

# Part Five

## The Law



## Twenty-Eight

### MONEY



"Hollywood has developed a system that provides for talent and financing sources to share in the success of any given film. But like most everything in the film business, the motion-picture profit-participation system is difficult to understand and arcane to apply."<sup>1</sup>



NOTHING IS SO PERPLEXING about *Caligula* as its financing. To this day, nobody outside a small declining population of insiders knows what it cost, or who paid, or when, or how. When those few insiders are gone, the information will go with them to the grave. The costs reported in the press, generally ranging from about \$12,000,000 to about \$22,000,000, but most often quoted as \$17,500,000, were fictions. I acquired Franco Rossellini's production records from his unpaid storage locker in Manhattan, New York, but they were incomplete. Many of the missing documents are housed at Duke University's David M. Rubenstein Rare Book & Manuscript Library. The remaining records must have been kept in Rome or in Monaco and may no longer exist. As absurd as this may sound, not even Felix or Penthouse kept full records of what was expended on production! Yet even with the gaps in the surviving record, we can trace much of the story, and it is not what anyone would expect.

Before we examine the money, let us examine the business background and the contracts. We have touched upon some of this before, but skirted the issues, better to concentrate on the making of the film *per se*. Now, though, it is time to go back and tell the story all over again, from the beginning, but this time from a completely different point of view. This time we look at the story strictly of a business venture. Without this perspective, none of the succeeding lawsuits will be at all comprehensible. We already examined at some length producer Franco Rossellini's business history in Chapter 3. Rossellini's ventures were

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1. Bill Daniels, David Leedy, and Steven D. Sills, *Movie Money: Understanding Hollywood's (Creative) Accounting Practices* (Beverly Hills: Silman-James Press, 1998), p. xxi.

straightforward, consisting simply of producing operas and films, and enjoying his profits or regretting his losses. We examined Guccione's numerous ventures as well, but we need now to pay especial attention to one particular shell corporation.

#### PENTHOUSE CLUBS INTERNATIONAL ESTABLISHMENT

AS WE LEARNED IN CHAPTER 4, to invest in the Penthouse Adriatic Casino on the island of Krk in Yugoslavia, Penthouse's attorneys established a legally separate corporation, Penthouse Clubs International Establishment, registered as a US entity but with domicile in Vaduz, Liechtenstein. The Krk venture fizzled within months, but even with its loss, Guccione was now in the enviable position of having a legally recognized business in Vaduz, an Alpine city famous as a skiing resort and tax haven. No government was permitted to examine any local bank account, and people and corporations wishing to hide money or "invest" in their own second bank accounts found Vaduz a veritable paradise.

All the business of Penthouse Clubs International Establishment was conducted from the Penthouse International, Ltd., headquarters in New York City. Penthouse Clubs International Establishment had no building, it rented no office space, it had no street address, no telephone number, and no employees. It existed only on paper and its address was a post-office box (Postfach 34 721, FL 9490 Vaduz). With this shell corporation, Guccione was free to invest his other income in a Liechtensteinian concern.

#### THE JOINT VENTURE AGREEMENT — WHICH PENTHOUSE IS WHICH?

AS WE LEARNED IN CHAPTER 3, Franco Rossellini was the producer of *Gore Vidal's Caligula*, and the production company was Felix Cinematografica. Forbidden by law from supporting Gore Vidal's salary demand without foreign investment, the production folded before it began. In July 1975 Vidal's Manhattan tenant, Jack H. Silverman, called Vidal to announce that he had just been appointed president of Penthouse's new film-production company, a position he would officially assume in January 1976, and it was this production company that showed an interest in *Gore Vidal's Caligula*.<sup>2</sup> The name of this new company was Penthouse (Wide World) Productions, Ltd.<sup>3</sup> It seems that this

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2. Gore Vidal, "Lo scrittore racconta la sua versione dei fatti «Caligola di Vidal»," *Paese Sera*, 3 October 1976, p. 7.

3. "New Penthouse Production Arm Sets \$7 Mil Vidal Film," *The Hollywood Reporter* 239 no. 11, Wednesday, 3 December 1975, p. 1.

company was never officially registered, and when it came time to draw the contract between Felix and Penthouse, the contract was not with Penthouse (Wide World) Productions, Ltd., or with any limited company. The Joint Venture Agreement of 6 October 1975, which formed The Caligula Company, was between "PENTHOUSE CLUBS INTERNATIONAL ESTABLISHMENT ('PENTHOUSE'), whose address is Vaduz, Lichtenstein [*sic*] and FELIX CINEMATOGRAFICA S.R.L. ('FELIX'), whose address is c/o Paragroup Limited, 1414 6th Ave, New York, New York."<sup>4</sup> A term of this contract was that "The parties agree to hire Jack H. Silverman as Executive Producer of the Photoplay for a fee of Seventy-Five Thousand (\$75,000.) Dollars." By this contract, all mail to Penthouse was to be addressed to Penthouse Clubs International Establishment in Vaduz, with a copy to Penthouse Productions in New York. When a contract for Tinto Brass was initially drawn up, post-dated 1 December 1975, it was exclusively between Brass and Penthouse Clubs International Establishment.<sup>5</sup>

To add a little confusion, Felix was separately involved as well, for it was on 10 June 1976 that Felix alone signed a contract with Sir John Gielgud.<sup>6</sup> To all appearances, the Italian cast and crew were hired exclusively by Felix, not by Penthouse, which hired only Brass along with some of the British/Irish and US cast and crew.<sup>7</sup>

Further complicating the issue was the hierarchy of Guccione's organization. Though his umbrella corporation was General Media International, Inc., that name never appears on any contract or correspondence with Felix.

Memos from Jack Silverman dated 20 November 1975, dealing with preproduction, were on Silverman's personal stationery, as he had not yet officially assumed his new position at Penthouse.<sup>8</sup> When Penthouse paid Gore Vidal his contractual instalment of \$8,750 on 30 January 1976, the check was

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4. Penthouse Clubs International Establishment and Felix Cinematografica Srl: Joint Venture Agreement, Monday, 6 October 1975. Franco Rossellini Collection (FRC). Other copies are on file in Doris Duke Papers at Duke University, Box 94 Folder 2 (DDP 94-2) and Box 360 Folder 17 (DDP 360-17), with a fourth copy in 361-4.

5. Penthouse Clubs International Establishment and Giovanni Tinto Brass: Director's Agreement, 1 December 1975. FRC.

6. Felix Cinematografica Srl and Peet Productions, Ltd.: Loan-Out of Sir John Gielgud, 10 June 1976. FRC.

7. Gerald Kreditor for Video Sound SA: letter to Felix Cinematografica Srl, 15 July 1976. FRC, DDP 360-17.

8. Silverman: memo to Vidal with a copy to Guccione, 20 November 1975; memo to Howard Austen, Guccione, Kathy Keeton, Rossellini, and Vidal, 20 November 1975. Gore Vidal Papers at Houghton Library, Harvard University, Box 64, Folder 2743 (GVP 64-2743).

drawn on Penthouse International's account.<sup>9</sup> (I have no direct records of other payments to Vidal, though he was paid in full.)

Then in early March there was a sudden change of name. On 5 March 1976 Inter-Travel Corporation of Tenaflly, New Jersey, invoiced travel arrangements for Silverman, Crown, and Rossellini, addressing this invoice to Penthouse International, Ltd., in New York.<sup>10</sup> A secretary at Penthouse wrote an annotation by hand, "PH Films Ltd.," and also rubber-stamped it "P/H FILMS INT'L." Three days later, on 8 March 1976, RRR Travel Services Corp. of New York invoiced "Penthouse Prods Ltd." for Rossellini's round-trip ticket from New York to Rome.<sup>11</sup> The following day Avenir Publicité typed up an invoice for Jack Silverman's upcoming participation at the Cannes Festival, and this was addressed to "Penthouse Productions Inc c/o Penthouse Publications."<sup>12</sup> The identical wording was on subsequent invoices dated 29 March 1976<sup>13</sup> and 29 April 1976.<sup>14</sup>

On Wednesday, 10 March 1976, Felix Cinematografica hired Brass as director, with a new contract incorporating and replacing the earlier contract with Penthouse Clubs International Establishment.<sup>15</sup> Penthouse *International*, Ltd., deposited two checks, one for \$5,000 and one for \$2,500, into Felix's Chase Manhattan Bank account 033-1-090409-5. Felix in turn paid that money to Brass. To all appearances it was Felix that paid the remainder of Brass's \$75,000 salary.

On 11 March 1976 Jack Silverman wrote a letter to Jay Harris of Weissberger & Harris, asking for a contract for Peter O'Toole.<sup>16</sup> Silverman wrote this letter on the stationery of Penthouse International, Ltd., and nowhere mentioned any other Penthouse entity. The same is true of a summary of costs that Silverman submitted to Penthouse's accountant Gerald Kreditor on 16 March,<sup>17</sup> as well as of

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9. GVP 64-2743.

10. Invoice 03071-01-N-PM for J. Silverman, A. Crown, F. Rossellini, round trip New York/Toronto/New York on 8 March 1976. FRC.

11. Invoice 8939. FRC.

12. Invoice for a triptych in front of the Hotel Carlton and an illuminated upright in front of the Banc Indochine, 9 March 1976. FRC.

13. Invoice for a triptych in front of the Hotel Carlton, 29 March 1976. FRC.

14. Invoice for illuminated uprights in front of the Hotel Majestic, the Grand Hotel, and the Bar Martinez, 29 April 1976. FRC.

15. Silverman for Penthouse International: letter to Rossellini of Felix, 11 March 1976. DDP 361-4.

16. Silverman of Penthouse International: letter to Jay Harris, Esq., of Weissberger & Harris, 11 March 1976. FRC.

17. Silverman of Penthouse International: letter to Kreditor of Gerald Kreditor & Co, 16 March 1976. FRC.

Silverman's letter to Rossellini of 18 March 1976 asking for help with the press kit.<sup>18</sup>

Franco Rossellini submitted his expense report, and included entries for the hiring of Danilo Donati and his assistants as well as Sergio Galiano, Mario Di Biase, and various other personnel. Penthouse *International*, Ltd., deposited \$27,257.21 into Felix's Chase Manhattan account to cover those expenses.<sup>19</sup>

When Penthouse first advertised its two upcoming co-productions, an untitled film by Fellini and Gore Vidal's *Caligula*, in a three-page spread in *Variety* on 24 March 1976, the ads read, in huge type: "JACK H. SILVERMAN, PRESIDENT OF PENTHOUSE FILMS INTERNATIONAL, LTD..." and "PENTHOUSE FILMS INTERNATIONAL LTD. AND BOB GUCCIONE PRESENT...."<sup>20</sup>

An invoice from The Typros of New York dated 24 March 1976 was addressed to Penthouse Magazine, and a Penthouse secretary rubber-stamped the usual annotation on it: "P/H FILMS INT'L."<sup>21</sup> When on 1 April 1976 Penthouse engaged Daniel Maffia to draw a medallion logo for the poster, it did so on a generic Penthouse invoice which specified that Penthouse Films International was merely a "department" of a larger "Penthouse" entity.<sup>22</sup> RRR Travel Services next invoice, dated 22 April 1976 for Rossellini's air fare, was addressed to Penthouse Films Int'l, Ltd.<sup>23</sup> On 23 April 1976, for his work on creating a poster, Michael Sweret invoiced Penthouse Films, Ltd.<sup>24</sup> When Silverman wrote to Peter O'Toole on 6 May 1976 to arrange meetings, he did so as "President, Penthouse Films Int'l" on Penthouse International, Ltd., stationery.<sup>25</sup> On 3 June 1976 Leslie Jay, signing herself as "Assistant to Jack H. Silverman," wrote to Howard Austen on Penthouse International, Ltd., stationery.<sup>26</sup>

The list goes on *ad infinitum*. Not once is Penthouse Clubs International Establishment invoiced, and not once does Penthouse Clubs International Establishment make a payment to any vendor. Penthouse Clubs International

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18. Silverman of Penthouse International: letter to Rossellini of Felix, 18 March 1976. FRC.

19. Silverman of Penthouse International: letter to Rossellini of Felix, 17 March 1976. DDP 361-4.

20. Three-page advertisement, *Variety* (weekly) 282 no. 7, Wednesday, 24 March 1976, pp. 13-15. This was repeated in *The Hollywood Reporter* ??? no. ??, Thursday, 25 March 1976, and in *Daily Variety* 171 no. 15, Friday, 26 March 1976, pp. 13-15.

21. Invoice 1866. FRC.

22. Invoice 01000. FRC.

23. Invoice 9579 for F. Rossellini, New York/London/Rome/New York. FRC.

24. FRC.

25. FRC.

26. GVP 64-2743.

Establishment completely disappears from all the subsequent paperwork for the entirety of the period of pre-production and production. The paper trail continually equates Penthouse International, Ltd., Penthouse Films International, Ltd., and Penthouse Productions, Ltd., as being one and the same company.

I do not know all the reasons why this new entity, Penthouse Films International, Ltd., replaced Penthouse Clubs International Establishment in this film production, but we can place some boundaries between the known and the unknown. *Variety* reported that:

...Pic has a 14-week lensing schedule starting in June, with exteriors in Italy, Rumania and "possibly" Yugoslavia.... After several pix in which he was strictly a fiscal participant ("Chinatown," "The Longest Yard," "Day of the Locust"), this one marks Guccione's first wholly backed venture, budgeted at close to \$7,000,000. (Part of that will pay off some 15,000 extras for the mob scenes.)<sup>27</sup>

This made little sense. The film, of course, was not "wholly backed" by Penthouse, and what would be the point of shooting exteriors in Romania or Yugoslavia? Further, why the talk about 15,000 extras for mob scenes? Gore Vidal's script had a few crowd scenes but did not call for 15,000 extras or mobs. Unexpectedly, Gore Vidal confirmed the necessity of the plan: "I think location stuff will be in Romania, Yugoslavia. We're going to need a lot of people and it's very expensive in Italy now, the crowds...."<sup>28</sup>.

Now, though, the pieces begin to come together. If 15,000 extras could be employed in Yugoslavia, possibly even near the Penthouse Adriatic Club on Krk, Guccione could possibly begin to reactivate his failed real-estate investment there. The idea of shooting in Yugoslavia also reveals why Penthouse (Wide World) Productions, Ltd., was left by the wayside and why the initial contracts were with Penthouse Clubs International Establishment, which already had official recognition in Yugoslavia.

No details are available, yet there can be little doubt but that the Yugoslav authorities disapproved of any shooting on Krk or anywhere else in Yugoslavia. Once permission was denied, the idea for 15,000 extras was dropped and there was little reason to continue with Penthouse Clubs International Establishment. Instead the film reverted to Penthouse (Wide World) Productions, Ltd., which

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27. "McDowell to Topline 'Caligula,' Guccione-Vidal's Historical Epic," *Variety* (weekly) 282 no. 1, Wednesday, 11 February 1976, p. 40.

28. Monique Van Vooren, "Vidal," *Andy Warhol's Interview: The Monthly Glamour Gazette*, April 1976 [misprinted 1975 on masthead], pp. 10-12.

was now given a newer, simpler, more memorable name, Penthouse Films International, Ltd.

The complication, of course, is that funding had already been arranged by the contract with Penthouse Clubs International Establishment. Felix Cinematografica at the time had no contract with Penthouse Films International. This worried nobody. After all, the people involved were identical no matter which corporation's name was on the paperwork, and all the Penthouse entities were controlled from the same office and were effectively interchangeable.

Penthouse International, to reduce its taxes, needed to invest heavily without earning a profit that would be detectable to the authorities. If International would "invest" \$7,000,000 in Clubs, which was legally separate and with a foreign bank account, then International could reduce its taxable income by \$7,000,000 and earn a significant break. Of course, the \$7,000,000 would need to go towards production expenses — or so it would seem.

#### THE JOINT PRODUCTION CONTRACT

**M**ONTHS AFTER PENTHOUSE FILMS REPLACED PENTHOUSE CLUBS, agents for Felix Cinematografica attempted to file the Joint Venture Agreement with the Italian Ministry of Tourism and Entertainment (Ministero del Turismo e dello Spettacolo). That is when they discovered that the Italian authorities would not allow a Vaduz or a US concern to coproduce a film together with an Italian concern.<sup>29</sup> It is rather amazing that Franco Rossellini and his lawyers and accountants were unaware of the law, for it had caused widespread outrage when it was first broached in late 1964.<sup>30</sup> "Just about everyone," wrote *Variety*, "seems to be against it.... Openly complaining so far — some in violent terms — have been newsreel makers, actors, distributors, authors and producers." The

29. Maurizio Lupoi, Concluding Statement, *Felix Cinematografica Srl v Penthouse Films International, Ltd., Penthouse Clubs International Establishment, Penthouse International, Ltd., and Penthouse Records, Ltd.*, 8 September 1988, Tribunale di Roma, Registro Generale (Docket Number) 2062/1986. The passage in question occurs on pages 8–9: "...the public bodies have never approved a 'coproduction,' but only a 'coparticipation' of proceeds: the relevant texts are cited above; it can be, nevertheless, added that the standard form of the Italian Exchange Office bears the printed word 'coproduction' and that this was struck through by the Office, substituting for it 'coparticipation.' " To be clear, the word "coproduction" was not struck out on all Exchange Office forms, but only on Felix's application (Permit 500227, 16 December 1976). A carbon original of this form is on file in FRC, and a photocopy is on file at DDP 360–27. See also Franco Rossellini: handwritten note, nd: "Impossibili Joint Venture Vaduz–Italy," on file at DDP 360–26.

