Io Caligola)*, which it regarded not as *Caligola*, but as a "new version" of an unnamed and unreferenced earlier film.

From the application, we can discern that Felix had initially trimmed the film to 4,050 metres (147 minutes and 38 seconds) but subsequently submitted an even more-harshly abridged edition with a length of a mere 3,421 metres (124 minutes and 43 seconds). The Ministry required even this to be cut further. Distinct shots of genitalia needed to be deleted; corpses, human oddities, people impaled or crucified, and various tortures all had to go, as well as the mastiffs gobbling a severed phallus. The image of a child being born also needed to be cut, along with Caligula's urination, Caligula kissing Drusilla's corpse, the rape of the newlyweds, Caligula taking Cæsonia from behind, a senator's wife taken from behind aboard the Imperial Bordello, and two decapitations in the killing-machine scene. Other cuts were less understandable: Tiberius being dressed, Tiberius talking with Caligula while dressed in a white toga, Tiberius embracing Caligula, the three men having a mud bath, the three-eyed midget, a slave scrubbing the floor, and a black man dancing aboard the Imperial Bordello. The cuts amounted to 177.4 metres, or 6 minutes and 28 seconds, for a total remaining running time of 118 minutes and 15 seconds. This was appealed and the 124'43"

60. "RICO/Film Sales Agent," *Entertainment Law Reporter* 9 no 4 (September 1987), pp 107-109. *Getz v Penthouse International, Ltd.*, 655 Supp. 1203 (S.D.N.Y. 1997) [ELR 9:14:18]. <http://elr.carolon.net/BI/V09N04.PDF>.

edition was released after all.⁶¹ This would be distributed by Franco's estranged cousin Renzo through Gaumont Italia. Renzo had resigned his post at Gaumont back in November 1983⁶² but now he was back. Gaumont Italia purchased the distribution license from OMNI, which in turn had purchased it from PAC. We should remember that the Rossellini family had been split by a feud when Franco sued Renzo for overages on Fellini's *La città delle donne*, a legal case that ground on for years. We do not know how or why Gaumont worked out a deal with Guccione's OMNI company to release *Io Caligola*, though, as we shall soon discover, the results were predictably upsetting. We have only a draft contract pertaining to the 1984 Italian release, by which Felix would immediately pay all outstanding debts (how?) and give Gaumont Italia total Italian ownership and control of the film in all Italian media in return for the first \$830,000 in net proceeds, to be followed by 75% of the remaining proceeds. In deference to Penthouse, Felix would hereby waive any and all claim to the music rights, and, once again, the music rights are not defined, leading an outside reader to assume this referred to the copyrights.⁶³

Rossellini prepared for the big release. He retrieved the master of the original 1979 preview, which was beautifully conceived and constructed, and superimposed new credits onto it, ending with a large legend, "FINALLY IN ITALY TOO, ITALIAN CINEMA'S BIGGEST PRODUCTION, A NEW AND MORE VIOLENT STEP FORWARD FOR WORLD CINEMA."

THE THIRTY-SECOND CALIGULA LAWSUIT

APRIL 1984 — SEIZING THE NEW VERSION

EIGHTY PRINTS WERE SHIPPED throughout Italy for the new release, which opened in Rome and Milan on Saturday, 31 March 1984 and elsewhere in Italy in early April. The results were "downright disappointing." It "failed to capture the market" as *Variety* succinctly put it, though *Variety* did not offer any speculations as to why. Predictably, just days later, on 3 April 1984, Forlì Chief Prosecutor Mario Angeletti ordered the new version seized as well.⁶⁴ Gaumont

61. marCa (Mario Calderale), Review of *Io Caligola*, *Segnocinema* 4 no 13, May 1984, p 75, supplies the running time of the March/April release as 125 minutes.

62. Gloria Satta, "Spettacoli. Cinema. Come reagiscono gli imprenditori alla crisi che quest'anno appare senza precedenti? Disorientati, subiscono l'avanzata delle tv e degli americani," *Il Messaggero*, Friday, 18 November 1983, p. 12. DDP 360-27, p. 117.

63. Atto di Transazione, undated but circa 16 March 1984. DDP 360-21, pp. 15-19.

64. "Torna sugli schermi il film «Io, Caligola», unidentified newspaper clip, 2 September 1984. DDP 360-28, p. 31.

