

Thirty-Eight

“EMPOWER THE GOOD RELATIONS”



“I’ve been approached by a number of people who wanted to do *Caligula II*.”
— Bob Guccione¹



MARCH 1990 — BACK TO WORK

ROSSELLINI ATTEMPTED TO MAKE UP for the decade of income he had lost, and doggedly, even frantically, attempted to keep his business going. But, as becomes painfully apparent, he simply did not have the resources to do so.

Nigel Green of Entertainment Film Distributors, Ltd., in the UK paid an £11,000 (US\$17,869.48) deposit to Pietro Bolognini of CVF for rights to *Caligula*, but had yet to decide on whether to license the hard or soft version, which he and his company were presently screening on VHS.²

CVF licensed Greek/Cypriot rights for two television transmissions for a lump sum of \$6,000 to General Film Enterprises Establishment of Vaduz.³

The most promising venture was by Domovideo Intermarket Group (Domovideo Gruppo Intermarcato), one of the leading home-video distributors in Italy. In March Domovideo paid an advance of £15,000,000 (US\$12,859.90) for VHS rights to *I, Caligula* in Italy.⁴ Each copy would sell to video shops for £100,000 (US\$79.54) and would be available exclusively for rental. Domovideo and Felix signed the contract on 28 March 1990, but we should by now anticipate the problem, because it follows the perennial pattern. Before Domovideo could

1. Bob Guccione: quoted by Thomas Vinciguerra, “Porn Again: *Caligula* Is Remastered in All Its Gross Glory,” *New York*, 6 September 1999.

2. Nigel Green: fax to Pietro Bolognini, 9 March 1990. This and all succeeding references in this chapter are from FRC.

3. CVF Filming Ventures Ltd: contract with General Film Enterprises Establishment, 12 March 1990. FRC.

4. Contract between Felix Cinematografica Srl and Domovideo, 28 March 1990. FRC.

release any copies, another company, Skorpion, issued unauthorized VHS copies for sale at newsstands for a price of £29,000 (US\$23.57). Domovideo demanded a refund of the advance,⁵ claiming that Felix had effectively rescinded the contract by breaching the exclusivity, as it was unable to force Skorpion to cease its activities. Domovideo was willing, though, to consider the contract valid but only on condition that the original 1979 version could be granted amnesty and if it could distribute that edition. As a matter of fact, it was sometime in 1990 that the sequestration order was overturned.⁶ Why Rossellini could not act upon this offer remains a mystery. The letter closed with the ominous, "We are taking legal recourse."⁷ Two months later Bolognini faxed this letter to Rossellini, with a handwritten plea at the top: "Dear Franco, I ask you please to respond directly. We are waiting for the instructions given to Cinecittà. Your Pietro."

To recapitulate: When Franco Rossellini opened *I, Caligula* to cinemas, Penthouse licensed Cosmopolitan the alleged rights to issue VHS copies of the original sequestered *Caligula* in Italy. Rossellini was able to put a stop to that. When Rossellini licensed video rights to Compagnia Cinematografica Prima in May 1986, the project remained stillborn. In 1987 Mida/Eden (through The Universal Video Srl) issued two releases of an unauthorized and blatantly illegal padded *Io Caligola*, with the scenes that had been banned by the Italian government. When Rossellini licensed the video rights to G.B. Television in September 1987, the project was scuttled when Universal again issued unauthorized copies, this time of the release version. When Rossellini finally managed to settle with Universal and sign a contract, the release was suddenly withdrawn. Now when Rossellini licensed the video rights to Domovideo, the project was once again scuttled when Skorpion suddenly issued unauthorized VHS copies at a reduced price to newsstands. It is difficult not to detect a pattern, and it is even more difficult not to be deafened by the silence emanating from Gaumont in response to these unauthorized VHS releases.

In an undated memo to himself, Franco Rossellini scribbled out by hand the basics of what had transpired over the past several years. Some of this information is new, and some of it may well be fallacious.

-PAC-

- On 10 November 1979 the film came out — against my wishes —
(as proved by the "Revocation of Contract").

5. Giuliano Angheben for Domovideo: fax to Felix Cinematografica, 7 September 1990. FRC.

6. Pietro Bolognini of Uniexport: fax to Franco Rossellini, 5 December 1990. FRC.

7. Angheben: letter to Pietro Bolognini (of Felix), 3 October 1990. FRC.

- On 14 November 1979, the film was confiscated in the National territory.
- With a letter sent on Sept. 25, 1981, PAC notified to its agencies that the distribution was effectively over.
- Telegrams that demonstrate the blackmails by PAC to the agencies in order to get money on Caligula.
When I canceled the agreement with Penthouse because I was desperately uncertain and I had not the guarantees one would expect, Penthouse joined PAC to force me to go bankrupt.
- While I was preparing the second edition, Penthouse and PAC started selling in stores, under the counter, the FORBIDDEN tapes — SEE ITALIAN AND US COPIES.
- In the meantime, in order to prevent me from signing an agreement with Gaumont, they published both in Cannes and in Venice promotional ads for a film they no longer possess.
- On 8 July 1983 the Criminal Court of Rome determined that PAC has no rights to the second edition of the film — while my case goes forward.
- Notwithstanding, PAC, together with Penthouse OMNI, continues to intimidate me with SERIOUS attempts at extortion.
- In fact, at the Venice film festival, they came out with WIDE PROMOTION again.
- The selling of tapes continues unpunished — obviously, it is done TO PREVENT THE DISTRIBUTION OF THE SECOND EDITION AND [to continue with] THE HUGE PROFIT THEY HAVE.⁸

MARCH 1990 — MONEY BEGINS TO TRICKLE IN, AND TRICKLE OUT

A BANKER'S CHECK FROM LISBON dated 13 March 1990 soon arrived, in the amount of US\$15,000, for rights for Portugal, presumably home-video rights.⁹ We know nothing more about this.