30. Robert F. Hawkins, "Reveal New Italo Film Law Proposals; Industry Howls," *Daily Variety* 126 no. 12, Tuesday, 22 December 1964, pp. 1, 4; "Key Provisions of Proposed Italian Film Aid Law in Italy," *ibid.*, p. 4.

law added numerous levels of bureaucracy, significantly reduced rebates, and placed “excessive limitations” on coproductions, especially international ones. When enacted on 4 November 1965, “New Order on the Provisions of Cinematography,” law number 1213, specified in article 19 that international coproductions were acceptable only should they fall within the provisions of international treaties, and there was no such treaty between the US and Italy or between Liechtenstein and Italy. Such an international coproduction would be considered legally void, and beginning in 1976 the Italian party to such a contract, and sometimes even the foreign party, would be prosecuted under the criminal code.<sup>31</sup>

The Italian government would, though, allow a US concern to *invest* in an Italian film production as a financial *coparticipant*, or to use more common English, shareholder.<sup>32</sup>

This was not what the Penthouse people wanted to hear. Guccione wanted to make a Penthouse movie to Penthouse’s specifications, and now, after all the preliminaries, his executives suddenly learned that this was illegal. Italian law, though, did allow for the foreign investor to have contractual “financial, artistic and technical participation.” Felix and Penthouse could easily have modified their Joint Venture Agreement to reflect this ideal. It would have taken several minutes to revise the document, changing only a few words and phrases here and there, and then not long at all to retype it. Felix and Penthouse, together with the various government agencies, would have been fully satisfied. That is not the route that they took.

Penthouse instead drafted an entirely new contract, entitled “Contratto di Produzione Associata.” This literally translates “Contract of Associated Production,” but the certified English translation rendered this as “Joint Production Contract.”<sup>33</sup> US law makes little distinction between an associated production (i.e., coparticipation) and a coproduction — nor, for that matter, does it make much distinction between a coproduction and a joint venture.<sup>34</sup> Historically “joint production” has thus become an accepted translation of “produzione associata.” Because the English term “Joint Production Contract” was used in the subsequent legal proceedings, I use it here. On Wednesday,

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31. Massimo Ferrara-Santamaria: unsigned, untitled document on the *Caligula* litigation and the Italian judicial system, 12 December 1989. This is included as an attachment to a letter from Rossellini to John Hornick, 12 December 1989. FRC.

32. Lupoi, *op. cit.*

33. This as well as the English translation, “Joint Production Contract,” are in FRC. Other copies of the English translation are at DDP 360–23 and DDP 361–4.

34. Lupoi: letter to BNL, 2 July 1984, p. 2. FRC.

23 June 1976, Jack Silverman mailed Rossellini this new contract, pre-dated 15 June 1976, and prefaced it with a cover letter that served only to complicate matters and which was brought in as evidence in numerous subsequent lawsuits:

Dear Franco:

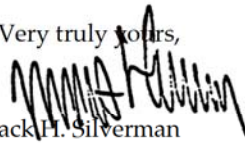
I am attaching a copy of the Joint Production Contract which you need to present to the Italian Ministero to apply for the Italian aid.

Obviously, it contains certain clauses and statements which are quite contrapuntal to our initial agreement between Felix and Penthouse.

Therefore, please acknowledge by signing 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's only the Joint Venture Agreement dated October 6, 1975 that will be binding between Felix and Penthouse and not this new Joint Production Contract.

Until we receive this letter signed by you no additional funds can be forwarded to Felix.

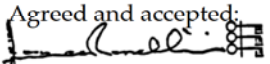
Very truly yours,



Jack H. Silverman  
President

Penthouse Films International

Mr. Franco Rossellini  
Felix Cinematografica  
Via Theodoro Montecelli, 2  
Rome 00197, Italy

Agreed and accepted:  
  
Franco Rossellini<sup>35</sup>

The new contract was short, it lacked the details necessary in a contract dealing with a major feature film production, and it was obviously written only to appease the government authorities. To compound the obviousness, the authors of this contract did not even deem it necessary to mention Felix's exclusive agent, Paragroup, proving that the contract was meant to be a legal fiction and that only the earlier agreement would be operative. Considering that Penthouse Clubs was not paying any bills or drawing any further contracts, and

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35. Silverman of Penthouse Films International: letter to Rossellini of Felix Cinematografica, 23 June 1976. FRC, DDP 360-17.

considering that the new advertising campaigns boldly proclaimed Penthouse Films International, Ltd., as the presenter, it is not surprising that this new Joint Production Contract would be in the name of Penthouse Films International, Ltd. On the other hand, what is surprising is that this cover letter refers to the previous "Joint Venture Agreement between Penthouse Films International Ltd. and Felix Cinematografica S.R.L. signed in New York City on October 6, 1975." Of course, the previous Joint Venture Agreement signed in New York City on October 6, 1975, was *not* between Penthouse *Films* International, Ltd., and Felix Cinematografica, but between Penthouse *Clubs* International Establishment and Felix Cinematografica.

The principal differences in terms between the two contracts concern the relation of the two companies and the percentages. In the earlier Joint Venture (Clubs) Agreement, Clubs and Felix were coproducers and would set up a one-time joint venture to be named The Caligula Company. In the later Joint Production (Films) Contract, Felix was the sole producer and Penthouse Films was a "participant" and the principal investor. As Felix's sole administrator, Lina Pagni (Franco Rossellini's mother) explained the later (Films) Contract in a government application: "Penthouse's participation was foreseen as a means of service supplies, performances, and materials so as to prevent the flow of currency out of Italy."<sup>36</sup>

In the earlier Joint Venture (Clubs) Agreement, each party would attempt to finance 50% of the film, but if the contributions were unequal, the royalty rates would be adjusted to match the contributions, to a maximum of a 90-10 split. In the later Joint Production (Films) Contract, Felix would raise \$3,000,000, while Penthouse Films, through financing from Video Sound, SA,<sup>37</sup> of Zurich, would raise \$4,500,000.

According to article 3 of the new Joint Production (Films) contract, Felix would sell to Penthouse 50% of the utilization rights of the screenplay. In Italian law, that is entirely different from ceding any of the underlying intellectual-property rights (including copyrights),<sup>38</sup> which, by contract, Felix would now retain.

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36. Lina Pagni, "Oggetto: Associazioni in Partecipazioni Italo-Americana — Film 'CALIGULA' (CALIGOLA)," an application by Felix Cinematografica addressed to the Ministero del Commercio con l'Estero Direzione Generale Import Export, the Ministero del Turismo e Spettacolo Direzione Generale Cinematografia and the Ufficio Italiano Cambi. The application is undated, but was created and sent on or about 16 July 1976. FRC.

37. SA = Société Anonyme = Limited Company = Ltd.

38. Lupoi: letter to Luigi Mazzella, Capo di Gabinetto del Ministero del Turismo e dello Spettacolo, 12 March 1985. FRC.

Once Penthouse were to recoup its expenses from foreign (non-Italian) receipts, Video Sound would pay 50% of future receipts to Felix and the other 50% to Penthouse.

The secondary differences between the two contracts concern the elaborated details of credits, executives, executive salaries, reimbursements for executive expenses, resolution of conflicts, and so forth, spelled out explicitly in the earlier Joint Venture (Clubs) Agreement, but omitted from the later Joint Production (Films) Contract. Another distinction was made in regard to the authorship of the screenplay. The earlier (Clubs) Agreement specified that the screenplay was the sole work of Gore Vidal, and gave the title as *Gore Vidal's Caligula*. The new (Films) Contract stated that the screenplay was a collaboration between Gore Vidal and Masolino d'Amico, and that the working title was simply *Caligula*. (In subsequent documentation throughout production, Vidal's name would randomly reappear and then disappear again from the title.)

Of profound significance, in the earlier Agreement, Penthouse Clubs International Establishment, incorporated in Vaduz, was coproducer. In the later Contract, Penthouse Films International, a Limited Company in the US, was coparticipant, but its funds would flow through Video Sound of Zurich. Thus, in both contracts Penthouse's money was sent off-shore to a separate corporation that acted primarily as a tax shelter.

Of the most ominous significance, the anonymous author of this contract understood full well that the total projected cost of the production would be around \$4,000,000 at the very most, more likely just over \$3,000,000. Yet the author of this contract chose the considerably higher figure of \$7,500,000 as the projected production budget. It becomes obvious from everything that follows that neither Rossellini nor Guccione understood that \$7,500,000 was an incorrect figure. Some of their underlings, though, did.

I do not know the identity of the person who drafted this Joint Production Contract. A reasonable guess would be Guccione's London lawyer, Ben Baker, or someone on his staff, quite likely with the coöperation of Gerald Kreditor or someone on his staff. Whoever the author really was, he was certainly the same person who instructed Silverman to have Rossellini countersign the letter to negate the effectiveness of this Joint Production Contract. In subsequent court battles, each contract was repeatedly waved in front of judges to disprove the other. I assume that the original draft of the Joint Production Contract was written in English and translated into Italian. I assume further that the certified English translation was made by a translator who did not know that the original had been in English.

Franco Rossellini countersigned the cover letter. Either he did not consult his lawyers, or his lawyers were negligent in their duties. By signing, he effectively confessed that the new Films Contract was fraudulent, that it served only to mislead the Italian government authorities, and that the film was after all an illegal joint venture.

Of course, an executed contract is legally binding, regardless of any secret paperwork to the contrary. Thus, despite the countersigned cover letter, this new Joint Production Contract governed, and The Caligula Company went into abeyance. Importantly, the Joint Venture Agreement was never annulled. It was the gravest error on Felix's part — an error that may be considered *literally* fatal — not to have annulled the Joint Venture, which instead was simply ignored as being of no further use, as being merely an early, rejected draft of the current contract. The Caligula Company was never activated, but few judges would ever understand that.

As definitive demonstration that the June 1976 Joint Production Contract governed, both parties, Penthouse Films International and Felix, based their subsequent understandings only on this newer contract. When terms were modified (23 July 1976<sup>39</sup> and 27 October 1977<sup>40</sup>), the amendments were made to the newer Joint Production Contract, never to the earlier Joint Venture Agreement. When Penthouse hired crew members, such as Walter Alford,<sup>41</sup> Gregory Bronson,<sup>42</sup> Leslie Cuscina,<sup>43</sup> and Eugene Rizzo<sup>44</sup> (unit publicists), Louise Vincent (dialogue coach),<sup>45</sup> Russell Lloyd (editor),<sup>46</sup> and others, the employment agreements were all done on Penthouse FILMS International, Ltd., forms (capitals in the original). Eastman Kodak sold raw stock only to "Penthouse Film Intl."<sup>47</sup> The firm that Penthouse hired as legal representation for *Caligula* was Weissberger & Harris of New York City, which addressed its first invoice to "Mr.

39. First Appendice [*sic*] to the Joint Production Contract, signed by Rossellini (for himself) and by Silverman for Penthouse Films International, 23 July 1976. FRC. Other copies are at DDP 360–17 and DDP 360–23. A retyped copy is at DDP 361–4.

40. Silverman for Penthouse Films International: Amendments to the participating association agreements, 27 October 1977. FRC. Fragments of this document, along with a draft in telegram form (addressed to Kreditor), are at DDP 360–17 and DDP 361–4.

41. Penthouse FILMS Int'l, Ltd.: agreement with Alford, 26 July 1976. FRC.

42. Penthouse FILMS Int'l, Ltd.: agreement with Bronson, July 1976. FRC.

43. Penthouse FILMS Int'l, Ltd.: agreement with Cuscina, 6 September 1976. FRC.

44. Penthouse FILMS Int'l, Ltd.: agreement with Rizzo, 20 August 1976. FRC.

45. Penthouse FILMS Int'l, Ltd.: agreement with Vincent, 20 July 1976. FRC.

46. Penthouse FILMS Int'l, Ltd.: agreement with Lloyd, 21 January 1977. FRC.

47. Invoice 002700017, 16 July 1976; invoice 002712330, 10 August 1976; invoice 002731761, 21 September 1976; invoice 002744327, 18 October 1976; invoice 002041192, 3 November 1976; invoice 002041706, 22 November 1976; invoice 002042369, 13 December 1976. FRC.

Bob Guccione" (this invoice was rubber stamped "P/H FILMS INT'L" upon receipt at headquarters) and its subsequent invoices to "Penthouse Films International," and it was Penthouse Films International that paid by check.<sup>48</sup> When Gerald Kreditor, writing in his capacity as executive of Video Sound, wrote to Franco Rossellini regarding several of the employment contracts that Penthouse negotiated with principal actors, he stated, "We have been further informed that these employment agreements must be signed by you as employer, as you are the film producer of the above motion picture."<sup>49</sup> That letter clearly demonstrates that Franco's Felix was the sole producer, not Penthouse, which would no longer even be employing the principal actors. As further definitive demonstration, when Penthouse generated its employees' tax forms for those who worked on *Caligula*, the W2's listed the employer as PENTHOUSE INTERNATIONAL LIMITED<sup>50</sup> and the 1099's listed the employer as PENTHOUSE FILMS INTERNATIONAL LTD.<sup>51</sup>

#### VIDEO SOUND, SA, OF ZURICH

THIS NEW JOINT PRODUCTION CONTRACT spawned a second contract, this one between Video Sound, SA, of Zurich and Felix. Video Sound would act on the instruction of Penthouse Films. By this contract, Felix as sole producer was required to sign employment agreements with the major actors, upon which Video Sound would supply those actors' payments. The transfer of rights, though, is most strange, since it did not tally with the actual amounts paid to the four big-name performers. We shall look at this more closely later in the chapter.

In Franco Rossellini's surviving files there is but a single example of a contract between Video Sound and an investor. It is a draft contract, in Italian, with Panmovies, SA, represented by Jacques Widmer, for cinema release in the French territories. It was never signed or executed, but there can be no doubt that

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48. Invoice to Mr. Bob Guccione, 1 January 1976; invoices to Penthouse Films International, 1 April 1976, 1 May 1976, 1 October 1976. Also, it was Penthouse Films International, Ltd., that made out a Manufacturer Hanover Trust Company \$5,000 check, number 375, to Weissberger & Harris on 5 November 1976. FRC.

49. Kreditor for Video Sound: letter to Felix, 15 July 1976. FRC, DDP 360-17.

50. The Penthouse International, Ltd., forms W-2 were for Adele Baranski, Alfred W. Crown, Cheryl Goldblatt, Cynthia J. Horden, Dawn Willis, Elizabeth Appelbaum, Fyrossa Khan, Hector Marrero, Harvey Zucker, Janet Cohen, Jack H. Silverman, John Quis, Leslie Jay, Maxine Berd, Michael Jaffa, Michele Petrillo, Norman Oberlander, Regina Andriolo, Steven Beer, Theodore C. Bailey, and William L. Hubschmitt. FRC.

51. The Penthouse Films International, Ltd., forms 1099 were for Anneka De Lorenzo, Bonnie De Wilson [sic], Carolyn Patsis, Eugene Rizzo, Gregory Bronson, Giancarlo Lui, Leslie Cuscina, Louise Vincent, Lori Wagner, and Stan Malinowski. FRC.

it was identical to the other contracts. It definitively confirms the validity of the Felix/Films Joint Production Contract: "WHEREAS: VIDEO SOUND has the rights to distribute in France the film entitled 'Gore Vidal's Caligula,' a Felix Cinematografica Srl production, starring Malcom [sic] McDowell...."<sup>52</sup> Felix was sole producer, and Penthouse was not mentioned anywhere.

This leads us to wonder what on earth Video Sound was. According to the Joint Production Contract of June 1976, Video Sound of Zurich was "a Swiss Distribution House." It takes a good deal of detective work to ascertain the precise details. Video Sound's legal representative was Dr Erwin E. Lustenberger, whose specialties are commercial law, bankruptcy and procedural law, contract law, and civil law. Video Sound claimed two different mailing addresses at different times. One address was Alpenstraße 9, CH-6300 Zug.<sup>53</sup> A quick check on the Internet reveals that numerous lending and financial institutions use Alpenstraße 9 as their elective domicile. This is thus the address of a legal firm that represents numerous lending and financial institutions. Another address was Chamerstraße 79, CH-6300 Zug.<sup>54</sup> This is actually the address of a law office, specifically the law office of Dr Lustenberger (who generally uses a postbox address: Postfach 3361, CH-6303 Zug). A quick check on the Internet reveals, predictably, that numerous businesses use Chamerstraße 79 as their elective domicile. More tellingly, though, is Jack Silverman's letter of 26 July 1976 to Felix Cinematografica concerning the transfer of the main actors' exploitation rights to Video Sound of Vaduz!<sup>55</sup> (In this letter Silverman makes clear that Penthouse Films has only an "association in participation." The wording is unequivocal that Felix is sole producer.)

Of even greater significance, the executive officer/accountant who signed on behalf of Video Sound was Gerald Kreditor, and the Video Sound agent who signed distribution deals was Don Getz.<sup>56</sup> Those three men, Lustenberger,

52. Video Sound di Zug and Panmovies, SA, represented by Sig. Jacques Widmer: Protocollo di Accordo. This is included as an attachment to Kreditor for Video Sound: letter to Felix, 15 July 1976. FRC.

53. Kreditor, *ibid.*

54. Lustenberger of Video Sound: letter to Penthouse Films International, Ltd., 26 July 1976; letter to Felix, 26 July 1976, for transfer of Malcolm McDowell, Peter O'Toole, Helen Mirren and John Gielgud's contracts, with a copy to Penthouse Films. FRC, DDP 360-17.

55. Silverman, President, Penthouse Films International, on Penthouse International, Ltd., stationery: letter to Felix, 26 July 1976. FRC, DDP 360-17.

56. "Distrib rights to 'Caligula' for Spain have been sold to Mercurio Films and for Portugal to Doperfilme. Don Getz is foreign sales rep for the Penthouse Films Franco Rossellini production": "Pix, People, Pickups," *Daily Variety* 173 no. 13, Thursday, 23 September 1976, p. 1. See also "Pix, People, Pickups," *Daily Variety* 173 no. 16, Tuesday, 28 September 1976, p. 1; "Buy 'Vidal's Caligula,'" *The Hollywood Reporter* 243 no. 27, Friday, 8 October 1976, p. 24; "Pix, People, Pickups," *Daily Variety*

Kreditor, and Getz, constituted the entire staff of Video Sound. This is how we determine that Video Sound of Zurich was a shell corporation. It existed only on paper, without an office, without a street address, without employees, but with a bank account in Vaduz.

