

Thirty-Six

"I DID NOT GIVE DIRECTIVES TO MY COLLEAGUE"¹



"Gradually the truth showed itself through the confusion of half-truths, false conjectures, seemingly interminably mixed and obscure, like the shake of a puzzle when the disordered pieces fall each into its proper place and the whole is visible."²



JULY 1989 — FELIX IS DECISIVE (ALMOST)

FELIX'S LEGAL COUNSEL Professor Massimo Ferrara-Santamaria drafted a letter, in a futile attempt to play hardball:

Rome, July 10th 1989

PENTHOUSE FILMS INTERNATIONAL LTD.
1965 Broadway
New York, New York 10023

Attn: Mr. David J. Meyerson

Re: "CALIGULA" Theatrical filmrights.

~~Dear~~ Sirs,

this is to inform you that I have been charged by Mr. Franco Rossellini on behalf of the Italian Company Felix Cinematografica SrL. to enjoin you the following decisions:

1. As you know by the competent Italian Authorities **and Italian tribunals [cite the court's rulings?]** has been ruled that PENTHOUSE

1. Maurizio Lupoi: fax to Rossellini, 18 April 1990. FRC.

2. Andrew Nelson Lytle, *A Name for Evil* (NY: Bobbs-Merrill Company, 1947), Chapter 28.

has acquired no rights in respect of the exploitation of the motion picture "CALIGULA" (produced in Italy on 1979 by FELIX CINEMATOGRAFICA and ~~directed~~ **filmed** by Tinto Brass) other than the theatrical rights under a distribution agreement on a percentage basis. **(approved by permit numbers-----)**

2. Up-to-date PENTHOUSE has not delivered to FELIX CINEMATOGRAFICA the necessary contractual reports on the revenues and profits of the theatrical exploitation. ?

3. FELIX CINEMATOGRAFICA has **now** full evidence that PENTHOUSE has illegally exploited also television and video-cassette rights.

4. PENTHOUSE has been duly notified by FELIX CINEMATOGRAFICA of all these defaults without caring to reply in order to try to correct these illegal situations. **[notified of the decision of the Supreme Court of Cassation and of the (ILLEGIBLE), never however (ILLEGIBLE)]**

5. Consequently the original contract **[put the date of the contract?]** of participation to the exploitation of this picture between FELIX CINEMATOGRAFICA and PENTHOUSE is terminated by default of PENTHOUSE and FELIX CINEMATOGRAFICA recoups all the rights for the full exploitation of the picture CALIGULA the world over for all media. **[mention the contract of 2/2/84?]**

6. This does not mean that PENTHOUSE has not the obligation to pay to FELIX all the money due to FELIX for the past theatrical **and other media** exploitation of the picture. On the contrary this is to request full and immediate reports of the revenues and profits up-to-date and payment to FELIX of what is due.

7. Besides PENTHOUSE has to stop at once any **theatrical and** other exploitation of the picture CALIGULA as a consequence of the present statement of termination of the contract with FELIX; because FELIX only is now entitled to every exploitation of the picture CALIGULA.

8. PENTHOUSE is also responsible of all the illicit exploitation of the picture CALIGULA other than the theatrical exhibition and therefore, while is obliged to pay at once to FELIX all the money cashed for these illicit exploitations by all the other media (non[-]theatrical, television, home video and cassette a.s.o.), for this illicit exploitation PENTHOUSE is also responsible for economic and punitive damages, for which FELIX Cinematografica **MAKES AGAIN FULL RESERVE OF LEGAL ACTION.?**

~~Looking forward to hearing from you at once your earliest convenience~~

Sincerely

MFS:cp

cc: **Proff. Lupoi**
Cashman
M.L.F
Vestron
Nippon Herald
Neue Constantine
Virgin Video
?Publication in VARIETY?³

Considering that Penthouse had purchased the bulk of Felix's debts, and considering that US courts had no interest in Italian rulings and allowed investors to claim copyright to others' works, it is certain that Felix was not expecting to deprive Penthouse of all rights and possession of *Caligula*. The only explanation for the above unsent message is that Felix, by intercepting Penthouse's non-US territories, was attempting to force Penthouse back to the bargaining table. Yet this letter was never sent. Rather than alert Penthouse to its intentions, Felix decided instead to continue establishing its ownership.

Just three days later, on 13 July 1989, the Paris Court of Appeals (Cour d'Appel de Paris) rejected Penthouse's appeal and declared that Penthouse's acts of selling TV and video rights in France placed the proceedings squarely within the Commercial Court of Paris's jurisdiction.⁴

Another factor behind Felix's decision not to send the letter was the matter of the pending judgment of the Rome Court of Appeals (Corte di Appello).⁵ Penthouse had requested that the Court of Appeals suspend the Tribunale's executory judgment pending settlement of the case. The Rome Court of Appeals

3. Massimo Ferrara-Santamaria: draft letter to David J. Myerson of Penthouse Films International, 10 July 1989. FRC.

4. This ruling is missing from the Rossellini collection, but it is referenced in Felix Cinematografica's 5 April 1990 appeal in the Paris Court of Appeals: *Felix Cinematografica v Penthouse International, Ltd., and Penthouse Films International, Ltd.* FRC.