We can see a sign of activity, for Lupoi received a bill from Coopers & Lybrand of Cyprus for CVF for C£944.29 (US\$2,051.45) in addition to an outstanding balance of C£804.24 (US\$1,747.20) for "professional services rendered to CVF Filming Ventures Limited in connection with various matters for the company including advice on finance, secretarial, exchange control, accounting and other related matters to 4 March 1990."¹⁰

8. Rossellini, PAC: handwritten memo, nd. DDP 360–27, pp. 109–113.

9. Credit Lyonnais Portugal, Lisbon, check no. 012514, funds drawn from Bankers Trust Company, New York, 13 March 1990. FRC.

10. Coopers & Lybrand: fax to Maurizio Lupoi, 20 March 1990. FRC.

There was trouble in Spain, as Miguel Ángel Murolas of Civite S.A. in Madrid received an unhappy fax from Barry Winston, vice president of Penthouse International. Winston had discovered, while at the American Film Market, that Civite had licensed cinema and video rights to *Caligula*. "The only company that owns these rights worldwide, except for Italy, is Penthouse Films International Ltd. I wanted to make you aware of the fact that your agreement through Uniexport will result in some rather involved legal problems." Winston went on to inform Murolas that Penthouse was in the midst of relicensing *Caligula* in a number of countries including Spain. "There have been several legal disputes and in each case Penthouse was able to continue their theatrical and video distribution in major countries such as France, Germany and England." That was true, though in France that was by the simple expedient of ignoring a court order prior to appeal, and in Germany and England by the simple expedients of ignoring an Italian ruling and by breach of contract. "I would be happy to discuss this with you by telephone, fax, or if you will be present at MIP [Marché International des Programmes] in Cannes, I will be happy to sit down and talk to you in order to help you avoid what can be an awkward and also an expensive problem."¹¹ When Franco Rossellini saw this letter, two weeks later, he forwarded it to Sarno, exclaiming, "It is terrible. How are we going to stop these continuous extorsions and harrassments!"¹²

22 MARCH 1990 — BACK TO COURT (38TH LAWSUIT, CONTINUED)

JUST AS PENTHOUSE HAD ATTEMPTED to extinguish its legal troubles once and for all by filing a lengthy affidavit with the Supreme Court of the State of New York, Rossellini's lawyers employed the identical tactic. As we have seen, Sarno's and Rossellini's prior responses had been woefully lacking in detail and were incomprehensible to anyone not intimately familiar with the myriad cases. This time John J. Sarno attempted to compensate for those previous defects, and submitted a 16-page Memorandum of Law in Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment.

Sarno tediously rebutted many of Penthouse's accusations, and offered a history of the film, the contracts, and the previous litigations as best he could. For the most part, he did a remarkably good job, but his resulting document is such a rapid recapitulation of facts that it could never be understood by a noninitiate. It

11. Barry E. Winston: fax to Miguel Ángel Murolas of Civite, 16 March 1990. FRC. Ten days later Carlos R. Sánchez faxed this letter to Pietro Bolognini asking for his comments. FRC.

12. Rossellini: cover fax to John Sarno, 30 March 1990. FRC.

did not help that he filled his response with careless typographical errors, referring to the plaintiff as the defendant and referring to the Joint Production Contract as the Joint Venture Agreement. It is these little errors, inevitable in a first draft, that should have been corrected prior to submission to the court.

Sarno reiterated that the present lawsuit "represents yet another attempt in plaintiff's ruthless effort to drive Mr. Rossellini and his company into bankruptcy and ruin." He noted that "plaintiff has cynically disregarded unfavorable decisions by federal and state courts, and by a foreign court of competent jurisdiction. Additionally, plaintiff has intentionally withheld material facts from this Court which indisputably show that plaintiff lacks legal standing to bring this lawsuit."

Reminding the court that "The Rossellini family has been involved in the international film industry for three generations," Sarno, at long last offered a not-always-accurate history of the production in order to put the contracts into perspective: "While significant work had been done on the production of the motion picture, including the construction of the sets and some preliminary shooting of the film, the motion picture contemplated by the Joint Venture Agreement was never realized. Instead, Felix and defendant [*sic*] Penthouse Films International, Ltd., a corporation organized under the laws of the State of New York..., entered into a Joint Production Contract to bring the production to fruition." Sarno pointed that, "Significantly, the Joint Production Contract provided that the motion picture 'will be produced as an Italian film' in full satisfaction of Italian law.' "

Sarno also briefly explained Italian law, that government authorization is required to transfer Italian film rights to non-citizens, and hence the 1975 Joint Venture had to be abandoned and "was never approved or recorded by the Italian government." He pointed out that when Vidal assigned screenplay rights to Felix, those rights included video rights.

Mistakenly following Jay Julien's earlier summary of events, Sarno repeated the story of the draft assignment, authored by Penthouse Films, by which Felix surrendered all its rights to Penthouse, was the result of rapidly increasing production costs and that "Felix experienced difficulty in capitalizing its share of the production." He pointed out the obvious: this incomplete draft was explicitly based on the 1976 contract, not the 1975 agreement. The draft opens in mid-sentence, it is undated, "a material term in paragraph 3 remains blank," and Penthouse never executed it, Rossellini's signature was never notarized, and the document was never recorded by the Italian government. "Thus it is clear that this 1977 unexecuted, draft document has no validity."

Sarno continued that “The first paragraph of the 1984 General Agreement reaffirms the undeniable fact that the motion picture enjoys Italian nationality and that the 1976 Joint Venture [*sic*] Contract, as amended, was the only valid agreement between the parties.” He also showed the court that the Settlement Agreement provided a choice of forum: New York for accounting and Italy for everything else. “Additionally, Penthouse Films specifically subjected itself to service of process in Italy and to the jurisdiction of the Italian courts.” Sarno in just a few sentences summarized the lengthy Italian proceedings, concluding: “Finally, after a full and fair trial, an executory judgment was issued declaring that Felix owned the exclusive right to distribute the video cassette version of the Italian motion picture ‘Caligula.’... This final judgment is now being appealed by Penthouse Films.”