Video Sound would raise funds for the production of *Caligula* by finding distributors to invest, and would take a 25% cut of those funds. In other words, Penthouse was required by contract to raise \$4,500,000 towards the production. It would have Video Sound get that \$4,500,000 from various investors. According to the contract, though, Video Sound would keep 25% of that \$4,500,000, or \$1,125,000, leaving only \$3,375,000 that would actually go towards production. Thus, before filming began, Penthouse, via its Video Sound bank account in Vaduz, would already earn \$1,125,000 without spending any money of its own. If, on the other hand, the contract were to be interpreted to mean that Video Sound were required by contract to place the full \$4,500,000 into the production, then Video Sound would merely need to raise \$6,000,000, of which it would keep \$1,500,000 as royalties. Which interpretation is correct is never made clear in this or in any other document.

Investors paid a small deposit up front, with the balance due upon delivery of the picture. It would be surprising if these initial deposits amounted even to \$100,000 in total. These pre-sales were entered into the books as funds forthcoming.

John Steiner was interviewed for a short entitled *My Roman Holiday*, produced by Digital Roadshow Productions specifically for the October 2007 deluxe "Imperial Edition" box set of *Caligula*, and what he said was quite extraordinary. While he found Guccione monstrous, he had to admit that:

*Caligula* was a brilliant piece of business conducted by Guccione. I mean, quite brilliant. The guy made the movie; it didn't cost him a penny to make, because he made it on tax write-offs he was getting on his publishing company in the United States. You could still do it [then], and I think that was one of the last movies that you could do that. So he had — I think it went like — a thirteen-million-dollar budget, which

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173 no. 43, Thursday, 4 November 1976, p. 15; "Scandinavian Rights to *Caligula*," *Screen International* no. 61, Saturday, 6 November 1976, p. 8; " 'Caligula' Distrib'n Set in Australia, Israel, Greece," *Daily Variety* 173 no. 52, Wednesday, 17 November 1976, p. 12; "More Foreign Sales for 'Vidal's *Caligula*,'" *The Hollywood Reporter* 244 no. 4, Thursday, 18 November 1976, p. 5; *Screen International* no. 63, Saturday, 20 November 1976, p. 10.

came down to a four-million-dollar write-off, which is what he made the movie for. So the movie cost him, again, nothing.<sup>57</sup>

There may be some truth in that. The declared budget, according to the contract amendments and applications to Italian government agencies, was closer to \$7,500,000, not \$13,000,000. Of this \$7,500,000, Penthouse was required to raise \$4,500,000. Did Penthouse ever submit a \$13,000,000 figure to US tax authorities? Perhaps. Perhaps not. Of this much, though, we can be certain: About \$3,000,000 of that transfer was used as collateral for the approximately \$3,000,000 that Felix would borrow from two banks and take from one investor. (Details below.)

For the sake of argument, let us assume that Steiner's story is correct. That would mean that Penthouse would have declared on its tax forms that it had a new business expense for 1976 of \$13,000,000. That \$13,000,000 was an investment in a foreign firm, either Penthouse Clubs International Establishment or Video Sound of Zurich, or possibly both. That would lower Penthouse's effective earnings by \$13,000,000 and thus reduce its tax obligations for 1976 by \$4,000,000. That \$4,000,000 then, originally earmarked as tax money, would now be liberated, and it was that \$4,000,000 that was actually used to produce the movie. Of course, to convince the US and New York tax authorities that \$13,000,000 had actually been expended on the new business venture, it would be necessary to spend all that \$13,000,000. The \$13,000,000 would be wired to Penthouse Clubs International Establishment of Vaduz, and/or to Video Sound's Vaduz account. Once in Vaduz, the money could no longer be monitored by US authorities and was in a legally separate organization. Thus would the \$13,000,000 stay in the family, but in one of the family's other bank accounts.

Considering the exceedingly low costs of making movies in Italy in the mid-1970s, it is certainly conceivable that *Caligula* may have been made for nothing other than \$4,000,000 of write-offs. Yet that simple picture is complicated by other information. For one thing, Penthouse did not need to use all \$4,000,000 to produce the film. If Steiner's story about there having been write-offs is basically correct, then Penthouse probably did not use *any* of that \$4,000,000 to produce the film. It is important to bear this in mind. It is equally important to bear in mind that Guccione by his own admission had no head for business and could not even read a ledger sheet. He disdained anyone who paid too much attention to income and expenditures. Said he, "I'm not a businessman. I'm an artist. To

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57. John Steiner, interviewed by Mikey T. (Nathaniel Thompson) on 16 February 2007 for *My Roman Holiday*, Digital Roadshow Productions, produced exclusively for a supplemental disc of the Image Entertainment DVD release of *Caligula*, 2 October 2007.

this very day, I can't read a, um, what do that call it? — your financial results, you know? The accountant thing.”<sup>58</sup> That was the truth. Guccione's principal outside counsel, Norman Roy Grutman, confirmed that the business records “were a mess.”<sup>59</sup> Guccione was very much interested in major projects such as new magazines, *Caligula*, casinos, and so forth, and he would insist upon full briefings. He would not simply delegate the projects to others and put them out of his mind.<sup>60</sup> Nonetheless, he had trouble understanding technical issues, and he surely accepted explanations that sounded reasonable, detailed, and authoritative.

Guccione had assigned Lustenberger, Kreditor, and Getz to raise money for the production. He asked how much the film would cost, and was informed, initially, nearly \$7,000,000, soon revised to about \$7,500,000, though the men who gave him those estimates realized full well that the film could be made for under \$4,000,000. Felix was required to contribute \$3,000,000, which was a good three-quarters of the budget. Anything Penthouse would raise beyond that difference would be pure profit.

Guccione simply assumed that his trusted men had indeed raised the necessary moneys and contributed \$4,500,000 or so towards the production. After all, he could see for himself that the movie would be produced and he could only assume that it was the money that Lustenberger, Kreditor, and Getz had raised, as well as the money Penthouse had wired to Vaduz, that made this possible. It is most probable that Guccione never for a moment suspected that little if any of this money went into the film. He really did think that he was the primary investor in the production. If this reading is correct, that would explain the succeeding legal complaints. Indeed, the only other conceivable explanation for the succeeding legal complaints would be that Guccione was a criminal mastermind of the first order, who devoted his every waking moment to ever-more intricate and elaborate schemes. That was most certainly not the case.

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58. John Colapinto, “The Twilight of Bob Guccione,” *Rolling Stone* no. 945, April 2004, p. 62.

59. [Norman] Roy Grutman, with Bill Thomas, *Lawyers and Thieves* (NY: Simon and Schuster, 1990), p. 140. Grutman continued with an example of a case against *Playboy* magazine: “When I finally found one batch of documents in a warehouse that contained projections that Guccione's accounting staff had repeatedly denied existed, I dutifully turned the documents over to the *Playboy* lawyers. As a reward, [Judge Thomas P.] Griesa denounced the *Penthouse* representatives as liars, excoriated me from the bench and abruptly threw the case out of court.”

60. Peter Bloch: email message to RS, 7 April 2015.

### FELIX RAISES FUNDS

**F**ELIX RAISED FUNDS AS WELL. It used the new Joint Production Contract and its amendments in part to apply for government approval, in part to apply for government aid, and in part to obtain a certificate of Italian nationality for the film. By 14 June Felix raised £900,000,000 (US\$1,055,242.39) by preselling distribution rights to PAC Produzioni Atlas Consorziate.<sup>61</sup> Felix requested a low-interest loan of £900,000,000 (US\$1,055,242.39) from the National Bank of Labor's Autonomous Section for Film Credit (Banca Nazionale del Lavoro – Sezione Autonoma per il Credito Cinematografico, or BNL-SACC for short),<sup>62</sup> and this came through on 11 October 1976.<sup>63</sup> Felix was also able to raise a further \$1,000,000 or so from Chemical Bank.<sup>64</sup> As production proceeded, Felix would also contribute some of its own funds, and in the end Felix contributed \$3,352,941.<sup>65</sup>

Now that the authorities had approved the Joint Production Contract, the film was eligible for a government grant, which would not be awarded until several years later, in 1979. As reported by the Italian Society of Authors and Publishers (SIAE), the grant totalled a mere £100, which at the time equalled about 12 cents.<sup>66</sup> The government approvals, on the other hand, were rather more involved.

61. PAC Produzioni Atlas Consorziate Srl: contract letter to Felix, 14 June 1976, DDP 360–19. See also Felix: letter to BNL-SACC, circa 14 October 1976, DDP 360–22; Harlan Jacobson, "Gore Vidal in 'Caligula' Billing and Inspiration Behind Same," *Variety* (weekly) 283 no. 10, Wednesday, 14 July 1976, pp. 4, 69; Hank Werba, "Gore Vidal's 'Caligula' Recipe: Porn, Ideology and Spectacle," *Variety* (weekly) 284 no. 3, Wednesday, 25 August 1976, pp. 33, 66.

62. Felix: letter to BNL-SACC, 25 June 1976, DDP 360–20. See also Technicolor SpA: letter to BNL-SACC, 7 October 1976; as well as BNL-SACC: letter to Felix and PAC, 21 October 1976, DDP 360–22.

63. The repayment of the first £540,000,000 (US\$642,994.02) would be due on 4 February 1977. BNL-SACC: letter to Felix, 11 October 1976. See also Rossellini for Felix: letter to BNL-SACC, Thursday, 15 July 1976. Both letters are at DDP 360–17.

64. Ben Beker [sic]: telegram to Rossellini, 24 November 1977. FRC.

65. Amended Complaint, 28 January 1983, *Felix Cinematografica Srl and Franco Rossellini v Penthouse International, Ltd., Penthouse Films International, Ltd., Penthouse Clubs International Establishment, Penthouse Records, Ltd., and Robert Guccione*, United States District Court – Southern District of New York, 81 Civ 3435 – EW, 99 F.R.D. 167, 169 (SDNY 19 September 1983). FRC, DDP 360–26.

66. Dr Renato Lotti of SIAE (Società Italiana degli Autori ed Editori): letter to Felix Cinematografica, including modulo 294 regarding Film N. 186. DDP 360–22.

## GOVERNMENT APPLICATIONS AND AUTHORIZATIONS

THE REGISTRATION with the Italian Cinematographic Public Registry (Pubblico Registro Cinematografico), a division of the Italian Society of Authors and Publishers (SIAE), was a perfunctory matter, and so the production was assigned # 6246 on 5 August 1976.<sup>67</sup> That was the same day that the Ministry of Tourism and Entertainment approved the Italian-American coparticipation, with an indication that nationality would be determined only after production had concluded.<sup>68</sup>

The various applications for approval, aid, and certificate were sent in late June 1976,<sup>69</sup> on 26 June 1976,<sup>70</sup> 2 July 1976,<sup>71</sup> 3 September 1976,<sup>72</sup> 16 September 1976,<sup>73</sup> and 18 October 1976.<sup>74</sup> The Ministero at long last granted an *interim* certificate of Italian nationality on 27 October 1976.<sup>75</sup>

67. We do not have a copy of this registration, but it is referenced in Concluding Arguments, 5 April 1990, *Felix Cinematografica Srl contre Penthouse International, Ltd., and Penthouse Films International, Ltd.*, Cour d'Appel de Paris, [date and file number unknown]. FRC. Rossellini's surviving papers include only an official reference to this document, dated 25 May 1985, which includes a further reference to Ministero del Turismo e dello Spettacolo memo number 27698 of 24 May 1985 (partially translated into English on 3 April 1986). FRC.

68. Ministero del Turismo e dello Spettacolo: letter to Felix, 5 August 1976. Permit # 6246 is confirmed in Lotti, SIAE: letter to Felix, 2 December 1983, including Modulo 294. Both documents are in DDP 360–22. A fragment of the second document is also in DDP 360–27.

69. Rossellini for Felix: application to the Ministero del Turismo e dello Spettacolo, n.d. Interestingly, this application includes numerous proposed names for cast and crew who were never used. It also specifies that the coauthorship meant simply that the Italian version would be by Masolino d'Amico whereas the English version would be by Gore Vidal. FRC.

70. Rossellini for Felix: application to the Ministero del Commercio con l'Estero – Direzione Generale Import Export, Ministero del Turismo e dello Spettacolo – Direzione Generale Cinematografia, and Ufficio Italiano Cambi: Associazioni in partecipazioni [sic] italo-americana film “Caligula” (Caligola), 26 June 1976, for approval of percentage shares; Rossellini for Felix: application to the Ministero del Turismo e dello Spettacolo, 26 June 1976, re approval of coparticipation with Penthouse Films International. All in FRC.

71. Lina Pagni for Felix: application to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo-Cinematografia, 2 July 1976, asking for interim certificate of nationality; Pagni for Felix: application to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo-Cinematografia, 2 July 1976, declaration that shooting will commence on 28 July 1976; Pagni for Felix: application to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo-Cinematografia, 2 July 1976, declaration of provisional title, *Caligula* (still with erroneous credits). All in FRC.

72. Felix: letter to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo-Cinematografia, 3 September 1976, attachments in furtherance of the declaration of the commencement of work. FRC.

73. Felix: letter to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo, 16 September 1976, further attachments. FRC.

On 14 July 1976 the Ministry of Tourism and Entertainment forwarded Felix's request for approval of the Joint Production to the Italian Exchange Office and to the Ministry of Foreign Commerce.<sup>76</sup> Then on 20 July the National Association of Cinema and Related Industries (Associazione Nazionale Industrie Cinematografiche ed Affini, or ANICA) granted approval to the coparticipation.<sup>77</sup>

#### VIDEO SOUND, SA, OF ZURICH RAISES FUNDS

**T**HROUGH SALES REPRESENTATIVE DON GETZ, Penthouse/Video Sound began to raise funds only in September, a month after filming had begun. Getz presold distribution rights to Mercúrio Films in Spain, Doperfilme in Portugal, Tuschinski Film Distribution in the Netherlands and Producciones Gustavo Altariste in México.<sup>78</sup> By mid-October distribution rights had been sold to Stockholm Film for Sweden, Fram Film for Norway, and Constantin Distributors for Denmark,<sup>79</sup> as well as Blanco y Traveisco for Venezuela, and American Distributors Inc for Perú, Bolívia, Chile, and Ecuador.<sup>80</sup> At about the same time Don Getz signed agreements with Roadshow Distributors Propriety, Ltd., for Australia, Pentrise-Gelfand Film for Israel, Victor Michaelides for Greece,<sup>81</sup> and Norma Vigo Film for Argentina.<sup>82</sup> That's a total of 16 countries, not including PAC's contract for Italy. We can assume that the initial deposits were around \$5,000 or \$10,000 each. The total amounts have never been published, but surely they were substantial, though whether they totaled Penthouse's guaranteed

74. BNL-SACC: letter to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo, 18 October 1976, further attachments; Felix: letter to the Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo, 18 October 1976, declaration by Tommaso (Masolino) d'Amico that he surrenders all his author rights to Felix. FRC.

75. Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo: letter to Felix, 27 October 1976. FRC, DDP 360–26.

76. Ministero del Turismo e dello Spettacolo – Direzione Generale dello Spettacolo: letter to Ufficio Italiano dei Cambi and Ministero del Commercio Estero, 14 July 1976. FRC, DDP 360–26.

77. Carmine Cianfarani for ANICA: letter to Felix, 20 July 1976. FRC.

78. "Gore Vidal's Caligula Sold in Spain, Portugal," *The Hollywood Reporter*, 28 September 1976, p. ???; "Pix, People, Pickups," *Daily Variety* 173 no. 16, Tuesday, 28 September 1976, p. 1; "Buy Vidal's Caligula," *The Hollywood Reporter*, 8 October 1976, p. ???.

79. "Pix, People, Pickups," *Daily Variety* 173 no. 43, 4 November 1976, p. 15.

80. "'Caligula' Going to S.A.," *The Hollywood Reporter*, 11 November 1976, p. ???.

81. "'Caligula' Distrib'n Set in Australia, Israel, Greece," *Daily Variety* 173 no. 52, Wednesday, 17 November 1976, p. 12; "More Foreign Sales for 'Vidal's Caligula,'" *The Hollywood Reporter*, 18 November 1976, p. ??? See also the full-page advertisement in *Variety* (weekly) 284 no. 11, Wednesday, 20 October 1976, p. 67.

82. "International Sound Track," *Variety* (weekly) 285 no. 4, Wednesday, 1 December 1976, p. 40.

\$4,500,000 remains unknown. Guccione later put this into perspective: "We succeeded in selling quite a few foreign territories, but the deals were subject to the film being accepted by the respective censors. So we found ourselves in the rather awkward position of having a lot of advance sales but no advance cash."<sup>83</sup> Guccione did not understand that this was not an awkward situation at all. Advance sales give only minimal advance cash. The remaining sums are paid upon delivery.

We have a fictional indication of Penthouse's contribution towards the production of the film:<sup>84</sup>

Franco Rossellini	per diem \$2,000 per week
Jack Silverman	per diem \$1,000 per week
	salary \$2,000 per week
Alfred Crown	per diem \$1,000 per week
	salary \$1,500 per week
Robert Guccione	per diem \$2,000 per week
Gerald Kreditor, financial consultant	\$2,000 per week
Walter Alford, Publicity consultant, paid in USA	\$600 per week
Louise Vincent, dialogue coach, paid in USA	\$600 per week
Pets (7 persons)	per diem \$1,050 per week, each pet
	salary \$5,000 per week, each pet
Giancarlo Lui	per diem \$1,000 per week
	salary \$1,500 per week
Thomas Ray, Pet security/chaperone	per diem \$1,000 per week
	salary \$1,000 per week
Publicity representatives	\$2,000 per week
de Llanos Twins	per diem \$1,050 per week
	salary \$5,000 per week

What the above does not tell us is when these payments began and when they ended, but we can make some reasonable guesses. The payments to the executives (Rossellini, Silverman, Crown, Guccione) would presumably have commenced effective mid-June 1976 and ceased at the end of the year, a total of 29 weeks, or \$275,500. As we shall learn below, Crown's payments were not \$2,500 per week, but only \$650 per month, on top of the \$2,000 per month for his

83. Jim Robbins, "Mostly Four-Wall Deals: Guccione Boasts Confidence in 'Caligula' Release Plan," *Boxoffice* 116 no. 20, 19 May 1980, p. 8.

