

13-4829-CV

United States Court of Appeals for the Second Circuit

THE AUTHORS GUILD, BETTY MILES, JIM BOUTON, JOSEPH
GOULDEN, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

HERBERT MITGANG, DANIEL HOFFMAN, individually and on behalf of all
others similarly situated, PAUL DICKSON, THE MCGRAW-HILL
COMPANIES, INC., PEARSON EDUCATION, INC., SIMON & SCHUSTER,
INC., ASSOCIATION OF AMERICAN PUBLISHERS, INC., CANADIAN
STANDARD ASSOCIATION, JOHN WILEY & SONS, INC., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX (UN-SEALED REDACTED VERSION) Volume 3 of 6 (Pages A-601 to A-900)

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destroy) any Confidential Information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 2.51, 2.5.2, 2.6, 2.7, 4.4 (so long as Google or a successor continues to exist), 4.5, 4.7, 4.8, 6, 8.2, and 9-12.

9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full right, power and authority to enter into this Agreement and to perform all of its obligation hereunder; (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms; and (iii) its execution, delivery and performance of this Agreement will not result in a breach of any material agreement or understanding to which it is a Party or by which it or any of its material properties may be bound.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GOOGLE SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 By Google. Google shall defend and indemnify the U of M, its Regents, employees, and agents against any third party claim based on an allegation that the U of M's (or its Regents', employees', or agents') or Google's actions, pursuant to this Agreement, violate that third party's copyrights or other legal rights. The foregoing indemnification includes U of M's receipt of the U of M Digital Copy, but excludes any third party claim that relates to U of M's use or distribution of the U of M Digital Copy or that arises from U of M's (or its Regents', employees' and agents') negligence under this Agreement. Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Google shall pay any damage awards or settlement costs that may be incurred. U of M may participate in the defense with counsel of its own choice, at its own expense.

10.2 By U of M. U of M shall defend and indemnify Google, its employees and agents against any third party claim based on an allegation that U of M's use or distribution of the U of M Digital Copy violates third party copyrights or other legal rights. U of M shall also defend and indemnify Google, its employees and agents against any third party claim based on an allegation that any third party's use or distribution of the U of M Digital Copy violates third party copyrights or other legal rights. U of M shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, U of M shall pay any damage awards or settlement costs that may be incurred. Google may participate in the defense with counsel of its own choice, at its own expense.

10.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, EACH PARTY EXPRESSLY DISCLAIMS ANY FURTHER OBLIGATION TO INDEMNIFY, DEFEND OR HOLD HARMLESS THE OTHER PARTY FROM ANY THIRD PARTY CLAIM OR ACTION. THE FOREGOING PROVISIONS OF THIS SECTION 10 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF INDEMNIFYING PARTY, AND THE EXCLUSIVE REMEDY OF INDEMNIFIED PARTY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT.

11. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY) OR DAMAGES ARISING FROM BREACH OF SECTIONS 4.4 - 4.6 (AND ASSOCIATED SUBSECTIONS), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY)

OR DAMAGES ARISING FROM BREACH OF SECTIONS 4.4 - 4.6 (AND ASSOCIATED SUBSECTIONS), EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES EXPENDED BY THE OTHER PARTY AS OF THE DATE OF SUCH CLAIM.

12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to Digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Services. U of M shall not be obligated to participate in any Project Plan to the extent U of M does not have sufficient funds to perform its budgeted obligations under that Project Plan. Furthermore, notwithstanding anything in this Agreement to the contrary, in the event Google determines, at its sole discretion, not to Digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the U of M with respect to digitizing or delivering the U of M Digital Copy with respect to such Selected Content.

12.2 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld. Any attempt to assign this Agreement other than as permitted above will be null and void. Subject to the foregoing, this Agreement is binding upon and shall inure to the benefit of each of the Parties, and the successors and permitted assigns of each.

12.3 Notices. Any notice required or permitted by this Agreement will be deemed given if sent by facsimile or by registered mail, postage prepaid, addressed to the other Party at the address set forth at the top of this Agreement. Delivery will be deemed effective upon transmission by facsimile (with receipt acknowledgement) or three (3) days after deposit with postal authorities. Unless otherwise specified by Google, notices directed to Google shall be sent to Google Inc., Attn: General Counsel, 2400 Bayshore Pkwy, Mountain View, CA 94043, or via facsimile to Google Inc., Attn: General Counsel, 650-618-1499. Unless otherwise specified by U of M, notices directed to U of M shall be sent to University Library, Attn: Associate University Librarian LIT, University of Michigan, Ann Arbor, MI 48109-1205.

12.4 Independent Contractors. The Parties to this Agreement are independent Parties and nothing herein shall be construed as creating an employment, agency, joint venture or partnership relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or to otherwise bind, the other Party.

12.5 Severability. If any term or provision of this Agreement is held to be invalid, illegal, or otherwise void against public policy, such term or provision shall be stricken and shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.


12.6 Force Majeure. Performance by either party under this Agreement shall be excused during the period such performance is prevented or delayed by government restrictions, war or warlike activity (e.g., acts of terrorism), insurrection or civil disorder, labor disputes, or any other causes similarly or dissimilar to the foregoing that are beyond the control of either party and are not foreseeable at the time the Agreement (or relevant amendment) is executed.

12.7 General. The Agreement shall be governed by Federal law without giving effect to applicable conflict of laws provisions. In the event of any dispute or litigation arising out of or relating to this Agreement, each Party agrees that it shall attempt to resolve such dispute in good faith. If such dispute cannot be resolved within thirty days of being raised, the dispute shall be elevated to the highest level at each Party. If the dispute still cannot be resolved within an additional thirty days, the aggrieved party may file a lawsuit in the state or federal courts with jurisdiction to hear such suits in the State of Michigan. This Agreement, including any Project Forms and attached Exhibits, constitutes the entire understanding and agreement with respect to its subject matter, and supersedes any and all prior or contemporaneous representations, understandings and agreements whether oral or written between the Parties relating to the subject matter of this Agreement, all of which are merged in this Agreement. For avoidance of doubt, as of the Effective Date, this Agreement supersedes and replaces any other Cooperative Agreements between the parties to the extent they exist. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the Party to be charged, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. All amendments or modifications of this

Agreement shall be binding upon the Parties despite any lack of consideration so long as such amendment or modifications are in writing and executed by the Parties. If any provision of this Agreement is found to be invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. In such event, the Parties agree to negotiate in good faith, a legal and enforceable substitute provision which most nearly conforms to the Parties' intention in entering into this Agreement. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. This Agreement may be executed by exchange of signature pages by facsimile and/or in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument.

Accepted and Agreed:


Google Inc.

By:  6/14/05
(Authorized signature)

Name: David Drummond

Title: V.P., Corporate Development

On behalf of the Regents of the University of Michigan

By:  6/15/05
(Authorized signature)

Name: Timothy Slottow

Title: Executive Vice President and
Chief Financial Officer

EXHIBIT A

SAMPLE PROJECT FORM

Project Name:

Program Manager:

Estimated Start Date:

Estimated Completion Date:

Description of Works Involved:

Out-of-circulation Time:

Location of Works:

Conservation Requirements:

Collection Instructions:

Transportation Instructions:

Special Handling Instructions:

Infrastructure Requirements (e.g., space, power, scanner size and quantity, environmental parameters, etc.):

Hours of Operation:

Known Copyright Restrictions:

Budget Allocations (if any):

Other comments:

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and The Regents of the University of California on behalf of its California Digital Library with its principal offices at 415 20th Street, 4th Floor, Oakland California, 94612 ("University"), and is effective as of the last date this Agreement is signed by the parties (the "Effective Date"). Google and University herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media located at various University Libraries;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Subject to the terms set forth herein, Google will digitize works from the University Libraries' collection to include them in Google's services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. DEFINITIONS. Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means selections from the University Libraries' holdings as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes the University Libraries' Digital Content.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.4 "End User" means a person that accesses or uses the Google Services.

1.5 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.6 "Google Services" means Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites.



- 1.7 "Google Site" means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.
- 1.8 "Hosted Solution" shall have the meaning set forth in Section 4.6.
- 1.9 "Initial Term" shall have the meaning set forth in Section 8.1.
- 1.10 "Other Library" means any library (including any libraries affiliated or associated with any university or other educational institution, other than University) with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library.
- 1.11 "University Digital Copy" means the Digitized copy of the Selected Content as specified in Section 4.7.
- 1.12 "University Libraries' Digital Content" means content that University Libraries already have in their possession in Digitized form, as of the Effective Date.
- 1.13 "University Libraries" means those libraries of the ten campuses of the University of California set forth on Exhibit A and the University's Office of the President's California Digital Library.
- 1.14 "University Library Patrons" means the sum total of all individuals and organizations that the University Libraries serve from their websites.
- 1.15 "Project" means a project for Digitizing certain Selected Content.
- 1.16 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.
- 1.17 "Renewal Term" shall have the meaning set forth in Section 8.1.
- 1.18 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.
- 1.19 "Term" shall have the meaning set forth in Section 8.1.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Locating the Digitization Operation. Selected Content will be digitized at a designated Digitization facility. The facility will be located at a site controlled by the University or at one controlled by Google. Where the facility is controlled by the University, the University shall provide Google with adequate physical space to Digitize the Selected Content. If University is unable to provide such space, University shall cooperate with Google to identify and obtain space that Google can use at reasonable rates. If the facility is provided by Google, Google shall pay for any and all fees and costs associated with the use of said space; University shall not be liable for any such fees and costs. Where the facility is controlled by Google, then Google may remove some or all of the Selected Content from University premises to perform Digitization in its facilities. Site selection will be agreed by both parties and specified in the "Project Plan".

2.2 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that University agrees to commit no less than two and a half million (2,500,000) volumes to the Digitization efforts under this Agreement. In addition, University agrees that for a period of sixty (60) days from the Effective Date, University will provide or provide Google with access to no less than six hundred (600) books of Selected Content per



day to Digitize. University will use reasonable efforts to provide or provide Google with access to no less than three thousand (3,000) books (or such amount that is mutually agreed to by the Parties) of Selected Content per day to Digitize commencing on the sixty-first (61st) day after the Effective Date but in no event later than ninety (90) days from the Effective Date. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.3 Collecting the Selected Content. Where Selected Content is Digitized in facilities controlled by the University, the University shall be responsible for locating, pulling and moving the Selected Content to and from the designated Digitization facility as well as re-shelving the Selected Content when the Digitization is complete. Where Selected Content is Digitized in facilities controlled by Google, the University shall be responsible for locating, pulling, and later reshelving the Selected Content. If agreed upon by the Parties in a particular Project Plan, the collection, pulling, moving, and reshelving functions may be assigned to Google. Google will be responsible for arranging and paying for any and all costs and fees associated with transporting the Selected Content to and from University and storing it during a Project. Google agrees that each Digitization facility it controls will, at all times be reasonably clean, dry, cool, protected from fire and secure against theft and vandalism and at no time shall smoking be permitted in any Digitization facility. Google personnel, agents, contractors and other representatives involved in the Digitization and/or handling of the Selected Content will satisfy and comply with the standards mutually agreed by the Parties in the Project Plan. Upon commencement of a Project, University shall at its sole discretion perform any conservation efforts, at its expense, that it determines are required and/or desirable for the Selected Content prior to Digitization. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing.

