

Twenty-Nine

PARTNERS



"Lawsuits are Guccione's way of expressing himself."

— Norman Roy Grutman, *Penthouse Counsel*¹



THE MOST CONTENTIOUS DOCUMENT in the *Caligula* saga was written on the 21st of May 1978.² It is perplexing.

Dear Bob,

Notwithstanding the documents and invoices given to me by Gerald Kreditor from time to time for the purposes of submitting returns to the Italian Government regarding Gore Vidal's *Caligula*, purporting to be expenditure of Video Sound SA and Penthouse Films International Ltd[,] the original agreement between us regarding Gore Vidal's *Caligula* remains unchanged.

Franco Rossellini

Perplexing as this note is, it tells us something useful. Even more expressive than the text itself is the actual document:

1. [Norman] Roy Grutman, *Lawyers and Thieves* (New York: Simon & Schuster, 1990), p. 138.

2. FRC, DDP 360–17 and 360–27. Unless stated otherwise, all internal correspondence and memos quoted in this chapter come from FRC.

GERALD KREDITOR & CO.

CHARTERED ACCOUNTANTS

G. KREDITOR, F.C.A.
S. S. PARKER, A.C.A.
G. P. COLE, A.C.A.5/7 Singer Street,
London, EC2A 4QATELEPHONE 01-882 8218
CABLES GIMP LONDON 822YOUR REF. at Drake Hotel 56th St - Park Ave.
OUR REF. N.Y.

21/5/78

Dear Bob,

Notwithstanding the documents and invoices given to me by Gerald Kreditor from time to time for the purposes of submission returns to the Italian Government regarding Gore Vidal's Caligula purporting to be expenditure of Video Sound SA and Penthouse Films International Ltd the original agreement between us regarding Gore Vidal's Caligula remains unchanged.

Franco Rossellini

Before we can interpret the meaning of the text, we need to interpret the physical origins of this most unusual piece of paper. It is written in Gerald Kreditor's handwriting on Gerald Kreditor & Co. stationery, but it is signed by Franco Rossellini. And though Gerald Kreditor & Co. was based in London, this document was written at the Drake Hotel in Manhattan. (Prior to purchasing his townhouse, Bob Guccione had kept an apartment at the Drake.³) Furthermore, when we look at the calendar, we see that the 21st of May 1978 was a Sunday, which is not the usual day for writing business documents.

Taking all that into account, and using our imagination, we can reconstruct the skeleton of the story. Kreditor had flown to New York City on Penthouse business and checked into the Drake Hotel. He called Franco Rossellini over to visit him, and when Franco arrived Gerald demanded that he affirm an agreement in writing. Franco, not having expected to sign a statement, had not thought to bring along any Felix stationery. Gerald reached into his briefcase, pulled out a sheet of his own stationery and composed a document for Franco to sign. Since there was no typewriter handy, Gerald wrote it out in longhand. Puzzled by this peculiar request, Franco nonetheless obeyed, because he was intimidated. Gerald Kreditor was not someone to be trifled with. Franco surely hesitated before signing. After asking Gerald a question or two and re-reading

3. Pasquale Chessa, "Film storici/Arriva l'imperatore Caligola: Innanzi a lui nitrisce tutta Roma," *L'Espresso* 22 no. 26, Sunday, 27 June 1976, pp. 98-105.

the short paragraph a few times, Franco decided that he could not find anything too troubling about the statement.

Franco should not have signed this statement, for it was indeed troubling. Franco was highly intelligent, undeniably. He was educated, well-read, and refined. Despite that, he had no head for business and no patience for details. That he had been able successfully to produce commercially viable films indicates that his previous investors had been trustworthy, not that Franco had been shrewd. Shrewd he certainly was not when it came to this document. He was surely suspicious, as he had previously been through the ordeal of being pressured into signing the assignment that Gerald Kreditor had drafted in July 1977 by which Felix denied it had raised any funds and renounced any claims to *Caligula*. Though Franco had managed to prevent the execution of that previous document, it should not have surprised him that Kreditor would have another trick up his sleeve. This new document does not name Felix Cinematografica or any Penthouse entity other than Video Sound. It is written as though it were an affirmation of a purely personal agreement between two individuals. Yet it insinuates, without stating, that the earlier documents Kreditor had provided had been designed only to defraud the Italian government. It further insinuates, without stating, that Video Sound and Penthouse Films International had not expended any funds on the production of *Gore Vidal's Caligula*, and that any documentation of such expenditures was likewise designed only to defraud the Italian government. Another insinuation is that Franco had been fully aware of the fraudulent nature of these documents all along, but that he had filed them with the government authorities all the same. Finally, despite the claims in the documentation that had been submitted to the authorities, "the original agreement" was still in effect. But what was "the original agreement"? That is not stated. Surely Franco thought it referred to the June 1976 Contract that he and Penthouse had been following all along. Kreditor had something else in mind. By wording the document so vaguely, "the original agreement" could be taken to mean the October 1975 Agreement — and that, indeed, is precisely how Penthouse represented it in the many court cases that would destroy Felix and wreck Franco Rossellini's life.

COUNTLESS HARDSHIPS RE ADVANCE GUARANTEES

BOB GUCCIONE HAD BY NOW SUCCEEDED IN HIS QUEST to keep Tinto Brass away from the editing suite. To his surprise he discovered that his desires at last were in almost perfect alignment with those of Brass, who decided he wanted nothing more to do with the film.

Brass, as we learned in the last chapter, had been waiting for nearly a year to re-gain access to the film to perform his own cut and deliver his answer print. The British court injunction, though, would not allow him access until all parties had resolved all ongoing disputes. The disputes could not be resolved, though, so long as PAC was holding a mortgage, as it continued to do, and it had expected a release and repayments by the October 1977 at the latest.

In June 1978 Penthouse and Felix filed a further plea before the Roman tribunal, asking for a final comprehensive resolution, since, as *Variety* put it, they were suffering “countless hardships re advance guarantees from distributors who have lost an entire season waiting for an appeal verdict.”⁴

The hearing was scheduled for 4 July 1978. The ruling was expected later that month, or, after a one-month court recess, in September. September came and went and still there was no resolution.

In the meantime, Felix and Penthouse continued to prepare for release. They worked diligently at clearing rights to the various musical pieces excerpted in the score. They worked with Warner Books on the two proposed tie-in volumes. They planned dates for scoring sessions. They screened the rough cut in early July and planned dates for dubbing and mixing sessions. They discussed a US release with the United Artists cinema chain. They had intensive discussions about the opening and closing credits. They prepared an elaborate press kit. They also had discussions about advertising campaigns, as explained by Leslie Jay in a Penthouse International letter to Franco Rossellini, dated 30 October 1978:

Dear Mr. Rossellini,

I am working on the publicity and advertising of “Gore Vidal’s *Caligula*.”

On Saturday Al Crown and I met with Bob to discuss our publicity campaign. Among the ideas we talked about was the possibility of doing a store window tie-in with either Bloomingdale’s, Henri Bendel or Fiorucci. To do this, we would require the costumes — togas, wigs, hair adornments, jewelry, sandals — that could be used to sell the film. We would also do blow-ups of various scenes to compliment [*sic*] the costumes.

Bob suggested I write you to see if these are indeed available to us.

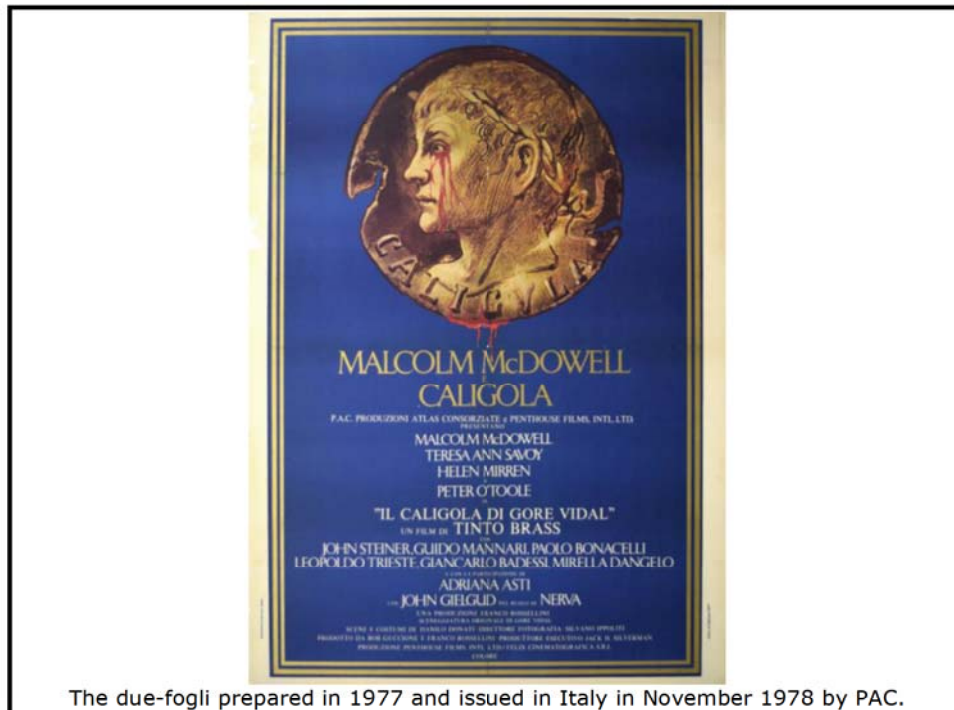
4. “Italo Theatrical Check-List,” *Variety* (weekly) 291 no. 2, Wednesday, 17 May 1978, p. 237.

Please let me know as soon as possible since department stores plan their windows months in advance. If we cannot supply original costumes more than likely they will not do anything on such a grand scale.

Thank you.
Cordially,

cc: Bob Guccione, Al Crown, Franco Rossellini — Twickenham⁵

Though these plans were all proceeding and would continue uninterrupted over the next several months, there was still no legal settlement even by November. In exasperation, and also to test the waters, PAC started putting up posters and teasers for *"Il Caligola di Gore Vidal," un Film di Tinto Brass*, announcing the imminent December release, even though the film was not ready — the mix was not final and the negative had not been cut. To quote *Variety*, "Brass went to court a fortnight ago and won another skirmish when civil judge Giovanni Giacobbi ordered Italian distrib PAC to withdraw all ads and posters announcing preem of *Caligula* in this market next month."⁶



The due-fogli prepared in 1977 and issued in Italy in November 1978 by PAC.

5. FRC.

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

By this time, as part of the protracted legal proceedings, Brass had seen the rough cut that production had prepared, and he did not recognize it as the film he had made. He would not allow his name to be listed as director. He and his lawyer Siniscalchi began discussions with Rossellini and Guccione and their lawyers.⁷

While that was in progress, in December and January, Penthouse optimistically started preparations for a soundtrack album through its new Penthouse Records arm, and announced that it would be issued in March to coincide with the première of *Caligula* in New York City.⁸

Ben Baker attempted to help settle with Tinto Brass, and he wrote a draft on 25 January 1979 that unfortunately does not survive in Rossellini's files, though the cover letter does. It is addressed to Gerald Kreditor, Esq., specifying that the Penthouse entity involved was Penthouse International, not Films, not Clubs:

Dear Gerald,

I enclose my small attempt at the Settlement Agreement between Tinto Brass, Felix Cinematographica [*sic*] and Penthouse International.

I must tell you positively that I am not in a position to affirm that an agreement of this nature will work in Italy and if it does not work in Italy then it won't work anywhere else in the World. It is vital therefore that any agreement that is reached must have the imprimatur of our friend Massimo [Ferrara Santamaria].

The Agreement does not provide technical headings or technical endings because these are matters that must be dealt with by Massimo.

My draft is, therefore, only a body or indeed a skeleton containing essentials.

You must also look at it very carefully since you may for tactical reasons consider that certain recitals or parts should be omitted or added.

I have endeavoured to keep it as simple as I can.

Hope you are sleeping occasionally.

As ever,

The above attempt at a settlement coincided with trouble that could have been predicted two and a half years earlier. When the original Joint Venture Agreement between Felix and Penthouse was executed in October 1975, Felix's payments were to be made to its exclusive agent, ParaGroup Limited of New York City. When the Joint Production Contract was executed in June 1976, there

7. *Ibid.*

8. "Penthouse Mag Launching Own Record Label," *Daily Variety* 182 no. 12, Friday, 5 January 1979, p. 36; reprinted as "Penthouse Bows Own Label with 'Caligula' Track," *Variety* (weekly) 293 no. 10, Wednesday, 10 January 1979, p. 95.

was no further mention of ParaGroup and so presumably payments would be made directly to Felix. This situation was destined to erupt into unpleasanties, and indeed it did.

THE TENTH CALIGULA LAWSUIT

FRANKLIN, WEINRIB, RUDELL & VASSALLO
ATTORNEYS AT LAW

950 THIRD AVENUE

NEW YORK, N.Y. 10022

(212) 935-5500

September 6, 1978

Gerald Adler, Esq.
PENTHOUSE MAGAZINE
909 Third Avenue
New York, NY 10022

Re: "Caligula"

Dear Gerry:

As you know, when Franco Rossellini made his deal with your company to act as producer of the above motion picture, he was represented by Paul Rosen who was his agent pursuant to a written contract. Mr. Rossellini was cognizant of the fact that we also represented Mr. Rosen who, in fact, recommended Mr. Rossellini to us.

The contract between Penthouse Clubs International Establishment and Felix Cinematografica S.R.L. (who furnished the services of Mr. Rossellini as co-producer) provides that all payments to Felix Cinematografica shall be made to ParaGroup, Ltd. as agent, which is Mr. Rosen's company.

As you know, Mr. Rossellini has unilaterally requested that payments be made directly to same. Mr. Rosen has requested me to advise you to advise your company that it is his intention to hold your company responsible for any payments that are made directly to Mr. Rossellini rather than to ParaGroup, Ltd. as the contract provides. Mr. Rosen has also asked me to advise you that if your company would pay directly to him his commissions of 10% of all sums to be paid to Mr. Rossellini and Felix Cinematografica, he would consent to such an arrangement.

I would appreciate hearing from you concerning the foregoing.

Cordially,

Leonard Franklin

cc: Mr. Paul Rosen

The above matter should have been simple to settle merely by correcting the mistake. The film had not yet been released, and so there had been no returns and Felix had received no royalties. The sensible thing to do would be to explain that situation to ParaGroup, to pay any moneys owing, if any, and then quietly to make an amendment to the Joint-Production Contract, specifying that royalty payments would be made to ParaGroup rather than to Felix. In retrospect, we can see that such would have been the only sensible solution, and would have prevented more than a decade of conflicts. Penthouse, for reasons that will become obvious, wanted anything *except* the sensible solution. So Penthouse started bullying.

PENTHOUSE

PENTHOUSE INTERNATIONAL LTD., 909 THIRD AVENUE, NEW YORK, N.Y. 10022. PHONE 212-593-3301

September 28, 1978

Leonard Franklin, Esq.
Franklin, Weinrib, Rudell & Vassallo
950 Third Avenue
New York, NY 10022

Re: Franco Rossellini

Dear Leonard:

Thank you for your letter of the 6th instant.

With respect, your facts are only partially correct. It is true that Mr. Rossellini originally asked for payment to be made to Paragroup, Ltd. but you will appreciate that Paragroup, Ltd. was not a party to the contract between Penthouse and Franco Rossellini and Mr. Rossellini gave further instructions that all payments were to be made directly to him.

I cannot see how Mr. Rosen can hold Penthouse responsible for any payments made to Mr. Rossellini under a contract between Rossellini and Penthouse and I am afraid you must advise Mr. Rosen to claim any sums that he may feel are due to him from Mr. Rossellini directly.

Yours sincerely,
Gerald Adler

Vice President and General Counsel

cc: F. Rossellini

Cleverly, the above letter was written on Penthouse International stationery, and made no mention of Films or Clubs. There can be no doubt from the above that Penthouse was looking for a fight. The fight began on Monday, 29 January 1979, when ParaGroup brought suit against Franco Rossellini, Felix

Cinematografica, and Penthouse Clubs International Establishment, for damages of \$10,000, which, of course, was 10% of Rossellini's \$100,000 salary. Further documentation is missing from the files, and we can only presume that this \$10,000 was paid, most likely by Felix. ParaGroup never appears again in the files, and we can safely assume that it and Felix went their separate ways after this breach of contract.

CATCHING VIDAL'S ATTENTION

AT ABOUT THE SAME TIME, February 1979, Warner Books at last released the long-promised novelization. Jack Silverman, who had poured himself into promotional strategies for this book, gave up and resigned his posts at Penthouse.⁹ His name was deleted from the back cover, just as it would be deleted from the film. Now that the book was published after such a long delay, it reached bookshop shelves with no fanfare. There were no advertisements, no upright displays, no publicity, nothing at all. It was hardly even noticed — except by Gore Vidal. Whether or not this was the intention, the publication of the book was not so much a publicity tie-in as it was a legal test case, for the title was *GORE VIDAL'S CALIGULA* and the back cover credited "Directed by Tinto Brass" and "Original Screenplay by Gore Vidal." If Penthouse, Felix, and Warner could get away with this unchallenged, or if they would prevail in the event of a challenge, then there was a good possibility that the movie could be released under that title and with those credits.