Italia appealed.⁶⁵ Ultimately the appeal was successful, and *I, Caligula* reopened on Saturday, 1 September. The results were as before. Summarized *Variety*, "Sans hardcore, no great shakes at \$2,390," the opening-weekend gross, about a quarter of what was expected and needed.⁶⁶ Felix was broke, and there was no longer any hope that it could earn meaningful profits through an Italian cinema release.

AN OLD CONTROVERSY REVIVED

THOUGH FELIX HAD A FLOP ON ITS HANDS, Penthouse was moving from strength to strength. Unbeknownst to Felix, Penthouse Clubs of Vaduz had already sublicensed *Caligula* to a separately incorporated sister company, Penthouse Products of Englewood, New Jersey,⁶⁷ which had then in turn sublicensed the film to make it available on home video in Germany, the Netherlands and elsewhere in Europe by the spring of 1982⁶⁸ as well as in England in December 1982.⁶⁹ Penthouse Products had also negotiated in October 1983 with Vestron Video for pan-American video distribution on Betamax, VHS, and laserdisc, in both the full-length and "R"-rated versions.⁷⁰ Vestron would also have an RCA Selectavision CED release, but because RCA had a corporate policy of not releasing "adult" titles, it released only the "R"-rated version, and even offered to let any offended factory workers take the day off while the discs were being pressed.⁷¹

Penthouse and Vestron pooled funds for a series of 10 to 12 "Penthouse Video" programs to be produced and released over the next two years. Explained Vestron president Jon Peisinger, "We get Penthouse's editorial expertise in producing these programs, and they get our global network of distributors."⁷² The video programs would not appear until 1985, with the delay

65. "International Sound Track," *Variety* (weekly) 314 no. 11, Wednesday, 11 April 1984, p. 35.

66. "Fresh Start for Italo B.O.," *Variety* (weekly) 316 no. 7, Wednesday, 12 September 1984, p. 42.

67. *Felix Cinematografica v Penthouse*, Pretura Civile di Roma, 1256/114, claim filed by Lupoi, 22 May 1985. FRC.

68. Tentative summary by Solomon, Finger & Newman, a division of Laventhol & Horwath, sent to Lupoi for the Felix Group, 6 December 1984. See especially item 23. FRC. A highlighted photocopy is also on file at FRC. Further copies are at DDP 94-2, pp. 24-38 and DDP 361-7, pp. 30-46.

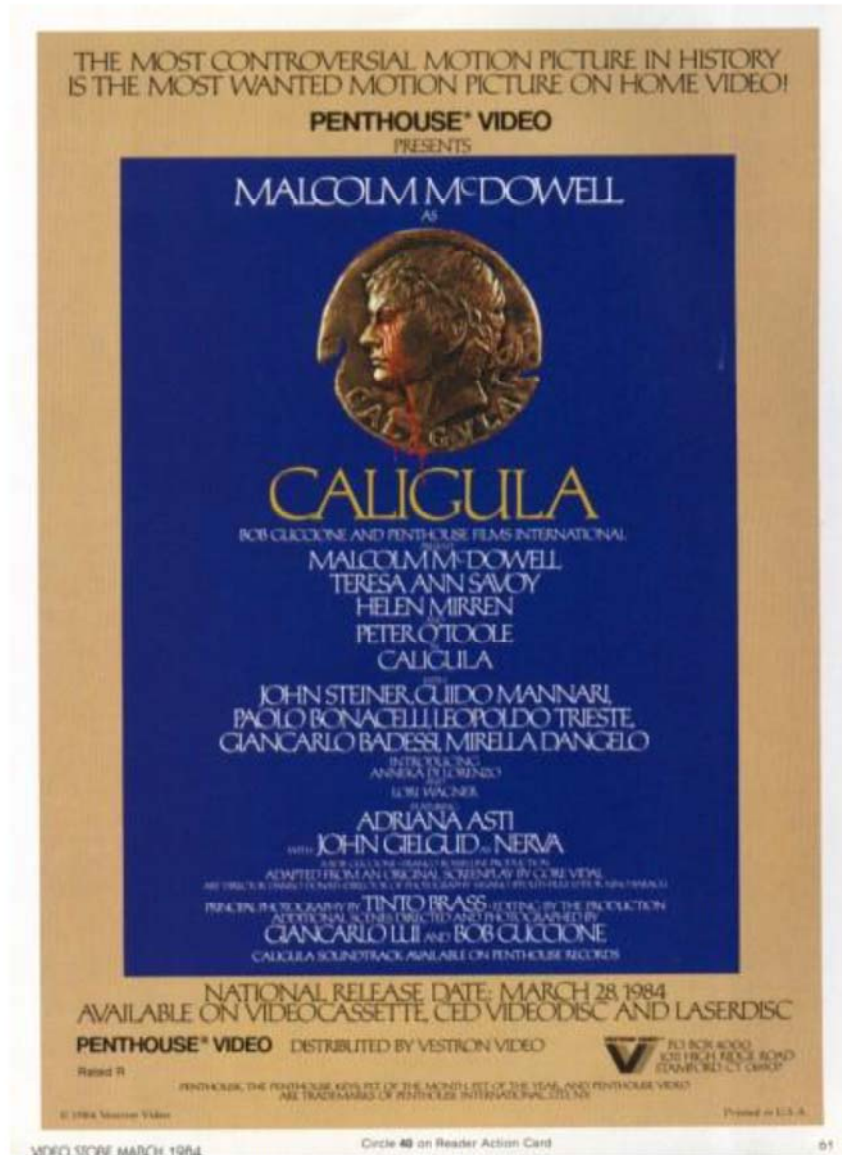
69. "Caligula on Video," *Continental Film and Video Review* 30 no. 2, December [1982], pp. 26-27.