5. *Penthouse Films International, Ltd., Penthouse Clubs International Establishment, Penthouse Records, Ltd., and Penthouse International, Ltd., v Felix Cinematografica Srl*, La Corte di Appello di Roma, General Docket Number 822/89, Chronology Number 1233, Archive Number 1140, (15 April 1991), Presided by a three-judge college: Dr Arnaldo Valente (President), Dr Vittorio Metta (Counselor), Dr Mario Adamo (Reporting Judge). Gianni Massaro for Plaintiffs, Maurizio Lupoi for Defendant. FRC.

denied Penthouse's request on 29 July 1989.⁶ It would be two years before the Rome Court of Appeals would issue its ruling.

JULY 1989 — FELIX'S CONTINUING ATTEMPTS AT DECISIVENESS

ON 13 JULY 1989 Felix had the Autonomous Section for Cinematographic Credit order a new *Caligula* internegative from Technicolor Rome.⁷ The Autonomous Section acted upon this request two months later, towards the end of September, and in a follow-up letter⁸ requested that the internegative be marked "integral version" and that it be kept at a different location from its source materials.

Penthouse first got wind of these new developments when Nippon Herald Films of Tokyo wrote to David J. Myerson to inform him of the request that it surrender its *Caligula* materials to New Select. Myerson's faxed response to Aikio Nakamura of Nippon Herald was terse and firm: "You do not have our authority to deliver any of our materials to New Select Film or to anyone other than ourselves."⁹ Albatross Films of Paris quickly sent a fax to Bolognini of Uniexport:¹⁰

Thank you for your fax to Nippon Herald. But Nippon bought the rights from Penthouse International in New York and this company sent a fax to Nippon to tell them not to give any material to New Select would you please check this immediately and inform Penthouse that new Select has acquired the reissue rights for Japan and has the right to have all material available. I rely on you to settle this matter as soon as possible.

Felix thought it could solve this problem easily by bypassing Penthouse. If Nippon Herald would not surrender its materials to New Select, then the Autonomous Section for Cinematographic Credit would simply arrange for a loan of an internegative to New Select!¹¹ The Autonomous Section cautiously

6. We know this primarily from the summary provided in Maurizio Lupoi, Certification (4 December 1989), *Penthouse Films International, Ltd., v Felix Cinematografica, Srl, and Franco Rossellini*, Superior Court of the State of New York – County of New York, Index Number 011799/89. FRC.

7. SACC (Sezione Autonoma per il Credito Cinematografico): letter to Felix Cinematografica Srl, 22 September 1989. FRC.

8. SACC: letter to Technicolor SpA, 26 September 1989. FRC.

9. David J. Myerson of Penthouse International: fax to Aikio Nakamura of Nippon Herald Films, 1 September 1989. FRC.

10. Monique André Steichen of Albatross Films: fax to Pietro Bolognini of Uniexport Films, 4 September 1989. FRC.

11. SACC: letter to Technicolor SpA, 9 October 1989. FRC.

declared its extraneity from the transaction, which it made clear was a formality on behalf of Felix.

25 JULY 1989 — BACK IN NEW YORK (38TH LAWSUIT, CONTINUED)

AS WE LEARNED EARLIER, Felix's New York counsel, Gideon Cashman of Pryor Cashman Sherman & Flynn, had petitioned the Supreme Court of the State of New York – County of New York to be dropped from the case for lack of payment. Judge Diane A. Lebedeff granted the provisional authorization:¹²

Upon the foregoing papers it is ordered that this motion is granted on default and Pryor, Cashman, Sherman & Flynn are relieved as counsel for the defendants herein. The matter is stayed for 30 days from service of a copy of this order upon the defendants, with notice of entry; an information copy of this order shall also be served by mail upon Professor Lupoi of Rome.

The movant shall retain such rights as authorized by law to protect its interest in relation to its fees.

This decision constitutes the order of the Court.

In the meantime, Felix began to do some research on Vestron Video, and acquired a photocopy of page 5 of its title list,¹³ which showed *Caligula* available as title number 312, credited "Director" being "Giancarlo Lui & Bob Guccione."

4 SEPTEMBER 1989 — BACK IN EUROPE

ANOTHER TERSE, PERFUNCTORY LETTER arrived by fax. It was from Herman Weigel of Neue Constantin and addressed to Pietro Bolognini of Uniexport: "Having reviewed the soft version of the above[-]mentioned film I do not see a possibility for us to enter into further negotiations."¹⁴

David J. Myerson, as president of Penthouse International, took action. He sent a form letter to various international distributors, among them Danport Video of Copenhagen:¹⁵

12. Notice of Entry, 25 July 1989. *Penthouse International, Ltd., v Felix Cinematografica, Srl, and Franco Rossellini*, Supreme Court of the State of New York, County of New York, IAS Part 8, Index Number 89/11799. FRC.

13. "Vestron International Group Home Video Offering Title List, Feature Length Programming," 14 September 1989, p 5. FRC.

14. Herman Weigel of Neue Constantin: letter to Bolognini of Uniexport, 4 September 1989. FRC.

15. Myerson, president of Penthouse International: letter to Danport Video, Copenhagen, 14 September 1989. FRC.

September 14, 1989

Dear Sir or Madam:

You are or were a distributor of the motion picture *Caligula* either for theatres, video, television or some combination of the foregoing. I trust that your business relationship with us was successful and that you may be able to continue to profit from your relationship with us either as a result of renewed interest in *Caligula* or new interest in one of the various films which we now have in pre-production.