A SUGGESTION OF APPLIED PRESSURE

THAT SAME MONTH the final cut of the film was completed, after two full years of editing work. It was time to cut the negative, and that led to further problems. On Monday, 26 February 1979, Ben Baker wrote to Technicolor Limited of Middlesex asking for the *Caligula* materials still remaining after Penthouse had retrieved the bulk of those materials three weeks earlier, on Monday, 5 February 1979. R.J. Dutfield of Technicolor responded on Thursday, 1 March, explaining that:

9. Silverman was last listed on the *Penthouse* magazine masthead in the September 1978 issue, which was issued in the first week of August and sent to the printing house in the last week of July. His resignation was reported in Peter Noble, "In Confidence," *Screen International* no. 180, Saturday, 10 March 1979, p. 4. See also Hank Grant, "Rambling Reporter," *The Hollywood Reporter* 257 no. 20, Friday, 6 July 1979, p. 2.

Up to 5th February 1979 we were working on both the 35mm print of the feature and the 16mm print of the documentary. However, at the date when the negative was collected, we had not completed either version to a state where it could be submitted as a finished article.

Accordingly, after 5th February, any material in the course of preparation was destroyed since we were no longer in the position of being able to complete the picture.

You can be assured that we hold no material — negative or positive — on this subject, and, so far as I am aware, the only material in existence is the negative and the action cutting copy¹⁰ collected by you on 5th February 1979. Incidentally, the action cutting copy, as mentioned in the attached advice note, is of course a positive print taken from the original negative.

Penthouse was paying Technicolor to store and care for the materials, and here Technicolor admits that it deliberately destroyed what was left behind after Penthouse's first retrieval. The letter is not explicit, but it implies that no unique materials had been destroyed, that only copies had been destroyed. Yet we cannot be sure, and the Penthouse executives were aggrieved by this action. Strangely, neither Penthouse nor Felix sued for damages.

We shall never know what prompted such vandalism, but Bob Guccione and his long-time attorney Ben Baker "suggested" to Giancarlo Lui that Disney had applied pressure to Technicolor as well as Rank. This may have accounted for Rank's sudden refusal to continue holding the film elements, as well as Technicolor's destruction of a renter's holdings. Lui continues:

Ben and Gerald must have certainly sniffed danger somewhere before running for cover. They and Bob did mention the Unions, besides Disney, but I never questioned where they got the information. I trusted they did their job as I did mine.

As to the timing (midnight?) I really don't remember, although I do recall the feeling of sharing in Bob's excitement and in the "Caligula run-'n'-hide adventure." It could have actually been that we moved the cans "after hours" but, obviously, when the vaults could have been regularly accessed. It's also possible we moved Caligula to France "overnight" by ferry and that could be what fired up Bob's dramatic recollections of a midnight raid....¹¹

An undated draft document appeared, probably at this time. Franco Rossellini had despaired of ever being able to pay his creditors, and so he

10. "Action cutting copy" is the image alone, edited and cut into single reels (up to 1,000 feet). The sound would be held on the correlative "sound cutting copy."

11. Giancarlo Lui: email message to JEC, 14 February 2011.

proposed that a contract be drafted for his signature by which he would sign over his rights in return for an immediate reimbursement of his costs.

...1. THAT : FELIX CINEMATOGRAFICA [sic] S.r.l. is the proprietor of 35% of all the rights of the film "CALIGULA" produced by it with the participation of PENTHOUSE FILMS INTERNATIONAL LIMITED of New York, as by the contracts dated 23.7.1976 and 31.10.1977, statutorily authorized by U.I.C. [Ufficio Italiano dei Cambi] no. 500227 of 31.12.1976. and no. 401217 of 28.11.1977.

2. THAT : On the basis of the said contracts, all the income derived from the exploitation of the film in the whole world, excluding Italy and territories of exclusive Italian pertinence, are shared, with 65% going to Penthouse Films International Limited and 35% going to Felix Cinematographica [sic] S.r.l. after the recovery of all costs.

3. THAT : Pursuant to the fact that the film is not yet ready for public exhibition, Felix Cinematographica [sic], S.r.l. wishes to recover the costs it has sustained.

WITH THE ABOVE STATED INTRODUCTION

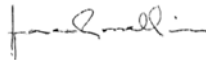
A. The FELIX CINEMATOGRAFICA [sic] S.r.l. sells to VIDEO SOUND S.A. all its rights of whatever nature and however obtained for the whole world, excluding the Italian territories above mentioned for the total amount of U.S.\$3,500,000.00. to be paid by Video Sound S.A. in no.7. (seven) consecutive monthly instalments of U.S.\$500,000.00. each.

B. The PENTHOUSE FILMS INTERNATIONAL LIMITED signifies its approval of this agreement by appending its signature hereto.

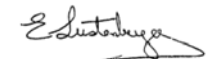
C. THIS AGREEMENT is executed in Italian and English and in the event of any variance of its effect the English translation shall apply.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day of 1979.

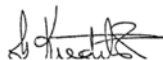
FELIX CINEMATOGRAFICA [sic] S.r.l.



VIDEO SOUND S.A.



PENTHOUSE FILMS INTERNATIONAL LIMITED



This agreement, though signed, was never executed, for almost miraculously it looked as though a release was at last in the offing. Yet problems ensued.

Though the negative was being cut and an answer print would soon be prepared, almost nobody was kept informed of any developments. Don Getz was beside himself with frustration, and he pleaded with Franco Rossellini:

9th March 1979

Dear Franco:

For some inexplicable reason we have completely lost contact on the progress of CALIGULA.

I have had communications in the last couple of days from distributors who have bought the film, and other distributors with who [*sic*] I had been in negotiations and with whom I had postponed finalising until we had a delivery date.

It is strange that they tell me that an answer print will be ready this week, and I cannot get any information from anyone.

I would appreciate any advice you can give me about the status of the film, since I am running into terrible problems with all of my good customers on the release dates etc.

If all of the litigation has been cleared, I think someone should advise me so that I can pass the information along to the distributors who have bought the film.

I am being particularly plagued by the distributors in Spain, Izaro Film, who have booked an opening in the biggest theatre in Madrid four times in the past year. I also receive information from Roadshow in Australia that they were told by Penthouse that an answer print would be ready this week. I have also received the same information from Shaw Brothers in Hong Kong and from two distributors in Germany, who claim they are offered the picture from various sources. This last piece of information puzzles me since my contract grants me exclusivity and I have performed my function quite well.

Someone, and preferably the producer of the picture, should advise all interested parties as soon as there is a date for delivery.

I find it quite strange that my information comes from sources such as the above.

Please phone, or write me, and tell me where we stand.

Sincerely,

Don Getz.

Copy to New York also.

There is no reason to think that an appeal to Franco Rossellini could have done any good, for there is no reason to think that Franco Rossellini was informed about the current status of the film. As Penthouse had been cavalier about honoring its contracts with Franco (acting unilaterally and not sharing financial information until after the fact), considering that Penthouse had been cavalier about its treatment of ParaGroup, considering that Penthouse had been

cavalier about honoring its contract with Tinto Brass, and considering that Penthouse had been cavalier about obeying Italian law, it is hardly surprising that Penthouse was similarly being cavalier about honoring its contract with Don Getz. Indeed, just afterwards, in April 1979, Penthouse fired Getz, alleging breach of contract, falsely claiming that Getz had not raised the required minimum of \$1,000,000 in presales by the deadline of 17 November 1976. Getz would contest his dismissal, but he had to delay his legal suit because he was unable to determine which particular Penthouse branch he had been working for and which particular Penthouse branch had fired him.

By 30 March 1979 the opening and closing credits (minus background image) had finally been delivered, and despite the ongoing battles with both Vidal and Brass, the credits still read "GORE VIDAL'S CALIGULA... ORIGINAL SCREENPLAY BY GORE VIDAL," but the direction credit had at last been changed: "PRINCIPAL PHOTOGRAPHY BY TINTO BRASS." The copyright notice was supplied as "COPYRIGHT © PENTHOUSE FILMS INTERNATIONAL, LTD. MCMLXXIX," without naming Felix Cinematografica. It is almost unbelievable, but it is true, that Franco Rossellini and his colleagues at Felix Cinematografica and their lawyers *never noticed this inappropriate copyright attribution!* That was their doom.

Shortly afterwards, Felix also drafted a proposal for the Italian credits, which were a bit different: "CALIGOLA... Tratto dal soggetto originale di GORE VIDAL... Sceneggiatura di GORE VIDAL E MASOLINO D'AMICO... Riprese dirette da TINTO BRASS Edizione della Produzione..." but without any copyright notice. A copyright notice was technically not necessary in a Berne Convention territory, since under that Convention all works are automatically copyrighted from the moment of their creation. Hence, when the film was finally released in 1979 in Italy, it carried no copyright notice.

The Warner paperback tie-in had been in bookshops for three months now, and Vidal had added a complaint about it to his ongoing suit. Nonetheless, Penthouse took this one step further and in May 1979¹² published an unillustrated edition through Futura Publications Limited of London, for sale in the UK, Ireland, Australia, and New Zealand, also entitled *GORE VIDAL'S CALIGULA*, and with captions on the back cover: "Director: Tinto Brass... Exec. Prod.: Jack H. Silverman." This edition, interestingly, made no mention of Penthouse except in fine print on the copyright page. Instead, it indicated that the film was from "Franco Rossellini Productions."

12. The date is supplied in "*Gore Vidal's Caligula: A Novel Based on Gore Vidal's Original Screenplay* [Paperback]," Amazon.co.uk.

Already, sometime in April 1979, Penthouse and Vidal drafted an out-of-court settlement. The date of 4 May at the bottom contradicted the April date at the top, and it was executed on 31 May. Vidal had accepted the compromise, as he said months earlier that he would,¹³ that he waive his 10 percent royalty. Further, he reluctantly agreed to a compromised credit reading "Adapted from an original screenplay by Gore Vidal." Penthouse also agreed that future printings of the novelization would not include any mention of his name whatsoever.¹⁴

The out-of-court settlement was yet another deception, because it actually had loopholes that allowed Penthouse to use Vidal's name, voice, and image to publicize the film, though within limitations. Insofar as it removed Vidal's name from the novelization and deleted his name from the title and removed his name as author of the screenplay, it was honest. This contract, though, wrongly gave the impression that it was Penthouse Clubs International Establishment that had co-produced the film through *The Caligula Company*, and it supplied the date of Penthouse Films' contract with Warner Books as 27 April 1978, though there was undoubtedly an earlier contract going back at least as far as November 1977, as we can see from Jack Silverman's memo of 4 November 1977 and from Dick Lochte's article in *The Los Angeles Times* of 4 December 1977.¹⁵

The out-of-court settlement stated that Vidal's name would not be used in any "derivative work including any publicity or promotional material in any form including print, film, audio, video or otherwise." Penthouse would violate that term in the May 1980 issue of *Penthouse*, the special issue devoted to *Caligula*, which included Guccione's lengthy and rather nasty stories about Gore Vidal's involvement in the film. On the other hand, Penthouse did prevent Giancarlo Lui's *A Documentary on the Making of "Gore Vidal's Caligula"* from being shown anywhere — for another nine years. A ten-minute abridgment made its first appearance in the UK in February 1988 in a VHS home video entitled *Penthouse on the Wild Side*. Vidal never learned about this, and so after an appropriate lapse of time, in January 1989, the same video was released in the US. Vidal still never noticed. Since he filed no complaint, the precedent was set, and Penthouse was free to issue the documentary as it saw fit. A slightly modified one-hour edition was put on DVD in November 1999. The first Vidal heard about this was in December 2006, when I interviewed him. He sighed in angry resignation. The

13. "Writer, 'Penthouse' Publisher at Odds over Orgy Pic," *New York* 12 no. 13, 26 March 1979, p. 85.

14. FRC, GVP 64-2745, DDP 360-17, DDP 360-23.

15. Dick Lochte, "Book Notes: Spinning-Off into Outer Space," *The Los Angeles Times Book Review*, Sunday, 4 December 1977, p. 2.

61-minute version shown at Cannes was finally issued on DVD in October 2007. There is no trace of the complete 67-minute version.

The out-of-court settlement was signed by Gore Vidal, by Vidal's attorney Peter H. Morrison, and by Norman Roy Grutman on behalf of The Caligula Company, Penthouse International, Ltd., and Penthouse Films International, Ltd., even though The Caligula Company had long been inactive. Felix, significantly, was not a signatory, and did not learn about this settlement until the following year, when Leslie Jay sent a cover memo with Vidal's out-of-court settlement attached, emphasizing that Vidal's name was not to be used in any way except as specified in the agreement.¹⁶

By the time the movie was shown at the Cannes trade festival in May 1979, the credits had been softened. Though the out-of-court settlement between Penthouse and Vidal would not be signed until the end of May, new credits were ordered in April and the film as screened at Cannes was *Caligula*, "Adapted from an Original Screenplay by Gore Vidal," "Principal Photography by Tinto Brass; Editing by the Production."¹⁷ (Later, in the spring of 1980, Warner Books ran off a second print run of the novelization, now entitled simply *Caligula* and with a credit to Analysis Film Releasing Corporation on the back cover.¹⁸) The Futura edition, *Gore Vidal's Caligula*, continued to be available in its territories from the time of its publication through late 1980.

Now that settlements had been reached with both Tinto Brass, at the beginning of May, and with Gore Vidal, at the end of May, it was time to move ahead quickly with the release, which was being publicized as pending for early summer.¹⁹ Consequently, Penthouse drew up a contract similar to the contract that Felix had drawn up earlier in the year, whereby Felix Cinematografica and Penthouse Films would cede all *Caligula* rights to Video Sound of Zurich for a consideration of \$10,000,000, of which Felix would be entitled to its 35% share of

16. Leslie Jay: Penthouse Inter-Office Memorandum, 3 January 1980, to the attention of Bob Guccione, Kathy Keeton, Irwin Billman, Giancarlo Lui, Al Crown, Franco Rossellini, Joe Kraft, Roy Grutman, Frank Devino, Jim Goode, Heidi Handman, Bill Marlieb, Sy Presten, Russ Seliger, and Jeri Winston. DDP 360-23.

17. Todd McCarthy, "Penthouse's \$16 Mil 'Caligula' Done but Pent-Up," *Daily Variety* 184 no. 26, Thursday, 12 July 1979, p. 6.

18. RS found a copy on the "Recently Arrived" shelf at Jerry Lane's Book Stop at the Nob Hill Center in Albuquerque sometime around 1980.

19. Melton Davis, "Fellini's Latest Creates a Ruckus in Rome," *The New York Times*, Sunday, 18 February 1979, pp. D1, D5; "Writer, 'Penthouse' Publisher at Odds over Orgy Pic," *op. cit.*

\$3,500,000 and Penthouse would be entitled to its 65% share of \$6,500,000.²⁰ Felix would receive its share in seven monthly instalments of \$500,000 “starting with the approval date of the competent Italian authorities.” Felix would, of course, retain all Italian-territory rights. Penthouse would retain all Mexican, French-Canadian, Venezuelan, and Brazilian rights. A further four unnamed countries were not part of this arrangement, as “another Company” was negotiating those licenses.

On Monday, 4 June 1979, this document was signed by Irwin E. Billman on behalf of Penthouse, Erwin Lustenberger on behalf of Video Sound, and lastly by Franco Rossellini on behalf of Felix Cinematografica. Now that we have examined so much data, we can conjecture from this document that, after all these years, Franco Rossellini still had no idea that Video Sound was effectively the same as Penthouse International. By signing this document, he had, once again, consigned his financial interests to the hands of Penthouse. Although all the signatures are on this document, there is no notary seal or government registration. More importantly, there never was and never would be a payment of \$3,500,000, which proves that the contract was never executed. After this document, Video Sound ceased all activity, and distribution licenses would be made directly by Penthouse Films International.

Working again on a Sunday, Franco Rossellini posted letters and forms to the Ministry of Tourism and Entertainment to arrange for official nationality and censor clearance. In early July 1979 Francesco Orefici, Felix’s CEO, submitted an application for Italian nationality to the Ministry, and its credits are notable for their differences from the US version: “Felix Cinematografica S.R.L. and Bob Guccione for Penthouse Films International present”; “adapted from an idea by Gore Vidal — screenplay by Gore Vidal and Masolino D’Amico”; “Editing consultant Nino Baragli”; “Scenes filmed by Tinto Brass, Edited by the Production”; and, most surprisingly, “Inserts filmed by Roberto Tatti,” giving Tatti credit for the additions shot by Guccione and Lui. This was surely a matter of foreign quotas, and it is likely that Tatti had served as an assistant to Guccione and Lui.