2.4 Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Plan, if any. If the University establishes that Selected Content was not returned in substantially the same condition, Google will, at Google's option and the University's sole remedy, either replace the Selected Content in question or pay the University for the repair or replacement of such Selected Content up to a maximum as may be specified in the Project Plan.

2.5 Return of the Selected Content. Google shall return the Selected Content to the library from which Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content. Google will use reasonable commercial efforts to ensure that Selected Content is returned within ten (10) business days of its being scanned or after a determination is made by Google that Selected Content will not be scanned. Notwithstanding the foregoing, Google agrees that no materials in a Project will be off University's shelves for longer than fifteen (15) business days or for a longer period as may be specified in the Project Plan.

3. COSTS

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to locating and pulling the Selected Content as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy, (d) existing bandwidth available for use by Google to transfer Digitized files from University facilities to Google's data centers to the extent that University provides the Digitization facility, (e) University space that may be available and acceptable to Google for the Digitization, (f) transportation of Selected Content to and from the University facility in which the Selected Content is normally kept to and from the Digitization facility provided by the University, (g) any conservation efforts that University elects to



undertake on the Selected Content prior to Digitizing, and (h) barcoding and associated data entry to barcode the Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to Digitize the Selected Content, (c) space required to Digitize the Selected Content (to the extent not provided by University), (d) transportation of Selected Content from the University facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by University), and (e) all costs related to barcoding and inventory record building for materials selected for Digitizing that do not have a barcode when pulled from the shelf ("dumb barcoding"); provided that (i) Google will bear such barcoding costs only if University personnel are unable to insert a barcode from University records and, in such case, University personnel will dumb barcode the work and the costs will be billed to Google on a mutually agreed upon time and materials basis (such agreement to be in writing and signed by both parties) not to exceed \$0.50 per work barcoded; and (ii) the Parties will determine the appropriate flow of works so that University will barcode at Google's expense not more than six (6) months ahead of the Digitizing schedule for such works. University agrees to provide to Google its current costs to barcode works.

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content and performing any required copyright research and clearances, conservation, and metadata development as may be required. Any such budget will take precedence over the provisions of Sections 3.1 and 3.2 above.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request Google not to Digitize any Available Content or to cease the display or use of any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, subject to copyright law, as part of the Google Services. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all



other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has permission or license from the copyright owner to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute fair use under copyright law and (2) bibliographic (e.g., title, author, date, etc) and other non-copyrighted information. In the event that Google has received a license or other permission from the applicable copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Google Digital Copy that is in-copyright. Google agrees that the security measures applied to in-copyright portions of the Google Digital Copy will be the same or equivalent to those employed to protect the information contained in Google's index. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Solution. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and to University Library patrons via a website that will be hosted by Google (the "Hosted Solution"). The design, layout, content, functions and features of the Hosted Solution will be determined by Google but substantially similar to that provided by Google to any Other Library.

4.7 University Digital Copy. Unless otherwise agreed by the Parties in writing, the "University Digital Copy" means the digital copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files including bibliographic information consisting of title and author of each Digitized work and technical information consisting of the date of scanning the work, information about which image files correspond to what Digitized work, and information pertaining to the logical order of image files that make up a Digitized work, (c) a list of works that are supplied for Digitization but not actually Digitized, and (d) the image coordinates for each Digitized Work ("Image Coordinates"); provided that Image Coordinates will only be provided (i) so long as University complies with the volume commitments set forth in Section 2.2 and (ii) pursuant to the restrictions on University's use and distribution of such Image Coordinates set forth in Section 4.10.

4.7.1 Google agrees to provide to University access to one copy of all Digitized Selected Content that has been "Successfully Processed" within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties. Selected Content is "Successfully Processed" when Google determines it has satisfactorily gone through all stages of Google's Digitization, post processing and quality assurance procedures. In addition Google will provide the University with the ability to sample the files for two hundred and fifty (250) Digitized works per month to assess quality. Google agrees that the quality and type of files provided to University in the University Digital Copy will be substantially similar to the quality and type of files provided to any Other Library. Further, the quality and type of files supplied by Google to the University will conform to a minimum specification established by Google in consultation with the University and by those Other Libraries. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute from



the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy.

4.8 Ownership and use of University Digital Copy. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy. University shall have the right to use the University Digital Copy, in whole or in part at University's sole discretion, subject to copyright law, as part of services offered to the University Library Patrons. University may not charge, receive payment or other consideration for the use of the University Digital Copy except that University may charge for use of any services supplemental to the original work that the University supplies that add value to the University Digital Copy (for example, University may charge University Library Patrons for access to annotations to works from professors and scholars but the original work will always be accessible without a fee), and to recover copying costs actually incurred. University agrees that to the extent it makes any portion of the University Digital Copy publicly available, that it will identify the works, in a statement on a web page or other access point to be mutually agreed to by the Parties, as "Digitized by Google" or in a substantially similar manner. University shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available. University shall also prevent third parties from (a) downloading or otherwise obtaining any portion of the University Digital Copy for commercial purposes, (b) redistributing any portions of the University Digital Copy, or (c) automated and systematic downloading from its website image files from the University Digital Copy. University shall develop methods and systems for ensuring that substantial portions of the University Digital Copy are not downloaded from the services offered on University's website or otherwise disseminated to the public at large. University shall also implement security and handling procedures for the University Digital Copy which procedures shall be mutually agreed by the Parties. Except as expressly allowed herein, University will not share, provide, license, or sell the University Digital Copy to any third party.

4.10 Distribution of the University Digital Copy.

(a) University shall not share, provide, license, distribute or sell the Image Coordinates to any entity in any manner. University may use the Image Coordinates only as part of the University Digital Copy for the services provided to University Library Patrons set forth in Section 4.9 above.

(b) Subject to the restrictions contained herein, University shall have the right to distribute (1) no more than ten percent (10%) of the University Digital Copy (but not any portion of the Image Coordinates) to (i) other libraries and (ii) educational institutions, in each case for non-commercial research, scholarly or academic purposes and (2) all or any portion of public domain works contained in the University Digital Copy (but not any portion of the Image Coordinates) to research libraries for research, scholarly and academic purposes by those libraries and the faculty, students, scholars and staff authorized by said libraries to access their commercially licensed electronic information products. Any recipient of the University Digital Copy under this Section 4.10 is referred to herein as a "**Recipient Institution**." Prior to any distribution by University to a Recipient Institution, Google and the Recipient Institution must have entered into a written agreement on terms acceptable to Google governing the use of the University Digital Copy and that, among other things, provide an indemnity to Google. In addition, any distribution by University to a Recipient Institution is subject to a written agreement that (A) prohibits that Recipient Institution from redistributing without first obtaining the prior written consent of Google, (B) makes Google an express third party beneficiary of such agreement, (C) provides an indemnity to Google from the Recipient Institution for the Recipient Institution's use of the Selected Content, (D) contains limitations at least as restrictive as the restrictions on University set forth in Section 4.9, (E) contains limitations on the use of the University Digital Copy consistent with copyright law and the limitations set forth in clauses (1) and (2) above, and (E) requires each Recipient Institution, to the extent it makes any



portion of the University Digital Copy publicly available, to identify the works, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner.

5. ACCESS, AUTHORIZATION AND SUPPORT

5.1 Access. Google shall have the right to access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that Google notify University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact, in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue.

5.3 Support from University. University shall appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular University business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by University. University shall also appoint one person to serve as the technical contact for Google, for obtaining or regulating the use of the University Digital Copy. This technical contact shall be available during regular University business hours at a telephone number and e-mail address to be provided by University. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.

5.4 Support from Google. Google will appoint specific persons for technical and administrative contact purposes, as identical to the conditions specified in 5.3 for University contacts.

6. CONFIDENTIALITY

6.1 Confidentiality. By virtue of this Agreement, each Party may have access to information of the other Party which is considered confidential and proprietary, including product plans, customer lists, and proprietary technology or methods ("**Confidential Information**"), whether disclosed in tangible or intangible form. Information disclosed in tangible form will be considered Confidential Information if it is marked as "Confidential". Information disclosed in intangible form will be considered Confidential Information if the disclosing Party clearly indicates that it is confidential at the time of disclosure.

6.2 Obligations. Each Party shall exercise at least the same degree of care to avoid the publication or dissemination of the Confidential Information of the other Party as it affords to its own confidential information of a similar nature which it desires not to be published or disseminated. The receiving Party shall not use Confidential Information of the disclosing Party except in connection with this Agreement and the matters contemplated hereby. The obligation of the Parties not to disclose Confidential Information survives termination or cancellation of this Agreement.

6.3 Exceptions. Neither Party is obligated to protect Confidential Information of the other Party that: (i) is received by the receiving Party from a third party which is not known to the receiving Party to be under a confidentiality obligation to the disclosing Party, or (ii) is known to or developed by the receiving Party independently without use of, or reference to, the Confidential Information, or (iii) is or becomes generally available to the public by other than a breach of duty hereunder by the receiving Party, (iv) has been or is hereafter furnished to others by the disclosing Party without restriction on disclosure, or (v) is required to be disclosed by any law, governmental authority or legal process



("Process"); provided that (a) the Recipient shall promptly notify the Discloser of such Process; and (b) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has (1) requested protection from the appropriate court or other legal or governmental authority requiring the Process and such request has been denied, (2) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (3) taken no action to protect its interest in the Confidential Information within fourteen (14) business days after the Recipient has given notice of its obligation to produce or disclose Confidential Information in response to the Process. The Discloser agrees that it will indemnify, defend, and hold harmless the Recipient for all damages, costs, liabilities, and fees, including reasonable attorney's fees, arising out of any third party claims that the failure to comply with the Process violates an applicable law, provided that Recipient's failure to comply is a result of adhering to the foregoing provisions; provided that the Recipient (i) promptly notifies the Discloser of such claim, (ii) provides the Discloser with reasonable information, assistance and cooperation in defending the claim, lawsuit or proceeding, and (iii) gives the Discloser full control and sole authority over the defense and settlement of such claim. The Recipient may join in defense with counsel of its choice at its own expense.