We have recently had a conflict with Felix Cinematografica S.R.L., and its principal Franco Rossellini[,] which has resulted in litigation in various countries. We now understand that Mr. Rossellini, or his company, or Uniexport Film, or another designee is attempting to claim rights to *Caligula* materials. We may have previously advised you not to make *Caligula* materials available to anyone other than ourselves. If we have not already done so you should take this letter as such an instruction.

You should also be aware that Mr. Rossellini may be seeking to change either the title or even some portions of the content of *Caligula* and distribute it himself. Please advise us by fax, at 212-580-3793 or 212-580-3693, if you learn of any approaches or attempts by others to distribute *Caligula* in any media in your territories.

In view of our past relationship, we would expect to approach you as our new productions become available. It may be helpful if you let us know where your distribution capacities exist indicating both territories and media so that we may keep this in mind.

Sincerely yours,
David J. Myerson
President and General Counsel

While this was occurring, Franco Rossellini decided at long last to set things right with his Roman attorney, Massimo Ferrara-Santamaria, via a letter to his Parisian attorney, Jacques-Georges Bitoun:¹⁶

With the present, we consent to an irrevocable cession, in favor of Professor Massimo Ferrara-Santamaria, Esq., and in his name and on behalf of his wife, Mrs Maria Badmajew, the sum of 50,000,000 (fifty million) Italian lire [US\$35,591.48] or its equivalent in foreign currency.

The above is the value of the amount owed above on all the Felix Cinematografica credits for the programming of the Italian feature film entitled "*Caligula*," in France.

The present has all effect of law, which annuls previous provisions.

16. Rossellini of Felix: letter to Jacques-Georges Bitoun, 20 September 1989. FRC.

To this, Ferrara added a cover letter to Bitoun, promising him about a million francs for fees owing along with damages.¹⁷

Felix's other Italian counsel, Giuseppe Biagiotti, asked for a full accounting from Ferrara in the hopes of settling the debt. Ferrara gladly supplied the itemized bill,¹⁸ which stretched back to the earliest pre-production and reached up to the present, and which totaled £35,700,000 (US\$26,168.79).

27 SEPTEMBER 1989 — FRANCE CAPITULATES TO PENTHOUSE (34TH LAWSUIT, CONTINUED)

DURING THIS TIME the predicted reversal in France occurred. Penthouse had appealed the April 1987 ruling of the Tribunal de Commerce de Paris, arguing that the Settlement Agreement of February 1984 was merely an "accounting amendment."¹⁹ Penthouse was successful, winning its case 27 September 1989,²⁰ under M. Jaillard, examining judge, together with his two colleagues, Mme. Lamy and M. Vanpe. They concluded that Felix "does not bring to the argumentation the precise and indisputable justification of the rights that it pretends should be valid." In particular, the court concluded that Italian rulings rendered "after the offenses" have only "an indirect relationship with the precise facts of the case"; that the litigation concerns the scope and "limits of the laws with respect to authors and producers"; that Felix had ceded to the 1975 Joint Venture the author rights it had acquired from Vidal; that the assignments by Vidal and d'Amico, occurring as they did after Felix's assignment to the Joint Venture, could be considered nothing more than a regularization of the Joint Venture; that the Berne Convention guarantees owners of the rights of authorship the same rights as authors to utilize their works; and finally that "The different subsequent agreements that were reached between FELIX and PENTHOUSE do not clearly define the provisions that could have been agreed to between them concerning the rights of reproduction on video and rights of TV utilization, and the settlement of 2 February 1984 had not borne any decisive clarification on this point, precisely as the Italian judges had already remarked."²¹ Essentially, the Commercial Court of Paris was re-litigating a case

17. Ferrara-Santamaria: letter to Bitoun, 20 September 1989. FRC.

18. Ferrara-Santamaria: letter to Giuseppe Biagiotti, 29 September 1989. FRC.

19. Chantal Bodin-Casalas, Concluding Arguments, 5 April 1990, Cour d'Appel de Paris, *Felix Cinematografica v Penthouse International, Ltd., and Penthouse Films International, Ltd.* FRC.

20. Bitoun: letter to Felix, 31 October 1989. FRC.

21. Quoted in Felix Cinematografica's appeal in the Paris Court of Appeals on 5 April 1990, *Felix Cinematografica v Penthouse International, Ltd., and Penthouse Films International, Ltd.* FRC.

already decided in Rome the previous year, even though Rome, by contract and by law, had sole jurisdiction to decide these matters. The Commercial Court of Paris's rôle was not to relitigate, but to determine whether or not an Italian ruling had been violated on French territory. The court far exceeded its authority.

As we shall learn in the next chapter, Felix lost this case because Lupoi declined to provide Bitoun with "directives," for the simple reason that Franco Rossellini was delinquent in his payments.²² It is difficult to follow Lupoi's logic, for by deliberately sabotaging the case he was ensuring that Rossellini would never be able to pay him.