The Ministry stamped this application as received on 9 July 1979, and quickly responded with a query: Why did the film not list a director? The absence of a director’s credit gave rise to suspicions that lawsuits might be pending, and if a government agency were to pass a film despite knowing that

20. Irwin E. Billman for Penthouse Films International, Erwin E. Lustenberger for Video Sound, and Franco Rossellini for Felix Cinematografica: contract, 4 June 1979. FRC, DDP 360–17, and 361–4 (English and Italian).

legal conflicts were brewing, it would in effect be taking sides and hence would share liability. We do not have a copy of the Ministry's query, but we do have a copy of Rossellini's response of Wednesday, 11 July 1979. He explained:

In reference to the demands for clarifications advanced to us from your office concerning the dispute with Tinto Brass, assumed director of this film, we specify as follows:

1) — as a result of the disputes between ourselves and Tinto Brass concerning the editing of the film, Mr. Brass obtained from the Roman Tribunal the consideration that he is the only one suitable to complete the editing of the film;

2) — our production, in compliance with the judge's orders, repeatedly ordered Mr. Brass to complete the work and, absent the collaboration, cited him in court so that he would complete his engagement;

3) — subsequently, in the last month of May, a satisfactory compromise to the dispute with mutual obligations to abandon the proceedings in progress.

Therefore, the situation between the director and us is completely healed with mutual satisfaction.

We needed this so much for your and our peace of mind.

Of course, this was a bit of an oversimplification and a distortion, but for the purpose of a government application, it was succinct and acceptable. The Ministry of Tourism and Entertainment returned the application stamped with a permit number, 73788, filed on 24 July 1979.²¹

When the film was ready for national release, there was a further communication from Orefici to the Ministry with even more details about the credits, and an assurance that it had been shot entirely in Italy.²² Now that the film was ready, PAC prepared for the national launch scheduled for 10 November 1979.²³ As we learned earlier, the government authorities seized the film after a mere six days, leaving PAC unable to collect its investment and leaving Felix unable to pay its debts.

21. Francesco Orefici for Felix Cinematografica: application addressed to the Ministero del Turismo e dello Spettacolo, stamped by the Ministero with permit number 73788, with the permit officially retroactively dated 10 July 1979, with an amendment dated 24 July 1979 demanding further cuts. FRC, DDP 361–4. Related documents are at DDP 360–26 and DDP 360–27.

22. Orefici, sole administrator of Felix: letter to the Ministero del Turismo e dello Spettacolo, 6 November 1979. DDP 360–23.

23. PAC Produzioni Atlas Consorziate: letter to Felix Cinematografica, 29 October 1979. DDP 360–24.

Though it was on the 4th of June that Felix, Penthouse, and Video Sound placed their signatures on the assignment of rights, which would indicate that Penthouse and Felix had turned their accountings over to each other, it was not until Thursday, 20 December 1979, that Irwin E. Billman, as Executive Vice President of Penthouse Films International, acknowledged receipt of Felix's accounting. The wording would later prove to be troubling:

This is to acknowledge we have received from you all accounting administrative documentation connected with expenses borne by you for the production of the film, "Caligula," starting with January 1, 1978, including overhead costs.

The above as majority participants in the production of said film for the purpose of submitting of said documentation to our administrative offices and to fiscal authorities.²⁴

What is more important than what Billman's letter says is what it does not say. Billman does not request accountings of costs borne by Felix prior to 1978. The only explanation for this can be that Felix had previously submitted its 1975–1977 costs to Penthouse.²⁵ Further, Billman has no complaints whatsoever about Felix's submission. He regards it as acceptable to forward to the Penthouse administrative office and to the fiscal authorities. Reading between the lines, we can see that Felix properly fulfilled its duty to report all its expenses.

In succeeding court cases, Penthouse would offer a completely different interpretation of Billman's letter, maintaining that Felix had accounted only for the costs it had borne in 1978 and 1979, and had never provided any accountings for previous years.

A curious bit of wording is "The above as majority participants." Yet no party was named "above." Clearly Billman meant to refer to Penthouse Films International, for he signed himself as Executive Vice President, PENTHOUSE Films International, Ltd.

Unfortunately, there are no accountings for Felix among the surviving documentation. The accountings are either being held by someone else or they have been destroyed.

24. FRC, DDP 361–4.

25. Evidence is contained in a cover letter from Felix's attorney Francesco Orefici to Penthouse's John Holland, dated 26 May 1978, as well as Gay Elizabeth Rosen of Penthouse: letter to Franco Rossellini, 2 August 1979, claiming that Penthouse had misplaced at least one Italian document needed for Kreditor's accounting, and was hoping that Rossellini could supply a replacement. These letters strongly suggest that Felix had indeed submitted accounting statements and back-up documents prior to the statement for 1978/1979. Both letters are on file at DDP 360–23.

The two drafts of assignment of rights had gone nowhere. Now that Felix had submitted its accounting to Penthouse, there came a third draft assignment, on Penthouse International stationery, which offered Felix considerably less money.

December 24th 1979.

Re: Your 35% share of foreign sales on "CALIGULA" exploitation rights

We refer to negotiations which have taken place between us through your representative Mr. Rossellini and wish to confirm the following.

As co-participants in the production of the film "CALIGULA" and for the purpose of simplifying as much as possible our relations and to expedite our work as licensees for foreign sales, we hereby declare to be willing to purchase directly from you your 35% share of the film's exploitation rights throughout the world, in all gauges and with all means, in perpetuity, for the sum of US \$2,750.000.=.

The above holds true exception made for the film exploitation rights and government aids for the Italian market (Italian Republic, former Italian colonies, isle of Malta as well as aircrafts and ships flying the Italian flag), said rights remaining totally in our property.

The validity of this offer will expire at midnight of February 28, 1980.

You are authorized to consider this letter as an irrevocable commitment until said date and to submit it for approval to the competent Italian authorities. We are on our part committed to deliver to you the above mentioned sum of US \$2.750.000 within thirty days after said approval has been secured, in ten consecutive monthly instalments.

With best regards.

Yours sincerely,

PENTHOUSE INTERNATIONAL LIMITED.,

G. Kreditor²⁶

Felix's reimbursement had now decreased from \$3,500,000 to \$2,750,000, and yet even with that reduction, Felix would have recovered its costs, if nothing else. The letter was needlessly formal. Though it would go directly to Franco Rossellini, it was not addressed to anyone in particular, and made mention of Rossellini only in the third person. There was no mention of Penthouse Films International, no mention of Penthouse Clubs, no mention of Video Sound, only a mention of Penthouse International. Conveniently for Penthouse, there was a typographical error, changing "your property" to "our property." There was an

26. FRC, DDP 360-25 and 27, 361-4.

ambiguity about the date of expiration. Midnight of 28 February in military time means the midnight that begins the 28th, and in civilian time it means the midnight that ends the 28th. That is a trivial matter, though. Something else is a little less trivial. As with the previous drafts, payment would not be immediate, but would be parceled out over a period of months, and only after Felix signed over its rights. It would have been better if the terms had been reversed, so that Felix would not surrender its rights until it had received all Penthouse's instalments. Once rights are transferred, they are transferred, and payments become a separate issue. Penthouse realized this, and would take full advantage of that situation in another matter.

Franco Rossellini accepted the offer, and he forwarded it with appropriate applications to the Italian authorities. Yet he waited a month to do so. Why the delay? Was the letter predated? We shall probably never know. It was on the 29th of January 1980 that Felix's lawyer, Davide Costa, forwarded Penthouse's offer to the Ministry of Foreign Trade, the Ministry of Tourism and Entertainment, and the Italian Exchange Office. He explained the devastating financial consequences of being forbidden to release the film. Without a film to show, Felix's revenues were nonexistent, but its debts were real and rapidly maturing. Felix was fully ready, Costa stated, to accept Penthouse's offer and cede world exhibition rights apart from the Italian rights.

A week later, on 5 February 1980 (several days after *Caligula's* record-breaking premiere in Manhattan), Felix drafted an appendix to Penthouse's offer of 24 December 1979, stating that the expiration of the offer, 28 February 1980, should be understood as meaning that Felix should submit its request to the Italian authorities no later than the 28 February, but that Penthouse's offer would remain valid until the attainment of the government approvals. Unfortunately, this appendix was never executed, and there were no signatures on it.

All went well for a short while. Gerald Kreditor worked closely with Franco Rossellini to arrange a French release through Claude Berri's AMLF. The film was shown at the Berlin festival and Rossellini began talks with German distributors.

The tensions began on the expiration date of Penthouse's offer. On 28 February 1980 Felix learned from ANICA (National Association of Cinema and Related Industries — Associazione Nazionale Industrie Cinematografiche ed Affini) that the Italian authorities would not approve the assignment of rights, and for a reason that no one could have foreseen. The Italian government offices claimed that the film could not physically be sold overseas since the materials had been sequestered.

Rossellini was horrified, and he immediately drafted a response to the Ministry of Foreign Commerce, the Ministry of Tourism and Entertainment, and the Italian Exchange Office, explaining that this was a misunderstanding. All those government agencies had cleared the film and had approved the previous contracts that ultimately allowed for the export of the elements, which were already outside of Italy. Further, the judge who had ordered the confiscation of the film had ordered only that the circulating prints be confiscated; he had said nothing about the masters or submasters and did not even prohibit the lab from making further prints. Rossellini emphasized that not to allow Felix to sell its rights would bankrupt the company. He sent this letter by registered mail on the 29th. By the 29th, though, it was too late.

The official notice of the rejection of the foreign sale was dated 17 March 1980, and it emanated from the Italian Exchange Office, file number 9244.²⁷

Just as Rossellini found that his film has been banned in consequence of his having scrupulously obeyed the obscenity laws, his obedience in following government permits to the letter was now being punished as well, and would lead to his undeclared bankruptcy. To add a further insult, on 28 April 1980 the court at Forlì would give Rossellini a suspended prison sentence for having released a film that the censors and courts had cleared.

Though he had not met the deadline, Rossellini continued to work harmoniously with Penthouse. His appeal proved successful, and the Italian Exchange Office approved the sale of world distribution rights to Penthouse for \$2,750,000 with permit number 117602 on Sunday, 6 April 1980.²⁸ Rossellini forwarded a copy of this letter to Penthouse. It would be almost two months before he received a reply.

Rossellini continued to work on collaborating with AMLF and other foreign distributors. Yet something went wrong, and Rossellini failed to notice. The distribution license with AMLF, signed on Friday, 16 May 1980, was countersigned not by Penthouse Films International, but by Penthouse International.

The deletion of that one word, "Films," served as a *prélude* to two handwritten memos by Gerald Kreditor, both on the same piece of paper, a week and a half later, on Tuesday, 27 May 1980.

27. I. Graziosi for the Ufficio Italiano dei Cambi: Number 9244 to Felix Cinematografica, 17 March 1980. Italian and English copies at DDP 360-27 and 361-1.

28. Ufficio Italiano dei Cambi, Nulla-Osta N° 117602, 6 April 1980. DDP 360-27.

To Franco Rossellini

Dear Franco,

With regard to the assignment you signed to Penthouse Films International Ltd it is our understanding that as soon as Bob Guccione gets to London we will sit down with you to adjust our agreement that has been done today with all the terms that are not included

Gerald Kreditor for
Penthouse International Ltd

Dear Franco,

It is still my understanding today (27th May 1980) that the original agreement between you and your company and Bob Guccione and Penthouse regarding Gore Vidal's Caligula remains in effect and unchanged.

G. Kreditor²⁹

Again, we have only photocopies of poor quality. It is useful to compare the handwriting with the previous handwritten memo. We can also see more clearly how odd it is.

The image shows two handwritten letters on lined paper, which are photocopies of the typed text above. The first letter is addressed to 'Franco Rossellini' and signed 'Gerald Kreditor for Penthouse International Ltd'. The second letter is addressed to 'Dear Franco,' and signed 'G. Kreditor'. The handwriting is cursive and somewhat messy, consistent with the 'odd' description in the text.

Franco Rossellini
Dear Franco
With regard to the assignment you signed to Penthouse Films International Ltd it is our understanding that as soon as Bob Guccione gets to London we will sit down with you to adjust our agreement that has been done today with all the terms that are not included
Gerald Kreditor for
Penthouse International Ltd

Dear Franco,
It is still my understanding today (27th May 1980) that the original agreement between you and your company and Bob Guccione and Penthouse regarding Gore Vidal's Caligula remains in effect and unchanged.
G. Kreditor

29. FRC, DDP 360-27, 361-4.

Let us take the second memo first. This is a reference to the peculiar document from Sunday, the 21st of May 1978, which Rossellini signed at Kreditor's urging. As with that earlier document, this one also fails to state precisely what is meant by "the original agreement," for there were two original agreements, the one from October 1975 which the Italian authorities rejected, and the novation of June 1976, which the Italian authorities approved, and which was the only contract that either party subsequently followed.

Now we can work backwards to the top memo, which refers to the assignment that Rossellini signed to Penthouse Films. But which assignment might this have been? And why did this memo not explain precisely which assignment was being referenced? We need now to review all the assignments.

There were several items that could have been considered assignments. There was the 26 July 1976 instrument by which Felix assigned the actors' rights, but that could not have been what Kreditor meant, for that issue had long ago been settled, and, further, the assignment was to Video Sound, which had then assigned rights to Penthouse Films International. There was the undated, unexecuted document of July 1977 by which Felix falsely declared its complete failure to invest in the film and granted Penthouse 100% ownership. But that assignment fortunately had never come to anything. There was also the June 1979 draft by which Felix sold all its non-Italian rights to Video Sound for \$3,500,000, which as we know this was never executed. There was the revised draft of 4 June 1979, by which Penthouse Films and Felix both assigned their rights to Video Sound. As with the earlier draft, this too was never executed. Finally, there was Penthouse's offer of 24 December 1979 to purchase Felix's non-Italian rights for \$2,750,000, and the unexecuted addendum of 5 February 1980. These two documents, beyond any question, are what Kreditor was referencing, for this was the matter of immediate concern. The promise "to adjust our agreement" must have come as a blessed relief to Franco Rossellini, who surely understood it as meaning that the deadline would either be extended or reinterpreted, though the agreement "that has been done today" remains a mystery. We do not have any record of what happened at the meeting with Bob Guccione upon his arrival in London, and we suspect that there was no such meeting.

Kreditor left the wording vague. An outsider reading this document would not know what assignment was being referenced. That was deliberate. In subsequent legal contests, Kreditor, Guccione, and other Penthouse executives and employees would use these two connected hand-written memos as further evidence, which they exhibited in court connected with the unexecuted

assignment of July 1977, to demonstrate that Felix had raised no funds towards production and had therefore assigned all its rights to Penthouse. Franco Rossellini did not realize this yet, nor could he have realized this yet.

Three days later Gerald Kreditor mailed Franco Rossellini another request. This may have been completely innocent; we simply do not have all the details. It was a copy of an outstanding bill from the Hotel Hassler in Rome for £368,900 (\$439.54) for Ben Baker's November 1979 stay. "Would you please see that the Hassler is settled for Ben's bills and my own so that we are not given a bad name by them, and confirm when this has been done." We do not know what he meant by "and my own," since Kreditor was not in Rome at that time. If this related to legal issues or difficulties surrounding the aborted Italian release, then this would properly be a Felix bill. If it was a Felix bill, though, then we do not understand why the Hassler sent it to Kreditor rather than to Felix.

Beginning in early June 1980 there was some important correspondence that is missing from the files. One missing item is found in the Gore Vidal Papers at Harvard. It is an "amicable" settlement among Felix, Brass, and Vidal, by which all drop their claims against one another. Felix agreed never again to credit Vidal with the screenplay, though it had the option of stating in the credits, "adapted from an original story by Gore Vidal."³⁰

The next document in the Rossellini files is, once again, inexplicable. It is dated 30 June 1980, and it is from Gerald Kreditor to Jean-Pierre Grey, Esq., of Citel Films, Switzerland, regarding Swiss distribution.³¹ Typically a distributor forwards a set percentage of net receipts to the rights holder. This agreement, though, complicated matters considerably. Wrote Kreditor: "You will open a separate 'Caligula' Bank account in the Union Bank of Switzerland in Geneva and you will give irrevocable instructions to the Manager at that branch acceptable to Mr. Max Langenegger, who is the Manager in charge of Penthouse Clubs International Establishment at Zurich Branch of the Union Bank of Switzerland at 45, Bahnhofstrasse, Zurich 8021." This was certainly a most unusual arrangement, and we see that after a long absence, Penthouse Clubs International Establishment is being brought back into the film dealings for

30. Scrittura privata tra la Felix Cinematografica S.r.l., il Signor Giovanni Tinto Brass e il Signor Gore Vidal, 13 June 1980. GVP 64-2745. This was soon followed by Vidal's letter to Tinto Brass in which he denied having made the objectionable statements to *Gente* and put it all down to mistranslations. "Personally, I always speak the truth," he said. Vidal: letter to Brass, 6 August 1980. GVC folder 1018. Vidal sent another copy of this letter on 12 December 1980. Brass, in turn, wrote to Vidal on 10 June 1981, withdrawing his complaints. GVC 64-2745.

31. Gerald Kreditor of Gerald Kreditor & Co: letter to Grey of Citel Films Distribution SA, Switzerland, 30 June 1980. FRC, DDP 360-23.

reasons that could not have seemed clear at the time. Adding to the strangeness is the instruction that "Immediately on receipt of any income into the 'Caligula' account 82½% (eighty two and one half per cent) will be transferred on the same day to Penthouse Clubs International Establishment account in Zurich." In other words, if income arrives each day, then each day 82½% must be deposited directly into the Clubs International account, which this letter seems to equate with the "Caligula" account. In normal business transactions, money is transferred according to a set time schedule, every week or every two weeks or every month. A daily deposit is far from usual. Further, 82½% is rather high, a more typical European rate being 75% or 80%.