84. Silverman of Penthouse International: letter to Rossellini of Felix, 22 December 1976. DDP 361-4.

accounting firm, or about \$533 per week. If we make that adjustment, the 29-week total becomes \$218,457. The payments to ongoing staff (Kreditor, Alford, Vincent, and the publicity representatives) presumably commenced in the last week of July, shortly before shooting, and presumably ran to the end of year, a total of 23 weeks, or \$119,600. The first three Penthouse Pets were placed on duty in mid-September, and they remained on call through mid-December, a total of 14 weeks. They are not included in the above chart. The seven Pets referred to in the chart arrived on 4 October 1976 and were on call for a total of 11 weeks. As we shall learn below, the ten Pets were not paid anything close to the figures above. They collectively received a grand total of \$10,708, and some of that was for their work in the "additional scenes," which were not part of the Felix-Penthouse contract. In addition to that negligible honorarium, their flights and hotel rooms and meals were surely looked after, but that would hardly amount to more than the smallest fraction of the specified \$6,050 per week. Thomas Ray (real name: Thomas Raymundo) was also not part of the Felix-Penthouse contract and should not have been included in the film's budget.

There are further problems. Giancarlo Lui was working on Penthouse's promotional featurette, not on *Caligula*, and so his \$2,500/week should not have been included in the movie's budget. What's more, he was earning only one-fifth of that amount, \$500/week. The de Llanos twins were in only a single shot during the Harem Monsters scene, and so the qualifier "per week" should not be taken seriously, since they were on set for probably less than one week, pro-rated. For the sake of argument, let us assume they worked a full week and were paid \$6,050. When we make the corrections and add up the costs, we arrive at \$354,815.

In addition to the above, we have some of Penthouse's other expenses. Penthouse paid \$150,000 of Vidal's script-writing fee.<sup>85</sup> We have seen that Penthouse paid Felix to cover the initial \$7,500 payment to Tinto Brass,<sup>86</sup> \$7,521.21 to cover some of Felix's expenses, and another \$20,000 to cover the initial payments to Sergio Galiano, Mario Di Biase, Danilo Donati and his assistants, and various office personnel.<sup>87</sup> As we shall determine below, Penthouse paid a portion of the lead actors' salaries: \$23,941.31 to Malcolm McDowell, \$11,970.66 to Peter O'Toole, \$13,167.72 to Helen Mirren, and \$3,591.20 to John Gielgud. There was the raw stock, of course, and when we subtract the charges for Giancarlo Lui's 16mm documentary and the charge for the film for

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85. Joint Venture Agreement, 6 October 1975, FRC, DDP 360-17, DDP 361-4.

86. Silverman of Penthouse International: letter to Rossellini of Felix, 11 March 1976, DDP 361-4.

87. Silverman of Penthouse International: letter to Rossellini of Felix, 17 March 1976, DDP 361-4.

the “additional scenes,” we are left with \$125,100.80 (see below). That adds up to \$362,792.90. When we add this to the previous subtotal, we get \$717,607.90.

There were also office expenses, such as telephones and office supplies, but they were never meaningfully accounted for. As we shall see later in the chapter, Penthouse paid other expenses as well: \$436,893 for insurance through Alfred G. Ruben & Company; \$26,644.02 for legal services through Weissberger & Harris; \$8,146.74 for publicity materials at the May 1976 Cannes festival; \$2,872.93 for Creative Typographers; \$11,091.46 for MacNaughton Lithograph Company; \$26.15 for Joyce Expediting Service; \$1,500 to Daniel Maffia for his logo; \$500 to Michael Sweret for the poster design; \$4,041.42 to The Typros; \$16,669.40 to Tinker-Campbell-Ewald for photocopies and typography; \$375 to Lehman Engel for a discussion about the music score; \$26,549.21 for air flights (Rossellini, Guccione, Silverman, Mr and Mrs Crown, Thomas Ray, Tony Leeds); \$18,085.94 to Guttman & Pam for publicity; \$2,947.78 to Nehls & O’Connell Inc (a forwarding agency that arranged for shipping of the raw stock from New York to Rome); \$1,900 for the 24 March 1976 advertisement in *Variety*; \$1,375 for the 25 March 1976 advertisement in *The Hollywood Reporter*; \$1,250 for the 26 March 1976 advertisement in *Daily Variety*. (Not included are various other advertisements such as the *Variety* advertisement of 20 October 1976, which is not documented. There were probably a few other expenses as well that similarly remained undocumented.) That totals \$560,868.05. When we add that to the previous \$717,607.90 we get a grand total of \$1,278,475.95 as Penthouse’s contribution towards the production of *Gore Vidal’s Caligula*. As we can see, much of that money was for peripherals, such as advertising, office expenses, travel, and insurance. Only a fraction of it was for the actual making of the film. It was Felix that covered the actual production costs (materials, construction, studio rental, below-the-line salaries, and so forth), through moneys raised from a bank loan and two investors as well as through its own small funds. There are problems with a total Penthouse contribution of \$1,278,475.95, because other documentation provides figures that contradict the above chart. Yet no matter how many adjustments we make, the result always hovers somewhere in the vicinity of \$1,278,475.95, never going as low as a million and never getting as high as a million and a half. Penthouse, of course, continued to contribute to post-production costs, for totals that will be examined, insofar as they can be examined, later in this book.

Set construction began in April 1976, shooting began in early August, and at first the production operated smoothly. Then production slowed down, for reasons never explained. The projected 15-week schedule was stretched out to a

maddening 21-week schedule. Outdoor scenes scheduled to be shot in September and early October were delayed until November and even late December, forcing actors to perform outside, nearly nude, in the freezing cold in wintertime. Malcolm McDowell explained this as best he could figure it out: "They kept running out of money. Not running out, but, you know, money was always in some accounts and nobody could get to it or something, I don't know. There was always some kind of problem going on."<sup>88</sup> Elsewhere he did not hedge his words so much: "I'd just hate to think how much money was stolen. Millions, probably."<sup>89</sup> Helen Mirren hinted at something of this nature as well, when a journalist asked her for horror stories: "It was a great education really. It was a liberating education in a sense. It was very foul a lot of it, not so much what was going on on the screen as what was going on off the screen... very corrupt."<sup>90</sup>

Giancarlo Lui comments about financial setbacks on his 16mm promotional film:

I cannot say about the feature film because I wasn't involved or interested in its financial transactions, but I know that personally I experienced delays partly because at times Gerald [Kreditor] was dragging his feet but mostly because of the time required to import foreign currency. What now is achieved with a click on the computer, in 1976 it took a minimum of a week to ten days. Once the Banca Commerciale Italiana had me waiting close to two unbelievable months because they had no record of a transfer. This happened once, but several other times it took well over two weeks before I could see the money deposited into my Rome's bank account. I had packs of AMEX traveler checks for several thousand dollars to pay my bills, the hotel, food, etc.<sup>91</sup>

It is time now to bring up an anecdote. McDowell recalled:

I took a journalist from the *New York Times* to the eight-acre set outside Rome one day and Guccione told him the movie cost \$8 million. The journalist looked around at the set and said, "Well, it looks like \$16 million." Next day another writer asked Guccione how much the movie cost, and Bob said, "\$16 million." I told Guccione, "Look. I've got a

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88. Sean McCarthy, "O Very Lucky Man!," *Film Ireland*, May/June 2005, p. 38.

89. Roderick Mann, "When Malcolm Got into Bed with a Horse," *The Sunday Express*, 3 December 1978, p. 23; also published as "The Horsey Set in 'Caligula,'" *The Los Angeles Times Calendar*, Sunday, 3 December 1978, pp. 48–52.

90. Steve M. Chagolian, "Mirren on Shakespeare, Peter Brooke & the Good Parts: For Helen Mirren, the Professional Pinnacle Isn't Quite High Enough," *Bruin Review* [UCLA], 26 May 1982, pp. 19–21.

91. Giancarlo Lui: email message to RS, 24 November 2015.

piece of this picture. And you've just spent \$8 million since yesterday."<sup>92</sup>

#### SUITCASES OF MONEY

IT IS NOW TIME to bring in some anecdotal evidence that cannot be proved or even properly referenced. Under normal circumstances such evidence should not be taken seriously and should not even be admissible. In the present circumstances, however, there is no reason to suppress it, even if it turns out to be completely false. In some form or other this material has already been published, and it will continue to circulate in the rumor mills; so we should examine it as best we can.

Assistant director Piernico Solinas's *Ultimate Porno* first introduced the world to a story about money. It began simply enough, and the evidence we have amassed above makes the following passage rather believable:

I had more xeroxes to make. Since the machine in the office never worked, I went for money from senior accountant Marcello Romeo to send Luca and Giovanni out to make them elsewhere. We also needed more videotapes.

Romeo sucked on his pipe, smiled at me like a long-lost friend, then said, "We haven't got ten lira to unscrew the filler plug on a lighter. No. Money."

"What do you mean, no money? The film starts next week."

"I don't know, Franco says there's a bottleneck somewhere along the line. We aren't receiving any money...."<sup>93</sup>

A few hundred pages later is a follow-up story, told to Piernico Solinas by an anonymous Penthouse employee he was dating at the time. The conversation as quoted, and the story it tells, is not so believable, especially since the three-day strike actually lasted a mere few hours:

"Franco was lucky the strike lasted only three days."

"Why?" she touched my arm. "If he paid everybody —"

"But he didn't. The grips, the gaffers, the camera operators, the technicians most important to actually shooting the film were paid the three weeks due them, but not the overtime. The rest of the workers got part of what they were owed and an empty promise of the rest over the course of shooting. The extras and stuntmen got nothing."

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92. Paul King, "McDowell in Tune with the Times: Clockwork Orange's Bully Acquired a Taste for Comedy," *The Toronto Star*, Tuesday, 11 September 1979, p. C1.

93. Piernico Solinas, *Ultimate Porno: The Making of a Sex Colossal* (New York: Eyecontact, 1981), pp. 69–70.

"Worker solidarity?"

"Divide et impera is an older Roman concept. But what I still don't understand is why it happened."

"Because you weren't paid."

"Yes, I know, but why? They didn't really believe they could make a movie without paying the workers — man, they aren't that out to lunch, are they? I mean, from where we were, the whole thing was totally mystifying."

"It was totally mystifying to Penthouse, too."

"How could that be? They controlled the money."

"That may have been the way it appeared to you at the time, but — listen, Kreditor would come every week or so to get a projection of expenses for the next week. But there always seemed to be something wrong with the projections, because two days after the suitcase of money arrived in Rome, Kreditor would get a call from Franco for more. Puzzled, Kreditor would return and Franco would show him a pile of bills and receipts which, since they were all in Italian, could have been Franco's laundry tickets for all Kreditor knew. Kreditor looked at the books, but they were only the aftermath, and besides, how could he tell whether the figures were accurate, or whether all the money had really been spent, whether all the suppliers were actually paid?

"It got so that the film's financing came down to these meetings where Kreditor would sit across the table from Franco and ask how much he needed, and Franco wouldn't know how much to dare ask for, so he wouldn't say anything, so Kreditor would start throwing out numbers, 100,000 dollars, 150,000 — generally, when Kreditor got above 200,000, Franco would beam and exclaim, "That's enough." Of course, it never was, but only Mario DiBiase and Danilo Donati could possibly have known that it wasn't, and they didn't speak English well enough, so they couldn't tell Kreditor, so Kreditor just kept getting more and more frustrated, not being able to understand why, no matter how much money they put into the film, they could never get current, they were always paying off debts."<sup>94</sup>

A casual reader of *Ultimate Porno* would accept that story as credible. A critical reader who is somewhat familiar with the production and its financing would not accept it at all. If Franco Rossellini had been lying about the film's finances, and if he had been less than forthcoming about the funding needed, he would have been in breach of contract. Penthouse would have sued him and moved the production to a different company. Gerald Kreditor, as odd as he could be, was no fool, and he would not have tolerated any vagaries related to

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94. *Ibid.*, pp. 216–217.

finance. The story as told makes Franco Rossellini the con artist and Gerald Kreditor the hapless victim. As we shall soon see, those were not the rôles they played at all. The anonymous Penthouse employee, if she did in fact speak any words resembling the passage above, was surely contributing to the ongoing *divide et impera* by painting Franco Rossellini in the worst possible light.

There is something else troubling about the anonymous Penthouse employee's statement: the mention of the suitcase of money arriving weekly in Rome. Let us think this through. The planned Felix/Penthouse joint account never came to be,<sup>95</sup> but nonetheless Penthouse was able to deposit funds into Felix's Chase account in New York City. So what is all this about a suitcase of money? The story is absurd. Giancarlo Lui's reaction is priceless:

Suitcase of money: just an image? A way of saying "bags of money" — a lot of unregulated money coming in from some unknown source?

It is possible that maybe once, needing money in a rush and unable to wait a week or two for a bank's transfer to become available, someone might have taken a stupid risk, stashed dollars into his socks and crossed the border or went through Customs at Rome's airport. But at the time, and still today, the Italian Guardia di Finanza boards all trains in Switzerland and seriously checks suitcases, hand luggage, etc. The same at airports. Taking money "regularly" into Italy from Liechtenstein or Zürich was risky and people such as Bob or Gerald simply couldn't afford arrest, prosecution and jail.

Conducting business above ground also had a secondary advantage. A foreign subject importing foreign currency into Italy was allowed to export the same amount without going through all the import/export requirements and permissions for such transactions, particularly difficult at that time. PH and, indirectly, Felix could have benefited from it.<sup>96</sup>

There is more to the story, though. On Friday, 2 February 2007, I was first notified of the forthcoming "Imperial Edition" *Caligula* DVD box set. I met with the set's producer, Nathaniel Thompson, and after viewing some never-before-seen rushes and rough cuts, we headed out for dinner at a restaurant. While at dinner, Nathaniel asked, "How much did *Caligula* really cost?" I confessed that I had not yet even begun to unravel that vexing mystery. Nathaniel explained why he had asked. When he had visited Penthouse headquarters in Manhattan, he met an elderly grey-haired gentleman, whose name he could not remember, who had worked at Penthouse since the 1970s. This gentleman told Nathaniel a story

95. Lupoi: telex to Penthouse Clubs International Establishment, 22 January 1981, DDP 360–17.

96. Giancarlo Lui: email message to RS: 24 November 2015

of the day when he entered Bob Guccione's office to witness him stuffing a suitcase with cash. Guccione explained to him that, in Italy, a film could not be made without bribes to local officials, and that for *Caligula* the bribes amounted to a million dollars a month. Because payment of bribes had to be kept off the books, it had to be done in cash. That is why, every month, he stuffed a suitcase with a million dollars in cash and smuggled it to Rome.<sup>97</sup> There is a problem with that story as well, and it was likely garbled in the telling.

I ran that story by Tag Gallagher, an authority on Italian films and their financing, and he responded: "I have no idea about the bribes, but \$1m a month sounds a bit excessive. Things were awfully cheap in Italy in 1971 when I was there. A good restaurant meal with wine and dessert was \$1.60."<sup>98</sup>

If bribes were an everyday fact of movie life, they would simply have been included in the budget. If the payments had to be disguised, that would not have been a problem for a savvy accountant who could hide the extra expenses in the ledger sheets. More likely, though, the payments would not need to be disguised. The bribes could be a line item in the budget, under the name of a front organization. There would have been no reason on earth to stuff suitcases with money and risk them getting confiscated at Customs either in New York City or in Rome. More realistic is Giancarlo Lui's assessment:

A gross exaggeration. Yes, bribes existed, but in my experience amounted to five, ten, maybe fifty dollars to get an appointment, a favor, or enter a Ministry and get into line with a low number provided by the doorman. The real problems for PH's accountants in NY were not the bribes, but the fact that the Italian economy was 90% submerged. Whether restaurants, taxis, food merchants, etc., people charged less if paid in cash under the table. No one wanted to write up a "fattura" (invoice) that would have included VAT. What I and everyone else were getting instead were quasi-illegal receipts or scribbled pieces of paper. It drove the US accountants (and Gerald) absolutely nuts. But he, Gerald, knew it because that was the way he had to function himself whenever he came down to Italy. So in essence the accountants had to use experience, trust and common sense in reviewing the amounts charged for taxis, restaurants, etc. But as I said, we're talking about petty cash, not millions of dollars, and not even if millions of Lire equal more or less to USD 1,000.00.

There may well have been suitcases filled with money, but they would not have gone through Customs nor would they have gone towards production.

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97. Nathaniel Thompson: personal conversation with RS, 6 February 2007.

98. Tag Gallagher: email message to RS, 5 March 2007.

Whatever the truth may have been, the tale of cash-filled suitcases being smuggled weekly or monthly to Rome made for a good story, a story that, ironically, cast suspicion not upon Penthouse, but upon Franco Rossellini, who for all we know may have lived out the remainder of his life completely unaware of such a rumor.

#### CAMBITAL NULLA OSTA 500227

TOWARDS THE END OF THE PRODUCTION, on 16 December 1976, the Italian Exchange Office granted its permit number 500227 to *Caligola*, approving the Italian-US coparticipation with a split of 62.5% to Penthouse and 37.5% to Felix.<sup>99</sup> This permit required Felix to submit the final costs of the film and the final balance sheet, along with a summary of costs borne by foreign investors, such as Penthouse.<sup>100</sup> Should the authorities refuse to grant final approval to the coparticipation, Felix would need to inform the Exchange Office of this and would need to detail all the final financial arrangements with the foreign investors.

