

Texaco case settled for million-plus

After 10 years in litigation, "the Texaco suit," as it's come to be known in publishing circles, has been settled.

Texaco is paying a seven-figure settlement to the Copyright Clearance Center, which organized the 83 publishers that signed on to the action.

Neither Texaco nor CCC would comment on whether the settlement was nearer \$1 million or \$10 million.

Besides the seven-figure payment, Texaco will pay licensing fees to CCC retroactively.

The case, *American Geographical Union v. Texaco*, began in 1985 when six scientific and technical journal publishers sued for copyright infringement because Texaco researchers were circulating photocopied articles among each other without paying permission fees to the copyright owners.

Those fees would go to CCC as a pass-through agency for the publishers.

Because most scientific and technical journals do not pay their contributors, it is unlikely much, if any, of the settlement will be passed on to authors.

As part of the settlement, Texaco announced it will enter a standard annual license agreement with the CCC for five years.

The case is a major victory for the CCC, which was founded in 1977 to, among other things, license corporations so they can legally photocopy copyrighted materials registered with the CCC.

With a blanket license, corporations are free to make all the copies they want of CCC-registered materials.

The cost of a license is based on complex formulas based on samples of corporate copying patterns.

CCC has slowly but steadily expanded its licensees over the past 18 years to include law firms, document suppliers, libraries, universities, copy shops and bookstores.

Observers say the Texaco settlement is even more important than CCC's case against Kinko's.

The Kinko's settlement, for \$510,000 in 1991, resulted in new sensitivity to copyright issues in the photocopy-shop and course-pack trade.

After the settlement, Kinko's abandoned the course-pack business.

The CCC financed both the Texaco and Kinko's case largely with Norwegian reprographic fees collected for U.S. works photocopied in Norway.

Origins of CCC-Texaco case

The Texaco case began with a charge by publishers that Texaco violated their rights under copyright law by allowing staff researchers to photocopy articles for their own files — a practice called "individual archiving."

To facilitate the litigation, the publishers and Texaco agreed to limit the initial trial to determining whether Texaco's copying fell under the Fair Use Doctrine, which allows copying without permission for limited purpose.

Part of the agreement was to track the copying of one Texaco researcher.

Dr. Donald H. Chickering, a chemical researcher at Beacon, New York, was chosen at random.

Here is what the study found out:

Texaco's in-house librarians circulated journals they thought would help

Chickering keep abreast of developments in his field. He copied articles he believed would facilitate his work and filed the copies for later reference.

He then passed the journals on to colleagues.

For the trial, the publishers focused on eight articles Chickering copied from the *Journal of Catalysis*.

Were these practices protected under Fair Use?

No, said the trial court in 1992. That decision was upheld on appeal in 1994.

The settlement announcement by CCC and Texaco was announced this spring.

We are indebted to Steve Gillen, a Cincinnati publishing law attorney, for information in this summary.

TAA has supported the CCC's Kinko's and Texaco initiatives but criticized CCC for using the Norwegian reprographic fees without meaningful author representation on its board.

The publisher-dominated CCC board has never had more than three authors, none of them elected from author groups.

In 1993, under TAA pressure, the CCC began earmarking 20 percent of foreign reprography income for author groups, including TAA.

That 1993 agreement is set for renegotiation this year.

About the Texaco settlement, TAA President Gerald Stone said:

"Through tireless efforts in battling copyright infringement, the CCC has clearly established that possession of a photocopy machine does not constitute fair use of another's work."

"As text and academic authors, we applaud the CCC for its dogged pursuit of this principle and delight in its victory."

"The Texaco case dealt primarily with copying scholarly articles, and I continue to believe that author rights in this area is a cause TAA should champion in the future as the CCC has for publishers."

In the Texaco case, CCC's big break came in 1992 when U.S. District Court Judge Pierre Leval ruled that photocopying of individual copyrighted journal articles by or for employees of for-profit companies like Texaco violated U.S. copyright law.

Texaco argued that such copying was fair use.

Texaco appealed that decision unsuccessfully.

The U.S. Court of Appeals for the Second Circuit upheld the lower-court decision and strongly affirmed the importance of CCC's licensing systems.

Putting the best face on the settlement May 15, Allen Krowe, Texaco vice chairman, said:

"Texaco strongly supports the protection of copyright and other types of intellectual property and is pleased to have the long-standing litigation resolved on satisfactory terms."

"Licensing our photocopying through the Copyright Clearance Center blanket license will simplify our compliance with the copyright law."

"Texaco looks forward to active and continued cooperation with the CCC and would encourage other companies to work with the CCC."

Said Peter Urbach, CCC chair: "As the district and appellate courts have recognized, the non-profit CCC plays a vital role in facilitating the licensing of reproduction from copyrighted works."

"Texaco will be joining more than 5,000 corporations and subsidiaries licensed under the CCC's annual license program to photocopy from 1.7 million publications owned by 9,000 registered publishers."

Said Nicholas Veliotis, president of the Association of American Publishers:

"This settlement further reinforces the publisher's rights to collect royalties for the photocopying of its works."

"The AAP, working closely with the CCC, will continue to promote compliance with the copyright law, including the availability of collective licensing of copyrighted material."