OCTOBER 1989 — PENTHOUSE INVESTIGATES

PENTHOUSE INTERNATIONAL'S VICE PRESIDENT, an attorney by the name of Barry Emanuel Winston, of Winston & Co, began some investigations. Winston, incidentally, was Guccione's brother-in-law, the husband of Geraldine Ann "Jeri" Guccione.²³ Winston started his investigation by writing to Margaret Lenaghan of Michael Forrest & Partners with a simple request:²⁴

Dear Miss Lenaghan:

I would appreciate your assistance in obtaining a current report on the following firms, as you have assisted us in the past:

1. C.V.F. Filming Ventures Ltd.
Nicosia, Cyprus
2. Uniexport Film (Member of Board of Directors of U.N.E.F.A.)
Rome, Italy

Thanking you in advance for your prompt service.

Sincerely yours,

Barry E. Winston

The response was quick. A Cypriot accountant by the name of Tonis Shakallis looked for records of the CVF firm and found little:²⁵

22. Maurizio Lupoi: fax to Rossellini, 18 April 1990. Much of this document is smeared to illegibility. FRC.

23. "Guccione—Winston," *The New York Times*, Sunday, 9 May 1954, p. 113; "Guccione—Winston," *The New York Times*, Monday, 11 October 1954, p. 3; "Child to Mrs. B. E. Winston," *The New York Times*, Saturday, 20 October 1962, p. 14.

24. Barry E. Winston of Winston & Co: letter to Margaret Lenaghan of Michael Forrest & Partners, 3 October 1989. FRC.

25. Tonis Shakallis of Christodoulides Shakallis & Co: letter to Lenaghan of Michael Forrest & Partners, 12 October 1989. FRC.

C.V.F. Filming Ventures Limited

With reference to your fax dated 4th October, 1989 regarding a search on the above company, please find attached the company details as shown at the company's file with the Registrar.

Please note the following:

1. The company is an "offshore" company, i.e., it belongs exclusively to nonresidents and its income is derived from sources, outside Cyprus.
2. It is registered under nominees and there is no way we can find the names of the beneficial shareholders, as these are known only to the Central Bank of Cyprus.
3. The two nominee companies who hold the shares belong to the local firm of Coopers & Lybrand. The registered office of the company is the address of Coopers & Lybrand and, presumably, the directors are employees of Coopers & Lybrand as well.
4. No annual return has been filed yet and so we cannot know if there have been any changes to the shareholders., e.g. if the shares were eventually transferred to the beneficial shareholders.
5. We cannot tell from the file whether the company is active or not. However, the issued share capital (C£4,000) is higher than the minimum required and this may be some indication that the company has, or is intended to have, some substance.

Please let me know if you require any additional information.

Penthouse sent out a two-page notice to Uniexport Film and other addressees unknown on 25 October 1989, and also spread it widely at the MIFED (Mercato Internazionale del Film e del Documentario) Film Market in Milan:

LEGAL NOTICE

Given by

PENTHOUSE FILMS INTERNATIONAL LIMITED

With reference to the film "Caligula"

With reference to the distribution of the film "Caligula" in all territories of the World (except Italy).

Penthouse Films International Limited co-produced the film "Caligula" with Felix Cinematografica SRL of Rome on the basis of agreements which provide in effect that all copyrights and other utilisation rights in the film "Caligula" belong to Penthouse Films International Limited throughout the World except Italy. Felix Cinematografica SRL is entitled to 10 per cent of the net profit realised from the exploitation of those rights.

TAKE NOTICE THAT Felix Cinematografica SRL challenged the rights of Penthouse International Limited to exploit the rights in the film

"Caligula" on French pay television and in the sale of video cassettes. The Commercial Court of Paris (Tribunal de Commerce de Paris) rendered its judgement on 27th September 1989 dismissing the claim by Felix Cinematografica SRL in its country.

AND FURTHER TAKE NOTICE that Felix Cinematografica SRL challenged the right of Penthouse Films International Limited to own and exploit the rights in the film "Caligula" before the Rome Tribunal. That Tribunal passed a sentence (provisionally executive in Italy) declaring that all utilisation rights (save theatrical ones) belong to Felix Cinematografica SRL.

PENTHOUSE FILMS INTERNATIONAL GIVES NOTICE that an appeal is pending before the Appellate Court in Rome which asks for the sentence of the Rome Tribunal to be annulled on the basis of evidence supplied.

The Appellate Judgement is in the process of examination.

AND FURTHER TAKE NOTICE that the film "Caligula" has been Confiscated by the Italian State Supreme Court of Cassazione.

AND FURTHER TAKE NOTICE that Penthouse Films International Limited is the only owner of the rights for the utilisation of the music in the film "Caligula".

AND FURTHER TAKE NOTICE that Penthouse Films International Limited has for some time past granted licences for the exploitation of the film "Caligula" on video cassette.

It would now appear that Felix Cinematografica SRL is offering "Caligula" for video exploitation in markets other than Italy.