There is an unfortunate gap in the record, but there can be no doubt that Felix submitted the required paperwork, for there is nothing in the subsequent documentation that even hints that this was not taken care of. The Exchange Office was completely satisfied that protocol had been met.

Then there is a jump to 29 March 1977, when we find a letter from the Ministry of Tourism and Entertainment. It is a response to Felix's proposed "Withdrawal of Garnishment."<sup>101</sup> Cucine Mobili Dino Srl, a catering service represented by Grazia Pirisi, foreclosed on all *Caligula* materials pending payment of £24,231,845 (US\$27,489.01), which included interest of £800,000 (US\$907.53).<sup>102</sup> After some bureaucratic complications, this matter was settled on 16 April 1977. That may seem insignificant in the larger scheme of things, but I

99. Ufficio Italiano dei Cambi: Progetto di compartecipazione italo-statunitense, N. Mecc. Dita 707095, Nulla-Osta No. 500227, 16 December 1976, DDP 361-4. Allegato al Nulla-Osta N. 500227, Ufficio Italiano dei Cambi, 16 December 1976, DDP 360-27 and 361-4. The latter includes an incomplete English translation.

100. I. Del Vecchio and L. Graziosi for the Ufficio Italiano dei Cambi: permit (*nulla osta*) number 500227 issued to Felix Cinematografica, 30 December 1976, with an attachment dated 16 December 1976. The Ufficio Italiano dei Cambi later issued a revised permit number 401217 on 28 November 1977. FRC. The latter document is also on file at DDP 360-22.

101. Dott. Aldo Saura for the Ministero del Turismo e dello Spettacolo: Rinuncia a pignoramento addressed to Cucine Mobili Dino Srl and Felix, 29 March 1977. FRC.

102. Dr Renato Lotti of SIAE: letter to Felix, including modulo 294 regarding Film N. 186. DDP 360-22.

mention this episode here in the event that there are further discoveries that establish a greater context.

#### KEEPING CINEMA SAFE FOR AMERICA

MID-WAY INTO PRODUCTION, IN NOVEMBER 1976, Guccione had Franco Rossellini and Massimo Ferrara-Santamaria arrange for Technicolor Laboratories of Rome to ship the entirety of the film to England. We do not know why Penthouse wished to remove the film from Italy. Guccione claimed this decision was because of “the peculiar laws governing a director’s rights in Europe,” but there is no reason to accept that excuse. He further explained that “[w]e even had to sneak the negative — all 120 miles of it — out of the country and into England. Don’t ask me how we did it; that’s another horror story.”<sup>103</sup> Years later he enhanced his story:

Rather than have Brass assemble the film, I stole the negative. We filled two huge suitcases with negatives; when we left Italy with our suitcases we were literally carrying \$17 million. We took them across three or four different borders. If anybody had looked at it, they would have seized the material because it was illegal in every country we went through. We managed to get it to England and started postproduction there. I became the film editor.<sup>104</sup>

The mental image of squeezing 100-odd miles of film (along with another 30 or 40+ miles of full-coat stock) into two suitcases is precious. Maybe 40 suitcases could carry all that footage, but 40 heavy suitcases would surely have caught the attention of border security. The funniest story is related by William Hawes, a professor of radio, television, and film production at the University of Houston. A person by the name of Bob Augustus, who had produced several hard-core sex films in the US,<sup>105</sup> told Hawes that he had been on the *Caligula* editing team. Hawes believed him and asked for stories. Hawes published one:

When the Italian court ruled that Tinto Brass had the right to do virtually as he pleased in editing and completing the film he shot, Guccione had to recognize that this was not going to be the film he wanted. Brass’s thematic concept was not what he wanted and the Penthouse Pets were minimalized in the film. To resolve the problems he perceived with his multi-million dollar venture, he took drastic

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103. Ernest Volkman, “Penthouse Interview: Bob Guccione,” *Penthouse: The International Magazine for Men* (US edition) 11 no. 9, May 1980, p. 150.

104. Justin Wyatt, “Emperor Bob,” *Detour*, September 1999, pp. 2–3.

105. Internet Movie Database, <http://www.imdb.com/name/nm1370066/>.

action. He smuggled the exposed film print out of Rome by wrapping it around the legs of trusted couriers who would edit it in London, once they got it past British customs. The editors, all of who [sic] were more interested in cash than recognition for their work, stayed in a small apartment, working night and day. By day they phoned instructions to Rome, telling Guccione the shots they needed to match the continuity. By night the film was developed and printed at Twickenham Studios. It was particularly difficult to salvage the orgy scene on the galley, a scene lasting nearly eleven minutes. The match/mismatch involved at times using different actors and surroundings inasmuch as the original actors were gone and the scenery was struck....<sup>106</sup>

Bob Augustus was having some fun by pulling Professor Hawes's leg. Augustus, of course, never worked on the film, and Hawes does not know the difference between a print and a negative, nor does he know that the master audio is on separate strips of magnetic-coated film. He has never handled 35mm film and does not realize that 100-odd miles of film and another 30- or 40-odd miles of magnetic-coated film cannot be wrapped around the legs of trusted couriers.

The transport of the film elements outside of Italian borders would normally have been illegal. There was a work-around, though, and it did not involve fabulous comic-book adventure stories such as those told by Guccione, Augustus, and Hawes. Massimo Ferrara-Santamaria, the former head of the Scalera studios and one of the few lawyers in the world who was "expert in international film laws and treaties," obtained, "with relative ease," a temporary Italian export license to move the negative to England for "special treatment, something that couldn't be done — or to the producers' satisfaction — in Italy."<sup>107</sup> With the export license in hand, Technicolor Laboratories of Rome simply flew the film to Technicolor Limited of Middlesex, England, by orders of "Felix Cinematografica, Srl, et al.," with the shipment insured by the Fireman's Fund Insurance Company, policy number MPT 223 60 18.<sup>108</sup> We cannot even speculate as to Felix's reasons for acceding to Penthouse's demand that the film elements be exported. Our only guess is that Penthouse must have exerted immense pressure against Felix to act against its own interests. It was the Italian National Bank of Labor, and no one else, who contractually and legally could

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106. William Hawes, *Caligula and the Fight for Artistic Freedom: The Making, Marketing and Impact of the Bob Guccione Film* (Jefferson, NC, and London: McFarland & Company, 2009 [actually issued on 18 November 2008]), p. 95. See also p. 231 ch. 3, fn. 31 and pp. 233–234 fn. 41.

107. Lui: email message to TR, 21 August 2010.

108. Fireman's Fund Insurance Company: Endorsement No. 17, 23 March 1977. DDP 360–23.

decide where the master elements would be housed, and the Bank was not notified of the export.

Shipments were piecemeal, as Penthouse still had outstanding bills. Why Penthouse still had outstanding bills is anybody's guess.

As soon as the final bills were satisfied and all the film and audio elements had arrived in England, Penthouse fired Brass on 18 April 1977 during the editing, charged him with breach of contract, and sued him for damages. There is evidence that Franco Rossellini did not approve of Brass's dismissal,<sup>109</sup> but he did not intervene. On the contrary, as Brass's employer, he collaborated. Brass countersued, but he ran into a problem. Since Guccione and Penthouse were foreigners without Italian domicile, Brass had no legal standing to sue them. So he sued Franco Rossellini and Felix instead. Rossellini then petitioned the court to integrate Penthouse *Clubs* International Establishment, into the suit. He did not seek to integrate Felix's coparticipant, Penthouse *Films* International.

One of the arguments in Brass's arsenal was the proof that, with a loan from the Italian National Bank of Labor, the film was legally Italian and that its shipment across the borders prior to completion of editing and without proper government authorization had been illegal.<sup>110</sup>

The Italian National Bank of Labor took notice of this suit, and its directors were not amused by the illegal breach of protocol, as they had never authorized the export of the film elements. On Monday, 4 July 1977, the bank wrote a letter to Technicolor UK, with copies to Felix, Technicolor Rome, and PAC, demanding that Technicolor UK return the film to Technicolor Rome, and demanding that Felix and/or PAC see to it that the Fireman's Fund Insurance Company of Rome again insure the film against potential damage or loss in transit.<sup>111</sup>

To Penthouse's great surprise, Brass won his suit. On 9 July 1977 Judge Giovanni Giacobbe issued a "preliminary injunction," or temporary restraining order. He ruled that Felix and Penthouse were in breach of contract, and further ruled that the film could not be released without Brass's express approval. More frighteningly for Penthouse, Giacobbe ruled that, as *Caligula* was a film of Italian nationality, it must be returned to Italy.

Penthouse reacted to Giacobbe's ruling — and quickly. According to news reporter Larry Sutton, Franco Rossellini hinted at what happened behind the

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109. Maurizio Lupoi: letter to Guccione, 12 September 1980. DDP 360–20.

110. "Tinto Brass Lawyers Seek to Pry Loose Long-Shelved 'Caligula,'" *Variety* (weekly) 293 no. 3, Wednesday, 22 November 1978, p. 31.

111. BNL-SACC: registered letter to Technicolor Limited of Middlesex, with copies to PAC, Felix, Technicolor SpA, and Fireman's Fund Insurance Company, 4 July 1977. DDP 360–22.

scenes: "an associate of Guccione told [Rossellini] the publisher wanted to hire two killers to murder the director."<sup>112</sup>

The first matter at hand was to seek an injunction not to allow anyone to move or even touch the negative prior to the settlement of further legal disputes. That injunction was issued before the end of August, and it served to keep the negative in England.<sup>113</sup>

Of course, there was no logical reason for this. Tinto Brass did not have final cut of the film except perhaps in Italy, and Guccione had no financial interest in the Italian release. Brass had first cut and by contract would deliver the answer print. After that, his services would no longer be required, and Penthouse could reconfigure the film however it pleased. Of course, that would necessitate recutting the negative, but that would be a small price to pay. It was in Penthouse's best interest, therefore, to keep Brass on the payroll and to help him complete his task as quickly as possible. Guccione, though, had learned his lesson vicariously from Gore Vidal's previous experience with the *Myra Breckinridge* film. He feared that Brass, like Michael Sarne before him, would deliberately drag out his editing chores until immediately before the world premiere, so that Penthouse would never have the time to re-edit his work. Guccione thus had no intention of allowing Brass access to the film, at any cost. He was so obstinate in this compulsion that he knowingly risked losing all his distribution contracts. He had no worries about losing the film elements, since they were physically beyond Italy's borders and thus beyond the reach of Italian law.

That brings us to yet another fiction, for the injunction was not enforced! Giancarlo Lui allows us another look at the reality behind the headlines. He corroborates Guccione's well-known account about hiding the film in mismarked cans and keeping one step ahead of the lawyers and unions, except that there was no high drama involved. The matters were routine.

I and others from Penthouse had the right to enter the vaults and remove our materials any time we wanted; and that is what we did

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112. Larry Sutton, "'Caligula' Lawsuit Is a Steamy Affair," *The Buffalo News*, Sunday, 16 April 1989, p. ????. This was excerpted from a wire story emanating from the *New York Daily News*, though the *Daily News'* own published version of the story ("Action! at Penthouse Trial," Wednesday, 12 April 1989, p. 2) was entirely different. The testimony in question was given on Tuesday, 11 April 1989, in the Supreme Court of the State of New York – County of New York, in the case of *Marjorie Lee Thoreson, a/k/a Annika di Lorenzo, v Penthouse International, Ltd., and Robert Guccione*, 149 Misc.2d 150, 563 N.Y.S.2d 968 (23 October 1990).

113. "Caligula Action Adjourned," *Screen International* no. 105, Saturday, 17 September 1977, p. 13.

whenever Bob or Ben [Baker] felt safer by changing address. Once or twice this happened on short notice (the drama?): when that happened, I simply rented a large van and transferred the film cans from one place to another with the help of a few hired hands.

If I am not mistaken, Tinto Brass's lawsuit was still going on and he was as well after the negative. Yes, from Ben's overall perspective, the negative, etc., had to be hidden to be kept safe, taking as well into account the fear that the police or some other authority could clamp down on our operation because of the rumours over the film contents.<sup>114</sup>

We also need to gauge another reality: In nine weeks of editing, Brass had cut the first half of the film together — 84 minutes — though he would not admit it, and claimed to production that he had edited only 38 minutes. Eighty-four minutes comes to about two minutes pieced together each working day, which was a reasonable rate of progress. By mid-June he would have completed the rough cut and begun the postsynchronization. He could have completed his work well before the proposed October 1977 première. By dismissing Brass Penthouse missed the deadline.

Since a temporary restraining order could not be appealed, Penthouse attempted to annul it by proving it legally groundless. To this end, Penthouse sought to prove that *Caligula* was not an Italian film! Gerald Kreditor drafted an assignment on behalf of Penthouse Films, by which Felix would declare that it had defaulted and had raised no funds whatsoever towards the production of the film. In consequence, Franco Rossellini, on behalf of Felix, would assign all rights, including copyright, to Penthouse Films International of the USA.<sup>115</sup> The relevant terms were:

WHEREAS:—

(1) The parties above mentioned entered into a joint production contract dated the 15th day of June 1976 in which the parties agreed jointly to participate in the production of the motion picture Gore Vidal's *Caligula*

(2) The said joint production contract provided that Felix would procure the sum of three million dollars U.S. in connection with the said production and that the remaining expenses of the film then estimated at four million five hundred thousand dollars would be met by Penthouse. The total of seven million five hundred thousand would thus be provided

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114. Lui: email message to JEC, 14 February 2011.

115. FRC, DDP 360–17, 360–27.

(3) In fact the whole of the production costs to date amounting to approximately \_\_\_\_\_ million dollars have been procured by Penthouse and no sum at all has been procured by Felix

NOW IT IS HEREBY AGREED AND DECLARED between the parties that in consideration of the fact that Felix has not procured its above mentioned share in connection with the said production until such date [*handwritten amendment:*] *in any event not later than the \_\_\_\_ day of \_\_\_\_ 19 after which date without such payment as Felix shall so procure by payment of the said three million dollars to Penthouse Felix hereby assigns all and every right of whatever nature and howsoever arisen it has or may have in the film in all its aspects to Penthouse whether or not such rights are referred to in the joint production contract above mentioned or whether arising to Felix in any other way whatsoever to the effect that the ownership of the film in all its aspects and all rights of whatever nature in relation to the film are hereby forthwith unequivocally and without reservation vested in Penthouse* [*handwritten amendment:*] *Provided always that if the said sum of 3000,000\$ [sic] shall not be procured by the \_\_\_\_ day of \_\_\_\_\_ in respect of which time this assignment shall become effective & perfected in any event shall be of the essence.*

The handwritten amendments were Rossellini's hedge. With them, he could pretend for the moment that he had raised no funds, but once the legal danger was over, he could honestly claim to have raised his share of the production costs. Those two handwritten amendments speak volumes. Rossellini understood full well that his signature on this unamended piece of paper would ruin him. Kreditor rejected Rossellini's amendments and insisted upon the original typewritten draft, with the verbal assurance that the assignment would never be operative, but was only a fiction to present to the court. Rossellini undeniably was under tremendous pressure, and signed against his will. Cleverly, he signed in the wrong place on the form. After signing and submitting this assignment, Rossellini came to his senses, set aside his fear of Kreditor, and told him in no uncertain terms that Penthouse must not countersign or execute the document. Kreditor obeyed.<sup>116</sup>

The draft assignment was not dated, its blanks were not filled in, it was not countersigned, it was not witnessed, it was not notarized, and it was not filed with any government agency. Despite that, Rossellini's signature on that draft

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116. Judge Edward Weinfeld, ruling on 19 September 1983 on Felix's first suit against Penthouse, noted that "Rossellini contends he signed it at the request of an accountant for defendants for their use in England but was told 'that it would not constitute an agreement binding upon us.'" *Felix Cinematografica Srl and Franco Rossellini v Penthouse International, Ltd., Penthouse Films International, Ltd., Penthouse Clubs International Establishment, Penthouse Records, Ltd., and Robert Guccione*, United States District Court Southern District of New York, 81 Civ. 3435, footnote 11. FRC, DDP 360-27.

assignment would haunt him for the remainder of his life. Penthouse would repeatedly exhibit this document in various legal proceedings to demonstrate that it had paid for the production in full and that Felix had entirely defaulted and assigned all its rights to Penthouse. Rossellini had an impossible time defending himself.

Now it is time to pause and reflect. Felix was the producer by contract, in fact, and by law, and had contributed three-quarters of the budget. Felix had allowed an investor to redesign the film, to interfere with the casting, to alienate the writer who was Franco's good long-time friend, to export the film illegally from Italy despite Felix's accountability to the Italian National Bank of Labor, and to dismiss the director, which could well delay the release of the film, which would force Felix to go into default with its creditors. Felix, instead of contesting Penthouse's decisions, joined it as co-defendant. And now, as a *coup de grâce*, Penthouse demanded that Felix falsely claim not to have paid for any part of the production and to turn over the film, the materials, and the copyrights, without charge. Though by now he surely sensed that Penthouse was attempting to take over his production, he continued to be coöperative. Why, we shall probably never know. Giancarlo Lui has an intuition about this:

I suggest that Franco was simply miserably strapped for money and had to bend with PH's wind. I had forgotten about it, but on and off he used to ask me for ridiculously small amounts which I gave him out of pocket. I would then get reimbursed by PH by including these small loans in my budget. No one at PH ever objected and I was always repaid.<sup>117</sup>

Penthouse operated on multiple fronts to win its way with the film. The most sensible approach was that of Alfred W. Crown, the senior vice president of Penthouse Films International. Crown arranged a face-to-face meeting with Tinto Brass.<sup>118</sup> Brass's wife Tinta was there as well, to ensure that there would be no misunderstandings due to Brass's imperfect English. They came to a preliminary agreement, and Brass was then willing to consider letting the film stay in England. Crown proposed two versions of the film: one edited by Brass for Berne Convention territories, and one edited by Russell Lloyd for the rest of the world. Brass was not happy about this idea but was open to it. Crown thus proposed that a duplicate negative be made from the original. Lloyd would continue editing the original rushes, and Brass would edit duplicate rushes. The negatives

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117. Giancarlo Lui: email message to RS, 24 November 2015.