6.4 PR. Neither Party will issue any public announcement regarding the existence or content of this Agreement without the other Party's prior written approval. Google may include the name "University of California" and the University unofficial seal in lists of other partner libraries, subject to the following: Google may use the University's name and unofficial seal in presentations and promotional/marketing materials only with the University's prior written permission. In lieu of submitting individual requests prior to each such use, Google may submit a plan for such presentations and promotional/marketing materials for University's review and approval.

7. BRAND FEATURES

7.1 Ownership. Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 License to University Brand Features. Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

8. TERM AND TERMINATION

8.1 Term. This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "Renewal Term") unless either Party notifies the other Party to the contrary at least thirty (30)



days before the end of either the Initial Term or a Renewal Term. The "Term" of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Termination. Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof.

8.3 Effect of Expiration or Termination. After expiration or termination of this Agreement for any reason: (i) each Party shall within thirty (30) days return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession, (ii) Google shall within thirty (30) days return to the University any Selected Content that it has in its possession or in transit at termination in a manner specified in Section 2.5, (iii) the University shall within ninety (90) days download any digitized Selected Content that has been created by Google during the Term but not yet downloaded by the University at termination, in a manner specified in Section 4.7.1. The following sections survive expiration or termination of this Agreement: 1, 2.4, 2.5, 4 (excluding Section 4.6), 5, 8.3, 9, 10 and 11.

9. DISCLAIMER OF WARRANTIES

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) the individual who executes this Agreement has full power and authority to do so; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BOTH PARTIES SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 By Google. Google shall defend, indemnify, and hold harmless University from and against any and all liabilities, damages, charges, fees, including reasonable attorneys' fees, costs, and expenses arising out of or in any way related to a third party claim, lawsuit, and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law, including, but not limited to, an allegation of copyright infringement: University's provision of Available Content to Google for digitization to the extent such provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services. The foregoing indemnification excludes any third party claim that relates to University's use or distribution of the University Digital Copy.

10.2 By University. University shall defend, indemnify, and hold harmless Google from and against any and all liabilities, damages, charges, fees, including reasonable attorneys' fees, costs and expenses arising out of or in any way related to a third party claim, lawsuit, and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law including, but not limited to, an allegation of copyright infringement: University's use or University's distribution of the University Digital Copy. The foregoing indemnification excludes any third party claim that relates to University's provision of Available Content to Google for digitization to the extent such



provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the Google Digital Copy; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services.

10.3 General. The foregoing obligations shall exist only if the Party seeking indemnification ("Indemnitee"): (i) promptly notifies the Indemnitor of such claim, (ii) provides the Indemnitor with reasonable information, assistance and cooperation in defending the claim, lawsuit or proceeding, and (iii) gives the Indemnitor full control and sole authority over the defense and settlement of such claim. The Indemnitee may join in defense with counsel of its choice at its own expense.

11. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (8) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000). The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk, and (ii) that each Party would not enter into the Agreement without these limitations on liability. The foregoing limitations, however, are not applicable to any damages arising from a breach of Section 6, Confidentiality, to any monetary obligations arising out of the indemnification obligations in Section 10, Indemnification, including, but not limited to, indemnification for allegations of copyright infringement, or to any damages related to actions for personal injury or willful misconduct.

12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to Digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. Likewise, notwithstanding anything in this Agreement to the contrary, University shall not be obligated to participate in the digitization program described in this Agreement with respect to any or all of the Available Content. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to Digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to Digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Miscellaneous. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, except that either Party may assign its rights and delegate its duties under this Agreement upon written notice to the other Party to a division or an affiliate thereof (that is not a competitor of the non-assigning Party), provided such division or affiliate agrees to be bound by all of the terms hereof. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void. This Agreement shall be binding upon the successors and permitted assigns of both Parties. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be sent to the respective party at the respective address identified above. Notice shall be deemed received (i) upon receipt when delivered personally or (ii) upon verification of receipt of registered or certified mail, return receipt requested. Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts. The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the Parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law. Neither



Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquakes, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. This Agreement sets forth the entire understanding and agreement between the Parties, supersedes any and all previous agreements on the subject matter, whether written or oral, and may be amended only in a writing signed by both Parties. This Agreement shall be governed by the laws of the State of California, without regard to its principles of conflicts of law. Any litigation hereunder shall be brought in any state or federal court of competent jurisdiction in Santa Clara or Alameda County, California; the Parties agree that venue shall be proper in, and consent to the personal jurisdiction of, such courts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

Google

By: *David E. Wu*

Print Name: DAVID E. WU

Title: VP, General Management

Date: Aug 3, 2006

The Regents of the University of California:

By: *Robert D. Dynes*

Print Name: ROBERT DYNES

Title: PRESIDENT U.C.

Date: July 27/06

[Signature Page to Cooperative Agreement]



EXHIBIT A

University Library, UC Berkeley
University Library, UC Davis
University Library, UC Irvine
University Library, UCLA
University Library, UC Merced
University Library, UC Riverside
University Library, UC San Diego
University Library, UC San Francisco
University Library, UC Santa Barbara
University Library, UC Santa Cruz

California Digital Library



COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and the Board of Regents of the University of Wisconsin System, d/b/a the University of Wisconsin-Madison, General Library System, with its principal offices at 728 State Street, Madison Wisconsin, 53706 ("University"), and is effective as of the date signed by Google below (the "Effective Date"). Google and University herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Google will digitize selected works from the University collection to include them in Google's services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means the University print collection as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes University Digital Content and any works that Google has obtained the permission of the copyright holder to Digitize.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "Committee on Institutional Cooperation" or "CIC" means the consortium of twelve (12) research libraries (including the University) that collaborate on library related initiatives. The other eleven member libraries of the CIC are: University of Chicago, University of Illinois, Indiana University, University of Iowa, University of Michigan, Michigan State University, University of Minnesota, Northwestern University, The Ohio State University, Penn State University, and Purdue University.

1.4 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.5 "End User" means a person that accesses or uses the Google Services.



1.6 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.7 "Google Services" means the Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites.

1.8 "Google Site" means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.9 "Hosted Solution" shall have the meaning set forth in Section 4.6.

1.10 "Initial Term" shall have the meaning set forth in Section 8.1.

1.11 "Member Library" means any library that is a member of the CIC.

1.12 "University Digital Copy" shall have the meaning set forth in Section 4.7.

1.13 "University Digital Content" means content that University already has in its possession in digitized form prior to or during the Term and for which University has the right to redistribute to third parties. The rights and privileges that University has in and to the University Digital Content shall not be affected in any way by the terms of this Agreement.

1.14 "Project" means a project for digitizing certain Selected Content.

1.15 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.

1.16 "Renewal Term" shall have the meaning set forth in Section 8.1.

1.17 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.18 "Term" shall have the meaning set forth in Section 8.1.

TERMS**2. DIGITIZATION OPERATIONS.**

2.1 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that University agrees to commit no less than 500,000 volumes to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

2.2 Collecting the Selected Content. University shall be responsible for locating, pulling and moving the Selected Content to and from the designated Digitization facility as well as re-shelving the Selected Content when the Digitization is complete. Upon commencement of a Project, University shall perform any conservation efforts that the Parties determine are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing. If agreed upon by the Parties in a particular Project Plan, this collection function may instead be assigned to Google.

2.3 Locating the Digitization Operation. University shall provide Google with adequate physical space to digitize the Selected Content. If University is unable to provide such space, University shall cooperate with Google to identify and obtain space that Google can use at reasonable rates.

2.4 Transporting and Storing the Selected Content. Google may remove some or all of the Selected Content from University premises to perform Digitization in facilities controlled by Google. If Google elects to remove any such Selected Content, then it will provide and be responsible for commercially reasonable transport methods and temporary storage areas.

2.5 Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Plan, if any.

2.6 Return of the Selected Content. Google shall return the Selected Content to the source from which Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content.

3. COSTS

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to locating, pulling and moving the Selected Content to and from the designated Digitization facility as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy (d) existing bandwidth available for use by Google to transfer Digitized files from University facilities to Google's data centers to the extent that University provides the Digitization facility, (e) University space that may be available and acceptable to Google for the Digitization, (f) transportation of Selected Content to and from the University facility in which the Selected Content is normally kept to and from the Digitization facility provided by the University, (g) any conservation efforts that University elects to undertake on the Selected Content prior to Digitizing, and (h) barcoding and associated data entry to barcode the Selected Content.



3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to digitize the Selected Content, (c) space required to digitize the Selected Content (to the extent not provided by University), and (d) transportation of Selected Content from the University facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by University).

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. Any such budget will take precedence over the provisions of Sections 3.1 and 3.2 above.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party receives a written request from a person or entity requesting to discontinue the display or use of any Digitized Selected Content, such Party will promptly notify and forward such request to the other Party and both Parties will comply with the request or demand so long as each Party determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder. In addition, Google will implement processes whereby any person or entity can request Google not to Digitize any Available Content or to cease the display or use of any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder.

4.1.1. With the exception of specific cases, as addressed in Section 4.1 above, University views all U.S. government documents (Federal and State) as public domain and will provide open access to those titles in the University Digital Copy. Google will provide the University with the complete Digitized version of these works in the University Digital Copy (so long as such works are Digitized by Google), regardless of how Google elects to treat them.

4.2 Ownership and use of Google Digital Copy. Neither University nor Google shall have any ownership or license rights to the Available Content that is Digitized (i.e., to the materials underlying the digitization process), except where University already owns such rights. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to its copy of the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, as part of the Google Services. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all other portions of the Google Digital Copy, Google may index the full text or content but may serve and display such content only in compliance with copyright law. In the event that Google has received a license or other permission from the applicable



copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Google Digital Copy that is in-copyright. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Solution. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and its patrons, researchers and staff via a website that will be hosted by Google (the "Hosted Solution"). The design, layout, content, functions and features of the Hosted Solution will be determined by Google with consideration of feedback from Google's library partners that receive a Hosted Solution.

4.7 University Digital Copy. Google shall provide the University with access to download one copy of the University Digital Copy in a timeframe mutually agreed by the Parties. Unless otherwise agreed by the Parties in writing, the "University Digital Copy" means a copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files such as which image files correspond to that Digitized work, and (c) the logical order of those image files. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. In addition Google will provide the University with the ability to sample the files for fifty (50) Digitized works per quarter to assess quality. Google agrees that the quality of files provided to University in the University Digital Copy will be substantially similar to the quality of files provided to any other library with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute from the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy.