In the circumstances, Penthouse Films International Limited consider illegitimate and without validity any acquisition or negotiation of rights outside of Italy relative to the film "Caligula" done with Felix Cinematografica SRL and/or its representatives or assigns. And Penthouse Films International Limited reserves its rights to take proceedings against any party exploiting the utilisation rights in the film "Caligula" without the consent of Penthouse Films International Limited.²⁶

The above notice worried Pietro Bolognini sufficiently that he faxed it to Maurizio Lupoi for an explanation and advice. He also faxed a copy of the latest advertisement he had prepared, and which was hastily designed, with uneven

26. Legal Notice Given by Penthouse Films International Limited with Reference to the Film "Caligula," 25 October 1989. FRC.

lines and typographical errors. It would hardly inspire confidence in potential customers. Bolognini faxed both documents to Lupoi in care of MIFED.²⁷

UNIEXPORT FILM ■ UNIEXPORT FILM ■ UNIEXPORT FILM ■ UNIEX

FELIX CINEMATOGRAFICA

is pleased to announce that

PIETRO BOLOGNINI

is incharge
of all negotiations concerning

CALIGOLA

written by **GORE VIDAL** and **MASOLINO D'AMICO**

with

MALCOM MCDOWELL, PETER O'TOOLE
HELEN MIRREN, TERESA ANN SAVOY
and with
JOHN GIELGUD

Filmed by
TINTO BRASS

A FRANCO ROSSELLINI PRODUCTION

★



FOREIGN SALES: UNIEXPORT FILM - Roma, via Rubicone 27, tel. 06/856561, 8449653, telex 624553 GTS
(Att. UNIEX) - fax 06/492163 GTS - at A.F.M.: Office n. 601.

From his office in Rome, Lupoi responded in English by fax on that same day, 25 October. He made mention of a court decision of 29 July 1989 that is not in the Franco Rossellini files.

Dear Mr. Bolognini,

I have read the "legal notice" given by Penthouse Films International Limited.

I wish to advise you that Penthouse has petitioned the appellate court in Rome in order to have the execution of the judgement rendered by the Rome Tribunal suspended. Said petition has been rejected by the court by its order of the 29th July 1989.

The judgement by the Rome Tribunal does, therefore, stand and it is effective against Penthouse Films worldwide. It follows that Felix

27. Bolmar Distribuzione, Uniexport Film: fax to Lupoi in care of MIFED, 25 October 1989. FRC.

Cinematografica is the sole owner of all exploitation rights. The only difference between theatrical and non-theatrical exploitation is that in the former case Penthouse Films is entitled to share in the profits (90%), in the latter it is not.

You are authorized to bring this letter to the attention of any interested party.²⁸

The French case, which Penthouse had won on appeal, was not yet over. Jacques-Georges Bitoun asked his associate, Counselor Chantal Cobin-Casalis, to launch an appeal, and he asked Rossellini to forward a payment of 15,000 francs (US\$2,404.89) directly to Cobin-Casalis.²⁹ A week later neither Bitoun nor Cobin-Casalis had heard from Rossellini, and urged him to respond, as the deadline for appeal was rapidly approaching.³⁰

OCTOBER–NOVEMBER 1989 — BATTLES RAGE ON (38TH LAWSUIT, CONTINUED)

THE LEGAL BATTLE AT THE SUPREME COURT of the State of New York was also in trouble. Steven M. Rabinowitz of Pryor Cashman Sherman & Flynn had a letter hand delivered to Rossellini at his Manhattan apartment:

Dear Franco:

When we last spoke, over a month ago, you indicated that you or Professor Lupoi would soon get in touch with me to set up a schedule for paying your long-outstanding bill. As of yet I have not heard from either you or Professor Lupoi. As you can see from the enclosed billing statement, you owe this firm nearly \$70,000 — hardly a trifling amount. Unless I hear from you this firm will be obliged to bring legal proceeding against you to recover its fees.

Naturally, we would like to resolve this matter amicably. However, if you do not make some good faith effort to begin paying your outstanding bill, we will not hesitate to bring in the courts to resolve this problem.

As for your question about the accuracy of our bill, I have spoken with our bookkeeping department and learned that while you did, in fact, provide us with a \$15,000 retainer, that amount was credited towards your first bill leaving a balance of \$14,130.62.

Also enclosed is a notice which we received from the Court advising that a status conference is scheduled for November 2, 1989. As you know, we have been relieved as your counsel and thus will not be appearing at this conference. I have forwarded a copy of this notice to

28. Lupoi: fax to Bolognini of Uniexport, 25 October 1989. FRC.

29. Bitoun: letter to Rossellini, 31 October 1989. FRC.

30. Bitoun: letter to Rossellini, 8 November 1989. FRC.

Don Robinson of Robinson, Wayne & La Salla in Newark, New Jersey and you should contact them to determine if they will represent you at this conference.

Please give me the courtesy of a prompt response to this letter.

Sincerely,
Steven M. Rabinowitz

cc: Professor Maurizio Lupoi³¹

Penthouse International's vice president, attorney Barry E. Winston, was still attempting to decipher Felix's strategy. He knew that Felix was licensing *Caligula* in Japan, and so he contacted Stevan J. Bosses, who had submitted Penthouse's copyright registration to the US Copyright Office in November 1980. Bosses responded:

Dear Barry:

This is merely to confirm in writing that which I have already told Chikako Lorenzetti on the telephone. Because both the United States and Japan are signatories to the Universal copyright convention, a copyright validly registered by a U.S. national in the United States is fully enforceable in Japan, assuming the formalities (such as proper copyright notice, etc.) have been adhered to. In addition, since the copyright is valid and enforceable in Japan, licenses under it can also be granted in Japan.

Of course, the advice given above assume[s] the U.S. copyright registration is valid. Obviously, if there is a defect in the U.S. registration, that would affect [t]he Japanese situation as well....³²

New Select was caught in a quagmire, and wrote to Felix for clarification. Maurizio Lupoi sent a succinct and completely accurate letter by courier:

Dear Sirs,

We have been asked by Felix Cinematografica to acquaint you with the legal aspects concerning the motion picture *Caligula*.