70. "Vestron Video Sells R-Rated 'Caligula' in W. Hemisphere," *Variety* (weekly) 312 no. 10, Wednesday, 5 October 1983, p. 38.

71. Jesse Skeen, "Re: CED Digest Vol. 4 No. 6," *CED Digest* 4 no 7, 13 February 1999, <http://www.cedmagic.com/home/ced-digest/ced-digest-vol-04/ced-digest0407.html>.

72. "Vestron Video Sells R-Rated 'Caligula' in W. Hemisphere," *op. cit.*

reportedly attributed to “the exacting standards of Penthouse publisher Bob Guccione.”⁷³



Video Store magazine, March 1984, p. 61.

Vestron publicized its upcoming Penthouse video releases to retailers at a consumer-and-electronics trade show in Las Vegas, Nevada, in January 1984, and

73. “Long-Awaited Penthouse Title Schedule by Vestron,” *Daily Variety* 206 no. 14, Wednesday, 26 December 1984, p. 8.

the *Caligula* videos were on shelves by 28 March. While other distributors of home videos were at last reducing prices to an average of \$19.95, *Caligula* would not follow that trend.⁷⁴ The suggested retail price for the full-length VHS was \$89.95, while the "R"-rated VHS was \$69.95. Despite those prices, in its first week it ranked 21st on the sales charts in the US,⁷⁵ and in its second week it ranked 30th.⁷⁶

From Franco Rossellini's misrecollections as stated in his deposition of February 1987, we can reconstruct what happened. It was in the spring ("April or May" of 1984 as Rossellini recalled) that he made his discovery:

...I visited New York and found a videocassette of the film "Caligula" in a store. Memory fails with respect to whether I was more surprised at the existence of an unauthorized videocassette of "Caligula" or by the copyright notice on the box which read: "Program Copyright 1979 Penthouse Films International Ltd. All Rights Reserved." I purchased the videocassette and made a photocopy of the box....⁷⁷

Of course, he discovered the videocassette at the shop almost immediately after he withdrew all his complaints against Penthouse. The timing was terrible. Nonetheless, he held out hope. Now that the relations between Penthouse and Felix had been normalized by the novative Settlement Agreement of 2 February 1984, there was room, he thought, to set things right. Or was there?

74. "Vestron Video Sells R-Rated 'Caligula' in W. Hemisphere," *op. cit.*

75. Dennis Hunt, "Video: The Current Hits," *The Los Angeles Times*, Friday, 13 April 1984, pt. vi, p. 18.

76. Hunt, "Video: The Current Hits," *The Los Angeles Times*, Friday, 20 April 1984, pt. vi, p. 14.

77. Draft affidavit, United States District Court, Southern District of New York, *Felix Cinematografica Srl against Penthouse International, et al.*, 86 Civ. 6183 (WCC), February 1987, p 9. FRC.