118. Al Crown, Attendance Notes on Conversation of Al Crown with Tinto Brass, 2 September 1977. Bob Guccione's handwritten notations are in the margins. FRC.

would not be cut until each side had seen the other's fine cut. Brass warned Crown that Lloyd's version would not be as popular, and he further warned Crown that the time required to code a new set of rushes would be prohibitive. Crown assured him that Guccione and Rossellini were willing to spend whatever time was needed.

Crown and Brass discussed ways to save money. Crown was certain that, for the most part, the two versions of the film would be identical, and funds could be saved by not doubling the work for identical sequences. Brass knew better and said he doubted there would be any similarities between the two versions.

They further discussed the problems with accessing the negative, which also hindered the creation of Maurice Binder's proposed opening-title sequence. Brass also asked that unpaid salary and expenses owed at last be paid.

Brass was opposed to using the Prokofiev and Khachaturian ballet excerpts that Guccione wished to accompany the film. Crown discussed this with Brass at length, encouraging him not to go against the idea until he had seen it work in practice. He was quite sure that Brass would be won over once he could watch the film with that music mixed in.

Crown even proposed that if Brass were to be willing to settle out of court, Penthouse would as well, and they would simply agree to release Brass's version to Berne Convention territories and Lloyd's version everywhere else.

Brass wanted a further meeting, this time with his lawyer (Vincenzo Siniscalchi) present, along with Crown, Guccione, Kreditor, and Baker as well. He wanted no one else present. He and Crown shook hands as they parted. Guccione read Crown's lengthy memo on the meeting, and he too agreed to allow Brass access to a duplicate negative. With this sensible compromise, all looked well.

The objective of that conciliatory meeting would never be met. The British court's injunction prohibited anyone, for any reason whatsoever, from touching the negative until all parties had settled all disputes. Though Penthouse was defying that injunction for its own purposes, it used that injunction as an excuse to prevent the making of duplicates for Brass's use. Also, and predictably, not all parties wished to settle. Three of the mortgage holders, Italian distributor PAC, the Chemical Bank, and the Italian National Bank of Labor, had no interest in joining Penthouse's plans, which would require them, as well as Technicolor, to sign on to Penthouse/Felix's lawsuit against Brass.<sup>119</sup> The National Bank of Labor was particularly offended since it alone had the right to determine where the

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119. "Caligula Action Adjourned," *Screen International* no. 105, Saturday, 17 September 1977, p. 13.

negatives and other master materials would be stored. By moving the film out of Italy, Felix was in breach of its contract. PAC, further, thought that Penthouse's wresting the film away from Brass was highly unprofessional.<sup>120</sup>

Felix had contracted to pay the mortgages held by these three lending institutions from boxoffice returns, and that led to an impasse. If the film could not be released, Felix could not pay, and so long as the lending institutions abided by Italian law, the film would not be released, for without their coöperation, the negative could not be cut. On 12 September 1977 British attorney Ben Baker, claiming to represent Penthouse Clubs International Establishment as well as Felix, appealed to the Italian National Bank of Labor to authorize Technicolor to make new positives, and assured the bank that there would be no effort to cut the negative at this stage.<sup>121</sup> Justice Slade, Baker reported, required that the bank be joined in the action as third defendants before he could issue an interim judgment. There is no known response to this letter, and no printing would take place.

Baker's letter was most surprising, because he claimed he was acting on behalf of Felix Cinematografica and Penthouse Clubs International Establishment. Clubs' involvement had definitively and provably ceased effective 15 June 1976, and the National Bank of Labor had invested in the film based upon the contract between Felix and Penthouse Films, not Penthouse Clubs. Altogether, this renders Baker's letter incomprehensible and legally meaningless.

Rossellini was in trouble. Out of money and expecting to be solvent again by October, he took a \$50,000 loan from the Manufacturers Hanover Trust Company in January, due 11 October 1977. He was not able to make a first instalment on that loan until 14 November, when he deposited \$400, only \$63 of which counted towards the principal. He was not able to pay a second instalment until ten years later.<sup>122</sup>

A Settlement Agreement (Accordo di Transazione) now made its appearance, dated 30 September 1977, by which producer "Felix" would pay

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120. "Court Ruling for Tinto Brass May Hold Up 'Caligula,'" *Variety* (weekly) 288 no. 2, Wednesday, 17 August 1977, p. 29.

121. Baker of Ronald Fletcher, Baker & Co.: letter to Banca Nazionale del Lavoro SACC, 12 September 1977. FRC.

122. Manufacturers Hanover Trust Company: note for Franco Rossellini, 10 January 1977; Manufacturers Hanover Trust Company: debt advice for Rossellini, 11 October 1977, 14 November 1977; Manufacturers Hanover Trust Company: receipt for Rossellini, 10 November 1987. DDP 360-17.

PAC fees owing.<sup>123</sup> In this Agreement, “Felix” was defined as including Penthouse Films International, Penthouse Clubs International Establishment, Penthouse International, and all other Penthouse companies. While that may have relieved Felix Cinematografica of some of the pressure and blame as solely responsible for the delays caused by Penthouse, it confused the matter of agency.

This Settlement Agreement also demanded that Tinto Brass have the full positive and audiotapes made available to him “as soon as possible.” Should a “reasonable agreement” with Brass not be achieved, all parties to the Settlement Agreement would sue him, given that he had long “unreasonably refused” to complete his task. That is self-contradictory, which is par for the course in these documents. The parties agreed to sue Brass for having long “unreasonably refused” to complete his task, even though it was the parties that were in the same paragraph admitting that they had refused Brass access to the materials needed to complete his task.

“Felix” guaranteed to deliver to PAC no later than 30 June 1978 a releasable version, either by Tinto Brass or by Russell Lloyd.

On 27 October 1977, by which time the film should have been released, Felix had to explain itself.<sup>124</sup> Rossellini’s mother, Lina Pagni, representing Felix, signed a document drafted by the Ministry of Foreign Commerce, the Ministry of Tourism and Entertainment, and the Exchange Office, explaining that various complications had delayed the completion of editing and post-production recording indefinitely, and that loans could not therefore be paid according to the pre-set time schedule. She also notified the three government offices that Penthouse’s contribution should be changed from \$4,500,000 to \$5,500,000 and that Felix’s contribution should be changed from \$3,000,000 to \$3,500,000.

The reason for these changes was made not quite clear with the “Amended Contract between Penthouse and Felix.”<sup>125</sup> Unable to move the Italian National Bank of Labor’s directors, Penthouse finally gave in. This amendment stated that Felix’s costs were now skyrocketing. Its projected \$3,000,000 investment would now need to be revised to \$4,500,000. This was largely due to the delay in release

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123. Accordo di Transazione: FELIX Cinematografica S.r.l., PENTHOUSE Films International, PENTHOUSE Clubs International Establishment di Vaduz, PENTHOUSE International Limited e tutte le società affiliate alla Penthouse International Limited, 30 September 1977. DDP 360–18 and 360–19.

124. Lina Pagni for Felix: Variazione agli accordi di associazione in partecipazione della PENTHOUSE FILM INTERNATIONAL per il film “CALIGOLA” del 15/6/76 e successive variazione del 26/6/76, addressed to the Ministero del Commercio con l’Estero, the Ministero del Turismo e Spettacolo, and the Ufficio Italiano dei Cambi, 27 October 1977. FRC.

125. Felix: Amendments to the participating association agreements, signed by Penthouse Films International, 27 October 1977. FRC.

which now dramatically escalated the interest rates charged by the National Bank of Labor and the other lenders, as the debt was past due.<sup>126</sup> Felix was burdened with the entirety of the expense. That escalation, combined with other added expenses, raised the costs significantly. Felix had been able to borrow this money only because Penthouse had guaranteed the loan. Now Felix requested Penthouse *Films* make good on its guarantee for the \$1,000,000+ due on the National Bank of Labor loan, and with this repayment Penthouse's contribution would be adjusted from \$4,500,000 to \$5,500,000. Felix's contribution would also be increased by half a million dollars to \$3,500,000, for a revised total production cost of \$9,000,000. Felix's \$3,500,000 was a rounding of its actual contribution of \$3,352,941 (which would have been a bit higher or lower depending on which day the conversion rate was calculated). With this adjustment in costs, Felix would reduce its share of the net revenues to 35% and Penthouse would increase its share to 65%. It is impossible to verify the accuracy of the extra \$1,500,000 of budget, though future documentation taken as a whole indicates, actually, that the total budget, even with delays, was under \$4,500,000. The Italian Exchange Office on 28 November 1977 approved the changes in contributions and percentages.

On 23 November 1977 Penthouse *International* (not *Films*) stepped in to pay Felix the money owed to the Italian National Bank of Labor.<sup>127</sup> With interest and other charges, the total was \$1,027,810. With this loan paid, the Italian National Bank of Labor would have no further interest in the film and would pose no further problems. On the following day Baker started to arrange for the Chemical Bank and PAC to be reimbursed as well. We have no subsequent paperwork and are in the dark as to what took place. Judging from future events, PAC was never paid in advance of release. Chemical Bank, though, must have been paid, but we do not know by whom. Had Penthouse paid the Chemical Bank mortgage, its lawyers would have made an issue of that in the future lawsuits. Had Felix paid the Chemical Bank mortgage, its lawyers would have based a strong argument upon that in the future lawsuits. Yet neither side made a mention of Chemical Bank in any future lawsuit. Even with Chemical Bank taken care of, PAC was not to be bought off, and hence the negative remained in limbo.

In the meantime, on 21 November 1977, Sergio Galiano, Felix's unit manager on *Caligula*, sent a plaintive telegram to Gerald Kreditor:<sup>128</sup>

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126. Consegna Copia e Presentazione Campione Muniti di Visto Censura, from the BNL-SACC, addressed to Felix, 28 February 1977, DDP 360-18.

127. Manufacturers Hanover Trust Company: Customer's Statement, addressed to Penthouse Inter Ltd, 23 November 1977. FRC, DDP 360-21 and 361-4.

128. Galliano is a typographical error for Sergio Galiano. FRC.

Mod. 23 - Fono B Spec.  
cod. 088420  
Ediz. 1975

## COPIA DI TELEGRAMMA

GBXX

OFF. TELEGRAFICO di RM

Numero telefonico  
dell'abbonato

FELIX CINEMATOGRAFICA

VIA MONTIGELLI 2 ROMA

804890

53



448

AMMINISTRAZIONE P. T.

AVV ABB

Qualifica	DESTINAZIONE	PROVENIENZA	NUMERO	PAROLE	DATA	ORA
	UK	ROMA FONO	81D	67	21/11/77	1220
		TF		66		

KREDITOR 5/7 SINGER STR LONDON EC2 A4 QA

WITH REFERENCE TO PAST REQUESTS WE REMIND YOU THAT WITHIN DECEMBER 15 1977 WE NEED DOCUMENTATION OF PENTHOUSE EXPENDITURES PERTAINING TO FILM CALIGOLA AMOUNTING TO DOLLARS 4500000 STOP REGARDING PAYMENT OF ENGLISH ACTORS SAID PAYMENT MUST APPEAR AS MADE BY PENTHOUSE TO VIDEO SOUND OR OTHER SIMILAR COMPANY FOR THE ACQUISITION OF THE RIGHTS OF USING SAID ACTORS REGARDS

FELIX GALLIANO

(0211890) Roma, 1974 - Int. Poligr. Stato P.V. - 441/088-428

It was a telling message. Felix and Penthouse were required to operate with full transparency and never to act unilaterally. Yet if Penthouse and its accountant were not supplying Felix with documentation of its expenses, then they were hardly acting in good faith. This message also served as a reminder that Penthouse's payments to the actors must appear to be made to Video Sound. No such reminder would be needed if the payments had actually been made to Video Sound, yet Galiano felt the need to remind Kreditor of this requirement. The letter hints that Kreditor had previously submitted paperwork that showed Penthouse as making payments directly to the actors, without going through Video Sound.

Not long afterwards, on 5 December 1977, Lustenberger came through with the required receipt from Video Sound of Zurich,<sup>129</sup> showing the total of the payments to the main actors, McDowell, Mirren, O'Toole, Gielgud, which came to \$3,000,000. Of course, those four actors were not paid anything close to that amount. O'Toole's contract was \$175,000 plus expenses. Mirren's was £40,000 (US\$68,063.49),<sup>130</sup> Gielgud's was \$12,000 plus expenses, and McDowell's was

129. Lustenberger for Video Sound: Rechnung, Penthouse Films International, 5 December 1977. FRC, DDP 360-21.

130. Ivan Waterman, *Helen Mirren: The Biography* (London: Metro Publishing, 2003), pp. 79-80.

reportedly \$500,000,<sup>131</sup> which, with penalties due to the film going overbudget and with overtime factored in, was pretty close to the truth.

Video Sound did not pay those amounts. Instead, by a letter of agreement from Penthouse FILMS International dated 26 July 1976, it was to pay — or it claimed it was to pay — £20,000,000 (US\$23,941.31) to Malcolm McDowell, £10,000,000 (US\$11,970.66) to Peter O'Toole, £11,000,000 (US\$13,167.72) to Helen Mirren, and £3,000,000 (US\$3,591.20) to John Gielgud.<sup>132</sup>

Assuming the original, larger, figures are all correct, and assuming that Video Sound covered the entirety of these expenses (which it did not), then those four actors cost Video Sound about \$800,000 or a bit over that. So we have to wonder what the figure of \$3,000,000 means. With the above in mind, we can see that it was intended to refer to all of Video Sound's contributions towards the film. If Video Sound had in fact first subtracted its 25% commission, then that means that Penthouse and Video Sound had actually raised about \$4,000,000 worth of contracts by preselling rights to distributors in 15 countries and then planning to keep \$1,000,000 for themselves in commissions. Is the \$3,000,000 figure a fiction?

#### LINE ITEMS AND INVOICES

THE ABOVE CONTRACTS, applications, reported figures, assignments, and so forth bring up major difficulties when contrasted with subsequent documents and claims. As we see, Penthouse's funding of the film is not adequately explained and the total amounts of presales remain mysterious. Essentially all the information given in this chapter so far will be flatly contradicted in Penthouse's future documentation.

By contract, Penthouse was required to render a full accounting to Felix, and Felix was likewise required to render a full accounting to Penthouse. Penthouse's accounting was dated 31 December 1977, though it was surely done over the following several weeks or months and then pre-dated. This was done in a most unusual fashion, as each line item was submitted in the form of an invoice billable to Felix. The invoices were all strongly secured together in Rossellini's

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131. David Sherwin, *Going Mad in Hollywood — and Life with Lindsay Anderson* (Andre Deutsch, 1996), p. 71. The entry is incorrectly dated 11 July 1974. A more likely date would be 11 July 1976. Arthur Bell, in "Bell Tells" (*Village Voice*, Tuesday, 13 April 1982) offered an incorrect story: "According to Malcolm, he's already received more than a million, up-front, tax-free dollars because *Caligula* wasn't shot in England or the States."

132. Lustenberger of Video Sound: letter of agreement countersigned by Kreditor for Penthouse FILMS International, 26 July 1976. FRC, DDP 360–21.

files. They were not merely clipped or stapled, but pinned and clasped so tightly that it was difficult to separate the sheets again. Further, apart from the one-time binding punctures, nearly all the pages were in pristine condition, indicating that they had not been scrambled and then reassembled later. We thus have every reason to conclude that the set is complete, and that conclusion is confirmed in later paperwork. The invoice numbers are not sequential, but that should be no cause for suspicion. These invoices were typed up piecemeal over at least several weeks, which would account for the jumps between invoice numbers.

The accounting statement opened with a cover letter from Gerald Kreditor, typed on Penthouse Films International stationery:

December 31, 1977

Felix Cinematografica S.r.l.  
via Theodoro Montecelli 2  
Rome, Italy

Re: Foreign Costs for GORE VIDAL'S CALIGULA

Gentlemen:


Reference our June 15, 1976[,] association-participation contract and later amendments, attached herewith please find the following enclosures which document our financial participation in the film GORE VIDAL'S CALIGULA:

- 1) Copy of the contract for the granting of the rights of the actors and pertinent payment documentation.
- 2) Documents of insurance and related payments.
- 3) Raw stock payment documents.
- 4) World wide publicity costs for the film GORE VIDAL'S CALIGULA and documentation thereof.
- 5) [Our] charges for costs related to our personnel working on the film.
- 6) Currency transfer for US \$1,027,810.00 for payment to the Banca Nazionale del Lavoro (SACC), from Manufacturers Hanover Trust Co.

Our contribution totals approximately US \$5,500,000.00 and therefore our participation share is thus definitely set.

Very truly yours,

PENTHOUSE FILMS INTERNATIONAL LTD.<sup>133</sup>



What follows in the attachments does not match the above table of contents. Let us perform the tedium of going through these invoices one by one.

**Invoice P 0272** is for \$336,893 for insurance coverage through Alfred G. Ruben & Company. Then **Invoice P 0322** is a revised invoice for the same charge, but this time with a \$100,000 overage, totalling \$436,893. The first invoice, P 0272, should have been canceled because its total is included in the second invoice. So \$336,893 is effectively entered twice.

