

SCIENCE AND THE LAW

Texaco Offers to Settle Copyright Case

A decade-long legal battle over what constitutes fair use of copyrighted materials by industry scientists may be drawing to a close. Last week Texaco Corp., which had lost two rounds in court to a coalition of scientific publishers that had accused its researchers of unfairly photocopying journal articles, proposed an out-of-court settlement. Texaco agreed to pay more than \$1 million to the 83 plaintiffs and to purchase licenses covering photocopying by its researchers. The case has evoked fears among researchers that the courts might stanch the free flow of information, while publishers were keen to ensure that corporations reimburse them for the use of copyrighted material (*Science*, 25 November 1994, p. 1315).

The Texaco offer must still be accepted by all the parties to the suit (among them the American Association for the Advancement of Science, which publishes *Science*) and the courts. Although the company admits to no wrongdoing, lawyers familiar with the case say the proposed settlement marks a clear victory for scientific publishers.

Texaco was sued in 1985 by a coalition of publishers, led by the American Geophysical Union, which contended that the company had committed numerous infringements of copyright law. To simplify the litigation, the suit focused on one case: the actions of Donald Chickering, a Texaco chemist who copied and filed away eight articles from the *Journal of Catalysis*.

Although Chickering's actions may be standard practice among scientists, the publishers argued that it was not fair use of the material. Their argument rested on two main points: Texaco had failed to purchase a copyright license, and Chickering intended to use the articles for commercial purposes. Copyright law allows use of published material for research but not for profit-making activities. Texaco maintained that Chickering's actions constituted fair use because he made the copies in pursuit of research rather than for commercial gain.

The publishers prevailed in a 1992 decision by the U.S. District Court for the Southern District of New York that was upheld last October in a 2-to-1 ruling by the 2nd U.S. Circuit Court of Appeals. Texaco had sought a rehearing by the appeals court and also asked the U.S. Supreme Court to consider the case, although sources say both sides have since asked the courts to postpone further proceedings pending approval of the settlement.

Texaco officials did not return calls seeking comment on their proposed settlement, but Texaco Vice Chairman Allen Krowe said in a statement last week that his com-

pany "strongly supports the protection of copyrights and other types of intellectual property and is pleased to have the long-standing litigation resolved on satisfactory terms." Specifically, Texaco agreed to pay a seven-figure settlement—the exact figure is a secret—and enter into a standard annual license agreement with the Copyright Clearance Center (CCC), a not-for-profit organization in Danvers, Massachusetts, set up by publishers in 1977. More than 5000 corporations and subsidiaries are licensed through the CCC, which represents more than 9000 publishers.

"After 10 years of litigation, [Texaco] is right back where it started," says Joseph Alen, president of the center. "This is a substantial victory on the part of the rights holders." Alen said 85 of the top 100 U.S. research and development companies have CCC licenses. Companies typically pay between \$10,000 and \$999,000 a year for access to 1.7 million titles held by the center, and the fees are returned to the publishers. The fees allow employees to make as many copies as they want of those books and articles. And there is another option: Companies can pay

CCC on a per-page basis, typically costing only a few cents.

Last fall, the dissenting appellate judge raised the specter of lawyers at every copy machine. Judge Dennis Jacobs warned that the publishers' stance "will add to the cost, time, and effort that scientists spend to scan, keep, and use journal articles." But Alen says academic researchers have no reason to fear the settlement because "there is a very important distinction between academia and a corporate environment," that is, between research and commercial activities. He added that "there has been no chilling effect on research since CCC was created. It is just the cost of doing business—like the cost of the file cabinets that store the copies."

Copyright lawyers following the case expressed surprise at the size of the Texaco settlement. But they were even more surprised that Texaco had persisted in the face of what they said were clear legal precedents. "This says to scientists at commercial operations that they should not be making copies of copyrighted material without a license, especially when it is so easy to pay for one," says Paul Berman, a lawyer with the Washington, D.C., firm of Covington & Burling. "And it says that fair use of material depends on the circumstances."

—Andrew Lawler

FRANCE

Research Is Absorbed Into Superministry

PARIS—Since the 7 May election of conservative politician Jacques Chirac as president of France, the nation's scientists had been waiting anxiously to hear who would be named to replace François Fillon as research minister. Last week they found out: in essence, nobody.

Instead, research has been absorbed into a new "superministry." Headed by François Bayrou, who was education minister in the previous administration, it also includes secondary education, higher education, and the "professional integration" of young people into their first jobs. Direct responsibility for research has been delegated to a secretary of state—essentially, a deputy minister—in the person of Elisabeth Dufourcq. A relatively unknown academic trained in political science and public health, Dufourcq has worked for the past 15 years in a variety of nonresearch capacities for the French biomedical research agency INSERM.

The news has sent waves of bewilderment



New faces. Elisabeth Dufourcq is secretary of state for research under "superminister" François Bayrou.

and dismay throughout the French research community, where fear about what a Chirac victory might mean for French science was already rife. "Chirac's reputation among us is that he has never had much interest in research," says geophysicist Vincent Courtillot, who was

research and higher education adviser to Socialist Lionel Jospin during his unsuccessful campaign against Chirac for the presidency. Indeed, for many French scientists, the memory of Chirac's tenure as

prime minister between 1986 and 1988—when he ran the government during the "cohabitation" with former Socialist President François Mitterrand—is still raw. As part of a campaign to curb public expenditures, Chirac canceled previously planned increases in the budgets of France's massive research agencies, including INSERM and the Centre National de la Recherche Scientifique (CNRS), and essentially froze

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