Once Citel opened *Caligula*, it made sure to play it at cinemas just across from the Italian border.³² Milanese movie-goers had no problem driving a short distance up the highway to see screenings in Lugano and Locarno, and thus did Penthouse syphon off business that, had it not been for the injunction, would have been Felix's.

The letter to Citel, though odd, in and of itself would not cause much uneasiness. The next item, though, would. Gerald Kreditor had had discussions with Rossellini about extending Penthouse's offer of \$2,750,000 in exchange for Felix's 35% of non-Italian rights. Yet he wrote to Guccione suggesting that the \$2,750,000 be reduced to a mere \$500,000. At the same time, he requested full accountings for both *Messalina*, *Messalina* as well as *The City of Women*, which he said Penthouse's tax preparers needed, despite Penthouse having withdrawn prior to production and despite its having contributed nothing to either production.³³

Felix received a cabled response supposedly from Gerald Kreditor, with news of Penthouse's reaction to his suggestion that the purchase offer be extended:

ON ACCOUNT OF OUR LEGAL REPERSENTATIVES [sic]
TEMPORARY ABSENCE ONLY TODAY WE CAN ANSWER TO
YOUR LETTER DATED JUNE 6 1980 STOP WE ARE SURPRISED
THAT PERMISSION WAS GRANTED BY ITALIAN AUTHORITIES
FOR FOR [sic] TRANSFERRING THE 35 PERCENT FOREIGN RIGHTS
OF FILM CALIGULA ON OUR BEHALF SUBSEQUENTLY THE
REJECTION OF CAMBITAL NOTE 9244 AS WE HAVE BEEN
INFORMED SOME TIME AGO STOP AS CONTRACTUAL TERMS

32. Fabrizio Zampi, "Caligola, il più porno dei kolossal all'estero sta rastrellando quattrini," *Il Messagero*, Sunday, 3 August 1980, p. 10. DDP 360-27.

33. Kreditor of Gerald Kreditor & Co: letter to Rossellini of Felix Cinematografica, 17 July 1980. DDP 360-26.

ELAPSED IN VAIN AND THE LACK OF AUTHORIZATION WITHIN SAID PERENTORY [sic] TERMS 28 FEBRUARY 1980 KEEPING IN MIND THE ABOFE [sic] CAPITOL [sic] NOTES HAVE PROVOCATED [sic] AUTOMATICALLY CANCELLATION OF OUR AGREEMENT DATED 24 DECEMBER 1979 WHICH THEREFORE MUST BE CONSIDERED CANCELLED FOR ALL PURPOSES AND AS IT HAD NEVER TAKEN PLACE STOP³⁴

The grammar and spelling alone are sufficient to demonstrate that Kreditor was not the author of the above message. Nonetheless, this telegram was clearly sent with his approval and at Penthouse's urging.

Penthouse's refusal to purchase the 35% share proved catastrophic for Felix. Penthouse, largely outside the reach of Italian law, would simply keep Felix's share for itself. Felix, after all, had no resources to fight back.

This was followed by more bad news. Giancarlo Lui let it be known that Gaumont Italia was falsely claiming to have paid Franco Rossellini unearned gifts.

Horried to learn, via Mr. Giancarlo Lui, that you have made damaging statements to him about me concerning alleged payments by you of substantial sums as gifts to me stop I request you as well as Mr. Giancarlo Lui to issue an immediate denial in writing stop otherwise I will be forced to take legal action stop am sending this telegram for information to Giancarlo Lui and Gerald Kreditor.³⁵

That was not all. Giancarlo Lui himself was spreading this rumor as well:³⁶

34. Time-stamped 8:36PM. DDP 360-17.

35. Rossellini: telegram to Gaumont Italia, 29 July 1980. FRC. Typed reference copies in Italian and English at DDP 360-27.

36. Rossellini: telegram to Lui, 29 July 1980. FRC. Typed reference copies in Italian and English at DDP 360-27.

Mod. 99 bis - Form. Spec. n. 101 - cod. 088326

AMMINISTRAZIONE P.T. UFF. TELEGRAFICO **PARTE B**

COPIA DI TELEGRAMMA di _____

389 FELIX CINEMATOGRAFICA

Numero telefonico dell'abbonato VIA TEODORO MONTICELLI 2 ROMA

877617 _____

QUALIFICA	DESTINAZIONE	PROVENIENZA	NUMERO	PAROLE	DATA	ORE
	ROMA	ROMA ROMO	653	71	29/7/80	2130

TESTO

BIANCARLO LUI PRESSO SOCIETA ALPHERAT

VIA PIETROTACCHINI 12 00197 ROMA

SEGUENTE TELE INVIATO PER CONOSCENZA AT BOB GUCCIONE ET GERALD

KREDITOR STOP INVITO PERENTORIAMENTE ET EMERGICAMENTE AT CESSARE

CON EFFETTO IMMEDIATO DA SUO INAMMISSIBILE ET GRAVISSIMO COMPORTAMENTO

DENIGRATORIO MIEI CONFRONTI ET ATTENDO SUE IMMEDIATE SENTITE SCRITTE

CORCA INGIURIOSE DICHIARAZIONI GIA CONTESTATELE CON TELE AT PARTE

STOP CONTRARIO COSTRETTO AZIONE LEGALE STOP ~~INVIATO~~

FRANCO ROSSSELLINI

Roma - Istituto Poligrafico dello Stato - P. V.

It ungrammatically reads: "29 July 1980. Giancarlo Lui, c/o Alpherat Society, Via Pietro Tacchini 12, 00197 Rome. This telegram is being copied to Bob Guccione and Gerald Kreditor. I request absolutely and firmly that you immediately cease your unacceptable and dangerous conduct [which is] damaging towards me and await your immediate denial in writing concerning the damaging statements already challenged in a separate telegram stop otherwise I will be forced to take legal action stop. Franco Rossellini."

Lui commented:

I only have a very vague recollection of that telegram. What I can assuredly tell you is that it's part and parcel of common Italian legally meaningless practices. When the probability of litigation looms over the horizons, all parties to it exchange telegrams (a telegram is an officially valid document) to make the most outrageous claims and denunciations while also asserting one's total innocence, utter surprise and honest righteousness. In all probability Franco's telegram was a response to mine, or really, Franco's attorneys' telegram was a rebuttal to one he received from attorney Massaro.

You need to be an Italian to understand this "legal" nonsense because in actual fact it has no legal weight or meaning; judges simply turn the page to the substantive issues; the telegrams' authors themselves never mention them again. How can I then explain why Italians keep up the practice? Well, it's like barking the loudest before

the fight. No one believes that woofing and growling can cause the adversary to back down; on the other hand this play-acting is intended to carry a last message: "I'm right, strong, and tough... but let's see if we can settle before it's too late." Of course it seldom works; but on the other hand, one never knows, it could. I could also use an Italian expression to further qualify it: it's a matter of "mettere le mani avanti per non cascare indietro"... or, of "putting the hands forward not to fall backwards."

As I said, my safe assumption is that attorney Massaro shot a first outrageous salvo in my name (God only knows what he wrote) and that Franco duly responded. But while on the subject, let me add my understanding of how the Penthouse/Rossellini very sad debacle started. To begin with, Gerald Kreditor saw any money being paid to Franco as blood, or actually vital lymph, being sucked out of Penthouse's body. This sentiment sat well with Bob who, once the film got ready for release, resented Franco's interest in the eventual profits. I never seriously got into their original contract and subsequent warranties, understandings and agreements (verbal and not) which, knowing Bob, I assumed could have been quite unclear and confusing; but I remember Bob telling me that Franco had failed to come up with his portion of the production moneys or their equivalent.

It was probably true. For example, I don't think that Franco put any of the moneys he received from PAC, an Italian film distributor, into *Caligula's* production. And in Bob's book, having paid for everything simply meant that he therefore owned everything, no matter the original agreements.³⁷

Two months after the Italian Exchange Office agreed to allow Felix to sell its international *Caligula* rights to Penthouse, Guccione changed his mind. He signed a letter typed on Penthouse International stationery. He surely did not write it. "Bob didn't really do letters," recalled Lynn Barber.³⁸ One of his battery of lawyers wrote it for him. The letter was overly formal, and it was vicious.

We were quite surprised to receive your letter dated the 6th of June, in which you inform us that the Italian Exchange Office furnished a letter of consent number 117602 (of which letter you forwarded a photocopy to us) and ask us to initiate action concerning payments as provided in our agreement dated December 24, 1979.

In this respect, we must inform you that said agreement between us cannot any longer be considered to be effective since the deadline of February 28, 1980 has lapsed; that was the date by which our offer of

37. Lui: telegram to TR: 24 December 2010.

38. Lynn Barber, *An Education* (NY: Atlas, 2010), p. 80.

US \$2,750,000 was supposed to have been accepted in order to be considered valid and irrevocable (liability statute 12/24/79). Beyond the applicable contract terms we would like to point out also that you had forwarded the communication from the Italian Exchange Office, Number 9244 dated 3/17/1980 which revoked the acquisition.

In view of the above and in the light of valuation developments which for obvious reasons took place in the area of foreign markets with respect to the exploitation of the film, at present we can only:

A) By way of direct procedure—refuse the acquisition;

B) By way of secondary procedure—as an exception, offer you the sum of US \$750,000 for your 35% rights in the exploitation throughout the world with exception of Italy and its former colonies—in perpetuity.

The offer in point “B” above will have to be considered valid until 2/28/1981 and by that date accepted by you and approved by your authorities.

Please be good enough to sign this document to indicate your acceptance and approval by executing your signature below the following wording: “for approval, acceptance and agreement of the proposal made in point “B,” of the US \$750,000 and subject to approval by Italian authorities.”

Yours faithfully,
R.C. Guccione
Chairman

RG: AM

For approval, acceptance and
agreement of the proposal made
in point “B” of the US \$750,000
and subject to approval by Italian
authorities.

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An offer of \$750,000 could not be acceptable to Rossellini, for it would put him two million dollars in arrears with his creditors. The offer would not be acceptable to the Italian authorities either, as they would realize that an Italian firm was taking a substantial loss in order to profit a foreign concern.

Guccione mentioned “valuation developments” in foreign markets. For Guccione to reduce a \$2,750,000 price by \$2,000,000 would indicate that the projections of returns had been reduced drastically. Yet we have seen in Chapter 26 the reverse was true, and *Caligula* had by now opened in Germany and France and was performing above all expectations, breaking boxoffice

39. 12 August 1980. FRC, DDP 360–25, 361–4.

records and staying at or close to the top. The “valuation developments” should have raised the price, not lowered it.

At about the time of this disconcerting letter, Rossellini hired a new lawyer for Felix, Maurizio Lupoi, a distinguished professor of comparative private law at the University of Perugia. Lupoi’s first known act as Felix’s legal counsel was to write a confidential letter to Bob Guccione at his home address.⁴⁰ It was a friendly letter, alerting Guccione to the legal blunders committed by his staff and advisers, and hoping that he could take care of matters quietly, without causing a row. The most immediate problem concerned the use of the music in the film. Penthouse had paid Bruno Nicolai to compose and record his score, but it was Felix that had signed a preliminary government application to license the score for use in the film.

We should note here that the application included the 11 rejected cues — further indication that Rossellini had never watched the final cut. Worse, another dozen or so cues were not included in the license, and nobody noticed! Rossellini naïvely assumed that the paperwork was accurate and complete.) Felix had forwarded the form to Giancarlo Lui for Penthouse’s signature, with the understanding that Lui would submit it to the SIAE (Italian Society of Authors and Publishers).⁴¹

Penthouse had neglected to sign or submit the contract. How the film was released without proper registration is not a question we can answer. When Rossellini learned about this, he had Felix and Gemelli sign a private contract granting Felix full and exclusive use of the music, in the film or separately from it, indefinitely.⁴² That contract was signed on 8 September 1980.

Dear Mr. Guccione:-

I am writing this letter on behalf of Mr. Franco Rossellini, whom I represent in various matters relating to the motion picture “Caligula”.

About ten days ago Mr. Rossellini learned to his great surprise that Penthouse had not yet signed the contract for the acquisition of the musical rights. Said contract had been sent to the attention of Mr. Lui nine months ago and had never been returned to Edizioni Gemelli. Mr.

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

41. *Programma Musicali di Film: Società Italiana degli Autori ed Editori*, signed by Alberto Nicolai for Edizioni Musicali Gemelli and by Franco Rossellini for Felix Cinematografica, 10 October 1979. The space for the party responsible for synchronization, namely Penthouse, is left blank. DDP 360–26.

42. *Scrittura Privata*, signed by Franco Rossellini for Felix Cinematografica and Alberto Nicolai for Edizioni Musicali Gemelli, 8 September 1980. Robert Guccione added his notarized signature offering Penthouse’s approval on 14 November 1980. DDP 360–26. An English translation is at 360–27.

Rossellini immediately realized that under the circumstances Edizioni Gemelli could easily have prevented any further showing of the picture and to protect the picture he signed the contract for the purchase of the rights in the name of Felix Cinematografica. That should solve the problem for the time being.

As you are no doubt well aware, there have been many occasions in which your adviser, or your staff, have placed the picture in great jeopardy, leaving it to Mr. Rossellini to come to the rescue — and bear the consequences (including various lawsuits and debts in Italy).

Mr. Rossellini feels that the time has come to find a final solution to all these problems. Mr. Sam Greenspoon has been asked to contact you in order to find a solution agreeable to both parties in the course of the next two weeks.

Yours very truly,
Maurizio Lupoi⁴³

We should note that Sam Greenspoon, working here alongside Lupoi and representing Franco Rossellini's interests, was also Penthouse's attorney! Greenspoon never divulged this crucial information to Lupoi or Rossellini.

Penthouse had originally planned to issue a *Caligula* soundtrack album on LP, cassette, and 8-track in March,⁴⁴ but for reasons unknown delayed the project until November, which coincidentally was the same time that Franco Rossellini at last got the SIAE authorization for his contract with Edizioni Musicali Gemelli. In a letter dated 8 November 1980 (a Saturday, demonstrating again that he enjoyed working on weekends) Rossellini offered to assign Penthouse the music-utilization rights.⁴⁵ His asking price was a reasonable \$10,000, which had surely been his own cost, payable within 30 days of the Italian Exchange Office's approval of the contract. Guccione and his chief outside counsel, Norman Roy Grutman, signed the contract on Sunday, 16 November 1980. The album was released without any further delay⁴⁶ and without waiting for the Exchange

43. Lupoi: confidential letter to Guccione, 12 September 1980. DDP 360–20.

44. "Penthouse Mag Launching Own Record Label," *op. cit.*

45. Rossellini of Felix Cinematografica: letter to Penthouse International, 8 November 1980. DDP 94–2, 360–26, and 361–4.

46. An undated Penthouse press release, "Penthouse International Forms Penthouse Records," states that the album "is scheduled for distribution during early November." The US edition of *Penthouse* 12 no. 2, dated October 1980 but which was available on newsstands about 7 September, had a full-page advertisement on page 89 for "Caligula — the Music," which stated that the double album, cassette, and 8-track tapes were "now available." *Billboard* magazine also had a full-page advertisement: *Billboard* 92 no. 47, 22 November 1980, p. 81.

Office's approval, which would not arrive until three months later, on 20 February 1981.⁴⁷ Then Penthouse declined to pay the \$10,000.

STOP, THIEF!

WHEN ROSSELLINI MADE PENTHOUSE THAT OFFER, he was not yet aware of the film's bizarre copyright development. He did not realize that a few months earlier, in late July 1980, a print of *Caligula* disappeared. The theft and its aftermath were highly unusual, even anomalous, but to understand that we need to take a refresher course in film piracy.

Piracy had been a troubling phenomenon from almost the day that cinema was invented. At the dawn of cinema, it was common for studios to include the company logo prominently displayed on every set, to eliminate all question of ownership. Such a device, though, did nothing to prevent distributor Siegmund Lubin from renting out unauthorized duplicates to his customers. He hired Fred J. Balshofer to copy French films from the Pathé and Méliès studios, and then carefully, under a magnifying glass, frame by frame, to paint out the offending trademark with a camel-hair paintbrush dipped in opaque.⁴⁸ The inevitable happened. A prospective purchaser asked for a screening of several pictures, including one called *A Trip to the Moon* (1903). Balshofer recalled:

Practice had made me quite expert at blocking out the trademarks, and the job on this picture was so good it was hard for our customer to believe his eyes. Suddenly he jumped up from his chair, shot his arm out in front of the beam of light from the projector, and shouted, "Stop the machine." Startled, I stopped grinding and turned on the light. Lubin stared at him wondering what was wrong. We found out soon enough when the prospective buyer shouted, "You want me to buy that film?" Lubin wanted to know why not. "I," the man bellowed, thumping his chest, "I made that picture. I am Georges Méliès from Paris." The man, quite naturally, was in a wild rage. Lubin glared at him and, pointing to me, brazenly began telling Méliès what a hard time I had had blocking out the trademark. Lubin's defiant attitude stunned Mr. Méliès, and he stood there speechless. Lubin seemed to consider the incident a joke, and I was dumbfounded when he went out

47. Ufficio Italiano dei Cambi: Nulla-Osta N° 119074 addressed to Felix Cinematografica: "Tale contratto prevede, tra l'altro, il seguente pagamento: US\$10.000.- ... per diritti di sfruttamento di brani musicali tratti dalla colonna sonora del film in questione (secondo le modalità stabilite, nel contratto dell'8/9/80 tra La Felix Cinematografica e la Edizioni Musicali Gemelli)...." DDP 360-18, 360-26. Lupoi forwarded this to Penthouse on 26 February 1981: DDP 360-26.