4.8 Ownership and use of University Digital Copy. Neither University nor Google shall have any ownership or license rights to the Available Content that is digitized through this Agreement (i.e., to the materials underlying the digitization process), except where University already has such rights. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy on University Website. University shall have the right to use the University Digital Copy, in whole or in part at University's sole discretion, subject to copyright law, as part of services offered openly on University's website and internally for research, scholarly and academic purposes. University may not charge, receive payment or other consideration for the University Digital Copy in connection with University's website. University agrees that to the extent it makes any portion of the University Digital Copy publicly available, that it will identify the works, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner. University shall implement reasonable technological measures (e.g., through use of the robots.txt



protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available. University shall also make reasonable efforts (including but not limited to restrictions placed in University's online terms and conditions governing the use of its website) prevent third parties from (a) downloading or otherwise obtaining any portion of the University Digital Copy for commercial purposes, (b) redistributing any portions of the University Digital Copy, or (c) automated and systematic downloading from its website image files from the University Digital Copy. University shall develop methods and systems for ensuring that substantial portions of the University Digital Copy are not downloaded from the services offered on University's website or otherwise disseminated to the public at large. University shall also implement security and handling procedures for the University Digital Copy which procedures shall be mutually agreed by the Parties. Except as expressly allowed herein, University will not provide (in whole or in part), license, or sell the University Digital Copy to any third party.

4.10 Contribution of University Digital Copy. Subject to the terms of this Section 4.10, University shall have the right to contribute the University Digital Copy to a central depository of digital works hosted by a Member Library. Prior to the provision of the University Digital Copy to any such Member Library, Google must have entered into a written agreement with the hosting Member Library and each Member Library that will have access to the University Digital Copy that (i) limits the use of the University Digital Copy to non-commercial research, scholarly and academic purposes consistent with the requirements of copyright law, (ii) requires the Member Library responsible for hosting the University Digital Copy to implement reasonable technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the website where the University Digital Copy is available, (iii) requires the Member Library make reasonable efforts (including but not limited to restrictions placed in online terms and conditions governing the use of the digital works) to prevent third parties from (a) downloading or otherwise obtaining any portion of the University Digital Copy for commercial purposes, (b) redistributing any portions of the University Digital Copy, or (c) automated and systematic downloading from its website image files from the University Digital Copy, (iv) prohibits the Member Library from redistributing any portion of the University Digital Copy without first obtaining the prior written consent of Google, (v) provides an indemnity to Google for the Member Library's use of the Selected Content, and (vii) requires the Member Library to identify the works in the University Digital Copy, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner.

5. ACCESS, AUTHORIZATION AND SUPPORT

5.1 Access. Google shall have the right to access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that (i) University is able to provide such access and (ii) Google notifies University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact; in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue.

5.3 Support. Each Party shall appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by each Party. Each Party shall also appoint one person to serve as the technical contact for obtaining and regulating the use of the

University Digital Copy. This technical contact shall be available during regular business hours at a telephone number and e-mail address to be provided by University. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.

6. **CONFIDENTIALITY**

6.1 **Confidentiality.** Disclosure of confidential and/or proprietary information disclosed hereunder, including the existence and content of the Agreement and any information provided pursuant to the Agreement, shall be governed by the confidentiality provisions of the Google Standard Mutual Non-Disclosure Agreement, which has been executed by the Parties prior to or concurrently with this Agreement, as of May 12, 2006 (the "NDA"). The confidentiality provisions of the NDA are hereby incorporated by reference into this Agreement.

6.2 **PR.** Neither Party will issue any public announcement regarding the existence or content of this Agreement without the other Party's prior written approval. Notwithstanding the foregoing, Google may include University's Brand Features in a list that includes Google's other library partners and, with University's prior written consent, in presentations, marketing materials, and customer lists. Upon University's request, Google will furnish University with a sample of such usage.

7. **BRAND FEATURES**

7.1 **Ownership.** Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 **License to University Brand Features.** Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

8. **TERM AND TERMINATION**

8.1 **Term.** This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "Renewal Term") unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The "Term" of this Agreement shall comprise the Initial Term and any Renewal Terms.



8.2 Termination. Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof. In addition, Google may immediately suspend or terminate this Agreement if Google reasonably determines that it is commercially impractical to continue performing its obligations in light of applicable laws.

8.3 Effect of Expiration or Termination. Within thirty (30) days after expiration or termination of this Agreement for any reason, each Party shall return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 4 (excluding Section 4.6), 6, 8, 9, 10, 11 and 12.

9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GOOGLE SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 By Google. Google shall defend University against any third party lawsuit or proceeding brought against University based on or otherwise arising out of a claim that Google's use or distribution of the Google Digital Copy constitutes a violation of that third party's copyrights. The foregoing indemnification excludes any third party claim that relates to University's use or distribution of the University Digital Copy. Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Google shall pay any damage awards or settlement costs that may be incurred. University may participate in the defense with counsel of its own choice, at its own expense.

10.2 By University. University shall defend Google against any third party lawsuit or proceeding that relates to University's use or distribution of the University Digital Copy, including without limitation, any such use by a third party. University shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, University shall pay any damage awards or settlement costs that may be incurred. Google may participate in the defense with counsel of its own choice, at its own expense.

10.3 General. Indemnification provided under Sections 10.1 and 10.2 shall be limited to (a) payment by the indemnifying party ("Indemnitor") of all damages and costs finally awarded for such claim, or (b) settlement costs approved in writing by the Indemnitor. The foregoing obligations shall exist

only if the party seeking indemnification ("**Indemnitee**"): (i) promptly notifies the Indemnitor of such claim, (ii) provides the Indemnitor with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (iii) gives the Indemnitor full control and sole authority over the defense and settlement of such claim. The Indemnitee may join in defense with counsel of its choice at its own expense. The Indemnitor shall only reimburse the Indemnitee for expenses incurred by the Indemnitee with the Indemnitor's prior written approval.

11. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTION 6 (CONFIDENTIALITY) OR INDEMNIFICATION PAYMENT OBLIGATIONS TO THIRD PARTIES UNDER SECTION 10, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO TEN THOUSAND DOLLARS (\$10,000). The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability.

12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. University shall not be obligated to participate in any Project Plan to the extent University does not have sufficient funds to perform its budgeted obligations under that Project Plan. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Miscellaneous. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld, except that either Party may assign its rights and delegate its duties under this Agreement upon written notice to the other Party to a division or an affiliate thereof (that is not a competitor of the non-assigning Party), provided such division or affiliate agrees to be bound by all of the terms hereof; and provided further that Google may assign this Agreement without consent to a successor-in-interest in connection with a merger or the sale of all or substantially all of its assets. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void. This Agreement shall be binding upon the successors and permitted assigns of both Parties. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be sent (a) if to University at the address identified above and (b) if to Google to such address as provided at www.google.com/corporate/address.html or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, "Attn: Legal Dept." Notice shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail. Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts. The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the Parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law. Neither Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable

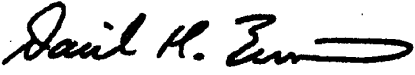


control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. This Agreement sets forth the entire understanding and agreement between the Parties and may be amended only in a writing signed by both Parties. To the extent that it does not waive the sovereign immunity of the University, this Agreement shall be governed by the laws of the State of California, without regard to its principles of conflicts of law. Any litigation hereunder shall be brought in any state or federal court of competent jurisdiction in Santa Clara County, California; the Parties agree that venue shall be proper in, and consent to the personal jurisdiction of, such courts. This is not a waiver of personal service. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

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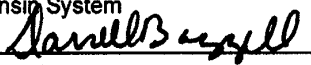


IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

Google 
By: DAVID EUN
~~Vice President, Content Partnerships~~
Print Name: Google, Inc.

Title:
Date: 10-06-06P12:12 RCVD

University: Board of Regents of the University of Wisconsin System

By: 
Print Name: DARRELL BRAZELL

Title: VICE CHANCELLOR
Date: 9/22/06

[Signature Page to Cooperative Agreement]



COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and The Rector and Visitors of the University of Virginia, a state-supported institution of higher education and agency of the Commonwealth of Virginia located in Charlottesville, Virginia ("University"), and is effective as of the date of the last signature below (the "Effective Date"). Google and the University are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Google will digitize works from the University collection to include them in Google's services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means the University print collection as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes University Digital Content.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.4 "End User" means a person that accesses or uses the Google Services.

1.5 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.6 "Google Services" means Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and

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otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites.

1.7 "Google Site" means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.8 "Hosted Solution" shall have the meaning set forth in Section 4.6.

1.9 "Initial Term" shall have the meaning set forth in Section 8.1.

1.10 "University Digital Copy" shall have the meaning set forth in Section 4.7.

1.11 "University Digital Content" means content that the University of Virginia Library has in its possession in digitized form that the Library is authorized, as determined by the Library in its sole discretion to share with Google.

1.12 "University of Virginia Library" means the comprehensive libraries of The University of Virginia not including Law, Darden or Health Sciences unless the Parties expressly agree to include such libraries by a written addendum to this Agreement.

1.13 "Project" means a project for digitizing certain Selected Content.

1.14 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.

1.15 "Renewal Term" shall have the meaning set forth in Section 8.1.

1.16 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.17 "Term" shall have the meaning set forth in Section 8.1.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that the University has agreed to commit all circulating volumes from the University of Virginia Library system to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to develop a timetable for completing the Project Plan for Digitizing the Selected Content.

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2.2 Collecting the Selected Content. University shall be responsible for locating, pulling and moving the Selected Content to a designated location at the University facility as well as re-shelving the Selected Content when the Digitization is complete. Upon commencement of a Project, University shall perform any conservation efforts that the Parties determine are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing.

2.3 Transporting and Storing the Selected Content. Google will remove the Selected Content from University premises to perform Digitization in facilities controlled by Google. University agrees that the Selected Content may be transported to one or more Digitization facilities determined by Google. Google will provide the University with the address of and a reasonable opportunity to inspect all Digitization facilities subject to Google's reasonable approval and University's compliance with all of Google's policies and procedures applicable to visits to Digitization facilities. Google will provide and be responsible for commercially reasonable transport methods and temporary storage areas. All risk of loss, damage or destruction of materials will lie with Google from the time that Google accepts possession of the materials until such time as they are returned to the University on University premises; provided that University agrees that Google's obligation will not exceed \$5,000 for any given text and that Google's maximum liability for any damage or loss to Selected Content in Google's custody resulting from a single incident or event will not exceed five million dollars (\$5,000,000). Google will carry reasonable sufficient insurance with a reputable independent provider approved by the University insuring against the risk of loss, damage, or destruction of materials entrusted to Google's custody, and will provide, at the University's request, a certificate of insurance to the University naming the University as an additional insured. In general, Google will provide a transport method and temporary storage area that is reasonably clean, dry, cool, free from insects and other pests, protected from fire, and secure against theft and vandalism. However, unless the University makes Google aware that specific materials require non-standard care, transport, and processing and Google decides to go forward with digitization of such items, Google shall have no responsibility to undertake special efforts to address unique or fragile conditions in its transport or handling of individual items. University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from University premises and will provide Google with an itemized list of any such materials.