Sarno noted that despite the temporary restraining order, Penthouse continued to distribute the video in the US, prompting Felix to file a suit for copyright infringement, which the court dismissed for lack of subject-matter jurisdiction (diversity).

That, Sarno argued, is what prompted Penthouse Films to file the current lawsuit, alleging its ownership. Yet it had transferred its alleged ownership to the offshore Penthouse Clubs. “Further, Penthouse Films alleges that its ownership rights are derived from the 1975 Joint Venture Agreement, to which it was never a party, and the 1977 draft document which was never executed.”

Sarno then went into some detail about a Stipulation agreement of April 1984. This, of course, was the stipulation that validated the Settlement Agreement.

Plaintiff Penthouse Films advances the meritless position that by executing a Stipulation in April 1984, to which Penthouse Films was a party, Felix and Rossellini “agreed that any purported claims against Penthouse that were or could have been litigated — including any claim arising out of Penthouse’s ownership of the Film’s copyright — were forever extinguished.”... However, Penthouse Films fails to realize that it is equally precluded from litigating claims arising out of the ownership of the motion picture. Notwithstanding plaintiff’s seemingly absurd position, the Stipulation, of course, incorporates the 1984 General Agreement... which contains the choice of forum clause. Thus, the parties are not precluded from bringing lawsuits pursuant to the General Agreement, provide that they comply with the choice of forum clause.

The Supreme Court of the State of New York, under Judge Leonard Cohen, had “declined to decide the entire controversy, clearly separating the accounting

dispute from the ownership dispute." This was an "implicit recognition of the choice of forum clause," Sarno asserted. "Thus, this Court found that the parties intended to pursue future litigation in Italy and New York pursuant to the choice of forum clause. Indeed, the parties had no choice because it was necessary to resolve ownership disputes of an Italian motion picture in Italy pursuant to Italian law."

Sarno saw as meritless Penthouse's position that "the present claim that Felix owns the copyright to the film arises out of the very matters that previously were adjudicated." Sarno pointed out the obvious, that the only adjudication had been in the only proper forum, Italy, which supported Felix. The principal of *res judicata* would preclude Penthouse from relitigating the issue. Penthouse's misinterpretation of Weinfeld's ruling as affirming Penthouse's total ownership of the copyright was, Sarno said, "misleading." "Judge Weinfeld [*sic*], of course, never reached the merits of the controversy, dismissing the complaint for Felix's failure to join an indispensable party, Penthouse Clubs. The General Agreement could not have played a role in Judge Weinfeld's [*sic*] thinking because the complaint was dismissed on September 19, 1983; the General Agreement was executed on February 2, 1984."

It was also incumbent upon Sarno to rebut Penthouse's claim that Felix waived its right to rely on the choice of forum clause upon filing suit in the federal district court. Such an argument was "meaningless." Sarno explained:

In 1986, defendants brought federal action in the Southern District of New York for copyright infringement. A federal district court has exclusive jurisdiction over copyright infringement actions.... Thus, it would have been ridiculous for defendants to have brought a copyright infringement action in Italy. In dismissing the complaint for lack of subject matter jurisdiction, Judge Conner noted that 28 U.S.C. § 1338(a) "does not grant the Court the power 'to determine a claim which essentially involves a dispute as to the ownership of copyrights.'"... Finding that defendants' action "centered on the interpretation of the language in the Settlement Agreement," Judge Conner dismissed the complaint, recognizing that "[Felix] may have a legitimate claim, albeit one which must be brought in another forum."

Repeating his earlier argument:

The other forum, of course, is located in Italy, the forum contemplated by the parties. It is clear that the Italian courts have both in personam jurisdiction over the parties and subject matter jurisdiction over the Italian motion picture. Therefore, defendants respectfully urge this Court to dismiss plaintiff's complaint and recognize the final judgment

entered and affirmed by the Italian judiciary.... Alternatively, defendants urge this Court to dismiss plaintiff's complaint and find that the Italian judiciary has exclusive jurisdiction over the controversy.

There was a second argument as well. Since Penthouse Films secretly assigned its purported copyright to the offshore Penthouse Clubs, it follows that Penthouse Films "has no standing to bring the instant lawsuit." Further, "Since both Penthouse Clubs and Penthouse Films were parties to the Italian litigation this Court should dismiss plaintiff's complaint and recognize the final judgment entered and affirmed in Italy." Sarno inserted a brilliant footnote:

This document also contains a license from Penthouse Clubs to Penthouse International Ltd, yet another New York corporation, granting exhibition rights to the motion picture in the United States. Unbelievably, Penthouse Films has granted a license to Vestron, Inc., a Connecticut corporation, to distribute the video cassettes in the United States!... This hydra-like approach is obviously designed to hide the true nature of plaintiff's continued misuse of an Italian motion picture in total disregard for defendants' rights. Significantly, the Vestron license is proof positive that Penthouse Films treats the right to exploit video cassettes as distinctly different from the right to exploit the motion picture in cinemas. Importantly, all of the heads of the Penthouse hydra were parties to the litigation in Italy.

And with that, Sarno asked simply to have, as per contract, the Italian rulings apply in the US.

26 MARCH 1990 — A MYSTERIOUS RECEIPT

NOTHING IS KNOWN ABOUT THIS RECEIPT, which was typed in Italian on plain stationery. Who wrote it? Ahat firm it was from? To what did it pertain? This receipt does show that Rossellini's financial situation was somewhat more complex than we would otherwise conclude. It contained only two items: "Balance Portugal (paid)" in an amount of US\$15,000, and "Balance United Kingdom (paid)" in an amount of US\$11,000. The entity that issued this receipt noted that it had collected 15% of the income, or US\$3,900. Were these grosses for video sales? We shall probably never know.