48. Fred J. Balshofer, "Chapter 1, Early Career with Shields, Lubin, and Others," in Fred J. Balshofer and Arthur C. Miller, *One Reel a Week* (Berkeley: University of California Press, 1967), p. 5.

laughing. I didn't see the humor of the situation as Méliès was in such a rage he could have become physically violent, but he soon stamped out of the room.⁴⁹

In the above story, prints were not stolen. They were rented through legitimate channels and then illegally duplicated and altered. This continued for decades, and the courts generally refused to prosecute. Here is a typical example, when a New York-based producer raided a duplicating plant on the East Side:

He found and seized a genuine positive of one of his own productions, together with a "duped" negative and a positive made from the copied negative. He took all three films and the machines by which they had been made before a city Magistrate and the court refused to hold the men who occupied the plant because the actual act of "duping" was not proved by a witness, but only by the "circumstantial" evidence of the exhibits.⁵⁰

There were occasional prosecutions,⁵¹ but never enough to stem the tide or deter thieves and pirates. Furthering the problem was the failure of various countries to recognize one another's copyrights, and that, indeed, is a problem that would, from the late 1970s through to the present day, plague *Caligula*. As far back as the 1920s we can see that there was, at best, little international coöperation. No one in Japan made it a secret that the Hollywood films shown there were stolen and illegally duplicated. Investigator George Mooser snooped around. "We had traced the source of stolen or duped prints, and found they were being shipped from Los Angeles, Seattle and Honolulu to Hong Kong, an exhibitor in Shanghai being the receiver general and distributor of the stolen material." This international group of thieves, pirates, and smugglers was proud to call itself "The Film Ring," and its members were supremely annoyed now to be questioned about their profitable business. Mooser and his colleagues were welcomed with the utmost cordiality by Japanese film-company heads, but the cordiality soon cooled.

We are informed we could never secure a conviction, as the Taisho Film Co. had lost its case against Ni-Katsudo Co. When we finally contracted for the showing here of "Way Down East," the thieves came out into the

49. *Ibid.*, pp. 8–9.

50. "To Use N.Y. Censorship as Preventive of Film Thefts," *Variety* 62 no. 14, Friday, 27 May 1921, p. 37.

51. "Heavy Film Thefts Suggest Organized Gang of Thieves," *Variety* 53 no. 13, Friday, 21 February 1919, p. 73; "'Duped' Film Seized," *Variety* 56 no. 14, Friday, 28 November 1919, p. 57; "Campaign against Film Thieves," *Variety* 62 no. 12, Friday, 13 May 1921, p. 47; "Dupers Wrecking Foreign Markets," *Variety* 63 no. 13, Friday, 19 August 1921, p. 39.

open, audaciously claiming copyright on the pirated film by virtue of a Japanese translation of the story of "Way Down East." They furthermore warned us that they would take "legal" steps to prevent the showing of our film, and sent word to the man with whom we had contracted, that 50 "Black Hand" or "Short Sword" men would be at the theatre to prevent his opening."⁵²

A duplication facility in Bogotá, Colombia, supplied much of Latin America as well as India.⁵³ It was not only foreigners who earned handsome livings from other people's films. Cinemas in the US that had been reported as closed were in fact open and thriving.⁵⁴ The trick was "bicycling," with a print taken, a few reels at a time, to a supposedly shuttered cinema. While one cinema was running the second part of a movie, the first part would be sent to a different cinema a few blocks away. Thus, one rental could pay for two exhibitions.⁵⁵ Oftentimes this was accomplished with the help of the Mafia-controlled garment-trucking union, in association with Murder, Inc.⁵⁶ What's more, many small villages in the US that had no cinemas were serviced by "jack rabbit" exhibitors who would travel from place to place with portable projectors and screens and put on shows. Some of these jack rabbits made extra income on the side by neglecting to inform the distributors about all the villages they serviced.⁵⁷

With the outbreak of hostilities in Europe in 1939, Hollywood withdrew most of its representatives, and this opened further marvelous growth opportunities for pirates, who nabbed prints from cinema lobbies, where, after a booking, they were awaiting pickup by couriers for delivery back to the exchanges. The pirates would take the prints to underground labs and run off copies, and some were even courteous enough to ship the legitimate prints back to the exchanges, by express delivery, collect. The duplicates were then exhibited in war-torn areas of Europe, and some were sold to jack rabbits.⁵⁸

During World War II troops were supplied with legitimate 16mm copies of the latest Hollywood movies, and in the years following the war a flood of these prints made their way back in soldiers' dufflebags and were sold to fly-by-night

52. George Mooser, "Japanese Pirates Defiant," *Variety* 67 no. 2, Friday, 2 June 1922, p. 39.

53. "'Ben-Hur' Prints Stolen in India," *Variety* 90 no. 4, Wednesday, 8 February 1928, p. 4.

54. "Si Seadler's Summer Samovorites Learn about Hired Hands' Larceny," *Variety* 259 no. 10, Wednesday, 22 July 1970, p. 27.

55. "Bureau Reveals 28% Bicycling in Theatres," *Daily Variety* 26 no. 18, Wednesday, 27 December 1939, p. 10.

56. "Si Seadler," *op. cit.*

57. "Trying to Curb 'Jack Rabbit' Exhibs (Summer Itinerants) from Bicycling," *Variety* 127 no. 8, Wednesday, 4 August 1937, p. 14.

58. "Police Probe Bootleg Films," *Daily Variety* 26 no. 12, Tuesday, 19 December 1939, pp. 1, 4.

exhibitors.⁵⁹ This situation was exacerbated on the other side of the globe when the Iron Curtain dropped after WWII. When the Motion Picture Export Association of America chanced upon a report that Hungarians preferred Hollywood movies, it launched an investigation, since no Hollywood movies had been licensed to Hungary since the takeover. It turned out that these were prints that had been confiscated by Communist forces when they overtook the country. The situation was similar in Czechoslovakia.⁶⁰

The Iron Curtain also made life temporarily convenient for US pirates who rented out films by Charlie Chaplin during the time that he was denied entry into the US. Chaplin arranged with his former partners, United Artists, to report on any unauthorized showings, and he soon engaged copyright attorneys Sargoy & Stein to enforce his interests in the US.⁶¹

Politics further assisted Indonesian pirates who walked off with 850 feature films once the offices of the USIA were sacked in 1964. It was the Motion Picture Export Association of America's new Far East director, Robert V. Perkins, who made this discovery three years later and set about recovering the materials.⁶²

As we shall discover more and more, the pirates were often not criminal gangs, but were Hollywood executives in good standing. We may here relate the story of Boston's vice squad, which, during its search for illegal sex films, stumbled upon something unexpected: a cache fifty-eight 16mm feature films stolen by Arthur Miller, a legitimate film distributor. Police, valuing the loot as worth \$750,000 in ticket sales, fined Miller \$100.⁶³ There is also the story of Allied Artists employee Emanuel Goodman who, in 1958, conspired with an unemployed taxi driver and four sailors to steal 16mm prints that the Hollywood studios had rented to the US Navy. These prints, stolen from the Brooklyn Navy Yard's film exchange, were then booked in various resort hotels in Upstate New York. Goodman and the taxi driver were each sentenced to three months in federal prison.⁶⁴ Two decades later the president of Technicolor International,

59. "Racket Wears Out," *Daily Variety* 82 no. 8, Wednesday, 16 December 1953, p. 6.

60. "Mayors Ask State Dept. Track Down Stolen U.S. Pix behind Iron Curtain," *Daily Variety* 87 no. 9, Thursday, 17 March 1955, pp. 1, 20.

61. "Lopert Does What UA Cannot," *Variety* 214 no. 7, Wednesday, 15 April 1959, pp. 5, 11.

62. "Recover 850 Prints Stolen in Indonesia," *Variety* 249 no. 1, Wednesday, 22 November 1967, p. 21.

63. We presume that Arthur Miller is the same as the Arthur C. Miller who had been a pioneer of film's earliest days and coauthor of *One Reel a Week*, *op. cit.* "Mystery of Stolen Prints," *Variety* 211 no. 4, Wednesday, 25 June 1958, p. 24.

64. "Navy's Prints Stolen, Two Men Indicted," *Variety* 218 no. 3, Wednesday, 16 March 1960, p. 7; "Two to Trial in Brooklyn," *Variety* 218 no. 6, Wednesday, 6 April 1960, p. 17; "AA's Emanuel

Mohydeen Izzat Quandour, fled to Saudi Arabia to avoid prosecution for the pirating of *Star Wars*, *Love Story*, *The Deep*, and *Elvis on Tour* for his customers in the UK and in the Middle East.⁶⁵ We learn from Wikipedia that Quandour is also an accomplished and well-known novelist, musical composer, and film director.⁶⁶

Losing patience after decades of incalculable losses, the major Hollywood studios in 1970 contributed \$175,000 to a new fund established by the Motion Picture Export Association of America, for the purpose of putting an end to the trade in pirated 16mm prints, which netted the international pirates untold millions.⁶⁷ One of the international “hotbeds” for the illegal duplication onto 16mm was provincial England. Income was earned by renting these illicit prints to “workingmen’s clubs.” MGM staffers were able to pay the 36-cent tickets to witness a 16mm screening of *When Eagles Dared*, only to discover that the film, officially available only in 35mm for cinema bookings, was booked quite innocently by the club owners who had been entirely unaware that the film could not legally be rented to them. The studio suspicion was that, unlike *When Eagles Dared*, many of these 16mm prints were not illegally duplicated, but that they had in fact been stolen from US military bases.⁶⁸ The story of pirated and stolen 16mm prints shown at British clubs lends further credence to the claim by Noel Bailey that he had seen a 16mm print of the padded version of *Caligula* in a late-night pub in London prior to the film’s release. (Refer to Chapter 20.)

The two pirates who had circulated *When Eagles Dared* were brought to trial at a provincial UK court, which discovered that these 16mm prints resulted from a lab overrun. It was not reported in the press if these two pirates were employed at the lab, or if they had paid a lab worker to run off the extra prints. It was easy for law enforcement to trace the origin of the 16mm prints simply by looking at the patterns of red dots that flashed visibly in mid-screen about once every minute. This was an early example of “Coded Anti-Piracy,” or “CAP Code” for short. CAP Code was now the new normal in the UK, though it was almost never used in the US at the time. The two pirates were fined £50 each (US\$120), which

Goodman Pleads Guilty, Mid-Trial, Gets 90 Days in Danbury,” *Variety* 219 no. 11, Wednesday, 10 August 1960, p. 18.

65. “Ex-Technicolor Int’l Prexy Fails to Show for Pic Piracy Sentencing,” *Daily Variety* 186 no. 6, Thursday, 13 December 1979, p. 2.

66. “Mohydeen Izzat Quandour,” *Wikipedia*, https://en.wikipedia.org/wiki/Mohydeen_Izzat_Quandour. We do not know if he was president of Technicolor at the time of the piracies.

67. “Majors Fighting Print Piracy with 175G War Chest,” *Variety* 259 no. 10, Wednesday, 22 July 1970, p. 28.

68. “London’s Film Row Calls England’s Provinces a ‘Hotbed’ for 16m Pirates,” *Variety* 259 no. 10, Wednesday, 22 July 1970, p. 28.

was the maximum fine for such an offense.⁶⁹ Since pirates laughed off such minimal fines as a small price to pay for doing thriving business, the courts increased the fine to £400, still laughably small, but this time with a potential threat of two years in prison for subsequent offenses.⁷⁰

Many of the pirated 16mm prints generated in the British provinces were destined not to the clubs, but to South Africa,⁷¹ which for a while had the distinction of being the piracy capital of the world, and which had no laws against the screening of pirated prints.⁷² The US, though, did have laws against film piracy, which enabled a grand jury to indict David Barnes and Frank Zichella and their A.R.C. Distributing Company of Manhattan with 75 counts of illegal shipments of 16mm prints to South Africa.⁷³

While South Africa was the world's piracy capital, the actual distribution "hub" of these pirated and stolen prints was Sicily. It was here that organized crime catered partly to secret clubs but mostly to the Middle Eastern markets, where Western pictures were contraband.⁷⁴ With prints disappearing from Italian cinemas left and right, insurance companies issued an ultimatum: Cinemas must take better care, even if that meant storing prints in safe-deposit vaults or hiring extra guards.⁷⁵ Such precautions must have been ignored, if we are to judge by a new phenomenon that burst upon the scene just three years later, when the home-collectors' market was flooded with pirated Super 8 copies of all manner of movies, new and old and even films not yet released. As usual, the pirates were uniquely satisfying a demand. As producer Mario Cecchi Gori explained, during those days of political unrest, "People no longer leave their homes at night either out of fear of violence in the streets or to protect their homes against break-ins. Television has little to offer and pirate distribs have a long and varied list of product for 8mm exposure. In this operation, both the film industry and state are defrauded."⁷⁶

69. "'Eagles Dare' Piracy Gets Two Convicted Who Dared," *Daily Variety* 150 no. 36, Wednesday, 27 January 1971, p. 6.

70. "Britain Stiffens Penalties for Pix & Platter Piracy," *Daily Variety* 156 no. 17, Wednesday, 28 June 1972, p. 5.

71. *Ibid.*

72. "So. Africa Pic Piracy Capital: Hint U.S. Lab Is Supplying the Prints," *Daily Variety* 151 no. 9, Thursday, 18 March 1971, p. 1

73. "Indict David Barnes, Frank Zichella," *Variety* 290 no. 1, Wednesday, 8 February 1978, p. 30.

74. "Sicily Hub of Stolen Pic Prints," *Daily Variety* 152 no. 17, Tuesday, 29 June 1971, p. 1.

75. "Stolen Prints' Insurance," *Variety* 264 no. 7, 29 September 1971, p. 27.

76. Hank Werba, "Suspect Mafia Hand in Flagrant Piracy of Films in Italy," *Variety* 282 no. 10, Wednesday, 14 April 1976, pp. 1, 80; Ted Clark, "Tighten Screws on Pic Pirates, but Some Countries Are Still Lax in Applying Full Weight of Law," *Variety* 295 no. 1, Wednesday, 9 May 1979, p. 502.

The Soviet Union similarly had no copyright agreements with the West at the time, though Western fare was immensely popular throughout that empire. During the days of détente, British producers were wary of participating in any mutual exchanges, knowing that their prints would be duplicated. Indeed, just recently, after failed negotiations for sale of *Murder on the Orient Express* to the USSR, the film was released there anyway after a single print was shown at the Moscow Film Festival.⁷⁷

An anonymous caller to the *Variety* office told the reporter who answered the telephone, "You don't know me, but I can get top dollar for a 16-millimeter print of 'Frenzy.' And if you know where there's a 16mm print of 'The Godfather' you and I can both get rich." The reporter assured the caller that *Variety* was in the reporting business, not in the exhibition business, and the caller then told his colorful tales. This bulk of his business stemmed from bars in the US that showed stolen 16mm prints to boost business on off-nights. Next in line were the little movie societies as well as small-town cinemas that normally booked through legitimate channels, but which changed their minds when the pirates offered the same titles at half the cost. While this anonymous caller would not reveal how he himself had acquired his products, he was free about telling how others did it. There was, for instance, a gentleman who posed as a movie buff who got friendly with a librarian at a Chicago television station, who invited him over for a conversation. After the chat, he simply walked down the hall where he grabbed all the prints he wanted and left the building with them. Others would book a film to a supposed cinema that was actually an abandoned building, and then pick up the print upon delivery and disappear with it. Another pirate was a lab worker who, predictably, just ran off a few extra copies of any black-and-white orders, which limited his business to older films, since extra color copies would have been noticed. The anonymous caller confirmed that many of the pirates were actual movie representatives who simply mixed a few stolen prints in with their legitimate wares. Pornographic films offered much promise, since "most of the guys who make hardcore stuff don't have the slightest idea where most of their prints are most of the time. They send them out to a theatre at a flat rate, and then sometimes forget where they sent them. When the porn theatre owner doesn't get a query in a few months, he just sells it to one of us dealers." The dealers to which the caller referred worked in smaller towns and villages, since

77. Roger Watkins, "London, Moscow Weeks; Fear (& Doubt) Piracy," *Variety* 280 no. 2, Wednesday, 20 August 1975, p. 28.

the larger cities were already so drowning in "hot" prints that it would be impossible for new dealers to establish themselves.⁷⁸

It was on 18 September 1972, not long after the above telephone call, that three prints of *The Godfather* disappeared during transit between Kennedy Airport and the Novo Freight Company of Queens, New York. Robert Alan Harris of Harrison, New York, offered to "sell" the three prints back to Paramount Pictures for \$500 each. Only two of the three prints were available at the moment, and so Harris asked that the \$1,000 for these first two prints be paid in cash to Kerry Matthew Culligan of Rye, New York. Paramount paid — with marked bills. One of those two prints was at the moment being run through a telecine in Yonkers for the production of illicit videotapes. The third print, which was not recovered, had gone missing in South Jersey. It was presumed that it had already been used to make duplicates. Harris and Culligan were arrested, together with Valmore Paul Boyly of Brooklyn, New York, and Sol Winkler, a record producer and song writer⁷⁹ who was also a "known trafficker" in stolen prints, according to the FBI.⁸⁰ By Monday, 2 October 1972, charges against Harris, Culligan, and Boyly were dismissed, while Winkler was indicted and faced a \$5,000 fine and ten years in prison.⁸¹ He received only a one-year probation, after which he was soon in the papers again, this time in connection with a raid on his Pisonic Productions Office, during which police confiscated over 500 stolen 16mm prints that Winkler transferred to video for sale to resort hotels in the Caribbean and in Florida, fetching between \$75 and \$350 per cassette. He made at least ten sales a day. The films found in his office were major current fare, including *The Godfather*, *Planet of the Apes*, *Deep Throat*, *Gone with the Wind*, *Bambi*, *Lassie Come Home*, *Lenny*, *Claudine*, and *The Towering Inferno*, together with various episodes of television shows. Winkler had stolen the prints from TV stations, airlines, and film libraries. Pisonic was allegedly a studio for producing television commercials, but in fact it was only a front for his pirating operation.⁸²

With such potential sales from the new popularity of videocassettes, it was hardly surprising that the black-market price for a hit film such as *Jaws* was

78. "Buffs' Own Stolen Film Biz," *Variety* 267 no. 10, Wednesday, 19 July 1972, pp. 3, 16.