2.4 Digitizing the Selected Content. Google will be responsible for Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Plan, if any.

2.5 Return of the Selected Content. Google shall return the Selected Content to the designated location where Google obtained it in the like manner in which it was collected after Google completes Digitizing the Selected Content.

3. COSTS

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to pulling and moving the Selected Content to a designated location at the University facility as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy (d) any conservation efforts that University elects to undertake on the Selected Content prior to Digitizing, and (e) any barcoding and associated data entry to barcode the Selected Content deemed appropriate by the University; provided University understands that Google will not bear the cost of barcoding and that only works that are barcoded may be included as Selected Content.

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3.2 Costs borne by Google. In addition to costs mutually agreed upon by the parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to digitize the Selected Content, (c) space required to digitize the Selected Content (to the extent not provided by University), (d) transportation of Selected Content from the University facility where the Selected Content is normally kept to a Google designated facility (to the extent not provided by University), and (e) those costs that Google elects to incur to address any legal and copyright issues associated with Google's Digitization of in-copyright materials.

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. Any such budget, which is mutually approved and authorized in writing, will take precedence over the provisions of Sections 3.1 and 3.2 above.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request Google not to Digitize any Available Content or to cease the display or use of any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. Neither University nor Google shall have any ownership or license rights to the Available Content that is Digitized (i.e., to the materials underlying the digitization process), except where University already owns such rights. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, as part of the Google Services. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has appropriate legal authority to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute fair use under copyright law and (2) bibliographic (e.g., title, author, date, etc) and other non-copyrighted information. In the event that Google has received a license or other permission from the applicable copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol)

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to restrict automated access to any portion of the Google Digital Copy that is in-copyright. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Solution. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and its patrons, researchers and staff via a website that will be hosted by Google (the "Hosted Solution"). The design, layout, content, functions and features of the Hosted Solution will be determined by Google.

4.7 University Digital Copy. Google shall provide the University with access to download one copy of the University Digital Copy in a timeframe mutually agreed by the parties. Unless otherwise agreed by the parties in writing, the "University Digital Copy" means a copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files including (i) bibliographic information consisting of title and author of each Digitized work and (ii) which image files correspond to that Digitized work, and (c) the logical order of those image files. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the parties. In addition Google will provide the University with the ability to sample the files for one hundred (100) Digitized works per quarter to assess quality. Google agrees that the quality of files provided to University in the University Digital Copy will be substantially similar to the quality of files provided to any other library with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute from the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy. For avoidance of doubt, Google agrees to include in the University Digital Copy a Digitized version of any work that was provided by University to Google as Selected Content hereunder, so long as such Selected Content is in the Public Domain and has been Digitized by Google either under this Agreement or from sources other than University.

4.8 Ownership and use of University Digital Copy. Neither University nor Google shall have any ownership or license rights to the Available Content that is Digitized through this Agreement (i.e., to the materials underlying the Digitization process), except where University already has such rights. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy on University Website. University shall have the right to use the University Digital Copy, in whole or in part at University's sole discretion, subject to copyright law, as part of services offered on University's website and internally for research, scholarly and academic purposes. University may not charge, receive payment or other consideration for the University Digital Copy in connection with University's website. University agrees that to the extent it makes any portion of the University Digital Copy publicly available, that it will identify the works, in a statement on a web page or other access point to be mutually agreed to by the Parties, as "Digitized by Google" or in a substantially similar manner. University shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available. University shall also implement reasonable policies and procedures designed to prevent third parties from (a) downloading or otherwise obtaining any portion of the University Digital Copy for commercial purposes, (b) redistributing any portions of the University Digital Copy other than portions of or discrete individual texts from the University Digital Copy that have been used for scholarly or research purposes and will be disseminated in compliance with copyright law and as part of a scholarly project, website, or publication, or (c)

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automated and systematic downloading from its website image files from the University Digital Copy. University shall develop methods and systems for ensuring that substantial portions of the University Digital Copy are not downloaded from the services offered on University's website or otherwise disseminated to the public at large. University shall also implement security and handling procedures for the University Digital Copy. The University will provide Google with a copy of its procedures and will comply with any reasonable revision or addition recommended by Google.

4.10 Distribution of the University Digital Copy. University shall have the right to provide all or any portion of public domain works contained in the University Digital Copy (a) to a library member of the Digital Library Federation or (b) with Google's consent, to a library member of VIVA (The Virtual Library of Virginia) (such consent not to be unreasonably withheld so long as the member library can evidence its compliance with the restrictions contained herein) (each recipient library is referred to herein as a "Recipient Library") for non-commercial research, scholarly or academic purposes by the Recipient Library and the faculty, students, scholars and staff authorized by the Recipient Library to access their commercially licensed electronic information products; provided that each Recipient Library is subject to a written agreement that (1) prohibits the Recipient Library from redistributing any portion of the University Digital Copy without first obtaining the prior written consent of Google, (2) makes Google an express third party beneficiary of such agreement, (3) provides an indemnity to Google for such Recipient Library's use of the Selected Content subject to the applicable law of the state or other jurisdiction for Recipient Libraries that are members of VIVA, (4) contains obligations and limitations at least as restrictive as the restrictions on University set forth in Section 4.9, and (5) requires each Recipient Library, to the extent it makes any portion of the University Digital Copy publicly available, to identify the works, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner. University shall notify Google of each Recipient Library with which it makes an agreement described in this Section. Except as expressly allowed herein, University will not share, provide, license, or sell the University Digital Copy to any third party.

5. ACCESS, AUTHORIZATION AND SUPPORT

5.1 Access. Google shall have the right to reasonably access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that Google notify University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact; in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue. No changes to the Project Plan or costs' allocation may be made without written authorization from the University Librarian.

5.3 Support. University shall appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular University business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by University. University shall also appoint one person to serve as the technical contact for Google for obtaining and regulating the use of the University Digital Copy. This technical contact shall be available during regular University business hours at a telephone number and e-mail address to be provided by University. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.



6. CONFIDENTIALITY

6.1 Confidentiality. Disclosure of confidential and/or proprietary information disclosed hereunder, including the existence and content of the Agreement and any information provided pursuant to the Agreement, shall be governed by the confidentiality provisions of the Google Mutual Non-Disclosure Agreement ("NDA"), which is attached hereto as Exhibit A and incorporated by reference to this Agreement.

6.2 PR. Neither Party will issue any public announcement regarding the existence or content of this Agreement without prior written approval of the other Party. Notwithstanding the foregoing, Google may include University's Brand Features with prior written approval of the University Librarian in presentations, marketing materials, and customer lists so long as Google first furnishes the University with specific examples of such presentations, marketing materials, and customer lists and uses the University's Brand Features only in a manner that is essentially similar to such prior reviewed and approved uses.

7. BRAND FEATURES

7.1 Ownership. Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 License to University Brand Features. Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized in writing for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

8. TERM AND TERMINATION

8.1 Term. This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years unless earlier terminated as provided herein (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "Renewal Term") unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The "Term" of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Termination. Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof. In addition, Google may immediately suspend or terminate this Agreement if Google reasonably



determines that it is commercially impractical to continue performing its obligations in light of applicable laws.

8.3 Effect of Expiration or Termination. Within thirty (30) days after expiration or termination of this Agreement for any reason and subject to applicable law, each Party shall return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 4 (excluding Section 4.6), 6, 8, 9, 10, 11 and 12.

9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GOOGLE AND THE UNIVERSITY SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. DEFENSE AND LEGAL RESPONSIBILITIES.

10.1 Google shall defend, or at its option, settle any third party lawsuit or proceeding brought against the University (or its Board of Visitors, employees' or agents') based on an allegation that Google's actions under this Agreement violate that party's copyrights or other legal rights. The foregoing indemnification and defense includes any third party claims alleging that (a) the University's participation in this Agreement and release of Selected Content to Google for Digitization constitutes a violation of that third party's copyrights and (b) Google's use or distribution of the Google Digital Copy constitutes a violation of that third party's copyrights, but excludes any third party claim that relates to University's use or distribution of the University Digital Copy. Mixed claims that include claims that relate to University's use or distribution of the University Digital Copy and claims covered by this Section shall not vitiate this indemnification responsibility by Google on breach-of-contract grounds. Consistent with the requirements of Virginia law, Google shall select counsel reasonably appropriate for such defense and shall pay for all costs incurred by such counsel. In addition, Google shall pay any damage awards or settlement costs that may be incurred solely in connection with such third party claims. University may participate in the defense with counsel of its own choice, at its own expense. Consistent with and subject to the requirements of Virginia law, settlement of any claim against the University shall be subject to approval of the University, which approval will not unreasonably be withheld, and to approval by the Governor of Virginia and Attorney General of Virginia where required by state law, which approval the University shall diligently seek.

10.2 Consistent with and subject to the requirements of Virginia law, University shall defend, or at its option, settle any third party lawsuit brought against Google (its affiliates, employees or agents) or proceeding that relates to University's use or distribution of the University Digital Copy in violation of that party's copyrights or other legal rights, including without limitation, any such use by a third party. The University shall have the sole responsibility for defense of such actions and for payment of any attorney's fees, damage awards or settlement costs that may be incurred solely as a result of the University's use or distribution of its own Digital Copy. University agrees that Google may participate in the defense with counsel of its own choice, at its own expense. The foregoing shall not be interpreted as a waiver of the sovereign immunity of the Commonwealth of Virginia, nor assumption by the University of any liability or obligation for the acts or omissions of Google or for the acts or omissions of others contrary to state law governing the University as an agency of the Commonwealth of Virginia.

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10.3 General. Responsibilities under Sections 10.1 and 10.2 shall be limited to (a) payment by the responsible party of all damages and costs finally awarded for such claim, or (b) settlement costs approved in writing by the responsible party. The foregoing obligations shall exist only if the party seeking indemnification ("requesting party"): (i) promptly notifies the responsible party of such claim, (ii) provides the responsible party with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (iii) gives the responsible party full control and sole authority over the defense and settlement of such claim subject to applicable law. The requesting party may join in defense with counsel of its choice at its own expense. The responsible party shall only reimburse the requesting party for expenses incurred by the requesting party with the responsible party's prior written approval.

11. LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM BREACH OF SECTIONS 2.3, 6 (CONFIDENTIALITY) OR PAYMENT OBLIGATIONS UNDER SECTION 10: (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE; AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO TEN THOUSAND DOLLARS (\$10,000). THE PARTIES AGREE THAT: (I) THE MUTUAL AGREEMENTS MADE IN THIS SECTION 11 REFLECT A REASONABLE ALLOCATION OF RISK, AND (II) THAT EACH PARTY WOULD NOT ENTER INTO THE AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY.

12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to digitize any portion of the Available Content or to use any portion of the Google Digital Copy as part of the Google Services. However, Google's decision to cease Digitization activities under this Agreement and thus fail to provide the University with a University Digital Copy shall not be taken without prior consultation with the University enabling the University to minimize investments in staff required under Section 5.3 of this Agreement. Likewise, notwithstanding anything in this Agreement to the contrary, University shall not be obligated to participate in the Digitization program described in this Agreement with respect to any or all of the Available Content. However, University's decision not to participate in the Digitization program shall not be made without prior consultation with Google enabling Google to minimize investments in operations required to perform the Digitization. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Assignment. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld.

12.3 Continuity. This Agreement shall be binding upon the successors and permitted assigns of both parties.

12.4 Notices. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be sent (a) if to University to the attention of the University Librarian at the address identified above and (b) if to Google to such address as provided at www.google.com/corporate/address.html or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, "Attn: Legal Dept." Notice shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent

GOOGLE CONFIDENTIAL
EXECUTION COPY



simultaneously via first class mail. Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts.

12.5 Independent Contractors. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

12.6 Force Majeure. Neither Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

12.7 Enforceability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties.

12.8 Non-Waiver in Event of Breach. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches.

12.9 Limitation of Rights. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns.

12.10 Headings. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

12.11 Completeness/Amendment. This Agreement sets forth the entire understanding and agreement between the parties and may be amended only in a writing signed by both parties.

12.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[Rest of page left intentionally blank.]



IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

Google	<u>David H. Eun</u>	University:	<u>Leonard W. Sandridge</u>
By:		By:	
Print Name:	DAVID EUN	Print Name:	Leonard W. Sandridge
Title:	Vice President, Content Partnerships	Title:	Executive Vice President and
	Google, Inc.		Chief Operating Officer
Date:		Date:	10/20/06

11-08-06P05:27 RCVD

[Signature Page to Cooperative Agreement]



EXHIBIT A
NON-DISCLOSURE AGREEMENT
(attached)

Google Mutual Non-Disclosure Agreement V032404C.1

This Mutual Non-Disclosure Agreement ("Agreement") is made and entered into between Google Inc., for itself and its subsidiaries and affiliates ("Google"), and "Participant" identified below, individually referred to as a "Party" and collectively referred to as the "Parties". The Parties wish to exchange Confidential Information (as defined below in Section 2) for the following purpose(s): a) to evaluate whether to enter into a contemplated business transaction; and b) if the Parties enter into an agreement related to such business transaction, to fulfill each Party's confidentiality obligations to the extent the terms set forth below are incorporated therein (the "Purpose"). The Parties have entered into this Agreement to protect the confidentiality of information in accordance with the following terms:

1. The Effective Date of this Agreement is October 20, 2006

2. In connection with the Purpose, a Party may disclose certain information it considers confidential and/or proprietary ("Confidential Information") to the other Party including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business information, including operations, planning, marketing interests, and products; (e) the terms of any agreement entered into between the Parties and the discussions, negotiations and proposals related thereto; and (f) information acquired during any facilities tours. Confidential Information shall not include the "Cooperative Agreement" entered into by the Parties; except that any disclosure of the Cooperative Agreement by a Party will only be with reasonable prior written notice to the other Party to allow the Parties to cooperate on the timing and manner of any disclosure in compliance with all applicable laws.

3. The Party receiving Confidential Information (a "Recipient") will only have a duty to protect Confidential Information disclosed to it by the other Party ("Discloser"): (a) if it is clearly and conspicuously marked as "confidential" or with a similar designation; (b) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or (c) if it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances, including without limitation those described in Section 2 above, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used.

4. A Recipient will use the Confidential Information only for the Purpose described above. A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own information of a similar nature to protect the Confidential Information and to prevent: (a) any use of Confidential Information in violation of this agreement; and/or (b) communication of Confidential Information to any unauthorized third parties. Confidential Information may only be disseminated to employees, directors, agents or third party contractors of Recipient with a need to know provided, the Recipient shall be responsible for such persons or contractor complying with the confidentiality provisions of this agreement.

5. Each Party agrees that it shall not do the following, except with the advanced review and written approval of the other Party: (a) publicly issue or release any articles, advertising, publicity or other matter announcing that the Parties are negotiating or have entered into the "Cooperative Agreement"; or (b) make copies of documents containing Confidential Information except as may be needed by a Recipient's attorneys or employees and subject to paragraph 4 above.

6. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is independently developed by the Recipient without a breach of this Agreement; (e) is disclosed by the Recipient with the Discloser's prior written approval; (f) is required to be

disclosed by the Virginia Freedom of Information Act; or (g) is required to be disclosed by court order or other governmental demand; provided that, in the event that disclosure is required by court order or other governmental demand ("Process"), (i) the Recipient shall immediately notify the Discloser of such Process; and (ii) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken no action to protect its interest in the Confidential Information within 14 business days after receipt of notice from the Recipient of its obligation to produce or disclose Confidential Information in response to the Process, or such shorter period as may be required by such Process. In the event that disclosure is required under the Virginia Freedom of Information Act (the "Act"), the recipient of the disclosure request will notify the other Party as soon as reasonably possible and the Parties will cooperate to determine the timing and manner of any disclosure in compliance with the requirements of the Act.

7. EACH DISCLOSER WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ITS CONFIDENTIAL INFORMATION. NO OTHER WARRANTIES ARE MADE. ALL CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER IS PROVIDED "AS IS".

8. This Agreement shall remain in effect until it is terminated by either Party with thirty (30) days prior written notice. Notwithstanding the foregoing, this Agreement shall survive with respect to Confidential Information that is disclosed before the effective date of termination.

9. Unless the Parties otherwise agree in writing, a Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure. A Recipient, upon Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed. Regardless of whether the Confidential Information is returned or destroyed, the Recipient may retain an archival copy of the Discloser's Confidential Information in the possession of outside counsel of its own choosing for use solely in the event a dispute arises hereunder and only in connection with such dispute.

10. This Agreement imposes no obligation on a Party to exchange Confidential Information, proceed with any business opportunity, or purchase, sell, license, transfer or otherwise make use of any technology, services or products.

11. No Party acquires any intellectual property rights under this Agreement (including, but not limited to, patent, copyright, and trademark rights) except the limited rights necessary to carry out the Purpose as set forth in this Agreement.

12. Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available to it.

13. This Agreement does not create any agency or partnership relationship. This Agreement will not be assignable or transferable by Participant without the prior written consent of Google.

14. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the agreement when a duly authorized representative of each party has signed the counterpart.

15. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements, and all contemporaneous oral communications. All additions or modifications to this Agreement must be made in writing and must be signed by the Parties. Any failure to enforce a provision of this Agreement shall not constitute a waiver thereof or of any other provision.

Google Inc.

By:

Name:

Title:

Amir Fruchtman
Amir Fruchtman
Senior Corporate Counsel

Participant:

By:

Name:

Title:

Rectors + Visitors of University of Virginia
Leonard W. Sandridge
Executive Vice President and
Chief Operating Officer

Address: 1800 Amphitheatre Parkway, Mountain View, CA 94043

Date: 10/21/06

Address:

PO BOX 400228
Charlottesville VA 22980

Date:

10/20/06

(Rev. 032404)

EXHIBIT 23

PART 2

**(LIBRARY AGREEMENTS WITH THE NEW YORK
PUBLIC LIBRARY, THE UNITED STATES LIBRARY OF
CONGRESS, STANFORD UNIVERSITY, PRINCETON
UNIVERSITY, COLUMBIA UNIVERSITY, CORNELL
UNIVERSITY, AND HARVARD UNIVERSITY HAVE BEEN
FILED UNDER SEAL)**

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and The University of Texas at Austin, a state agency and institution of higher education organized under the laws of the State of Texas, for and on behalf of the University Libraries with its principal offices at 1 University Station S5400, Austin, Texas 78712 ("University"), and is effective as of the last date this Agreement is signed by the parties (the "Effective Date"). Google and University herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media located at various University libraries and research centers;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Subject to the terms set forth herein, the Parties desire to enter into a non-exclusive agreement whereby Google will digitize works from the University collections to include them in Google's services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. DEFINITIONS. Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means selections from the University Collections as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes University Digital Content.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.4 "End User" means a person that accesses or uses the Google Services.

1.5 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.6 "Google Services" means Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-

based services accessible through the Google Sites and any Google syndication partner sites.

1.7 "Google Site" means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.8 "Hosted Access" shall have the meaning set forth in Section 4.6.

1.9 "Initial Term" shall have the meaning set forth in Section 8.1.

1.10 "Other Library" means any library (including any libraries affiliated or associated with any university or other educational institution, other than University) with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library.

1.11 "Project" means a project for digitizing certain Selected Content.

1.12 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.

1.13 "Renewal Term" shall have the meaning set forth in Section 8.1.

1.14 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.15 "Term" shall have the meaning set forth in Section 8.1.

1.16 "University Collections" means those collections of the University of Texas at Austin which may be administered by a University library, research center, or other University organizational unit.

1.17 "University Collections Digital Content" means content that University already has in its possession in Digitized form, as of the Effective Date.

1.18 "University Digital Copy" means the Digitized copy of the Selected Content as specified in Section 4.7.

1.19 "University Library Patrons" means the sum total of all individuals and organizations that access University Collections from University library websites.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that University agrees to commit no fewer than one million (1,000,000) volumes to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to determine the rate in which University will provide books of Selected Content to Google to Digitize and will develop a timetable for completing each Project Plan for Digitizing Selected Content. University will provide Google with metadata for each Selected Content to be Digitized in the format specified by Google prior to Google Digitizing any Selected Content. Also, University will provide Google with an identifier

such as an OCLC call number for each text of the Available Content as soon as reasonably possible after the Effective Date and prior to the commencement of Digitization efforts under this Agreement. Google will use such identifier information for internal purposes only.