In spite of the many conflicting news concerning *Caligula*, the issues are really quite simple once you bear in mind that *Caligula* is an Italian motion picture produced by Felix Cinematografica (see document # 1, Certificate of Nationality). It follows that all the rights to the picture belong to FELIX CINEMATOGRAFICA.

PENTHOUSE FILMS INTERNATIONAL has contributed various amounts of money to the production of the picture. In return FELIX

31. Steven M. Rabinowitz of Pryor Cashman Sherman & Flynn: hand-delivered letter to Rossellini, 31 October 1989. FRC.

32. Stevan J. Bosses of Fitzpatrick Cella Harper & Scinto: letter to Winston of Penthouse International, 1 November 1989. FRC.

kept for itself only 10% of the profits deriving from the exploitation of the picture outside Italy (see document # 2, translation of the General Agreement of Feb. 2, 1984, article 14, para. a).

A controversy has arisen concerning the type of exploitation in respect of which the profits are to be shared 10/90. FELIX maintained that the General Agreement concerned the theatrical exploitation only, hence, the profits deriving from the non-theatrical exploitation belonged 100% to FELIX. PENTHOUSE took the opposite view.

The Courts of Rome, first by a preliminary injunction, subsequently by a first instance judgment (see document #3) have held that the non-theatrical exploitation is outside the scope of the General Agreement and does, therefore, wholly pertain to FELIX as the producer of the picture. The first instance judgement was made immediately enforc[e]able by the court. PENTHOUSE has appealed and has petitioned the court of appeal to stay the execution of the judgement pending the appeal. By order of the 29th July, 1986, the petition has been rejected.

* * *

It is, therefore, beyond doubt that FELIX, the producer, is entitled to exploit the picture in all conceivable manners and that PENTHOUSE has only a right to receive 90% of the profits deriving from the theatrical exploitation.

As far as the contracts for the theatrical distribution are concerned, FELIX has never granted PENTHOUSE any exclusive distributorship. There is, therefore, no reason why PENTHOUSE should claim that FELIX cannot distribute the picture itself or through agents.

Yours Faithfully,
Studio Legale Lupoi
Prof. Avv. Maurizio Lupoi

cc. Mr. Bolognini — Uniexport Films³³

Licenses continued: Filmax (F.E.), Ltd., for Hong Kong and Macao,³⁴ Bethel Program Co., Ltd., for South Korea for \$60,000,³⁵ and for Spain. The latter contract was further cause of worry:

Dear Franco,

Technicolor has not yet received instructions from the National Bank of Labor's Autonomous Section for Cinematographic Credit for the printing of a copy for Spain.

33. Lupoi: letter to Akira Sugiyama of New Select, 8 November 1989. FRC.

34. Bolognini of Uniexport: letter to Indra Suharjono of Filmax (F.E.), Ltd., 8 November 1989. FRC.

35. Bolognini of Uniexport: letter to Mr K. Y. Shon of Bethel Program Co., Ltd., 10 November 1989. FRC.

The client is furious because he paid the royalty to get that copy.

I await your urgent reply....³⁶

In the meanwhile, Franco Rossellini decided to set the record straight with New Select of Japan:

New York Nov 23

Mr. Akira Suguyama [*sic*]

NEW SELECT

Nakamura Building 7th Floor

5-9-13 Ginza Chuo-Ku

TOKYO

Dear Mr. Suguyama [*sic*]

with this telefax comes the confirmation of my decision to come to Tokyo.

I am deeply embarrassed about all the problems that these people of Penthouse have been creating to NEW SELECT. But I will not comment now on their various criminals activities. As I have explained t[o] Mr. Bolognini, my arrival in Tokyo should be kept a secret.

It seems to me that we are witnessing a case of extortion and I want to make sure that these people are properly punished.

I should be in Tokyo on Saturday December 2nd.

My warmest regards

Franco Rossellini³⁷

DECEMBER 1989 — SUPREME COURT OF THE STATE OF NEW YORK – COUNTY OF NEW YORK (38

TH LAWSUIT, CONTINUED)

A FULL YEAR AFTER Penthouse Films International filed breach-of-contract charges against Felix, the case finally went to court. Felix was represented by two legal firms, Arnoff & Suskind, and Robinson, Wayne & La Sala.

Franco Rossellini submitted a motion for summary judgment,³⁸ explaining that Penthouse initiated this suit only because it had just lost its case in Italy. By

36. Bolognini of Uniexport: fax to Rossellini, 29 November 1989. FRC.

37. Rossellini: fax to Sugiyama of New Select, 23 November 1989. Misspellings in the original. FRC.

way of background to understand the contracts, he stated that Gore Vidal's original screenplay, the basis of the original Joint Venture Agreement, was never used. Instead there was a Joint Production Contract for a different screenplay co-authored by Vidal and d'Amico. Technically that was untrue, but legally and contractually it was.

Maurizio Lupoi also offered a statement in support of summary judgment, and his "Certification of Maurizio Lupoi" consisted in the main of a brief summary of events to date,³⁹ and he concluded that any transfer of Italian rights to foreign parties, or any contracts with foreign parties, were subject to government authorization. An unauthorized contract would be "null and void; under certain circumstances, it would also have amounted to a crime."

