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 company "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.

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

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 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

overall research spending.

Although most researchers contacted by *Science* are reluctant to criticize the new government publicly just days after it has taken power, many see the absorption of research into a larger ministry as a sign of hard times ahead for French research. "It's certainly giving research a very low priority, that's very clear," says one internationally known French scientist, who asked not to be identified, adding that the appointment of Dufourcq is a "typically political nomination."

Courtillot says that "it's a little bit strange to have someone who is not known in the world of research." Although former Research Minister Fillon was a career politician with no scientific training, he had won the grudging respect of many French researchers, who felt that he was trying his best to defend French science. And most scientists still look back with nostalgia at the tenure of physicist Hubert Curien, the last scientist to serve as research minister, who held the post during much of the last decade when the Socialists held a solid grip on the government.

Dufourcq says, however, that the fears of French scientists about the intentions of the new government are misplaced. "I really, really don't believe that this fear can be justified," she told *Science*. "I think that if there is concern, this concern is going to dissipate very quickly." To help win over the scientific community, last Friday—their first day on the job—Dufourcq and Bayrou made a well-publicized, highly symbolic visit to the Paris headquarters of CNRS, France's largest public research agency.

Indeed, despite their reservations about Dufourcq's qualifications, a number of French scientists say they are prepared to give her the benefit of the doubt—at least for the moment. Moreover, not everyone agrees that research will automatically be submerged under the new governmental setup. "The fact that it is going to be united in a big ministry is not necessarily bad," says Marc Girard of the Pasteur Institute in Paris. "It all depends on how Mr. Bayrou plans to arrange things and on what the research budget will be." The first budgetary details should be known by June or July, when the administration will announce how much research money is available for the second half of 1995.

"I don't want to be aggressive today," says Jean-Claude Mounolou, director of CNRS's Center for Molecular Genetics in the Paris suburb of Gif-sur-Yvette. "On the other hand, once I know the [new] budget, I reserve the liberty to speak my mind."

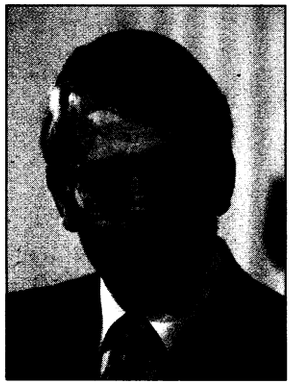
–Michael Balter

SCIENCE POLICY

U.K. Spells Out New Research Priorities

LONDON—Science has rarely had a high profile in British political life, but at the moment science policy is a main attraction—perhaps more so than at any time in the past 20 years. A crescendo of activity, which has been building up since the publication of a science and technology policy white paper in 1993, hit a new high this week when Prime Minister John Major unveiled a report setting out new priorities for British research.

The report, published along with a clutch of others aimed at improving the competitiveness of industry, spells out a set of broad priorities for science that follow the Conservative government's theme that research should be more focused on wealth creation. "It's the next step in a long-term science strategy," says Major. The priorities selected by the report were identified through an enormous consultation exercise to determine future technology trends and highlight national strengths and weaknesses in exploiting them (*Science*, 12 May, p. 795). This "foresight" exercise involved more than 10,000 British academics and industrialists and produced 15 reports, each covering a different industrial or research sector. "The exercise has been seen as a trailblazer across the world," says Science Minister David Hunt.



J. MARKOWITZ/SYGMA

High profile. Prime Minister John Major unveiled report.

The new report is a distillation by the project's steering group of the most urgent cross-sector priorities for science, technology, and infrastructure. The 15 sector panels made a total of 360 recommendations, which the steering group has boiled down to six broad science and technology themes: communications and computing power; new organisms, products, and processes from genetics; advances in materials science, engineering, and technology; production processes and services; clean, sustainable technology; and social trends. Within these themes, 27 key areas are listed, either because they were highlighted by most of the panels or because of a match between industrial potential and British science strengths. These include genetic and biomolecular engineering, bioinformatics, sensors, and software engineering.

But the steering committee has not simply tried to pick potential winners; it has also identified parts of the research infrastructure for extra attention, such as selective support for basic research excellence, the communications infrastructure, and long-term finance. "It's not just a case of identifying new science and technology, but a more holistic look," says steering committee member Kenneth Gray of the electronics company Thorn EMI.

To back up its new priorities, the government announced that it would put an additional $60 million over 3 years into a new program, with matching funds from industry, that will support collaborative projects using mechanisms already established by the government.

This emphasis on wealth creation causes some anxiety for researchers, who worry that they will be pressured into pursuing more applied research. "It is vital that the outcome allows for a healthy volume of responsive-mode research," says Oxford University physicist John Mulvey of the pressure group Save British Science. Indeed, the research community will be watching with interest to see what impact the exercise has on the science budget. Already, 5% of next year's budget for the research councils has been earmarked for projects emerging from the exercise, and the government sees the allocation of this budget as initiating significant change. "The danger is that the outcomes of the foresight exercise might become a too narrow prescription for research council funding," says Mulvey.

A notable byproduct of the foresight exercise itself has been the establishment of networks linking academics and industrialists. "The exercise has helped some sectors learn about the more advanced research culture of some of the other sectors, which was very valuable," says steering group member Barbara Young, professor of construction management at University College London. To help maintain this momentum, the foresight panels are being retained to develop the networks and help implement the results of the exercise.

The pressure is now on the government to show some real results from this $2.5 million initiative. "If foresight is just treated as a paper exercise it will be a disaster," says steering committee member Mike Brady, professor of engineering science at Oxford University. Judging the success of this approach to a new national science strategy may take many years, but an early sign may come when the government publishes a progress report before the end of the year.

–Nigel Williams