26 MARCH 1990 — NEW SELECT OF JAPAN GETS STUCK

AKIRA SUGIYAMA OF NEW SELECT CO, LTD., was still trapped between Felix/Uniexport and Penthouse. Rossellini demonstrated, to Sugiyama's satisfaction, that Felix controlled all rights. New Select hired a US lawyer, Kent J.

Klavens, who responded that Penthouse's copyright registration of 13 May 1986(?) did not prove ownership, but that instead the Settlement Agreement and the decision of the Civil Court of Rome determined the matter.¹³ Nonetheless, Sugiyama was in no position to take sides. He insisted that it was Felix and Penthouse that would have to work together to reach an understanding. Besides, Felix had delayed shipping the masters, and by that time Penthouse had sold the video to a different Japanese distributor. Sugiyama agreed to return the internegative on condition that Rossellini return his money.¹⁴

29 MARCH 1990 — FELIX CANNOT REPAY THE LOAN

A YEAR EARLIER the Autonomous Section for Cinematographic Credit had loaned Felix £700,000,000 (US\$546,382.84), and now it was time to begin repayments. Felix's sole administrator, Giacinto Solito, promised to pay, with interest, no later than 30 April.¹⁵ That presents us with another mystery. Since Felix had not in fact begun any production again, the £700,000,000 should theoretically have remained in a bank collecting interest. Felix should have been able to begin repayments easily, since it had never spent a penny of the money. Or had it?

Felix was also indebted to Technicolor of Rome. Franco Rossellini typed a letter on the same day, 29 March, as a follow-up to a conversation. "In relation to the unforeseeable delays of a technical-bureaucratic nature that we are encountering," he began, he begged permission to offer promissory notes, which he hoped would help "maintain, and in fact empower the good relations that we have always had with you."¹⁶

Rossellini followed this with a more personal letter to a Dott. Verani of Technicolor, and we can confidently trust that what he wrote was entirely true:

Dear Dr Verani

During my very brief stay in Rome I tried very hard to meet you. It was decidedly impossible for me.

I wanted to explain to you in person how embarrassed I was by certain telegrams and certain final notices/peremptory letters that request payments — to which Technicolor has sacrosanct right — and which in the case of delayed execution I will be dragged in a whirling

13. Kent J. Klavens: letter to Akira Sugiyama, 27 February 1990. FRC.

14. Akira Sugiyama: fax to Pietro Bolognini, 26 March 1990. FRC.

15. Giacinto Solito: letter to Banca Nazionale del Lavoro, Sezione Autonoma per il Credito Cinematografico, 29 March 1990. FRC.

16. Rossellini: letter to Technicolor SpA, 29 March 1990. FRC.

spiral of charges, lawyers, courts — and, I read between the lines — much shame.

The accountant Zucchi said — equally imperatively — to my Dr Biagiotti, that works are paid for and there are no excuses for my delays. And he is right.

But Accountant Zucchi forgets that, from 1976 to date, I have printed, for CALIGULA, hundreds of thousands of meters of film and paid hundreds and hundreds of millions without ever batting an eye or asking particular favors. Well over half a billion.

When at the beginning of January my lawyer Lupoi punctually sent a check of 15,000,000 Lire from my foreign account, this check was sent back to me. To date I do not know the reason.

Unfortunately, many delays in the delivery of copies — due to technical problems by Technicolor itself — have brought me painful delays of payments by foreign companies, who had to wait a long time to have the materials.

Please do well by me, dear Dr Verani, since for centuries I have been an excellent client of Technicolor... and I deserve a little more consideration...

Best regards,
Franco Rossellini¹⁷

3 APRIL 1990 — WARNING PENTHOUSE

WHEN ROSSELLINI LEARNED about Penthouse's letter to Civite of Spain, he pleaded with Sarno to do something. Sarno did, in the form of a simple letter to Barry Winston, in which he pointed out that Penthouse's legal notices claiming ownership of the film were "offensive," and warned him that "Mr. Rossellini will take whatever legal action necessary to enforce his rights to the film." By this time, though, Penthouse understood that it had little to worry about, since it had successfully undercut nearly all of Felix's business to date.

Rossellini faxed Sarno's letter to Murolas of Civite, and added his own foreword stating the he was starting a suit against Penthouse for extortion and harrassment. He continued (spelling errors corrected):¹⁸

So here I am including the note of my lawyer to Penthouse and the Sentence of the Tribunale di Roma. The sentence is EXECUTORY. As you can see from the Certificate of Origin, my film Caligola is an Italian production produced by me with my company Felix Cinematografica S.R.L.

17. Rossellini: letter to Dott. Verani of Technicolor SpA, 1 April 1990. FRC.

18. Rossellini: fax to Miguel Ángel Murolas of Civite, 5 April 1990. FRC.

Felix owns one hundred percent of all video rights and T.V. around the world, and ten percent of the theatrical rights. Penthouse is, or actually was, the agent of Felix for the foreign sales.

Because of a dispute over the accounting, I started legal actions in various countries in order to recoup money that Penthouse illegally subtracted to my company. [I include as well the report of the accounting firm.]

Now I have given C.V.F. Filming Ventures the mandate to negotiate the various licenses and Mr Pietro Bolognini is the only legal representative in charge of the foreign sales.

You can suggest to Penthouse, if you wish, to get in touch with Felix due to the fact that the legal documentation in your possession shows that Felix is the only copyright owner of the film.

Please keep me informed if Mr Winston gets in touch with you so I can report it to the police.

Regards,

Again, that was a dangerous argument. To say that Penthouse was no longer the foreign agent was taking matters a bit too far, since Felix had never revoked the contract and was unsuccessful at having the US copyright revoked. Penthouse was still very much in charge of foreign sales.