While in Tokyo for discussions with New Select, Franco Rossellini signed an affidavit. We do not know who suggested that he do so.

To whom it may concern:

I Franco Rossellini, Procuratore Generale of Felix Cinematographica [sic], do solemnly swear under oath that the film, "Caligola," produced by Felix Cinematographica [sic] SRL is conform with the certificate of origin issued by the Ministero Turismo e Spettacolo on the 6th of February, 1989.

On the year 1983, Felix Cinematographica [sic] has edited and distributed in Italy an Italian language film, "Io, Caligola," only distributed in Italy, has never and will never be distributed in other countries other than Italy.

In faith,
Franco Rossellini
December 5th, 1989,
Tokyo, Japan.⁴⁰

38. Franco Rossellini, Affidavit in Support of Defendant's Motion for Summary Judgment (December 1989), *Penthouse Films International, Ltd., v Felix Cinematografica, Srl, and Franco Rossellini*, Supreme Court of the State of New York – County of New York, Index Number 011799/89. Judge Diane A. Lebedeff presiding. Shea & Gould for Plaintiff, John J. Sarno of Robinson Wayne & La Sala for Defendants. Only an early draft of this affidavit survives in Franco Rossellini's files. FRC.

39. Lupoi, Certification (4 December 1989). *Penthouse Films v Felix and Franco Rossellini*, Superior Court of the State of New York – County of New York, Index Number 011799/89. FRC.

40. Rossellini: letter to whom it may concern, 5 December 1989; faxed to New Select of Japan on 26 May 1990. FRC.

Rossellini also took the opportunity to send a registered letter to Penthouse vice president Barry E. Winston and to Yoshinori Nishizaki of Japan Audio Visual Network Inc of Tokyo:⁴¹

Sirs,

I have been informed by Mr. Akira Sugiyama of New Select that you are claiming incorrectly the ownership rights over my film, "Caligula," and you are planning to start illegal distribution in Japan of the above mentioned film, in contrast with the sentence of the Tribunal of Rome dated September 30th, 1988.

Be aware that if you do not stop at once these harrassments, I will be forced to report you to the police for extortion.

Franco Rossellini
Procuratore Generale of
Felix Cinematographica [*sic*] SRL
c/o Prof. Maurizio Lupoi....

At the same time New Select wrote to Lupoi:⁴²

Dear Professor Lupoi

Please be advised that agents for PENTHOUSE—Mr. Barry Winston, Vice President of PENTHOUSE and Mr. Ypshinori [*sic*] Nishizaki representative of PENTHOUSE for Japan ignoring the various orders of the tribunal of ROME are harrassing us with threats seriously damaging our distribution plans for "CALIGULA" in Japan.

As we got some documents from them, we sent them to you by separate mail.

Kindest regards,

Yours sincerely
NEW SELECT CO., LTD.
Akira Sugiyama

Barry E. Winston had learned from Steven J. Bosses that a defective US copyright registration would spell trouble for Penthouse. That correspondence was inadvertently shared with New Select, and so Franco Rossellini contacted John J. Sarno,⁴³ an attorney with Robinson, Wayne & La Sala, supplying him with documentation that proved Felix's ownership of *Caligula*. Rossellini asked Sarno to check to see if the copyright registration was still in order.

41. Rossellini: letter to Winston of Penthouse and Yoshinori Nishizaki of Japan Audio Visual Network Inc, 5 December 1989. FRC.

42. Sugiyama of New Select Co., Ltd.: letter to Lupoi, 5 December 1989. FRC.

43. Rossellini: letter to John Hornick, 19 December 1989. FRC.

DECEMBER 1989 — APPEALING THE FRENCH RULING (34TH LAWSUIT, CONTINUED)

JACQUES-GEORGES BITOUN SENT FRANCO ROSSELLINI a receipt for his recent payment of US\$2,500 to go toward the upcoming appeal.⁴⁴ “We thank you but are keen to remind you that you still owe the office a sum of 192,600 francs [US\$31,699.49] for fees and 10,000 francs for expenses already paid by the legal offices. During this meeting, you had indicated to me that you would send an amount of 10,000 DOLLARS in partial payment of the fees. It is absolutely indispensable that you completely and very quickly settle your affairs with my office.” Chantal Bodin-Casalis followed this by a letter urging Bitoun to demonstrate to the court Felix’s means of financial support to carry out the case.⁴⁵ Should Rossellini fail to submit his file and his summary of conclusions by 10 April at the latest, he would lose by default.

Maurizio Lupoi added to the pressure by faxing his latest bill to Rossellini: £47,000,000 (US\$36,237.81).⁴⁶ It was of no help that the Italian banks were on strike at the time.⁴⁷

DECEMBER 1989 — GERMAN CONFLICTS

BARRY E. WINSTON sent a New Year’s greeting to Killian Rebentrost of Tobis Filmkunst, informing him that Penthouse was preparing a worldwide reissue of *Caligula*, and hereby offered him a license:

...During my conversation with your assistant yesterday, I learned that your company still has a strong interest in the German video market which we also plan to have a reissue of *Caligula* in both video cassette, video disc, TV, etc. I am sure that both the theatrical and video market has changed dramatically in Germany during the past 10 years, and as a result, a film/TV package may make an inter[e]sting marketing concept for your company.