**Invoice P 0273** is for \$137,082.80 of raw stock. The attached documentation, consisting of invoices from Eastman Kodak, includes a charge of \$405 for 20,000 feet (9 hours 15 minutes) of 16mm 7383 stock, and a further charge of \$1,017 for 25 rolls, 400 feet each (4 hours 38 minutes), of 16mm 7247 stock. That was for the November and December shooting of Giancarlo Lui's documentary, which by contract was to be funded entirely by Penthouse and in which Felix had no interest or contractual obligation. This should not have counted towards the costs of *Gore Vidal's Caligula*. These invoices also itemized 773,850 feet (143 hours and 18 minutes) of 35mm 5254 stock, but that obviously included the final charge of \$10,560 for 60,000 feet (11 hours 12 minutes) for Guccione's "additional scenes," which were not specified in any contract between Penthouse and Felix.<sup>134</sup> Had Felix Cinematografica chosen to argue against the inclusion of the three unrelated charges, it would have had an excellent case.

**Invoice P 0274** summarizes all of the charges billed to Penthouse by Alfred W. Crown of Al Crown Enterprises from September 1976 through 6 January 1978. His price was \$650 per month through January 1977, but when it became clear that editing would be on an extended schedule, his price — coincidentally? — went up to \$1,000 per month. Penthouse's contractual obligation of \$4,500,000 covered only pre-production, production and projected post-production. Whether a subsequent overage, due to a delayed release,

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<sup>133</sup> FRC.

<sup>134</sup> I have it on good authority that Guccione and Lui exposed only about 12,000 feet of film for their "additional scenes." The extra was likely resold, though there is no record of earnings from a resale in the available paperwork.

should have counted towards that original \$4,500,000 is debatable at best. The total of Crown's invoices was \$15,250.

**Invoice P 0278** is for legal services provided by Weissberger & Harris (1 January 1976 through 1 July 1977, \$26,644.02) and Lefrak Fischer Myerson & Mandell (28 February 1977 through 31 August 1977, \$8,192.71). There is a problem with the figure of \$26,644.02, for it includes a double entry for an end-of-principal-photography charge of \$10,000. The actual total is \$16,644.02. Felix should have disputed the extra \$10,000, but did not.

**Invoice P 0285** is for expenses related to the May 1976 Cannes Film Festival, specifically the various posters, triptychs, handouts, inserts, and brochures, as itemized in the bills from Avenir Publicité. The total is 37,920 francs, which the accountant determined was equal to US\$8,146.74, which may well have been right, depending upon all sorts of variables that we cannot now reconstruct. No other Cannes expenses were summarized — booth rentals, hotel, restaurants, gratuities, and so forth — leaving us completely in the dark regarding how much the Cannes-related bills actually were.

**Invoice P 0287** is even stranger yet. It is an itemized list of salaries for the various Penthouse executives and their assistants:

- Jack Silverman was paid \$33,173.13 in 1976 and \$75,000.12 in 1977. According to the original Joint Venture Agreement of October 1975:

The parties agree to hire Jack H. Silverman as Executive Producer of the Photoplay for a fee of Seventy-Five Thousand (\$75,000.) Dollars. Twenty-five (25%) percent of the foregoing fees shall be paid on the first day of principal photography, twenty-five (25%) percent in equal weekly payments during photography, twenty-five (25%) percent on completion of principal photography, and the remaining twenty-five (25%) percent upon delivery of the answer print.

Silverman's salary was originally to have been a flat lump sum, not annual. Of course, the June 1976 Contract made no mention at all about any salaries. That oversight led to this extraneous \$33,173.13 charge in 1976.

- Leslie Jay (assistant to Bob Guccione) was paid \$7,377.10 in 1976 and \$17,258.10 in 1977. Nothing in the June 1976 Contract related to her salary or employment or even position.

- Regina Andriolo (assistant to the executives) was paid \$4,445.00 in 1976 and \$10,157.00 in 1977. Again, there was nothing at all in the Contract relating to her salary or position.

- Then there was Alfred W. Crown. The Al Crown Enterprises expenses had already been summarized as \$15,250 in invoice P 0274. Here, supplementing that

other invoice, is an expense report of \$12,000 for 1976 and \$32,860 for 1977. Crown must have been paid a separate vice-president salary on top of his company's consultation fees.

- On top of those four executive salaries, there was an entry for "Taxes Withheld": \$2,194.00 in 1976 and \$6,210.00 in 1977.

The total of the executive salaries was wrongly tallied as \$200,674.45.

Fortunately for us, the Forms W-2 were appended to this list of expenses. As one might suspect, these do not correlate with the summary sheet:

	Total Gross Wages 1976	Total Gross Wages 1977	Grand Total
Jack H. Silverman	73,857.81	75,000.12	148,857.93
Leslie Jay	15,992.70	17,258.10	33,250.80
Regina Andriolo	9,170.00	10,157.00	19,327.00
Alfred W. Crown	27,000.00	32,860.00	59,860.00
			261,295.73

Since Jay and Andriolo were on the Penthouse staff and were performing other duties prior to the production of *Gore Vidal's Caligula*, it is reasonable that their entire 1976 salaries are not included. The same would not hold true for Silverman and Crown, who were working exclusively on *Caligula*.

If we adjust Jay's and Andriolo's salaries to reflect only their claimed work on *Gore Vidal's Caligula*, we get the following:

	Total Gross Wages 1976	Total Gross Wages 1977	Grand Total
Jack H. Silverman	73,857.81	75,000.12	148,857.93
Leslie Jay	7,377.10	17,258.10	24,635.20
Regina Andriolo	4,445.00	10,157.00	14,602.00
Alfred W. Crown	27,000.00	32,860.00	59,860.00
			247,955.13

The entry for "Taxes Withheld" does not correlate to anything in the Forms W-2. Peculiarly, the costs in the summary do not include any insurances, benefits, or retirement contributions. That such important and substantial items could be omitted from an accounting summary proves that the secretaries as well as their bosses were extremely careless.

From the above, we can also see that women simply did not rank as highly as the men, who were paid considerably more. The story gets even sadder when we look at the entries on the bottom half of the summary sheet, confirmed by the attached Forms 1099, which demonstrate that the "Pets" were not recognized as employees, but were instead independent contractors, with no retirement or benefits.

PETS' SALARIES	AUG-DEC 1976	JAN-DEC 1977	
Anneka de Lorenzo	\$ 500	\$2,108	
Lori Wagner	1,000	1,200	
Carolyn Patsis	500	800	
Jane Hargrave	—	1,100	
Bonnie Dee Wilson	500	600	
Valarie [ <i>sic</i> ] Rae Clark	—	600	
Signe Johnson	—	600	
Susan Swanson	—	600	
Julie Andrews	—	600	
	\$2,500	\$8,208	\$10,708

So Jane Hargrave was paid *nothing* in 1976, though she appeared in several scenes in the film. Her 1976 salary was withheld until she had performed her hardcore scenes in 1977. Clark, Johnson, Swanson (stage name Saxon) and Andrews (stage name Juliet Morris) appeared only in Guccione's "additional scenes," which were not part of the contract with Felix, and their salaries should not have been counted towards the production of the film. Henrietta Kellogg is nowhere mentioned, though she did appear in the film.

**Invoice P 0288** is an extension of Invoice P 0273, as it concerns expenses related to Giancarlo Lui's promotional film, which was never part of any agreement between Penthouse and Felix, but was a Penthouse exclusive and as such should not have been charged against the production of *Gore Vidal's Caligula*. As an independent contractor, Lui at \$500 a week earned \$13,000 in 1976 and \$26,000 in 1977. A small portion of his 1977 wages, of course, related to his work overseeing the editing of *Gore Vidal's Caligula*, and that portion of his salary should indeed have been part of the production cost, but here it is inextricably mixed in with his other work.

**Invoice P 0292** is a summary of the salaries for Russell Lloyd (editor) and Peter Boita (editorial assistant, July–August 1977). Lloyd's gross wages as an independent contractor were \$18,400. He was paid \$700 per week, though nearly half of that, \$300, went to his agent, Paul Kohner. Peter Boita's gross wages as an independent contractor were \$2,800. Though this is a legitimate expense, even this could theoretically have been challenged in court, as the hiring of Lloyd and his crew members was in violation of Felix's contract with Tinto Brass.

**Invoice P 0293** summarizes the independent-contractor salaries for Gregory Bronson, Eugene Rizzo, and Leslie Cuscina, all of the publicity crew, as well as Stan Malinowski, publicity photographer. The total was \$7,930.

**Invoice P 0294** is for Louise Vincent, the dialogue coach, who worked as an independent contractor and earned \$9,040.

**Invoice P 0295** is for the salaries of the New York staff of Penthouse Films International, Ltd. This was nowhere specified or even hinted at in the Felix-Penthouse contracts. The total gross wages, exclusive of insurances, was given as \$153,786.91, which was off by over \$100,000. This summary is accompanied by copies of the Forms W-2, and it is clear, once again, that women did not rank, and further that the staff turn-over rate was high, and finally that these summaries were unforgivably careless. Here are the actual figures:

	1976 Gross Wages	1977 Gross Wages	Total
Steven Beer	16,571.42	15,744.59	32,316.01
William L. Hubschmitt	14,936.74	19,242.57	34,179.31
Norman Oberlander	11,296.80	8,111.44	19,408.24
John Quis	12,149.94	9,788.35	21,938.29
Dawn Willis	10,567.99	1,404.00	11,971.99
Adele Baranski	10,982.75	2,490.06	13,472.81
Fyrossa Khan	10,486.51	1,913.63	12,400.14
Elizabeth Appelbaum	11,423.62	3,736.37	15,159.99
Janet Cohen	10,245.00	12,720.00	22,965.00
Harvey Zucker	16,846.32		16,846.32
Hector Marrbro	17,980.22		17,980.22
Maxine Berd	6,391.80		6,391.80
Cheryl Goldblatt	5,425.00		5,425.00
Cynthia J. Horden	1,505.00		1,505.00
Theodore C. Bailey	430.00		430.00
Michael Jaffa	256.00		256.00
Michele Petrillo	175.00		175.00
Waldtraut E. Biondi		14,000.00	14,000.00
Constance Bleckman		11,749.98	11,749.98
Elaine Louie		326.92	326.92
TOTAL			258,898.02

**Invoice P 0296** charges 15 percent of Penthouse's office rent to the production. This is a blatant violation of the Contract, which did not consider any part of Penthouse's other ongoing operational expenses as part of the production of the film. The invoice itself is difficult to interpret. Photostats of several "rent due" notices are attached, but they tell us too little. For the months of August, September, and October of 1976 we see notices from Warner Communications, Inc., charging \$17,147.93 per month for Floor 20 of 900 Third Avenue, \$3,459.57 per month for Floor 21 Suites 1 through 7, and \$1,901.15 per month for Floor 21 Suites 8 and 8B. In September, there is a further unexplained charge of \$646.10. There is also a December rent paid to Tishman East Management Corporation, though this too is unexplained. These bills are all

preceded by a largely incomprehensible series of three calculator tapes totalling the rents from August 1976 through the end of 1977, with a grand total of \$434,264.79, of which 15 percent, \$65,139.72, is charged to the production.

**Invoice P 0302** is even worse. It consists largely of a typed table:

PENTHOUSE General & Administrative Expenses	Aug to Dec 1976	Total 1977
Depreciation & Amortization	\$71,796	\$104,452
Auto Rental	17,133	32,456
Bank Charges	2,756	32,104
Cleaning, Repairs/Maint.	—	20,303
Copies Expenses	—	46,768
Donations	3,688	28,390
Dues & Subscriptions	5,650	16,898
Employee Benefits	—	180,288
Employment Agency Fees	1,779	10,207
Equipment Rental	—	4,583
Insurance	240,960	74,242
Maintenance Agreements	—	3,096
Messenger Service	—	5,632
Office Temporaries	—	9,245
Postage & Freight	41,948	76,749
Stationery & Supplies	49,396	101,850
Travel & Entertainment	106,068	234,135
Utilities	—	9,408
Storage	—	1,212
Miscellaneous	31,703	41,367
Totals	\$572,877	\$1,033,385

$\$572,877 + \$1,033,835 = \$1,606,262$ , of which fifteen percent, \$240,939.30, is charged against the film production. There are no attached exhibits to demonstrate the veracity of the quoted figures, which should not in any case have been charged to the film production, as they were ongoing magazine expenses.

**Invoice P 0312** continues this trend, by charging 15 percent of Penthouse International's phone bills to the film production.

Billing Date	Amount
7 August 1976	13,508.51
7 September 1976	12,413.44
7 October 1976	17,850.77

Billing Date	Amount
7 November 1976	13,792.57
7 December 1976	15,059.98
7 January 1977	12,326.08
7 February 1977	13,783.55
7 March 1977	11,182.22
7 April 1977	16,198.75
7 May 1977	14,028.55
7 June 1977	12,675.26
7 July 1977	13,846.39
7 August 1977	15,011.89
7 September 1977	15,242.28
7 October 1977	14,825.96
7 November 1977	12,854.52
7 December 1977	11,656.11

The grand total is \$236,256.83, of which 15 percent would be \$35,438.53, which the secretary rounded down by one penny. Aside from the issue of the unimaginably exorbitant overuse of phones, this simply should not have been charged to the film production, as it was unrelated and as there was nothing in any contract pertaining to 15 percent of International's phone usage being assigned to Films.

Apparently there was also an **invoice P 0313**, which is not included in Rossellini's files and was surely never sent to him. It was for \$27,906.77 for Enterprise Press. We shall see evidence for this below.

**Invoice P 0314** is somewhat unusual in that it deals with expenses related to *Gore Vidal's Caligula*, specifically to the creation and distribution of posters and flyers. Again, there are significant arithmetical errors. Attached are bills from Creative Typographers (\$2,872.93), MacNaughton Lithograph Company (totaling \$11,091.46), Joyce Expediting Service (\$26.15), Daniel Maffia (totalling \$1,500), Michael Sweret (\$500), The Typros (totaling \$4,041.42), and Tinker-Campbell-Ewald (totalling \$16,669.40). The grand total is \$45,340.70, yet the invoice totals this as \$34,647.75.

**Invoice P 0316** is for expenses related to abandoned music scores. Lehman Engel was paid \$375 for five days of consultations in Rome, and the costs of phoning Maurice Jarre and treating him to lunch were \$41.75.

**Invoice P 0317** tallies charges for air travel, but the charges are only partial. There are no charges for the flights between Rome and New York for the autumn of 1975 or January 1976, nor are there the costs of the flights for the leading

British actors. Further, the first item is a change in plans for a previous item that is nowhere listed.

BILL	TRAVEL	PASSENGERS	ITINERARY	CLASS	COST	AGENCY
27-2-76		Rossellini (Charge for change in travel plans)			618.00	RRR Travel
5-3-76	8-3-76	Silverman, Crown, Rossellini	NY / Toronto / NY	1st	384.51	InterTravel Corp
8-3-76		Rossellini	NY / Rome / NY	1st	1,405.00	RRR Travel
14-4-76		Rossellini	NY / LA / NY	coach	388.00	RRR Travel
22-4-76	25-4-76	Rossellini	NY / London / Rome / NY	1st	1,405.00	RRR Travel
4-5-76	12-5-76	Rossellini	Rome / Nice / Rome	1st	273.70	InterTravel
5-5-76	9-5-76	Crown	NY / London / Nice / Paris / NY	econ & 1st	843.00	InterTravel
5-5-76	9-5-76	Silverman	NY / London / Nice / Rome / NY	econ & 1st	1,162.00	InterTravel
19-7-76	14-7-76	Silverman	NY / London / Rome / London / Rome / NY	1st	1,669.00	InterTravel
20-9-76		Rossellini	NY / Rome / NY	1st	1,517.00	RRR Travel
15-10-76	17-10-76	Wilson	El Paso / Dallas / NY / Rome / NY / El Paso	econ	1,131.00	InterTravel
15-10-76	17-10-76	Patsis	NY / Rome / NY	econ	831.00	InterTravel
30-11-76	2-12-76	Guccione, Ray[mundo], Leeds	JFK / Rome / JFK	1st	4,551.00	InterTravel
1-12-76	4-12-76	Wilson	El Paso / Dallas / NY / Rome / NY / Dallas / El Paso	econ	1,032.00	InterTravel
2-12-76	4-12-76	Crown	NY / Rome / Paris / NY	econ & 1st	1,174.00	InterTravel
2-12-76	4-12-76	Patsis, de Lorenzo, Wagner	NY / Rome / NY	excur	2,196.00	InterTravel
16-12-76	16-12-76	Crown	NY / Paris / Rome / NY	excur	717.00	InterTravel
6-1-77	9-1-77	Guccione, Ray[mundo]	NY / London / Rome / London / NY	1st	3,034.00	InterTravel
	11-1-77	Rossellini	NY / Rome / NY	1st	1,517.00	RRR Travel
13-1-1977	13-1-77	De Lorenzo, Patsis	NY / Rome / NY	econ	1,662.00	InterTravel
2-3-1977		Rossellini	NY / Rome / NY	1st	1,517.00	RRR Travel
16-5-1977		Rossellini	NY / Rome / NY	1st	1,597.00	RRR Travel
23-6-1977	6-7-77	Mr & Mrs Crown (London/Paris/London at \$88 was personal)	JFK / London / Paris / London / NY	excur	1,180.00	InterTravel
7-7-1977	13-1-77	Bonnie Dee Wilson (Seems to be a revised bill)	JFK / Rome / London / JFK	econ	831.00	InterTravel
11-7-77		Franco Rossellini	NY / Rome / NY	1st	1,597.00	RRR Travel

Predictably, we can see that the male executives more often than not flew first class, while the women who made them rich were reduced to traveling at economy class.

The total of the listed charges is \$34,232.21, and is correctly tabulated in the invoice.

**Invoice P 0318** concerns "public relations," specifically the charges for the use of the Guttman & Pam, Ltd., publicity agency (\$18,085.94) as well as to Walter Alford, another independent contractor who worked from 26 July 1976 through 10 December 1976 and earned exactly \$7,000.