5 APRIL 1990 — CONCLUDING ARGUMENTS IN PARIS (37TH LAWSUIT, CONTINUED)

IT IS IMPOSSIBLE to keep all the facts in the memory without the occasional jog. So here's a memory jog. On 18 July 1986 the Superior Court of Paris (Tribunal de Grande Instance de Paris) issued an exequatur order, upholding Livio Fancelli's temporary restraining order against Penthouse, which had until late October 1986 to file an appeal. Penthouse raised no objections until 23 February 1987 when it filed an interim summons against Rossellini in the Superior Court, challenging the Superior Court's jurisdiction in the matter, and charging procedural irregularities. In response, on 13 January 1988 Felix sued Penthouse in the Commercial Court of Paris (Tribunal Commerce de Paris) for fraudulently licensing AMLF broadcast and home-video sublicensing rights. Penthouse countered, again, by challenging the court's jurisdiction over a defendant without French domicile, by referencing the Settlement Agreement which stated that controversies needed to be settled in Rome, and by pointing out the pending litigation which should stay other proceedings. The Commercial Court rejected Penthouse's arguments. Penthouse appealed this ruling in mid-February 1988, and on 13 July 1989 the Court of Appeals confirmed the original ruling, stating that since Penthouse's counterfeiting had been performed in France, this did fall

within the jurisdiction of the Commercial Court. Penthouse appealed again, arguing that the ruling should be suspended pending the outcome of the Italian ruling, and further presenting the argument that the Settlement Agreement of February 1984 was nothing more than a mere “accounting amendment,” and so won its appeal on 27 September 1989, with the court concluding that Felix had not made an indisputable case about the validity of the Italian rulings.

Felix filed its appeal just a week before the deadline.¹⁹ Rossellini and his attorney reiterated the point that the court should judge Penthouse guilty of fraudulently exploiting *Caligula* on French home video and French television. The 3,940 videos that had been sold generated royalties for Penthouse of 1,874,220 francs (US\$327,940.86), in addition to the 900,000 francs (US\$157,477.13) Penthouse earned for selling television rights to Canal Plus. According to the law of 11 March 1957, Penthouse’s actions constituted counterfeiting. Rossellini asked for damages of 2,700,000 francs (US\$472,431.38), plus interests and interests upon those interests in addition to the 55,000 francs (US\$9,623.61) demanded by civil law, 100,000 francs (US\$17,497.46) required by article 700 of the New Civil Procedural Code, as well as a further 1,000,000 francs (US\$174,974.58) for commercial losses and interest thereon.

Rossellini and Bodin-Casalis pointed out that Penthouse had missed the deadline for appealing the original exequatur ruling, and pointed out also that despite the Italian rulings and the French exequatur, Penthouse continued to sell and distribute videos and had even licensed television rights to Canal Plus as well as video rights to GIE Hollywood Boulevard Distribution. They further noted that, far from being a mere “accounting amendment,” the Settlement Agreement of February 1984 was the sole active contract among the parties, and that it bore on every aspect of their relationship. Rossellini and Bodin-Casalis went through the Commercial Court of Paris’s reasoning, line by line, and deconstructed it completely. Forcefully, Rossellini and his counsel explained an article of the June 1976 contract that the court had thoroughly misinterpreted:

Concerning the rights of authors, only the first agreement of 15 June 1976 evokes this question and indicates in article 3: “FELIX guarantees to PENTHOUSE the acquisition of the rights or exploitation of the screenplay on which the film will be based. FELIX promises to sell 50% of the above-cited rights.”

19. *Felix Cinematografica Srl v Penthouse International, Ltd., and Penthouse Films International, Ltd.*, Cour d’Appel de Paris, Index Number DL 28 805, filed on 5 April 1990. Maître Chantal Bodin-Casalis for plaintiff, Maître Sévellec for defendants. FRC.

This clearly means that FELIX did not bring the rights of authorship to a coproduction which never existed, PENTHOUSE itself recognizing that it must acquire them in order to be 50% owner of them. Yet this acquisition was never concluded between the parties. The affirmation of the First Judges is totally lacking in foundation.

Thus did Felix now offer what it had previously failed to supply to the court, namely, indisputable verification of the rights granted by contract and by law. Two months later Penthouse would take the case to the French Supreme Court of Cassation.

APRIL 1990 — PORTUGUESE PROFITS?

IT WAS A RELIEF to know that the aftermarket sales of *Caligula* were beginning to turn a profit. The problem, as before, was that Rossellini would not see those profits. Pietro Bolognini and his two partners at Uniexport, Ezio and Andrea Giulio, sent CVF a statement that the sums from Portugal had amounted to £2,759,950 (US\$2,212.10), but that Uniexport would be keeping that entire amount as its commission. Rossellini responded only that he had just been invited to Japan and Spain, presumably for sales.²⁰

APRIL 1990 — JAPANESE CONUNDRAS

ROSSELLINI AT THE SAME TIME sent an impatient fax to Akira Sugiyama of New Select (some typographical errors corrected):

Dear Mr. Sugiyama

I answer with just a few words to the telefax you have sent to Mr. Bolognini on March 26, 1990.

I want to make clear, in the first place, that when you got the licence to distribute my film "Caligola" for Japan you have been supplied by all the necessary legal documentation and appropriate Certificate of Origin (chain of titles).

You have engaged in conversations with Penthouse and you encourage them in their criminal harrassments.

It is very embarrassing for me to read that "you need an official statement asserting that the documentation you have been given is legal."

If the sentence of the Tribunal of Rome and the Certificate of Origin of the Ministero del Turismo e Spettacolo is not satisfactory to you... that is your problem.

20. Rossellini: fax to Pietro Bolognini, 7 April 1990. FRC.

You keep forgetting that Caligola is an Italian film, and Penthouse was just an agent for Felix, selling the film for theatrical distribution.