Caligula here in the United States still sells very well in both the video rental and also video mail order market. The film has become a “cult” type of film, timeless in its concept and possibly more salable today than [i]t was 10 years ago. I am very interested in obtaining your thoughts about the potential for *Caligula* in Germany, both theatrically

44. Bitoun: letter to Rossellini, 6 December 1989. FRC.

45. Bodin-Casalis: letter to Bitoun, 29 December 1989. FRC.

46. Lupoi: invoice to Rossellini, 20 December 1989. FRC.

47. Rossellini: letter to Lupoi (identified only as Gentile Professore), 19 December 1989; letter to Don Robinson, 27 December 1989; Guglielmo Quagliarotti, “Le banche in pieno caos: trattative interrotte, confermati gli scioperi durante le feste,” *Il Messaggero*, Friday, 22 December 1989, p 8, All FRC.

as well as the video market. We have in Germany the most successful Penthouse foreign edition which I feel could be a marketing tool for your company, since their readership could be a really large percentage of your early customer base.....⁴⁸

JANUARY 1990 — THE FIRST REVENUES

AFTER A YEAR OF LICENSING RIGHTS, the revenues began to arrive. First was \$15,000 from Filmax (F.E.) of Hong Kong,⁴⁹ and this led Massimo Ferrara-Santamaria to ask about his share.⁵⁰ Next were some earnings from Spain, £10,192,473 (US\$7,975.22).

The United Kingdom then expressed an interest in a re-issue, and Entertainment Film Distributors Limited of London licensed from CVF the cinema, home-video, and television rights to *Caligula* for 10 years for a consideration of US\$55,000.⁵¹

JANUARY AND FEBRUARY 1990 — THE LAST STRAWS

THE EVER-INDULGENT Massimo Ferrara-Santamaria was at a loss. Rossellini had promised him £50,000,000 (US\$35,591.48) the previous May and had signed an irrevocable cession of in his favor in September, and yet nothing had transpired since, except for Felix's inability to supply prints to distributors who had paid their advances. Ferrara wrote to Jacques-Georges Bitoun for advice:

My Dear Colleague, my Dear Friend,

My wife and I always retain the beautiful memories of your reception in your beautiful home, filled with works of art.

I beg you to read the enclosed letters that I sent to you on 20 September 1989. Permit me now to refer to you my situation of debt with Franco Rossellini and his company Felix Cinematografica. You wrote me on 3 October 1989 to acknowledge receipt of those letters, asking me to talk to you about them during one of my visits to Paris. That we did on the occasion of your above-mentioned reception.

48. Winston, vice president of Penthouse International: fax to Killian Rebentrost of Tobis Filmkunst GmbH & Co Verleih KG, 28 December 1989. FRC.

49. Bolognini for Uniexport: letter to Lupoi, 11 January 1990. FRC.

50. Ferrara-Santamaria: letter to Lupoi, 16 January 1990. FRC.

51. Contract between CVF Filming Ventures, Ltd., and Entertainment Film Distributors Limited, 23 January 1990. FRC.

I would now like to have your information on this subject, because Rossellini has never paid anything for fifteen years of my most complete assistance, and has not even paid my expenses.

Awaiting your response, I offer you, dear friend and colleague, best wishes to your lovely wife and beg you to accept my friendly salutations.

Professor Massimo Ferrara Santamaria, Esq.⁵²

Bitoun's repeated pleas must have borne fruit, for he assigned his appeals attorney, Chantal Bodin-Casalis, to present Felix's concluding arguments.

The next day came more bad news, as Bitoun wrote to Rossellini that, though they had launched an appeal, they were now prepared to suspend his firm's handling of the case pending payment of the 192,600 francs (US\$33,722.43) owing for more than a year.⁵³ Then on 5 February 1990 Chantal Bodin-Casalis nervously wrote a letter to Jacques-Georges Bitoun, with a desperate plea:⁵⁴

Please find the dossier of the proceedings of this case distributed to the First Chamber C of the Court.

I remind you that this case is subject to the provisions of article 915 of the New Civil Procedure Code and that we must give, imperatively, our conclusions before 12 April 1990

Could you, therefore, send your draft conclusions, or the elements that would allow me to establish this, which I would submit for your approval, as well as the set of all of the documents that you intend to file at the proceedings accompanied by a docket slip.

The 6th of February saw more action, as John J. Sarno wrote to Vestron Video:

We represent Mr. Franco Rossellini and Felix Cinematografica in a lawsuit commenced by Penthouse International, Ltd.[.] over the ownership rights of the film "Caligula." The case is currently pending in the Supreme Court of New York.

It is our understanding that Vestron Video is distributing the video cassette "Caligula". It is our position that Felix Cinemat[o]grafica has the exclusive right to distribute this video cassette. Neither Felix Cinematografica nor Franco Rossellini has authorized Vestron Video to distribute "Caligula". Please be advised that our clients will take whatever legal action necessary to protect their rights.

52. Ferrara-Santamaria: letter to Bitoun, 30 January 1990. FRC.

53. Bitoun: letter to Rossellini, 1 February 1990. FRC.

54. Bodin-Casalis: letter to Bitoun, 5 February 1990. FRC.

If you require further information, you may contact me at your earliest convenience.

Very truly yours,
John J. Sarno

Vestron correctly saw no need to worry.