79. One of Winkler's songs, "A Broken Promise," can be heard in the 1957 film *Jamboree!* Among his endeavors was a talent agency called Talent Unlimited and a record-production company called Audico Records. See "On the Upbeat," *Variety* 226 no. 3, Wednesday, 14 March 1962, p. 58.

80. "FBI in on 'Godfather' Caper," *Daily Variety* 157 no. 15, Tuesday, 26 September 1972, pp. 1, 5.

81. "Indict N.Y. Publisher Re 'Godfather' Prints," *Variety* 268 no. 8, Wednesday, 4 October 1972, p. 4.

82. "'Lenny,' 'Inferno,' among 500 Prints Found in N.Y. Police Raid of Pic-Tv Pirate Suspect," *Daily Variety* 166 no. 53, Friday, 21 February 1975, pp. 1, 9.

\$500,000, which explains why a print vanished from the Gopher Theatre in Minneapolis, Minnesota.⁸³ Half a year later some more creative thieves stole not a mere 25 prints of the soon-to-be-premiered *Hollywood Boulevard*, they stole the entire truck, leaving the driver stranded on the highway.⁸⁴

By the mid-1970s pirated 35mm and 16mm prints of new Hollywood releases abounded on the collectors' market.⁸⁵ When it was discovered that pirates were raiding studio dumpsters to collect rejected prints, the studios responded by guarding their trash.⁸⁶ All vehicles leaving studio lots were now subject to search.⁸⁷ Pirates would also raid salvage companies that were contracted to dispose of early print assemblages that predated the final cuts.⁸⁸ Bootleggers approached studio and lab personnel with offers of \$10,000 for access to an interpositive or internegative. Producer Martin Ransohoff had something to say about this: "I doubt very much that the president, the vice president, or the manager is in the movie lab at two in the morning when the workmen can be running off prints." Another producer, Lee Rich, elaborated on Ransohoff's remark: "We ordered 475 prints of *Twilight's Last Gleaming*. What's to prevent them from running off 476?"⁸⁹

A cinema in Alaska was happy to get access to a pirated print of *The Exorcist* and played it to "a packed audience eight times a day for 29 days straight," earning \$800,000 without paying a penny in royalties.⁹⁰ While some pirates were prosecuted, it was the collectors who needed always to be on the lookout. Even collectors who had purchased film prints legally found that their collections were impounded and that they faced civil suits from the studios. Explained one anonymous collector, "As far as I know, no copyrighted film has ever been returned by the FBI, even if it was sold legally by the copyright holder in the first place."⁹¹ Among the collectors was famous British actor Roddy McDowall, whose

83. "Sandy Smith, 22, Nabbed on 'Jaws' Print Possession," *Variety* 280 no. 4, Wednesday, 3 September 1975, p. 28.

84. "Truckload of 25 Prints Stolen in Fla.," *Variety* 282 no. 3, Wednesday, 25 February 1976, p. 26.

85. Christine Nieland, "Reel Pirating," *The Chicago Sun-Times*, Sunday, 21 May 1978, pp. ??

86. "Crime: The Film Pirates," *Newsweek*, 17 October 1977, p. 90.

87. *Ibid.*

88. "'Ark' Raid Tied to Par's Upfront Anti-Piracy Ploys," *Variety* (weekly) 303 no. 9, Wednesday, 1 July 1981, pp. 5, 34.

89. Joyce Haber, "Panic on the Bel-Air Circuit," *Los Angeles*, April 1977, pp. 130+.

90. Robert J. McAuley, "Pirated Movies Seized Here Part of \$800 million Racket," *The Cleveland Plain Dealer*, undated story from 1978 in the Margaret Herrick Library's clipping files, "Piracy — 1978," pp 1-A, 8-A.

91. Charlie Haas, "How the Film Piracy Underground Works," *Los Angeles*, April 1977, pp. 131, 201. There is a single known exception. Some years after serving time in prison, collector Jeff Joseph received a call from the FBI, which graciously returned his entire film collection. See Dennis

home was raided by the FBI. Charges were eventually dropped when he broke down and named names.⁹² Another collector was Hugh Hefner, against whom Universal Studios filed a \$10,000,000 lawsuit.⁹³

With the introduction of home video recorders — Vcord in 1974 and Betamax in May 1975 — the MPAA saw trouble ahead. As early as March 1975 the MPAA budgeted \$100,000 per year, soon raised to \$1,000,000 per year, to establish a Film Security Office (FSO) in Hollywood, operated by four ex-FBI agents, to deal with pirated videotapes.⁹⁴ These four agents, under the executive directorship of Ewing Layhew, soon came to be known as the “Film Fuzz.”⁹⁵ Anyone with access to film prints was a suspect; that included truckers, cinema personnel, and television and airline employees. There were rumors that pirates were offering projectionists \$500 for the loan of each desired print.⁹⁶ The MPAA countered that offer with a \$5,000 reward for information leading to the arrest and conviction of a pirate.⁹⁷ In 1976 alone the US Department of Justice and the FBI together spent \$22,000,000 fighting film piracy, at a time when the best estimates were that the studios were losing between \$100,000,000 and \$700,000,000 a year in US ticket sales. To put that number into perspective, Hollywood’s total US rentals in 1974 were \$549,300,000.⁹⁸ Film piracy was no longer a mere annoyance; it was now on the verge of destroying the entire motion-picture business.

In early 1977 the Motion Picture Export Association of America discovered that entire laboratory installations had been shipped to Africa and the Middle

Bartok and Jeff Joseph, *A Thousand Cuts: The Bizarre Underground World of Collectors and Dealers Who Saved the Movies* (Jackson: University Press of Mississippi, 2016), p. 191.

92. Bartok and Joseph, *op. cit.*, pp. 16–20.

93. Nieland, *op. cit.*

94. *Ibid.*; “Crime: The Film Pirates,” *Newsweek*, 17 October 1977, p. 90.

95. Dick Adler, “Psst... Wanna Buy a Hot Copy of ‘Heaven’s Gate’?,” *Los Angeles*, February 1981, pp. 104, 106, 108, 109.

96. Will Tusher, “Theatre Boothmen as №1 ‘Suspects’ in Piracy of Films,” *Variety* (weekly) 293 no. 11, Wednesday, 18 July 1979, p. 34; Bill Carlton, “Putting a High-Stakes Bounty on the Pirates,” *The New York Daily News*, 14 August 1980, p. ??.

97. “Reward \$5000,” full-page advertisement, *Daily Variety* 295 no. 3, Friday, 23 March 1979, p. 35; Paul Harris, “Piracy: World-Wide Problem Estimated to Cost Film Industry Upwards of \$700 Mil Annually; Middle Eastern Countries Pirates Hotbed,” *Daily Variety* 189 no. 36, 28 October 1980, pp. 14, 79.

98. “World-Wide War on Pix Print Pirates,” *Variety* 278 no. 2, Wednesday, 19 February 1975, p. 5; Will Tusher, “Valenti: Justice and FBI Spent \$22 Mil Fighting Piracy in ‘76,”

East solely for piracy, and that this was likely in conjunction with a series of burglaries.⁹⁹

Probably the first US projectionist who was convicted was from Benton Harbor, Michigan. He had received a print of *Raiders of the Lost Ark* prior to release and was overly confident. Paramount Pictures had exercised caution, according to Joseph Moscarel, Paramount's vice president of film and videotape security:

We knew *Raiders* was something special, so we took special steps to keep it under our control. At all screenings, private security guards escorted the print to and from the theatre. When general release prints were distributed, a lead seal was placed on each can. If the seal was broken before it arrived at the movie house, the manager was asked to notify us immediately. A letter was also sent to each of the 1,200 theatre operators showing the film, alerting them to antipiracy measures and warning that they would be held personally responsible if their prints somehow found their way into tape-duplication houses.

I got a call on June ninth from someone who claimed the print would be taken out of the theatre on the 12th. We immediately called the Film Security Office, which worked with the FBI, to coordinate the raid.¹⁰⁰

FSO investigator Fred Behrends told the rest of the story. The FBI "staked out the theatre using the same surveillance techniques they use for drug raids. When they spotted the employee leaving with the print, they followed him for 120 miles right into Chicago and, with Chicago authorities and a search warrant in tow, performed the raid. It was terrific."¹⁰¹ At Chicago was a tape-piracy operation that fronted as a warehouse, and the agents caught the projectionist red-handed just as he and a staff of 20 at two o'clock in the morning were loading the first reel onto the telecine.¹⁰² While seizing *Raiders*, FBI agents discovered master tapes for more than 60 movies there.¹⁰³

There was also a report of a projectionist who worked in Sweden. The Hollywood film in his booth was under continuous surveillance, but the moment that the security guards were called away to tend to an emergency, the

99. Ted Clark, "Organized Crime Linked to Int'l Piracy of Films," *Daily Variety* 175 no. 38, Wednesday, 27 April 1977, pp. 1, 3.

100. Mark Trost, "Pirates of the Lost Ark...", *Video Review*, September 1981, pp. 49–50.

101. *Ibid.*

102. "'Wars' Top Pirated Film, Court Told" (UPI wire story), *The Los Angeles Times*, Wednesday, 24 June 1981, pt. vi, p. 4.

103. Kathryn Christensen, "Industry Steps up Its Battle against Savvy Video Pirates," *The Wall Street Journal*, 24 July 1981, p. ???.

projectionist quickly grabbed the print and dashed it to his private home-based studio. He tore a few frames in his rush, but patched up the damage with splicing tape, leaving his fingerprints in the process. The fingerprints visible on the videocassettes matched the fingerprints on the splice.¹⁰⁴

Then there was the tale of a Düsseldorf projectionist who “borrowed” a print of *For Your Eyes Only*, not realizing that each print had been “CAP Coded.” He was captured quite easily.¹⁰⁵

Though there were great profits to be made by selling pirated videocassettes in the US, the big money was selling them to multinational corporations who would exhibit them on their oil rigs,¹⁰⁶ and also to oil tycoons from the Middle East, where there were no copyright laws. These oil millionaires would pay \$1,000 for the privilege of owning a copy of a new Hollywood blockbuster.¹⁰⁷ “The Saudi market in pirated videocassettes of movies is extensive because there is no public theatre in the country and state and religious control exists over all programs. Wealthy Saudis therefore have the latest video equipment.”¹⁰⁸

The question was who at management level was leaking the prints. A television engineer, Gary Nestra, a longtime employee of ABC-TV in Los Angeles, was in charge of testing videotapes prior to the recording of shows. He developed a habit of marking good tapes as defective, stealing from the discard pile, copying films long before their scheduled network broadcasts, and selling them to TV producer David Dunn, who “washed” the money through the Howard Morton Manufacturing Company.¹⁰⁹ But Nestra and Dunn were small-fry. More prominent were a select few Hollywood producers and directors who had private screening parties in their mansions prior to their films’ releases.¹¹⁰ This was the so-called Bel-Air Circuit, consisting of about 40 mansions. It turned out that three members of this circuit were indeed pirating the movies. Rather than prosecute the three, the MPAA simply closed down the Bel-Air circuit altogether. Directors who needed to study older films were now

104. Inge Hanson, “Diligent Sleuthing Nabs Pirates; Swedish Law Tough on Copiers and Sellers beyond Copyright,” *Variety* (weekly) 300 no. 10, Wednesday, 8 October 1980, pp. 49, 72.

105. “The constant and pretty hopeless fight...,” *Screen International*, 24 October 1981, p. ??.

106. Bill Carlton, “Putting a High-Stakes Bounty on the Pirates,” *The New York Daily News*, 14 August 1980, p. ??.

107. “Tulsa Grand Jury Issues Indictments; Five Arrested in Illegal Film Sales,” *Boxoffice*, 15 January 1979, p. ??.

108. John Harris, “Film Pirate Pleads Guilty, Admits to Shipping Video Cassettes to Saudi Arabian Princess,” *The Los Angeles Herald-Examiner*, Thursday, 15 November 1979, p. 3.

109. Terry Pristin, “Film-Piracy Investigators Recover 600 Cassettes,” *The Los Angeles Herald-Examiner*, 7 March 1979, pp A-1, A-2.

110. Haas, *op. cit.*

barred from doing so, and they were incensed. Director Richard Brooks put this into perspective: "I can tell you where to get films or videotape cassettes. You can get them from the labs. You can get them from Gilboy's Exchange. Anyone can walk in and take any film. Let the FBI go there. The army, the navy, and the marine corps have prints. They knock off thousands. Let the FBI look there. I can tell you where you *can't* get films. You can't get them from anyone's screening room on the Bel-Air circuit."¹¹¹

Yet it was not the studio executives from Bel-Air or the lab workers who were investigated, prosecuted, or convicted. Arrests and convictions were rare, but when they did occur, more often than not it was the mom-and-pop operators who were booked. One notable example was an anonymous couple in Long Beach, California, who included among their circle of friends people who worked in the movie studios, who asked, as favors, that copies of movies be made for them. "Almost all the prints we got to copy were from people who had legitimate access to them. If we told you their names, you'd recognize them — and we'd be in even bigger trouble than we are already." An FBI undercover agent took a job at their business and somehow "persuaded" them to sell a few tapes to those not connected with the studios. After several months, this couple finally gave in and instantly found 17 FBI agents and three Los Angeles Police Department officers raiding their premises. "All the people one step above us are still in business. Why did they land on us so hard and leave them alone?"¹¹² Among others who were arrested was Lonnie C. Fisher of Enon, Ohio, had to pay a \$40,000 fine and was sentenced to six years' probation for selling counterfeit videocassettes through the mail.¹¹³ A UCLA theatre-arts professor, Stephen David Mamber, who sold a single ¾" video of a 16mm print of *The French Connection*, faced one year in jail and/or a \$1,000 fine.¹¹⁴ The list goes on. As a general rule, the further down the convicts were on the scale, the greater their fines and sentences.

A most atypical case was that of Robert Cammarata of Somerville, Massachusetts, who actually stole prints of films. He "threatened to cause physical harm to a Staten Island resident" in order to get prints of *The Big Sleep*,

111. Haber, *op. cit.* As a former projectionist who regularly picked up 35mm prints from the Wesco Film Service exchange (108 Gruner Road, Cheektowaga NY 14225, just outside of Buffalo), I can affirm that this is correct. Regional film exchanges did not ask for identification or authorization. Anybody could walk in, ask for a print, and walk out with it, without signing papers.

112. Adler, *op. cit.*

113. Tina Daniell, "Judge imposes \$40,000 Fine for Videotape Pirate," *The Hollywood Reporter*, 24 November 1981.

114. "He's a Professor and Pirate," *Variety* (weekly) 286 no. 8, Wednesday, 30 March 1977, p. ???.