2.2 Collecting the Selected Content. University shall be responsible for locating, pulling and moving the Selected Content to a designated location at the University facility where Google can collect it, as well as later re-shelving the Selected Content when the Digitization is complete. If agreed upon by the Parties in a particular Project Plan, the collection, pulling, moving, and re-shelving functions may be assigned to Google. Upon commencement of a Project, University shall at its sole discretion perform any conservation efforts, at its expense, that it determines are required and/or desirable for the Selected Content prior to Digitization. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing.

2.3 Locating the Digitization Operation. Google will designate a location where the Selected Content will be Digitized. Google shall pay for any and all fees and costs associated with the use of said space; University shall not be liable for any such fees and costs. Google agrees that each Digitization facility it controls will, at all times, be reasonably clean, dry, cool, protected from fire and secure against theft and vandalism and at no time shall smoking be permitted in any Digitization facility. Google personnel, agents, contractors and other representatives involved in the Digitization and/or handling of the Selected Content will satisfy and comply with standards mutually agreed by the Parties in any Project Plan. University agrees that Google may remove the Selected Content from University premises to perform the Digitization in facilities controlled by Google.

2.4 Digitizing the Selected Content. Subject to handling constraints or procedures specified in any Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the relevant Project Plan, if any. If the University establishes that Selected Content was not returned in substantially the same condition, Google will, at Google's option and the University's sole remedy, either replace the Selected Content in question or pay the University for the repair or replacement of such Selected Content up to a maximum as may be specified in the relevant Project Plan provided that University agrees that Google's obligation will not exceed \$1,000 for any given text and that Google's maximum liability for any damage or loss to Selected Content in Google's custody resulting from a single incident or event will not exceed one million dollars (\$1,000,000). Unless the University makes Google aware that specific materials require non-standard care, transport, and processing and Google decides to go forward with Digitization of such items, Google shall have no responsibility to undertake special efforts to address unique or fragile conditions in its transport or handling of individual items. University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from University premises and will provide Google with an itemized list of any such materials.

2.5 Return of the Selected Content. Google shall return the Selected Content to the source from which Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content. Google will use reasonable commercial efforts to ensure that Selected Content is returned within ten (10) business days of its being scanned or after a determination is made by Google that Selected Content will not be scanned. Notwithstanding the foregoing, Google agrees that no materials in a Project will be off the University's shelves for longer than fifteen (15) business days or for a longer period as may be specified in the relevant Project Plan.

3. COSTS.

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to locating, pulling and moving the Selected Content to and from the designated location at the University facility so that Google can collect it as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy, (d) any conservation efforts that University elects to undertake on the Selected Content prior to Digitizing, and (e) barcoding and associated data entry to barcode the Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to Digitize the Selected Content, (c) space required to Digitize the Selected Content, and (d) transportation of Selected Content from the designated location at the University facility to a Google designated facility to perform the Digitization.

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content, conducting conservation assessments, performing conservation work, performing any required copyright research and clearances, and metadata development as required. Any such budget will take precedence over the provisions of Sections 3.1 and 3.2 above and will be effective only after set forth in a writing signed by both Parties.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES.

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request that Google not Digitize any Available Content or to stop displaying or using any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has actual or apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, subject to copyright law, as part of the Google Services. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing



and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has permission or license from the copyright owner to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute fair use under copyright law and (2) bibliographic (e.g. title, author, date, etc.) and other non-copyrighted information. In the event that Google has received a license or other permission from the applicable copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Google Digital Copy that is in-copyright. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Access. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and to University Library patrons via a website that will be hosted by Google ("Hosted Access"). The design, layout, content, functions and features of Hosted Access will be determined by Google but substantially similar to that provided by Google to any Other Library as such features evolve during the Term.

4.7 University Digital Copy. Unless otherwise agreed by the Parties in writing, the "University Digital Copy" means the digital copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files including bibliographic information consisting of title and author of each Digitized work and technical information consisting of the date of scanning the work, information about which image files correspond to what Digitized work, and (c) a list of works that are supplied for Digitization but not actually Digitized.

4.7.1 Google agrees to provide to University access to one copy of all Digitized Selected Content that has been "Successfully Processed" within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties. Selected Content is "Successfully Processed" when Google determines it has satisfactorily gone through all stages of Google's Digitization, post processing and quality assurance procedures. In addition Google will provide the University with the ability to sample the files for two hundred and fifty (250) Digitized works per quarter to assess quality. Google agrees that the quality of files provided to University in the University Digital Copy will be substantially similar to the quality of files provided to any Other Library. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute as set forth in Section 4.1 from the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy.

4.8 Ownership and use of University Digital Copy. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the

University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy on University Website.

4.9.1 Uses by University Library Patrons: (a) University shall have the right to use the University Digital Copy in whole or in part at University's sole discretion, in accordance with copyright law, as part of services offered to University Library Patrons; provided that University not charge or receive payment or other consideration for such use of the University Digital Copy. (b) University may, however, charge for services it provides that build upon the University Digital Copy. For example, University may charge University Library Patrons for access to annotations provided by professors and scholars even though the original work digitized by Google will always be accessible without a fee. University may also charge University Library Patrons to recover copying costs actually incurred in serving their needs.

4.9.2 Public Access:

(a) **Digitized by Google Reference.** University agrees to identify the works within the University Digital Copy that it makes available to the public as "Digitized by Google" in a statement on a web page or other access point to be mutually agreed to by the Parties, or in a substantially similar manner.

(b) **Automated Access.** University shall implement technological measures such as the robots.txt protocol or similar measures to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available.

(c) **Commercial and Systematic Downloading and Distribution.** University shall also make reasonable efforts to prevent third parties from (i) downloading or otherwise obtaining works from the University Digital Copy for commercial purposes, (ii) commercial redistribution of works from the University Digital Copy, or (iii) automated and systematic downloading or distribution to the public at large of substantial portions of the University Digital Copy from the services offered on University's website.

(d) **Protection for Internal Archive.** University shall implement security and handling procedures for the University Digital Copy as mutually agreed by the Parties. Except as expressly allowed herein, University will not share, provide, license, or sell the University Digital Copy to any third party.

4.10 Distribution of the University Digital Copy.

4.10.1 Distribution to Libraries and Educational Institutions: Subject to the limitations set forth herein,

(a) University shall have the right to distribute no more than ten percent (10%) of public domain works from the University Digital Copy to other libraries and educational institutions in accordance with copyright law and in each case for non-commercial research, scholarly or academic purposes.

(b) University shall have the right to distribute all or any portion of the public domain works contained in the University Digital Copy to a library member of the Digital Library Federation or with Google's prior written consent, to other institutions (each recipient entity is referred to herein as a "**Recipient Institution**") for non-commercial research, scholarly or academic purposes by the Recipient Institution and the faculty, students, scholars and staff authorized by the Recipient Institution to access their commercially licensed electronic information products.

4.10.2 Limitations on Recipients of Distributed Copy:

(a) **Contract with Google:** Prior to any distribution by University to a Recipient Institution, Google and the Recipient Institution must have entered into a written agreement on terms acceptable to Google governing the use of the University Digital Copy and that, among other things, provide an indemnity to Google.

(b) **Contract with University:** In addition, University and Recipient Institution must enter

into a written agreement that

(A) prohibits that Recipient Institution from redistributing without first obtaining the prior written consent of Google,

(B) makes Google an express third party beneficiary of such agreement,

(C) provides an indemnity to Google from the Recipient Institution for the Recipient Institution's use of the University Digital Copy or part thereof,

(D) contains limitations at least as restrictive as the restrictions on University set forth in Section 4.9,

(E) contains limitations on the use of the University Digital Copy as set forth in clauses 4.10.1 (a) and (b) above, if any, and

(F) requires each Recipient Institution, to the extent it makes any portion of the University Digital Copy publicly available, to identify the works as "Digitized by Google" in a statement on the applicable web page or other access point, or in a substantially similar manner.

5. ACCESS, AUTHORIZATION AND SUPPORT.

5.1 **Access.** Google shall have the right to access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that Google notify University at least two (2) days in advance of its intent to access such materials.

5.2 **Authorization.** The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact; in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue.

5.3 **Support.** Each party shall appoint one person to serve as the administrative contact for the other, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by each party. Each party shall also appoint one person to serve as the technical contact for the other for obtaining and regulating the use of the University Digital Copy among other things. This technical contact shall be available during regular business hours at a telephone number and e-mail address to be provided by each party. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.

6. CONFIDENTIALITY.

6.1 **Confidentiality.** By virtue of this Agreement, each Party may have access to information of the other Party which is considered confidential and proprietary, including product plans, customer lists, and proprietary technology or methods ("**Confidential Information**"). whether disclosed in tangible or intangible form. Information disclosed in tangible form will be considered Confidential Information if it is marked as "Confidential". Information disclosed in intangible form will be considered Confidential Information if the disclosing Party clearly indicates that it is confidential at the time of disclosure.

6.2 **Obligations.** Each Party shall exercise the same degree of care, but no less than a reasonable degree of care, to avoid the publication or dissemination of the Confidential Information of the other Party as it affords to its own confidential information of a similar nature

which it desires not to be published or disseminated. The receiving Party ("Recipient") shall not use Confidential Information of the disclosing Party ("Discloser") except in connection with this Agreement and the matters contemplated hereby. The obligation of the parties not to disclose Confidential Information survives termination or cancellation of this Agreement.

6.3 Exceptions. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is independently developed by the Recipient without a breach of this Agreement; (e) is disclosed by the Recipient with the Discloser's prior written approval; or (f) is required to be disclosed by operation of law, court order or other governmental demand ("Process"); provided that (i) the Recipient shall immediately notify the Discloser of such Process; and (ii) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has: (a) requested protection from the legal or governmental authority and such request has been denied; (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process; or (c) taken no action to protect its interest in the Confidential Information within 10 business days after receipt of notice by the Recipient of its obligation to produce or disclose Confidential Information in response to the Process.

6.4 Public Relations; Publicity. Neither Party will issue publicity announcements, press releases or other public statements regarding the Agreement without the other Party's prior written approval. Google may include the name "The University of Texas at Austin" and the University logo illustrated in Attachment A hereto ("Logo") in factual statements about University's participation in Google's digitization efforts, for example, in lists of other partner universities, with the prior written permission of the University's Director of Trademark Licensing; provided that Google is not required to obtain separate permissions for each use of the Logo so long as subsequent uses are similar to the prior reviewed and approved use. As a courtesy to University to permit University to confirm Google's judgments regarding similarity, Google will provide University post-hoc notice of its similar uses for the first three (3) months of the Term.