I will be in Cannes for the "Rossellini Award" from the tenth of May.

I hope you will be there as well in order to clear once for ever something that has become a major embarrassment for me.

Regards,
Franco Rossellini

cc. Signor Pietro Bolognini
Signor [ILLEGIBLE], Albatross²¹

As we have learned by now, Sugiyama was right to ask for further legal documentation, for the Italian documentation would have trouble prevailing in a Japanese court, and Penthouse could outspend Felix on legal representation. Sugiyama needed a watertight case that would be impervious to legal challenges, and such documentation would never be forthcoming. A week later Sugiyama responded briefly (typographical and grammatical errors corrected):²²

Dear Mr. Rossellini:

Thank you for your fax. I came back to Tokyo this week and now we have to ask some additional documents from you. My lawyer is translating its explanation so we can send the letter to you on Monday.

I wish to thank you for your coöperation.

Kindest regards,

Yours sincerely

Akira Sugiyama
NEW SELECT CO., LTD.²³

And the lawyer did indeed prepare some documents, which Sugiyama faxed to Rossellini two days later. It was a long fax, five pages altogether, consisting of a cover letter, a letter proper, and a statement for Rossellini to sign. Sugiyama explained to Rossellini that notwithstanding his understanding of Italian law and Italian jurisdiction, more was needed to stave off a threatened suit from Penthouse.

Reading this lawyer's composition, it is clear that an emissary from Penthouse had had lengthy talks and correspondence with Sugiyama and his lawyer, had convinced them that the Joint Venture Agreement of October 1975 was the governing document, and had further convinced them that Penthouse owned the copyright to the film. Penthouse challenged the New Select

21. Rossellini: fax to Akira Sugiyama, 7 April 1990. FRC.

22. Sugiyama: fax to Rossellini, 14 April 1990. FRC.

23. Rossellini: fax to Akira Sugiyama, 7 April 1990. FRC.

representatives to get from Rossellini any abrogation of the October 1975 Agreement or any assignments from the Joint Venture to Felix! New Select took up that challenge, and the result was a catastrophe. Here is Sugiyama's cover letter 16 April 1990 (typographical and grammatical errors largely corrected):

Dear Mr. Franco Rossellini

As I faxed to you last week, we send our discussion with my lawyer. This letter is based on the contract of Oct. 6th, 1975. Although you told me the picture in that contract is different from the "CALIGOLA" which exists at present time, we understand that it is not enough to say the difference that one screenplay man is added — MASOLINO D'AMICO. So we can not ignore the contract of Oct. 6th, 1975. But if you have any document for the contract — abrogation contract or letter for that contract, we can ignore the contract.

But I think it is not difficult for you to sign the statement because all which we ask are under your rights. There is a law of partnership in U.S.A. so you can put the signature. I think you understand our consideration when you see the letter. It is to clear the route of the license from Joint Venture to my company by this statement.

I wish you understand our position and send back the statement signed by you.

Yours sincerely

Akira Sugiyama
NEW SELECT CO., LTD.

Copy to ALBATROSS, UNIEXPORT FILM²⁴

Here is the bulk of the text of the three-page letter that followed (typographical and grammatical errors largely corrected):

Dear Mr. Rossellini

...It is our understanding that, with the contract between C.V.F. Filming Venture, Ltd., and New Select Co., Ltd., executed on the 17th of May 1989, we are duly entitled to the exploitation rights of photoplay "CALIGOLA" in the original and versions specified by the said contract on theatrical, on television and by reproduction on videocassettes in Japan. As you may well be aware, however, Penthouse group is claiming the copyright of the said photoplay and suggests to initiate legal proceedings against us if we exercise our rights in accordance with said contract. We ought to defend our legal rights and commercial interests in the said photoplay under the jurisdiction of Japan.

Pursuant to the consultation with our attorney, we have come to the following conclusion:

24. Sugiyama: fax to Rossellini, 16 April 1990. FRC.

(1) Under the jurisdiction of Japan, there exists a high probability, and therefore, we have to go on the assumption to be on the safe side that our court follows the line with the decision of the French court, that is the copyright of photoplay "CALIGOLA" belongs to the Joint Venture to which Felix Cinematografica S.r.l. and Penthouse Clubs Int'l (or Penthouse Films Int'l) are parties.

(2) If that is the case, we have to make preparation for possible legal proceedings to be initiated by Penthouse Clubs Int'l (or Penthouse Films Int'l) on such assumption.

Please be advised that our conclusions do not indicate any disbelief in your legal standings under the jurisdiction of Italy. I just want you to give due consideration to the difficult situation we are placed in because of the differences of the jurisdiction and legal structures in Italy and Japan.

It is further to be noticed that your interests as well as ours will be best served when we prevail in the legal proceedings in a Japan court.

Based on what is said above, we would like to have your cooperation in providing us with the following documents:

(1) The contract between C.V.F. Filming Ventures and the Joint Venture to which Felix Cinematografica S.r.l. and Penthouse Clubs Int'l (or Penthouse Films Int'l) are parties, or the contract between C.V.F. Filming Ventures and Felix Cinematografica S.r.l. which has given C.V.F. Filming Ventures the legal basis for transferring to New Select Co., Ltd., the exploitation rights of photoplay "CALIGOLA" in the original and soft versions on theatrical and on television and by reproduction on videocassettes in Japan. In case that the contract is the one between C.V.F. Filming Venture and Felix Cinematografica S.r.l., the statement of Felix Cinematografica S.r.l., the contents of which are to the effect that Felix Cinematografica S.r.l. has been and is a party to said Joint Venture formed for the purpose of producing, distributing and financing the photoplay entitled "CALIGOLA," that Felix Cinematografica S.r.l. has been and is duly authorized to represent the said Joint Venture for the purpose of its business under the law of Italy, and that Felix Cinematografica did act as an agent of the said Joint Venture in the said contract.