MGM's *Big Parade of Comedy*, *A Night at the Opera*, *Buck Privates*, *The Maltese Falcon*, *King Kong*, *Go West*, *Monkey Business*, *Horse Feathers*, and *At War with the Army*. He was also indicted for selling stolen prints of *Fantasia*.¹¹⁵

Rare indeed were thefts from cinemas' projection booths. Such thefts were generally for reasons other than covetousness. Documentary footage of opium manufacture in Siam was stolen from the vault (not a projection booth), and when filmmaker Donald C. Thompson was able to retrieve it, it was stolen yet again. Finally, the negative was placed into a bank vault to keep it safe.¹¹⁶ A print of *The Question*, a film about the torture used by French paratroopers in Algiers, was stolen from a French cinema.¹¹⁷ A documentary on Hitler called *Swastika* was stolen from a Parisian cinema and the film was spread out in front of a memorial at the local cemetery dedicated to victims of the Nazis.¹¹⁸

Thieves simply had no need to break locks, force doors open, and smash into locked booths in order to get access to desirable prints. As we have learned, anyone wanting a print could simply walk off with it, with little or no trouble. Oddly, though, there were a few occasions in which thieves did stage such break-ins, but these thieves were not pirates; they were entirely unprofessional naïfs. In August 1970, there was a break-in at the Oriental Theatre in Los Angeles, and the thief or thieves made off with a 35mm print of *2001: A Space Odyssey*.¹¹⁹ In August 1978 there was a break-in at the State Theatre in Pasadena, California, and its print of *Star Wars* vanished.¹²⁰ A few years later there were several thefts of *Return of the Jedi*. Thieves broke in to the Bush River Theatre in Columbia, South Carolina, in the early dawn of 24 May 1983 and walked off with a 35mm print. On the afternoon of the 25th sheriff's deputies found the film in its shipping cans on the side of a rural road in Lexington, South Carolina. The seals on the shipping bands were unbroken, indicating that the print had not been projected or duplicated.¹²¹

115. "Man Indicted on Violation of Hobbs Act," *The Hollywood Reporter*, 18 May 1977, p. ???.

116. "Print of Dope Area Again Vanishes," *Daily Variety* 3 no. 41, Saturday, 21 April 1934, p. 2.

117. "International Sound Track," *Variety* 287 no. 10, Wednesday, 13 July 1977, p. 26.

118. "Incidents Mark Showing of 'Swastika,' Hitler Film at Two Cinemas in Paris," *Variety* 288 no. 8, Wednesday, 28 September 1977, p. 39.

119. Army Archerd, "Just for Variety," *Daily Variety* 148 no. 60, Friday, 28 August 1970, p. 2.

120. "'Star Wars' Print Stolen in Pasadena," *Daily Variety* 180 no. 54, Monday, 21 August 1978, pp. 1, 15.

121. Ray Loynd, "'Jedi' Print Stolen, Recovered in South Carolina; Other Film and Exhibition Bugs Face Lucas," *Variety* 311 no. 5, Wednesday, 1 June 1983, pp. 5, 24.

Thieves also forced a door open to break into the Cannon Classic cinema in Hastings, England, and helped themselves to a print of *Jedi*. Twentieth Century-Fox published an ad in *The Sun* offering a £5,000 reward for information.¹²²

Larry DeWayne Riddick, Jr., an 18-year-old fan of the film, laid in wait outside the Glenwood Theatres in Overland Park, Kansas, watching for the projectionist at the end of the 5 July 1983 workday. As the projectionist was entering his car, Riddick approached him from behind with a .22-caliber pistol and told him to wait for the building to clear. Twenty minutes later he marched the projectionist up to the booth and made off with the 70mm print. Riddick likely did not understand that the seven reels would weigh several hundred pounds and that the equipment to transfer it to video had not yet been invented.¹²³ Not knowing what else to do with his quarry, he attempted to induce Karl Ramsey, Sr., of Roscoe TV and Video in Kansas City, Missouri, to help sell the print. Ramsey called the FBI, which sent agents posing as customers to meet with Riddick in a hotel for the \$10,000 transaction. The agents easily apprehended Riddick and rescued the film.¹²⁴ Riddick explained to Judge D. Brook Bartlett, "I really don't understand why I did it. It was supposed to be the crime of the century, something spectacular, something to get some attention."¹²⁵

In late July 1980 there was yet another bizarre theft.

122. "Fox Offers Reward for Stolen 'Jedi' Print," *Daily Variety* 200 no. 15, Friday, 24 June 1983, p. 1.

123. The first 70mm telecine was put on the market in 1991. It was called the Otti, and was designed by Phil Kroll. See "Awards," *Philmit Photography*, <http://emmyphil.blogspot.co.uk>. Only three were ever sold. Phil Kroll: email message, 10 June 2016.

124. "Police Recover Stolen 70m 'Return of Jedi' Print," *Daily Variety* 200 no. 39, Friday, 29 July 1983, p. 18; "'Jedi' Print Thief Faces Fed Charges; 'Fascinated' by Pic," *Variety* 312 no. 5, Wednesday, 31 August 1983, p. 7.

125. "Man Terms Theft of Jedi Film as the 'Crime of the Century'" (AP wire story), *Ocala [Florida] Star-Banner*, Friday, 16 September 1983, p. 3A.

NOTICE

A print of "CALIGULA" has been stolen from the Holly Theater in Los Angeles.

Any unauthorized use or production of the print or video cassette, video tape, video disc or other video device derived therefrom will subject the violator to substantial legal penalties.

Penthouse has not produced, or authorized the production of, any video cassette, video tape, video disc or other video device derived from "Caligula" either in the United States or elsewhere. The sale or any such device should be considered illegal.

Penthouse International Ltd., and its authorized distributors, including Analysis Film Releasing Corp. in the United States, are the only persons entitled to distribute "Caligula."

A reward has been offered for the arrest and conviction of the person or persons who stole this print. If anyone has any information concerning its whereabouts, please call Leslie Jay at Penthouse International Ltd., (212) 593-3301 or Tim Meyers at Analysis Film Releasing Corp., (212) 765-8734.

The above announcement appeared on Wednesday, 30 July 1980, in the weekly *Variety*.¹²⁶ Interestingly, the announcement made no mention of Felix, and the wording implied, without stating, that only Penthouse was authorized to produce video editions of *Caligula*.

The Holly's manager, Patti Hanson, determined that the theft had occurred early on the morning of Saturday, 26 July 1980, sometime between one o'clock and five o'clock. George Pearn, operations manager for Sterling Recreation Organization (SRO), which operated the Holly, thought the thieves probably entered through an exit door, or possibly hid in the cinema.¹²⁷ Los Angeles police detective Lou Estrella explained that a chain on the outside door had been broken and that the projection-booth door had been pried open.¹²⁸ Guccione told reporters that the thieves had also helped themselves to an intermission tape recorder and a small record player, but did not take the day's cash receipts.¹²⁹

126. "Notice," *Variety* (weekly) 299 no. 13, Wednesday, 30 July 1980, p 40.

127. "'Caligula' Print Stolen in L.A.," *Variety* (weekly) 299 no. 13, Wednesday, 30 July 1980, p. 32; "'Caligula' Print Stolen at Holly," *The Hollywood Reporter* 262 no. 41, Wednesday, 30 July 1980, p. 18.

128. "'Caligula' Stolen from Calif. Theater; Guccione's Offer Draws Bad Reviews," *Boxoffice*, Tuesday, 4 August 1980, p. 1.

129. "Names & Faces," *The Boston Globe*, Tuesday, 29 July 1980, p. 1.

Guccione further noted that prior to the break-in he had received several phone calls "from blue-nose groups" who sought to take matters into their own hands should the Los Angeles District Attorney decline to take action against the film. Guccione further "suggested" to reporters that the District Attorney had "been under pressure from local vigilante groups." Guccione offered to donate \$100,000 to the Los Angeles Police Memorial Fund upon recovery of the print and capture and conviction of the thieves.¹³⁰ Despite Guccione's announcement to the press, George Padilla of the Los Angeles Police Memorial Foundation insisted that he had never been notified of such an offer. Said he, "It's not good protocol, good etiquette, and definitely not good public relations. The guy can do anything he wants with his money, but the connotation of a reward going to the foundation is not good for us."¹³¹ Said Detective Estrella, "We don't need rewards for doing the job we're paid to do."¹³² In response, Guccione assured the press that his donation would go to a special fund for the wives of police officers who were injured or killed on duty.¹³³

A new print was flown in from Guffanti Laboratories in Manhattan in time for the Holly to resume showings on Tuesday. The Holly estimated that the three-day shut-down had cost the cinema about \$12,500 in lost revenue.¹³⁴ By that time the Los Angeles police conjectured that the print had most likely fallen into the hands of pirates and would never be recovered.¹³⁵ Detective Estrella claimed to have gathered a "number of leads and a number of probable suspects in the case."¹³⁶

Then, on Tuesday, 12 August 1980, following an anonymous call, the police located the print in rhododendron shrubs behind Bob's Big Boy Jr. hamburgers at 772 Vine Street in downtown Hollywood.¹³⁷ Why the print was placed there remains a mystery, for it was not a pirate's standard operating procedure to dispose of a stolen film print by placing it into a patch of rhododendron shrubs.

130. " 'Caligula' Print Stolen in L.A.," *op. cit.*; " 'Caligula' Print Stolen at Holly," *op. cit.*

131. " 'Caligula' Stolen from Calif. Theater," *op. cit.*

132. "Police Find Stolen Copy of 'Caligula,'" *The Los Angeles Herald-Examiner*, Wednesday, 13 August 1980.

133. " 'Caligula' Stolen from Calif. Theater," *op. cit.*

134. "Still Investigating 'Caligula' Print," *The Hollywood Reporter* 262 no. 48, Friday, 8 August 1980, p. 4.


135. " 'Caligula' Stolen from Calif. Theater," *op. cit.*

136. "Still Investigating 'Caligula' Print," *op. cit.*

137. "Police Find Stolen Copy of 'Caligula,'" *op. cit.*; William Hickey, "Revolting Epic," *Daily Express* [UK], Friday, 5 September 1980, p. 13; " 'Caligula' Print Is Recovered," *Screen International: The Paper of the Entertainment Industry* no. 257, Saturday, 6 September 1980, p. 6.

In response to the theft, Guccione announced that he would place an armed guard in every cinema during *Caligula's* run, and he issued a warning: "*Penthouse* magazine has an army of circulation representatives around the country, and they have been instructed to be on the lookout for any unofficial use of sales of *Caligula* in their territories. Anyone found in possession of these materials will be prosecuted to the full extent of the law."¹³⁸ There is no indication anywhere that Guccione made good on his offer of a reward to the Los Angeles Police Memorial Foundation, and he certainly did not place guards in any cinemas where *Caligula* played. There is no evidence that Detective Estrella or anyone at LAPD, or anyone at all, was able to locate the culprits, despite the leads. All in all, this is a highly unusual break-in, and a highly unusual story. Theft and piracy were common and even routine, but this is not the way such things were done.

Two months after the excitement, the FBI alerted Analysis Film Releasing that pirated videotapes of *Caligula* were available through the underground.



ANALYSIS FILM RELEASING CORP.
225 WEST 57th STREET - 3rd FL.
NEW YORK, N. Y. 10019


*FBI Pirated
tapes*

10/29/80

MEMO
RE: "CALIGULA" videotape

At approximately 11:45 A.M. today, we received a call from Mr. Dale Heckbart of the F.B.I. in New York (553-2700, ext. 1257). Mr. Heckbart informed us that working undercover, he is in position to purchase within the next three days, a videotape cassette of "CALIGULA" and in order to make a proper arrest of the illicit tapes dealer, he needs copyright information on the film. Mr. Heckbart also informed us that illicit tapes of the film have been offered to him for sale from at least two different sources for a purchase price of \$100.00 to \$150.00 each. It is my understanding that Mr. Heckbart is currently working in the videotape piracy department.

I recommend that someone from Penthouse call Mr. Heckbart immediately.


Mr. Paul E. Cohen
President
ANALYSIS FILM RELEASING CORP.

PC/mh

cc: Mr. Robert Kaplan ANALYSIS FILM RELEASING CORP.
Mr. Andrew Lamy ANALYSIS FILM RELEASING CORP.
Mr. Bob Guccione PENTHOUSE INTERNATIONAL
Mr. Al Crown PENTHOUSE INTERNATIONAL
Ms. Leslie Jay PENTHOUSE INTERNATIONAL
Mr. Steven Rodner PRYOR, CASHMAN, SHEPPARD & FLYNN

138. "Retrieve 'Caligula,'" *Variety* (weekly) 300 no. 3, Wednesday, 20 August 1980, p 5; " 'Caligula' Print Is Recovered," *op. cit.*

Paul Cohen had come to know Franco Rossellini, and had even, just one day previously, offered him the opportunity to have Felix invest in Rainer Werner Fassbinder's new film, *Cocaine*. But Cohen was under no obligation to send a copy of the above letter to Rossellini, for his contract was strictly with Penthouse. It was Penthouse's obligation to inform Rossellini of this news, but Penthouse chose not to do so. (Stevan Rodner of Pryor, Cashman, Sherman & Flynn, who was copied, had once been Rossellini's lawyer but was now apparently Guccione's lawyer.)

In order to pursue the underground supplier, Dale Hackbart needed copyright information, but *Caligula* had never been submitted to the US Copyright Office. No submission had been necessary, for *Caligula* was an Italian film under the Berne Convention which did not require formal papers of copyright registration. Yet when fighting against pirates, a formal US copyright submission is required. Accordingly, on 6 November 1980 Stevan J. Bosses of Watson Leavenworth Kelton & Taggart submitted "one print of the film *Caligula*,¹³⁹ a press book, an application to register copyright on form PA, two copies of a Motion Picture Agreement and two copies of a Bond." Bosses also requested "special handling" of this case as the piracy was being investigated by the FBI.

The "Motion Picture Agreement" was most curious. This was a new document, back-dated to 3 December 1975, by which Penthouse International, as sole "Owner" of *Caligula*, hired Penthouse Films International as "Production Services Company." With this document, history was rewritten. There was no mention of Felix, and as for financing: "The Owner will cause the financing of the entire cost of production of the Picture as provided herein," and, further, "The Owner will cause loans to be made to the Production Service Company for all costs of producing the Picture as provided herein and on the terms hereof ('Production Loans')." This contract is, effectively, a forgery, and it essentially admits as much in Article 32: "Effectiveness and Execution. This agreement confirms an oral agreement between the parties which has been in effect from the date first above written. Although executed subsequently, this agreement shall govern all relationships between the parties hereto since such date." It was certainly a deliberate decision not to state the date the contract was actually written.

The form PA, completed by Bosses, listed the author of the work as Felix Cinematografica, domiciled in Italy, though he supplied the name and address of

139. By mutual agreement, the print would be returned to Penthouse. Stevan J. Bosses of Watson Leavenworth Kelton & Taggart: letter to US Copyright Office, 6 November 1980. FRC, DDP 94-2.

the copyright claimant as Penthouse Films International, 909 Third Avenue, New York, New York 10022. The form required that if the author and claimant were not the same, an explanation of the transfer must be given. Bosses duly filled this spot in as: "By virtue of assignment." On the following day David Ladd, Register of Copyrights, received the form and put his signature on it, assigning it Registration Number PA 83-587.¹⁴⁰

On 13 November 1980 J. Michael Cleary of Brylawski & Cleary sent a follow-up letter to Julia Huff of the Copyright Office, confirming Stevan Bosses's claim that the date and place of first publication was 10 November 1979 in Italy.¹⁴¹ By US law that was correct, for that was the first time that three parties (producer, distributor, exhibitor) presented the film publicly in multiple venues. By US law, the previous one-week engagement at the Cinema Nuovo in Meldola in August did not qualify as a first publication, for it was shown in only a single venue. By Italian law, the reverse was true, as the first public exhibition was considered the first publication,¹⁴² and that would have been 14 August 1979 in Meldola.

The secretarial force was eventually able to type up the index cards in January.¹⁴³

<p>Caligula.</p> <p>Caligula / a Penthouse Films International and Felix Cinematografica, S.R.L., production ; a Bob Guccione, Franco Rossellini production. -- [Italy] : s.n., c1979. 8 film reels (ca. 157 min.) : sd., col. ; 35 mm.</p> <p>On film: Analysis Film Releasing Corporation. -- Presented by Bob Guccione & Penthouse Films International. -- Adapted from an original screenplay by Gore Vidal. -- Deposit includes production handbook (1 v.)</p> <p style="text-align: right;">CON. NEXT CARD</p> <p>*007432 23JAN81,JTN PA 83-587. A</p>

140. Certificate of Copyright Registration, Form PA, Registration Number 83-587. FRC, DDP 94-2, 360-4.

141. J. Michael Cleary, of Brylawski & Cleary: letter to Julia Huff of the US Register of Copyrights, 13 November 1980. FRC, DDP 94-2, 361-3, and 361-4.

142. SIAE (Italian Society Authors and Publishers): notice, 13 September 1984. FRC, DDP 94-2.

143. FRC, DDP 361-3.

Caligula.	CARD 02
CAST: Malcolm McDowell, Teresa Ann Savoy, Helen Mirren et al.	
CREDITS: Director of photography: Silvano Ippoliti; principal photography by Tinto Brass; additional scenes directed & photographed by Giancarlo Lui & Bob Guccione; original music by Paul Clemente; musical excerpts from works by Aram Khatchaturian & Sergei Prokofiev; film editor: Nino Baragli.	
© Penthouse Films International, Ltd. Appl.	
CON. NEXT CARD	
*007433 23JAN81,JTN	PA 83-587. A

Caligula.	CARD 03
au.: Felix Cinematografica, employer for hire.	
DCR 1979; PUB 10Nov79; REG 7Nov80; PA 83-587.	
*007434 23JAN81,JTN	PA 83-587. A

On the third card, Felix's rôle as author is given as "employer for hire," giving the clear implication that Penthouse originated the project and had hired Felix to carry it out.