**Invoice P 0319** concentrates on Nehls & O'Connell, Inc., a forwarding agency, which arranged for the shipments of film stock and various other materials, such as props. The attached invoices total \$2,947.78, even though the calculator tapes include numerous other undocumented costs, for a total of \$12,154.58.

**Invoice P 0320** is for advertising in *Variety*, *Daily Variety*, *The Hollywood Reporter*, and *Screen International & Cinema TV Today*. The three-page spread in the 24 March 1976 *Variety* cost \$2,850, but only two-thirds of that, or \$1,900, was related to the production of *Gore Vidal's Caligula*. This three-page advertisement spread also ran in the *Daily Variety* of 26 March 1976, at a total cost of \$1,875, two-thirds of which, \$1,250, should have been charged to *Gore Vidal's Caligula*. The *Hollywood Reporter* ran this advertisement spread on 25 March 1976, total cost \$2,025, of which \$1,375 should have been charged to *Caligula*. Penthouse delivered 15,000 copies of its 8½"×11" flyer to *Screen International* to be inserted into each of five daily issues distributed at the Cannes Film Festival: Sunday, 16 May; Wednesday, 19 May; Friday, 21 May; Monday, 24 May; and Wednesday, 26 May. The total cost, including French tax, was \$2,360, though the secretary failed to notice the \$200 down payment and thus neglected to include it in invoice P 0320. What's more, that \$2,360+\$200 cost was already included in P 0285. The secretary also mistakenly counted the \$1,900 for the 24 March ad twice. Altogether, those errors changed a \$4,525 total to \$8,585.

#### ANALYSIS OF THE LINE ITEMS

**W**HEN WE TOTAL ALL THESE INVOICES, we see how strange they are. Not only are many of them completely unrelated to the production of *Gore Vidal's Caligula*, we see that they do not total Penthouse's contracted \$4,500,000 contribution.

P0272	Albert G. Ruben & Co. Insurance	336,893.00
P0273	Raw Stock	137,082.80
P0274	AI Crown	15,250.00
P0278	Weissberger & Harris	26,644.02
	Lefrak Fischer Myerson & Mandell	8,192.71

P0285	Cannes hotels	8,146.74
P0287	Executives	200,674.45
	"Pets"	10,708.00
P0288	Giancarlo Lui	87,975.00
P0292	Russell Lloyd	33,400.00
	Peter Boita	2,800.00
P0293	Gregory Bronson advertising	1,000.00
	Eugene Rizzo advertising	1,050.00
	Leslie Cuscina advertising	2,880.00
	Stan Malinowski	3,000.00
P0294	Louise Vincent	9,040.00
P0295	Penthouse staff	153,786.91
P0296	15% of office rental	65,139.72
P0302	Administrative Expenses	240,939.30
P0312	15% of Telephone	35,438.52
P0313	Enterprise Press	27,906.77
P0314	Creative Typographers	2,872.93
	Mac Naughton Lithograph	11,091.46
	Dan Maffia	1,500.00
	Michael Sweret	500.00
	The Typros	2,013.96
	Tinker-Campbell-Ewald	16,669.40
P0316	Lehman Engel music expenses	375.00
	Maurice Jarre	416.72
P0317	InterTravel	22,671.21
	RRR Travel	11,561.00
P0318	Guttman & Pam	18,085.94
	Walter Alford	7,000.00
P0319	Nehls & O'Connell air freight	12,154.58
P0320	Variety ads	3,800.00
	Daily Variety	1,250.00
	Hollywood Reporter	1,375.00
	Screen International & Cinema Today	2,160.00
P0322	Albert G. Ruben & Co. Insurance	436,893.00
	<b>GRAND TOTAL</b>	<b>1,860,338.14</b>

Let us perform that calculation again, this time without the spurious costs, without Lui's work (since only a small portion of it was related to the film), and with various other corrections:

P0273	Raw Stock <b>minus 11,982</b>	125,100.80
P0274	Al Crown	15,250.00
P0278	Weissberger & Harris <b>minus 10,000</b>	16,644.02
	Lefrak Fischer Myerson & Mandell	8,192.71
P0285	Cannes hotels	8,146.74
P0287	Executives <b>recalculated</b>	247,955.13
	"Pets"	10,708.00

P0292	Russell Lloyd	33,400.00
	Peter Boita	2,800.00
P0293	Gregory Bronson advertising	1,000.00
	Eugene Rizzo advertising	1,050.00
	Leslie Cucina advertising	2,880.00
	Stan Malinowski	3,000.00
P0294	Louise Vincent	9,040.00
P0313	Enterprise Press	27,906.77
P0314	Creative Typographers	2,872.93
	Mac Naughton Lithograph	11,091.46
	<u>ADD: Joyce Expediting Service</u>	26.15
	Dan Maffia	1,500.00
	Michael Sweret	500.00
	The Typros <u>recalculated</u>	4,041.42
	Tinker-Campbell-Ewald	16,669.40
P0316	Lehman Engel music expenses	375.00
	Maurice Jarre	416.72
P0317	InterTravel	22,671.21
	RRR Travel	11,561.00
P0318	Guttman & Pam	18,085.94
	Walter Alford	7,000.00
P0319	Nehls & O'Connell air freight	12,154.58
P0320	Variety ads <u>minus 1,900</u>	1,900.00
	Daily Variety	1,250.00
	Hollywood Reporter	1,375.00
P0322	Albert G Ruben & Co Insurance	436,893.00
	<b>GRAND TOTAL</b>	<b>1,063,457.98</b>

According to these invoices, Penthouse contributed only \$1,063,457.98 (give or take) towards the production of *Caligula*. As we learned above, though, these invoices are not complete, and there were other costs, for instance some executives' honoraria, which might raise this by a few hundred thousand dollars. Penthouse had guaranteed by contract to contribute \$4,500,000, yet according to its own paperwork, Penthouse came up about three and a half million dollars short.

Of course, in addition to the above \$1,063,457.98, Penthouse took on Felix's burden of \$1,027,810.00 for the Italian National Bank of Labor's loan. On paper, then, Penthouse contributed \$2,063,361.21 out of about a \$5,500,000 total requirement. Gerald Kreditor's cover letter, explaining these invoices, stated: "Our contribution totals approximately US\$5,500,000.00 and therefore our participation share is thus definitely set." (For the record, "participation share" = "coparticipation.") Kreditor, of course, was one of England's most formidable accountants, and he took an enormous risk by sending this letter. He wagered that nobody at Felix or at Penthouse would examine his work, or even do a

cursory tally with a pocket calculator — and his gamble paid off. Felix would never challenge any part of this accounting, simply because nobody at Felix paid it the slightest attention. Had anyone at Felix given this accounting even a single read-through, the succeeding lawsuits would all have been settled instantly, and all in Felix's favor.

Upon completing the first draft of this book, more documentation came to light from Duke University, and this helps put these anomalies into perspective. There is a one-page ledger sheet from P/H FILMS INT'L with a handwritten summary of all of Penthouse's costs, including the elusive invoice P 0313:<sup>135</sup>

P/H FILMS INT'L		
Inv. #		\$Amt
P-0272	Insurance — Albert G Ruben	\$436,893.00
273	Raw Film Stock	137,082.80
274	Al Crown Enterprises	15,250.00
278	Legal — Weissberger & Harris / Lefrak Fischer	34,836.73
285	Cannes Film Festival — Posters	8,146.74
287	Salaries — Executives & Pets	211,382.45
288	Consultant — Giancarlo Lui	87,975.00
292	Film Editor — Lloyd/Boita	36,200
293	Adv & Promo — Bronson, Rizzo, Cuscina, Malinowski	7,930.00
294	Dialogue Coach — Louise Vincent	9,040
295	G&A — Salaries	153,786.91
296	G&A — Rent	65,139.72
302	G&A — Misc Expenses	240,939.30
312	G&A — Telephone	35,438.52
313	Enterprise Press	27,906.77
314	Posters, Ads, Designs, Typo	34,647.75
320	Magazine Advtg — Variety, etc	8,585.00
316	Lehman Engel	416.72
317	Travel Expenses	34,232.21
318	Public Relations — Guttman & Pam / W. Alford	25,085.94
319	Nehls & O'Connell — Air freight	12,154.58
		\$1,623,070.14

Felix accepted this summary without examining the supporting documentation. Of course, \$1,623,070.14 does not even approximate \$4,500,000. That is why, some years later, in preparation for submitting an accounting to the Ministry of Tourism and Entertainment, Felix adjusted the above summary thus (with the US\$ equivalents as of 5 September 1980):<sup>136</sup>

Rewrites	£	7,684,000	\$	9,071.99
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135. DDP 360-21.

136. DDP 360-21.

Organization	£ 111,584,334	\$ 131,740.22
Expertise, consultation	£ 12,962,500	\$ 15,303.96
Photographers and photography	£ 74,778,750	\$ 88,286.30
Actors: Malcolm McDowell, Peter O'Toole, Helen Mirren and John Gielgud	£ 2,594,200,000	\$ 3,062,799.59
Film stock	£ 116,520,380	\$ 137,567.87
Music	£ 354,212	\$ 418.19
Transportation	£ 29,097,379	\$ 34,353.34
Preparatory travels	£ 23,720,755	\$ 28,005.53
Telegrams, telephone, post	£ 40,454,135	\$ 47,761.52
Insurance	£ 371,359,052	\$ 438,438.96
General expenses	£ 260,167,167	\$ 307,162.09
Developing	£ 6,740,500	\$ 7,958.06
Publication costs	£ 30,770,000	\$ 36,328.09
Advance advertising	£ 36,747,838	\$ 43,385.73
Public relations	£ 21,323,049	\$ 25,174.70
Legal expenses	£ 29,611,220	\$ 34,960.00
Cannes Festival expenses	£ 6,924,729	\$ 8,175.56
Total so far	£ 3,775,000,000	\$ 4,456,891.71
Transferred to Italy (Italian Exchange Office 401217 of 28 Nov 1977)	£ 900,000,000	\$ 1,062,570.21
TOTAL	£ 4,675,000,000	\$ 5,519,461.91

Some of the above items are different from Penthouse's own accounting, some are in basic agreement with the line items in Penthouse's accounting, but that hardly helps since those line items were nonsensical to begin with. Felix made no attempt to reconcile this accounting by checking it against the investments from distributors or by checking it against anything at all. By accepting the basics of Penthouse's accounting and by making such spurious adjustments to bring it into line with the contractual requirements, Felix was effectively committing fraud. The above summary was likely the work of a temporary employee laboring for a day or two as an assistant to the accountant, under pressure to force the numbers to fit by any means. Years later, when some of the executives finally took a look for themselves,<sup>137</sup> they could not muster the courage to admit that Felix had agreed, against its own interest, to confirm Penthouse's fictional accounting.

Tag Gallagher, upon being told this story, offered some intriguing insights that put Penthouse's fakery and Felix's carelessness into perspective:

You know, there is a long and ancient tradition of producers ripping off tons of money from movie productions. Especially Americans. This is why it is much easier to get funding for a \$50,000,000 movie than for a

137. Rossellini, "Ottobre 6, 1972" [*sic*, should be 1982], handwritten notes. DDP 360–26.

5,000 movie. So Penthouse wasn't doing anything unusual. Kind of like Obama dropping a bomb.

I can't blame anyone for not wanting to read those contracts which can be the size of phone books.

Italians have an ancient distrust of paper. They're an oral culture. They don't regard contracts as anything more than bullshit to get round the stifling bureaucracy. Since the 1930s, they've had a system of the government supporting film production, I think about ten percent of the budget. So every budget is routinely quadrupled or more, and acres of false contracts are made up saying they paid someone 100 when they actually paid them 15. In this way they get the government money, then they make the entire film on just that money. This is how people made their first films in the 60s, 70s, 80s, maybe still today. It was so under Mussolini. I have copies of all the contracts of *Un pilota ritorna*, 1942, whose producer told me they were all total fiction. So the thing is that if you want to research something in Italy, you simply cannot put a lot of faith in documents. No one reads them. So why now submit fake ones?<sup>138</sup>

Before proceeding, we need to look again at invoices P 0272 and P 0322. George R. Walden of the Albert G. Ruben & Company (New York) sent a letter to Alfred Crown of Penthouse International, explaining the adjustments to the policy. The letter is not dated, but Crown received it on 21 November 1977. Claiming to be a memorialization of their telephone conversation of "this date," Walden itemized some costs, which came to \$18,703 above the original quote of \$318,190. Strangely, he mailed two different versions of this letter at the same time. In the second version, he added a paragraph:

Please note that principal photography exceeded the original fifteen-week estimate and continued for an additional seven weeks and five days. An additional premium was due for this period of production, and, therefore, \$100,000 of the original claim was subtracted and applied to this additional premium.<sup>139</sup>

This is the first we know about an insurance claim. There had been several accidents, for instance a mastiff attacking an extra and seriously injuring her arm, Guido Mannari badly burning his hand in a brazier when the gas pipe erupted, and burning his hand on hot wax during a scene. There was also the instance of Davide's owner, Alberto Danesi, being kicked in the head by his animal during the fever scene. There should also have been a pair of business-continuity

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138. Tag Gallagher: email message to RS, 8 November 2015.

139. FRC.

claims — first when Brass contracted bronchitis, resulting in a several-day work stoppage; and second when Brass refused to shoot for several days in protest of Guccione's having unilaterally fired an extra. All these claims were rolled into one, for something over \$100,000.

To be tiresomely pedantic, "seven weeks and five days" means "eight weeks." The shooting had originally been scheduled to last from Wednesday, 27 July, through Monday, 15 November 1976, one day short of a 15-week shoot. Instead, shooting began half a week late, on Monday, 2 August, and lasted through Friday, 24 December 1976, a 21-week shoot, six weeks longer than anticipated, not "seven weeks and five days" longer. What was this extra two weeks? Giancarlo Lui explained: the time required to produce the "additional scenes."<sup>140</sup>

#### OMISSIONS, DELETIONS, MISREPRESENTATIONS, AND STRATEGIES

**I**T IS IMPOSSIBLE TO KNOW how much Penthouse actually raised, or how much of that money it actually contributed towards the production. The above invoices omit the funds raised from distributors. A trade-paper account suggests that the reason for this is that Penthouse had to return those investments when it breached its contracts by not having the film ready in time.<sup>141</sup> It is nearly certain that Penthouse, ultimately, contributed only a little over a million dollars towards the production, or nearly \$1,500,000 at the most, and that Felix raised and contributed all the remaining funds. If that was indeed the case, then the movie did cost not much more than \$4,500,000, which accords with John Steiner's statement given above as well as with Tinto Brass's assertion.<sup>142</sup> As for the bulk of the funds that Penthouse raised by preselling distribution rights, there is a possibility, howsoever slim, that Penthouse simply kept them aside throughout production and then reimbursed them afterwards when the release was delayed. Most likely, though, the money disappeared.

It is now time to point out the obvious. In all advertising, without exception, the names **BOB GUCCIONE** and **PENTHOUSE** were prominently displayed in large type, while **FRANCO ROSSELLINI** was in small print and almost unnoticeable. Felix was rarely mentioned at all, and was not named in the opening or closing credits of the film outside of Italy. In the various articles in the trade press and in the popular press, Guccione was the focus, and Rossellini was seldom even a

140. Lui: email message to RS, 8 June 2015.

141. " 'Caligula' Still Stalled in Roman Courts; Judge Sets a Hearing July 4," *Variety* (weekly) 291 no. 6, Wednesday, 14 June 1978, p. 32.

142. Brass: interviewed by RS, 4 April 2004.

passing reference. When the film was released, Guccione and Penthouse received all the glory and blame, while Rossellini was relegated to incidental comments. Lui recalls the year leading up to the release:

The press was already describing Penthouse's first production venture as a film and economic disaster. Tinto Brass, Gore Vidal and others in the know around the studios and the production had released less than favourable opinions and interviews. Bob himself began letting himself down easily, downplaying and slowly changing his prior grand statements about *Caligula*.... And here is one instance where one can appreciate his marketing and self-interest genius.

Bob never let it be known around that he was pleased. On the contrary, he continued downplaying the picture to the point of... not really saying it, but slightly hinting that what was being said in the press and around the business was, alas, a sad reality. He went as far as suggesting that he may just close the whole operation down and reach a financial settlement or compromise with anyone holding rights over the picture, such as Gore Vidal and Tinto Brass. And passing from words to facts, that is exactly what he did, buying back their profit-sharing participations<sup>143</sup> — cheaply, as he told me, since the general consensus was that the film *Caligula* would never be shown or make a penny....

...what mattered to Bob in those days was, as I said, his immense satisfaction with the feature's prospects. He anticipated *Caligula's* huge success and already started openly expressing to me and others close to him, his wish to cut Franco Rossellini out of the picture.

In this respect, I think that Franco Rossellini was too much of an expert old fox in movie-making not to expect love and partnership to fade away at interest-sharing time. In my personal opinion, he had in fact begun hedging his bets with *Messalina*, *Messalina* while some of the sets, or their recombined parts, the costumes and the Penthouse Pets were still available in Rome....<sup>144</sup>

We should be clear: Giancarlo Lui, Jack Silverman, and various other Penthouse executives were of the belief that Penthouse had supplied the bulk of *Caligula's* funds. That is what they were told, and nobody told them otherwise.

When Rossellini and Felix eventually went to court to protect their intellectual property, trade journalists, who knew *Caligula* only as a

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143. Lui is mistaken about Brass having had a profit-sharing participation. When I pointed this out to him, he replied: "True, I am mistaken. But it's truer, as I do clarify in the same sentence, that I'm referring only to what Bob told me. I don't know why Bob mentioned people "such as" Vidal and Tinto. Did Tinto perhaps renounce anything? And were there others, as Bob's words [imply]? It is also true that I did enjoy listening to a friend's drama and exploits, and whether real or probable or not it didn't really matter."

144. Lui: email message to TR, 21 August 2010.

Penthouse/Guccione production, were so mystified that they were incapable of understanding the story, since they had no conception of the extent of Rossellini's involvement.