(2) The statement of Felix Cinematografica S.r.l. which is probative to the facts that Felix Cinematografica S.r.l., as an agent or a party, as the case may be, of the said Joint Venture, has been and its duly authorized to make or cause to make version out of the original one of the photoplay "CALIGOLA" for the purpose of its business, and that Felix Cinematografica S.r.l. did make in the course of the business of the said Joint Venture such soft version of the photoplay "CALIGOLA" as is specified by the contract between C.V.F. Filming Venture and New Select co., Ltd.

(3) The statement of Felix Cinematografica S.r.l., the contents of which are to the effect that Felix Cinematografica S.r.l., in the capacity of a party to the said Joint Venture and based upon article 9 of the Joint Venture agreement on the 6th day of June, 1975, has duly designated New Select Co., Ltd., as the distributor in the territory of Japan of such versions of photoplay "CALIGOLA" as are specified in the contract between C.V.F. Filming Venture and New Select Co., Ltd., executed on 17th day of May, 1989.

Attached are the forms of statements referred to (1), (2) and (3), respectively, for your convenience, if you do not have any objection to them, please put your signature on each of the form and send them back to us as soon as possible.

I would like to express our appreciation in advance for your cooperation in this matter. If you have any question, please do not hesitate to make contact with me.

Expressing again my appreciation and hoping that everything be settled in mutual satisfaction, I remain,

Kindest regards,

Yours sincerely

The statement they wished Franco Rossellini to sign was infuriating:

Dear Sirs,

I, undersigned, in the capacity of a representative director of Felix Cinematografica s.r.l. and duly authorized to represent it under the law of Italy, do hereby make the following statement.

1) [Felix] Cinematografica s.r.l. is and has been a party to the Joint Venture based on the Joint Venture Agreement between Felix Cinematografica s.r.l. and Penthouse Clubs International Establishment of 6th day of October, 1975.

2) The said Joint Venture is formed for the purpose of producing, distributing and financing the photoplay entitled "CALIGOLA."

3) Felix Cinematografica s.r.l. as the party to the said Joint Venture, is and has been duly authorised under the law of Italy to make or cause to make any version of photoplay "CALIGOLA" out of the original version thereof for the purpose of business of said Joint Venture and, in such capacity and in the course of conducting the business of the said Joint Venture, did make the soft version of the said photoplay specified by the contract between C.V.F. Filming Ventures Ltd. and New Select Co., Ltd., entered into on the 17th day of May, 1989.

4) Felix Cinematografica s.r.l. as the party to the said Joint Venture, is and has been duly authorized under the law of Italy to represent the said Joint Venture for the purpose of the business thereof and, in such capacity and in the course of conducting the business of the said Joint Venture, did transfer to C.V.F. Filming Ventures Ltd. the exploitation

rights of said photoplay in the original version and the soft version specified by the contract referred to in 3) hereof on theatrical, on television and by reproduction on videocassettes in the territory of Japan.

5) Felix Cinematografica s.r.l. in the capacity of the representative of the said Joint Venture and based on article 9 of the Joint Venture Agreement of the 6th day of June, 1975, hereby do declare that, as long as the exploitation rights on theatrical, on television and by reproduction on video cassettes are concerned, New Select Co., Ltd., has been designated as the distributor in the territory of Japan of the original version and the soft version specified by the contract referred to in 3) hereof.

FELIX CINEMATOGRAFICA S.R.L.
00198 ROMA — VIA LIMA 5/A
FRANCO RESSELLINI [sic]

Franco Rossellini's response, the same day, was quite emotional and defensive (typographical and grammatical errors largely corrected):

New York
16-IV-90

Mr. Sugiyama

I have great sympathy for you.

But you make me lose a lot of time because of your lack of knowledge of the international laws that control the rights of "authors" under the Berne Convention.

Actually, your knowledge is non-existent.

So, if you believe that a "script" written by one "author" is the same as one written by two "authors"...!!! I thank God that we, the authors, are protected by the indisputable codes of the Berne Convention.

You don't seem to understand that ONLY the "script" written by Masolino d'Amico and Gore Vidal in 1976 was chosen to make the film "Caligola," and only that version was approved by the Italian authorities and the Ufficio Italiano dei Cambi with the "nulla osta" of 16 December 1976 n.500227 and November 28, 1977, n.401217. Read the Contract of Feb. 2, 1984.

Keep clear in your mind that Penthouse Films has acted just as an agent for Felix. FELIX is the AUTHOR by assignment from Masolino d'Amico and Gore Vidal.

Read the "Certificato d'Origine" issued by the Ministero del Turismo e dello Spettacolo dated 6 Feb. 1989. The FILM IS ITALIAN.

Now, if you don't know the Berne Convention, and you cannot read or understand the Sentence of the Tribunal of Rome, you have two options:

- 1) go to school
- 2) change your line of work

It seems to me that you ignore who I am and where I come from, as well.

My family is universally celebrated for its contribution to the Art of Cinematography.

I include for your fragile knowledge of this Art the stamps that are presently sold in Europe to celebrate the contribution we have given to the cinematographic industry.

At this point, if you want to know more about making films, get on a plane and come to N.Y. as I kindly did when I came to Tokyo.

Franco Rossellini²⁵

He added a handwritten postscript on a separate sheet of paper:

When I say that Penthouse Films has acted (in the past) as agents of Felix, I mean to define what they have done until the order of the Tribunal of Rome.

Rossellini's emotional response was legally accurate, but useless in Japan, which recognized US copyright claims and where Felix could not afford any legal challenges. The next day Rossellini, realizing that his response was insufficient, supplemented it with a single sentence (some typographical and grammatical errors corrected):

Mr Sugiyama,
you should explain [to] your advisers to read the Transazione Generale or "General Transaction" [Settlement Agreement] signed by me for Felix and all the companies of Penthouse, on Feb. 2, 1984, and they will see that Penthouse Clubs has signed as well, and by consequence is approving the content of the contract.