It is significant that, despite this copyright registration, there is no evidence anywhere that the FBI followed through with its investigation. It is significant that there is no evidence anywhere that the pirates were identified. To this day their identities remain a mystery. It is significant that, just a few years later, nobody at Penthouse claimed any knowledge of the related paperwork. It is also significant that no one at Penthouse alerted anyone at Felix about this copyright registration.

A REALIZATION

IT WAS NOT UNTIL EARLY DECEMBER 1980 that Franco Rossellini realized he was not among friends. On the fourth of that month Kilian Rebentrost of Tobis Filmkunst, the German distributor of *Caligula*, sent Rossellini an amazing letter, a letter like no other. I quote it in full, for no summary would be believed.

Dear Franco,

Since you were the one to start the negotiations with us on CALIGULA and since you took part in the discussions with Mr. Kreditor and Mr. Baker from the very beginning, we ask you to do us a favor and contact Bob Guccione, in order to finally settle a disagreeable matter, because we believe that he personally will have to decide in this matter.

There is a discrepancy existing regarding the interpretation of our Agreement. While Penthouse is maintaining that first the distribution costs should be deducted off the top and our distribution fee should be calculated on the remaining receipts, we are of the opinion that the meaning of this paragraph from the very beginning was that the distribution fee is to be calculated on the distribution receipts prior to a deduction of the release costs.

The corresponding wording in the Agreement says that the distribution fee shall be calculated on the net distribution receipts. Our discrepancies now deal with the correct definition of this word.

In a former letter to Mr. Kreditor, we already tried to convince him of our opinion by means of an example: In case the picture would have recouped only one million Deutschmarks [\$514,562.10] (which is approximately the sum of our distribution costs and which, by way, is not so bad either), we would have received 25 % of 0, i. e. we would have worked for nothing. This example clearly shows that our interpretation of the Agreement must be correct.

We actually are fighting for an amount of \$ 175,000, which seems to be ridiculous in view of our endeavours to make the film such a big success as it is.

Horst Wendlandt has a great interest in maintaining the good relations to Bob Guccione and is, therefore, prepared to immediately pay an amount of \$ 750,000 as a flat compensation of all future producer's shares that will become due to Penthouse until the end of the license period, i. e. until July 12, 1986, in order to finally settle the discussion on the above point.

We make this offer without giving up any legal claims.

The offer, of course, is a speculation. Up to now, we have accounted an amount of 1.5 million dollars to Penthouse. The latest accounting statement amounted to \$ 100,000, since the picture is now running [at] the smaller locations, where the exhibitions are much more difficult than in the big cities.

Please contact Bob Guccione, submit him our proposal and let us know his reaction.

We would further be interested in getting some more details on his latest project "KATHARINA THE GREAT".

Yours sincerely,

TOBIS FILMKUNST GMBH & CO VEREIH KG

Kilian Rebentrost¹⁴⁴

It was one thing for Guccione to reinterpret contracts with Vidal, Brass, McDowell, Getz, and others. But it was something entirely different to reinterpret a contract in such a way as to deprive a distributor of any payments for a film that was breaking boxoffice records.

Rossellini was fuming. He assigned Lupoi to pursue matters more deeply. Lupoi obeyed, and thumbed through a few of the documents, which Rossellini almost entirely misunderstood, and began his task by dutifully forwarding to Gerald Kreditor the accounting that Felix had submitted to the Italian government.¹⁴⁵ Unthinkingly he sent over the Italian originals without English translations, which did Kreditor no good.¹⁴⁶ That was a prelude to the next step, for he then dashed out a telex.

TO: PENTHOUSE CLUBS INTERNATIONAL ESTABLISHMENT
C/O PENTHOUSE PRODUCTIONS INCORPORATED

WE HAVE BEEN INSTRUCTED BY FELIX CINEMATOGRAFICA SRL TO EXAMINE THE BOOKS AND RECORDS PERTAINING TO THE JOINT VENTURE ESTABLISHED FOR THE PURPOSE OF PRODUCING, DISTRIBUTING AND FINANCING THE MOTION PICTURE "CALIGULA".

PLEASE BE ADVISED THAT WE SHALL CALL AT YOUR OFFICE ON THE 2ND OF FEBRUARY 1981 AT 12.00 NOON AND EXPECT ALL BOOKS, RECORD AND BANK STATEMENTS TO BE AVAILABLE FOR OUR INSPECTION AS WELL AS A CURRENT STATEMENT OF THE PROFITS AND LOSSES OF THE MOTION PICTURE.

SHOULD SAID DOCUMENTS BE KEPT BY YOU AT A DIFFERENT ADDRESS PLEASE NOTIFY US BY TELEX NO LATER THAN THURSDAY THE 29TH OF JANUARY.

REGARDS,
STUDIO LEGALE LUPOI¹⁴⁷

144. FRC. I have brought the thousands separators and decimal points into conformity with standard English usage.

145. Lupoi: letter to Kreditor, 18 December 1980. DDP 361-4.

146. Kreditor: telex to Lupoi, 21 January 1981. DDP 361-4.

147. 22 January 1981. DDP 360-17.

The above telegram was a legal disaster. Had Lupoi read the full set of contracts he would have realized that the 1975 Agreement had not governed, and that neither Penthouse Clubs nor Penthouse Productions was party to any governing contract with Felix.

Penthouse asked its financial adviser Gerald Kreditor to respond, and he did via telex on 26 January 1981, informing Lupoi that the files were with him in London. Lupoi instantly fired back.

PLEASE BE ADVISED THAT BANCA NAZIONALE DEL LAVORO HAS
THREATENED TO BEGIN LEGAL PROCEEDINGS TO RECOVER THE
OUTSTANDING AMOUNT OF THE LOAN.

THIS WILL PROBABLY MEAN THAT THE BANK WILL ENFORCE ITS
PLEDGE ON THE MOTION PICTURE'S REVENUES WORLD-WIDE.

REGARDS,¹⁴⁸

The outstanding balance was for a further \$150,000 that Rossellini had borrowed and in which Penthouse was in no way involved. Nonetheless, Lupoi sent the identical message to Bob Guccione.¹⁴⁹ An unsigned and undated handwritten note comments the above: "loan to Felix 150,000 guaranteed by Rossellini[.] No pledge exists. Lupoi was mistaken[.] Felix has no assets."¹⁵⁰

Lupoi sent Kreditor another telex two days later.

FOR THE ATTENTION OF MR. G. KREDITOR

WITH REFERENCE TO YOUR TELEX OF JAN 26.

BOOKS AND RECORDS ARE TO BE AVAILABLE AT ALL TIMES AND THERE
IS NO REASON WHY THEY SHOULD BE KEPT IN LONDON.

I WILL BE AT YOUR OFFICES AS ADVISED.

REGARDS¹⁵¹

Although he now knew that the records were in London, Lupoi visited the Manhattan office anyway, asking to see Irwin Billman, who, his secretary said, was at a meeting and could not be disturbed. She confirmed that the records were in London with Kreditor. Lupoi was not amused.

Please be advised that you are in breach of your obligation to provide an accounting to your coventurer, Felix Cinematografica, and to maintain all books and records in New York and to make them available to Felix. It is also apparent that you breached many other

148. 28 January 1981. DDP 360-17.

149. Lupoi: telex to Guccione, 28 January 1981. DDP 360-17.

150. Anonymous: note, nd. DDP 360-17.

151. 28 January 1981. DDP 360-17.

clauses of the agreement, such as those relating to a bank account to be opened in New York, to Felix prior approval, to the credits and titles, etc.¹⁵²

Lupoi was still arguing that the governing contract was the jettisoned Joint Venture of 1975. By making such an argument Lupoi forever derailed Felix's legal case. Penthouse would use Lupoi's erroneous claim to its full advantage, and would agree — vehemently — that the 1975 Agreement governed at all times. Wielding this 1975 document, Penthouse would ceaselessly pound Felix and Rossellini into the dirt for the next decade. Felix and Rossellini would never be able to extricate themselves from this confusion.

On 10 February 1981 Lupoi went further and sent a form letter to all known foreign distributors of *Caligula*,¹⁵³ demanding that advertisements state that the film was a Felix production, and demanding further to see copies of all related financial statements. Lupoi further threatened all these distributors with legal action should they not comply prior by the end of the month. These demands were unreasonable and downright preposterous, as Franco Rossellini had helped arrange for some of these distribution contracts and had made no such demands at the time. More importantly, the contracts were strictly with Penthouse, not with Felix, and it was not in any way appropriate for Felix to send such letters or to make such demands.

Felix followed this up the next day with a letter to Penthouse. Guccione's offer to purchase Felix's non-Italian rights for the absurdly low price of \$750,000 was set to expire at the end of February 1981. On 11 February Felix's general manager Davide (or David, he used both variations) Costa sent by registered mail an enraged reply to Penthouse International, to the attention of Bob Guccione himself, with a copy needlessly addressed to Penthouse Clubs International Establishment. As we can see, his most important facts were in error.

Dear Sirs,

We refer to your letter of August 12, 1980 and to the offer contained therein to purchase our 35% rights in the world-wide exploitation of the motion picture CALIGULA (with the exception of Italy and Italian former colonies).

Your offer is hereby rejected.

152. Lupoi: memo, nd [2 February 1981]. DDP 360-17.

153. The list of distributors was compiled by Bonnie O'Meal in a Penthouse Inter-Office Memorandum dated 14 January 1981. A follow-up memo was by Regina Andriolo and addressed to Bob Guccione and Franco Rossellini, 25 June 1980. DDP 360-23.

You have already been informed that our Exchange Control Authorities have informally expressed their contrary advice. We have done nothing to induce them to change their minds.

In view of your persistent breaches of your agreements, of your failure to honour the commitments we entered into for the purpose of producing the picture (Banca Nazionale del Lavoro loan) and of the continuous dangers to which you have exposed us, our only purpose at this time is to enforce our rights in every possible way, not to sell them cheaply to you.¹⁵⁴

Costa was again mistaken. Penthouse had more than honored the Banca Nazionale del Lavoro loan, and had even repaid it on Felix's behalf.

Rossellini had his staff and lawyers start gathering documentation concerning articles of Italian law, contracts, costs, and permits to help him in his forthcoming legal charges. He did not know that Guccione and his lawyers had already begun the process of constructing a different sort of paper trail, one that would mislead any court and stymie all of Rossellini's lawyers.

Lupoi's form letters began to arrive at their destinations on about the 20th of February. The results were disastrous. GTO's response was curt and forthright: "Thank you for your letter dated 10th February, 1981, contents of which are noted. We must, however inform you that as we have no contractual relationship with you, we cannot agree to your request for a copy of the distribution statements."¹⁵⁵ Constantin Film of Copenhagen forwarded Lupoi's letter to Penthouse International, stating, "as our contract is with Penthouse International, we will not take any action or send any statements to Studio Legale Lupoi, before we have heard your opinion on the matter."¹⁵⁶ Not all the other responses were so restrained. Premiere Films (US agent for Roadshow Distributors Propriety, Ltd.): "We are replying to your letter out of courtesy, certainly not out of any obligation to do so. We find it extraordinary and more than a little irresponsible that you would advise us that 'legal actions may become necessary should the appropriate corrections not be brought about before the end of February.' The film has not even been released in our territory of Australia. Please be good enough to do a more thorough research of the facts before making allegations and demands...."¹⁵⁷ Cinelux of Swaziland: "We are

154. FRC.

155. Laurence Myers of GTO Films (Distributions): letter to Studio Legale Lupoi, 20 February 1981. FRC, DDP 360-26.

156. Peter Philipsen of Constantin Film: letter to Studio Legale Lupoi, 24 February 1981, FRC, DDP 360-26, 361-4.

157. Barbara Johnstone of Premiere Films: letter to Studio Legale Lupoi, 25 February 1981. FRC, DDP 360-26.

surprised to receive correspondence in respect of a motion picture *Caligula*, and as far as we are concerned the only people we have to answer to are Penthouse International Ltd., the Organization to whom we have paid Royalty and are contracted to in respect of *Caligula*. Any points that you might raise in respect of infringement in advertising is not our concern, never has been nor never will be. Kindly address all your correspondence to Penthouse International Ltd., as we have no intention of becoming involved in any matters that do not concern us.”¹⁵⁸ Films Mutuels: “We acknowledge receipt of your letter of February 10, 1981, concerning the captioned matter. As our contractual obligations are owed solely to Analysis Film Releasing Corp. and Penthouse International Ltd., it would be both illegal and inappropriate for us to divulge the information you request without the authority of Analysis Film Releasing Corp. and Penthouse International Ltd., the signatories to the distribution agreement with ourselves for ‘*Caligula*’. Pursuant to receipt of such authorization, we would be pleased to comply with your request.”¹⁵⁹ Victor G. Michaelides: “our company is distributing the film without any alteration in the main titles of the prints received from abroad and in accordance to its obligations. As for... your request to supply you with distribution statements... we are willing to satisfy your demand provided that our licensor instructs us accordingly.”¹⁶⁰ Even Kilian Rebentrost of Tobis in Germany, who had pleaded for Rossellini’s help in his dispute with Penthouse, could not fathom Lupoi’s letter: “We received your letter of February 10 and inform you that we acquired the rights in the above picture from Penthouse, 909 Third Avenue, New York, N. Y. 10022, phone: 593-3301. In our advertising, we considered the billing requirements which we received from Penthouse. Any further billings as mentioned in your letter are not known to us. Any corrections would cause considerable expenses and would, by the way, not be very useful, because exploitation of the picture is nearly terminated. As to the second point of your letter: We have an accounting obligation towards Penthouse and are not entitled to send you copies of our statements without an authorization by them.”¹⁶¹

158. Sander H. Gibson, solicitor for Films Mutuels: letter to Studio Legale Lupoi, 13 March 1981. FRC, DDP 360–26, 361–4.

159. M. Menachemson, managing director of Cinelux Theatres: letter to Studio Legale Lupoi, 2 March 1981. FRC, DDP 360–26, 361–4.

160. Victor G. Michaelides: letter to Studio Legale Lupoi, 18 March 1981. In his 1 April 1981 response (wrongly dated 1980), Lupoi referred to the Joint Venture Agreement, demonstrating that he was still unaware of the invalidity of that contract. DDP 360–26.

161. Kilian Rebentrost of Tobis Filmkunst GmbH & Co Verleih KG: letter to Studio Legale Lupoi, 3 March 1981. FRC, DDP 360–26.

These negative responses, though, did produce a positive result. They proved definitively that no contract was with Penthouse Clubs International Establishment. GTO and Premiere did not name any corporation, but Constantin Film copied its response to Penthouse *International*, Cinelux claimed its contract was with Penthouse *International*, Tobis claimed its contract was with Penthouse of 909 Third Avenue in New York, and Films Mutuels claimed its contract was with Analysis Film Releasing Corp and Penthouse *International*. With these letters in hand, Rossellini and his lawyers had powerful evidence that it was *International* or at least the US office of Penthouse and not *Clubs* that had worked on the film with him, and that would prove that only the Joint Production Contract of 1976 and its amendments governed. In any dispute with Penthouse, this was crucial information, since Penthouse would forever after insist that it was only the Joint Venture Agreement of 1975 that had governed. Almost unbelievably, when Rossellini and his lawyers exhibited these letters in court, the judge was entirely dismissive of the evidence they provided.

Strangely, at this moment of hostility, Lupoi courteously wrote a letter to Penthouse International stating that the Italian Exchange Office had approved the transfer of the music-utilization rights.¹⁶² He did not realize that Penthouse had three months earlier already issued the original soundtrack album.

Guccione and his lawyers had now heard from several international distributors and realized that trouble was afoot. They took immediate action to shelter *Caligula* from US and Italian law by the simple expedient of transferring Penthouse Films International's claimed copyright to Penthouse Clubs International Establishment of Vaduz. This they did on 5 March 1981.¹⁶³

Unaware of this, Felix's New York-based lawyer, Jay Julien, wrote to Penthouse on 24 March 1981 rescinding the music rights for Penthouse's failure to pay the \$10,000 fee.¹⁶⁴ "Please take notice that, in view of your defaults, all your rights, if any, to the said music are rescinded and terminated. You are called upon to cease all sales or other distribution of the music whether by records, tapes, or in any other form, and to account for all sales to date." Penthouse referred this letter to an attorney by the name of David Joel Myerson, of the firm Lefrak Fischer Myerson & Mandell. Myerson was unaware of the background and replied on 3 April 1981 asking to see the underlying documents so that he

162. Studio Legale Lupoi: letter to Penthouse International, 26 February 1981. FRC, DDP 360–26.

163. Copyright Assignment and License, 23 February 1981, attested 5 March 1981. FRC, DDP 94–2, and DDP 361–3.

164. Jay Julien: letter to Penthouse International, 24 March 1981. FRC, DDP 360–18, and DDP 360–26.

could discuss the situation with his client.¹⁶⁵ Before Julien could reply to this \$10,000 matter, Penthouse filed charges against Felix for the theft of \$10,000,000.

165. David J. Myerson of Lefrak Fischer Myerson & Mandell: letter to Jay Julien, 3 April 1981. DDP 360-26.