Franco Rossellini²⁶

Sugiyama responded at once, with a simple message:

Dear Mr. Franco Rossellini

Thank you for your fax. Now we are discussing with my lawyer about what you say. I think we have to ask the additional document later. Now they are checking up what we need.

Anyway, we need to clarify the route from FELIX to NEW SELECT. We remake your statement hereby [ILLEGIBLE] need and check it and return it with your signature by fax.

I thank you for your cooperation.²⁷

25. Rossellini: fax to Sugiyama, 16 April 1990. FRC.

26. Rossellini: fax to Sugiyama, 17 April 1990. FRC.

The new affidavit was quite different from the previous one, and Rossellini signed it without any objections:

Dear Sirs,

I, undersigned, in the capacity of a representative director of Felix Cinematografica s.r.l. and duly authorized to represent it under the law of Italy, do hereby make the following statements:

1) The photoplay "CALIGOLA" based upon the theme and screenplay by Gore Vidal and Masolino d'Amico and directed by Giovanni Tinto Brass was produced by Felix Cinematografica s.r.l.

2) The copyright of the said photoplay, therefore, belongs to Felix Cinematografica s.r.l.

3) Further, all the rights of authors of the theme and screenplay, Messrs Gore Vidal and Masolino d'Amico have been transferred to Felix Cinematografica s.r.l.

4) Felix Cinematografica s.r.l. did transfer to C.V.F. Filming Ventures Ltd. the exploitation rights of the said photoplay in the original version and the soft version specified by the contract between C.V.F. Filming Ventures Ltd. and New Select Co., Ltd., entered into on the 17th day of May 1989 on theatrical and non theatrical presentation, on the television and by reproduction on videocassettes in the territory of Japan.²⁸

Maurizio Lupoi reviewed at least some of the above correspondence and replied to Rossellini with an admonition.²⁹ Yes, he said, Rossellini's reply corresponded to what had happened in court, and Lupoi was forwarding that reply to another lawyer by the name of Aureli. More importantly, though, Lupoi would need to disinterest himself from the Spanish and Japanese cases since Rossellini still had not discussed how to settle his longstanding debt. "You have already caused enough damage behaving yourself this way with everybody (in particular, the French case was lost because I did not give directives to my colleague Bitoun, and I did not do it because you did not carry out the agreed-upon actions; now the Japanese take the French sentence at face value!)."

Akira Sugiyama faxed his thanks to Rossellini on the 21st and hoped for a get-together at the upcoming Cannes Festival.³⁰ On the 27th he faxed a follow-up message, expressing again New Select's concerns about a threatened lawsuit

27. Sugiyama: fax to Rossellini, 18 April 1990. This is on badly faded thermal fax paper and is nearly illegible. FRC.

28. Rossellini: fax to Sugiyama, 18 April 1990. This fax was also included as an attachment to a fax from Rossellini to Bolognini of that same date. FRC.

29. Maurizio Lupoi: fax to Rossellini, 18 April 1990. Much of this document is smeared to illegibility. The word "actions" is uncertain as it is entirely obscured. FRC.

30. Sugiyama: fax to Rossellini, 21 April 1990. FRC.

from Penthouse upon release. He asked again about the technicalities of the Joint Venture. Was it terminated, or did it still have some validity? If it was terminated, how and why, and what was the legal cause of the termination? If the Joint Venture was still valid, how did it serve as a basis for Felix obtaining assignments from both Vidal and d'Amico? Finally, did the Settlement Agreement of February 1984 derive from the Joint Venture of 1975? If it did not, then why did the Settlement Agreement reference the 1976 and 1977 contracts? With that final question, there can be no further doubt but that nobody at New Select understood a single fact in the case.

MAY 1990 — TECHNICOLOR THREATENS SUIT

THE PRECEDING MISUNDERSTANDINGS were all for naught, as Technicolor Rome had appointed its lawyer, Ornella Maculani, to charge Felix for default on payments, and refused to carry out Felix's or Uniexport's instructions absent payment of prior claims. Thus, no new prints could be made.³¹

Giacinto Solito took exception to Technicolor's position,³² and responded three weeks later to Technicolor's appointed attorney, asking for a detailed statement, and following that request with:

That being said, we cannot do less than express all our stupor at your profound bitterness for the unjustified intimidating behavior assumed by your client toward a company that, like ours, with the film CALIGULA has had a source of work worth hundreds of millions, all duly paid, and which will continue to be paid in the future.

Solito provided some ironic background, probably truthful, but for which no other documentation is known to survive:

For the latest work connected with our direct recovery of the sales abroad for videocassettes and television, after having paid £40,000,000 (US\$32,518.40) in cash, we then received a perfectly good check from abroad, in Italian lire, for £15,000,000 (US\$12,194.40), which we deposited on account. We then, in futility, requested that we be given the possibility of settling our remaining debt, with bills of exchange with our direct signature, with a due date reasonably timed with proceeds of the sales abroad in question.

We have even, also in vain, pointed out that our request was also, and principally, due to Technicolor's tardiness in delivering some

31. Giuseppe Zucchi, Technicolor SpA: fax to Felix Cinematografica, Banca Nazionale del Lavoro — Sezione Autonoma per il Credito Cinematografico, and Uniexport Film, 9 May 1990. FRC.

32. Solito: letter to Ornella Maculani, 29 May 1990. FRC.

copies to our clients, because of the strikes that Technicolor needed to deal with. This led us, among other things, to lose an important contract worth \$60,000 from Korea and which imposed upon us a greater expense for a second internegative for Japan.

Currently, against its own interests, Technicolor is suspending the delivery of copies for our numerous sales contracts, for which, paradoxically, it is cutting our vital sources of proceeds while it is summoning us for payment of our debt for which the same proceeds are, in part, intended to settle.