7. BRAND FEATURES.

7.1 Ownership. Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 License to University Brand Features. Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

8. TERM AND TERMINATION.

8.1 Term. This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "Renewal Term") unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The "Term" of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Termination. Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof.

8.3 Effect of Expiration or Termination. After expiration or termination of this Agreement for any reason: (i) each Party shall within thirty (30) days return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession, (ii) Google shall within thirty (30) days return to the University any Selected Content that it has in its possession or in transit at termination in a manner specified in Section 2.5, (iii) the University shall within ninety (90) days download any digitized Selected Content that has been created by Google during the Term but not yet downloaded by the University at termination, in a manner specified in Section 4.7.1. The following sections survive expiration or termination of this Agreement: 1, 2.4, 2.5, 4 (excluding Section 4.6), 6, 8.3, 9, 10, 11 and 12.

9. WARRANTIES AND DISCLAIMER.

9.1 Mutual Warranties. Google warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation. Each Party represents to the other that (i) the individual who executes this Agreement has full power and authority to do so; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BOTH PARTIES SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 By Google. Google shall defend, indemnify, and hold harmless University from and against any and all liabilities, damages, charges, fees, including reasonable attorney's fees, costs, and expenses incurred by University and arising out of a third party claim, lawsuit and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law, including, but not limited to, an allegation of copyright infringement: University's provision of Available Content to Google for digitization but only to the extent such provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the

Google Digital Copy in connection with Google Services. The foregoing indemnification excludes any third party claim that relates to University's use or distribution of the University Digital Copy.

10.2 By University. Consistent with and subject to the requirements of the Constitution and Laws of the State of Texas, University shall defend, indemnify, and hold harmless Google from and against any and all liabilities, damages, charges, fees, including reasonable attorney's fees, costs and expenses incurred by Google and arising out of a third party claim, lawsuit and/or any other legal, quasi-legal, or administrative proceeding alleging that University's use or distribution of the University Digital Copy (including any use by a third party) violates any applicable law including, but not limited to, an allegation of copyright infringement. The foregoing indemnification excludes any third party claim that relates to University's provision of Available Content to Google for Digitization to the extent such provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services.

10.3 General. The foregoing obligations shall exist only if the party seeking indemnification ("Indemnitee"): (i) promptly notifies the indemnifying party ("Indemnitor") of such claim, (ii) provides the Indemnitor with reasonable information, assistance and cooperation in defending the claim, lawsuit or proceeding, and (iii) gives the Indemnitor full control and sole authority over the defense and settlement of such claim, subject to the statutory obligations of the Texas Attorney General when the University is named as a defendant in a lawsuit. The Indemnitee may join in defense with counsel of its choice at its own expense.

11. Limitation of Liability

(A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000). The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability. The foregoing limitations however, are not applicable to any damages arising from a breach of Section 6, Confidentiality, to any monetary obligations arising out of the indemnification obligations in Section 10, Indemnification, including, but not limited to, indemnification for allegations of copyright infringement, or to any damages related to actions for personal injury or willful misconduct. The limitations set forth in (B) above are not applicable to damages arising from works that are lost, stolen or damaged while such works are in Google's custody or control subject to the limits set forth in Section 2.4. University's obligations set forth in this Section are subject to the provisions of Section 12.13.

12. GENERAL PROVISIONS.

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. University shall not be obligated to participate in any Project Plan to the extent University does not have sufficient funds to perform its budgeted obligations under that Project Plan. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Assignment. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld, except that either Party may assign its rights and delegate its duties under this Agreement upon written notice to the other Party to a division or an affiliate thereof (that is not a competitor of the non-assigning Party), provided such division or affiliate agrees to be bound by all of the terms hereof, and provided further that Google may assign this Agreement without consent to a successor-in-interest in connection with a merger or the sale of all or substantially all of its assets. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void.

12.3 Continuity. This Agreement shall be binding upon the successors and permitted assigns of both Parties.

12.4 Notices. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail and addressed as follows:

if to University:

The University of Texas at Austin
Office of the Vice-President and Chief Financial Officer
PO Box 8179
Austin, TX 78713-8179
ATTN: Kevin P. Hegarty, Vice President and Chief Financial Officer

With a copy to:

The University of Texas at Austin
University of Texas Libraries
Office of the Vice-Provost
1 University Station S5400
Austin, TX 78712
ATTN: Fred M. Heath, Vice Provost and Director of Libraries

if to Google:

to such address as provided at www.google.com/corporate/address.html or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, "Attn: Legal Dept".

Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts.

12.5 Independent Contractors. The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the Parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

12.6 Force Majeure. Neither Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

12.7 Enforceability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties.



12.8 Non-Waiver. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches.

12.9 Limitation of Rights. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns.

12.10 Headings. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

12.11 Amendment. This Agreement sets forth the entire understanding and agreement between the Parties and may be amended only in a writing signed by both Parties.

12.12 Franchise Tax Certification. Google is an out-of-state corporation that is not subject to the Texas Franchise Tax.

12.13 Dispute Resolution. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Google to attempt to resolve any claim for breach of contract made by Google that cannot be resolved in the ordinary course of business. The Chief Business Officer of University shall examine Google's claim and any counterclaim and negotiate with Google in an effort to resolve such claims. The Parties specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

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TF

IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

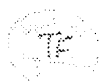
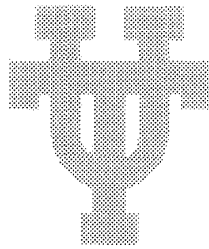
Google Inc.	The University of Texas at Austin
By: <i>David H. Eun</i>	By: <i>David H. Eun</i>
Print Name: DAVID EUN	Print Name: David H. Eun
Title: Vice President, Content Partnerships	Title: Business Contracts Administrator
Date: 12-21-06	Date: 1-8-09

12-21-06 03:40 RCYD

Google and The University of Texas at Austin
Cooperative Agreement

Attachment A: The University of Texas Logo

As set forth in Section 6.4, the Logo of The University of Texas at Austin shall be an interlocking UT, represented below.



COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google") and The Board of Trustees of the University of Illinois on behalf of the Committee on Institutional Cooperation (as described in Section 1.3 below) ("CIC") and each university listed as a member of CIC in Section 1.3 below that has agreed to the terms herein by executing a signature page to this Agreement (each such university is referred to herein as a "CIC University"; all such universities are collectively referred to herein as the "CIC Universities"). This Agreement is effective as of the date signed by Google below (the "Effective Date"). Google, CIC, and each CIC University herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Each CIC University is a leading academic institution and has amassed an enormous collection of works in various media; and

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services; and

WHEREAS, Google and the CIC Universities share a mutual interest in making information available to the public; and

WHEREAS, CIC Universities wish to digitize portions of their collections in a manner consistent with copyright law to create a searchable database to facilitate use of their collections by scholars and the general public for education, research and related purposes; and

WHEREAS, CIC Universities and Google have determined that it would be most cost effective, and reduce the risk of damaging volumes in the CIC Universities' collections, to create digitized copies for the CIC University's fair use and digitized copies for Google's fair use as part of a single scanning project; and

WHEREAS, Google is willing to digitize works from the collections of CIC Universities for Google's fair use purposes and provide access to the digitized works to each CIC University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google, CIC, and each CIC University hereby agree as follows:

DEFINITIONS

1. DEFINITIONS. Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means those portions of each CIC University's print collection that such CIC University wishes to make available to Google for Digitizing and that Google may wish to Digitize as from time to time identified by Google and the applicable CIC University. The term "Available Content" also includes each CIC University's Digital Content.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "CIC" or "Committee on Institutional Cooperation" is a consortium of twelve (12) research universities that collaborate on a wide range of academic and administrative initiatives. The current members of the CIC are: University of Chicago, University of Illinois, Indiana University, University of Iowa, University of Michigan, Michigan State University, University of Minnesota, Northwestern University, University of Wisconsin-Madison, The Ohio State University, Penn State University, and Purdue University. For the purposes of this Agreement, "CIC" is generally understood to refer to the thirteen (13)

research libraries (including the libraries affiliated with the University of Illinois at Urbana-Champaign and Chicago) affiliated with the CIC member institutions. These libraries have a long history of collaboration, and established processes for shared decision-making facilitated by the CIC Administrative Offices.

1.4 "CIC Administrative Offices" is the central CIC administrative staff operating under the administrative authority for the CIC vested in the Provosts of the member CIC Universities. CIC Administrative Offices are located at 1819 South Neil St, Suite D, Champaign, IL 61820. The fiscal agent for CIC is The Board of Trustees of the University of Illinois.

1.5 "Copyright Laws" means the U.S. Copyright Act, 17 U.S.C. §§ 101 et. seq., all other copyright laws, rules and regulations worldwide, and all international treaties creating or protecting copyrights, including the Berne Convention and the Universal Copyright Convention, as the same from time to time exist.

1.6 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.7 "End User" means a person that accesses or uses the Google Services.

1.8 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.9 "Google Services" means Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites.

1.10 "Google Site" means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.11 "Hosted Solution" shall have the meaning set forth in Section 4.6.

1.12 "In-Copyright Works" means those works of Digitized Selected Content that are in-copyright.

1.13 "Initial Term" shall have the meaning set forth in Section 8.1.

1.14 "Other Library" means any library (other than a CIC University library) with which Google has an agreement as of the Effective Date concerning Digitization by Google of books from that library.

1.15 "Public Domain Works" means those works of Digitized Selected Content that are in the public domain.

1.16 "University Digital Copy" shall have the meaning set forth in Section 4.7.

1.17 "University Digital Content" means content that a CIC University already has in its possession in digitized form.

1.18 "Project" means a project for digitizing certain Selected Content.

1.19 "Project Plan" means a written plan for implementing a Project. The Project Plan shall include the following: (a) timetable for Digitizing the Selected Content, (b) instructions by a CIC University regarding how the Selected Content is to be collected and returned by Google; (c) material handling processes for the Selected Content, (d) if required, the amount of time available to a CIC University for performing conservation efforts; (e) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to a CIC University; and (f) a budget for the Project.

1.20 "Renewal Term" shall have the meaning set forth in Section 8.1.

1.21 "Selected Content" means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.22 "Source CIC University" means the CIC University where the Selected Content was sourced.

1.23 "Term" shall have the meaning set forth in Section 8.1.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Identifying the Available and Selected Content to be Digitized. Google, the CIC Administrative Offices, and each CIC University shall collaborate to identify Available Content that Google may elect to Digitize. The CIC Universities agree that they will collectively commit Available Content of not less than 10,000,000 volumes to the Digitization efforts under this Agreement. Included in the Available Content will be CIC library holdings that add new and unique content to Google Services, and "collections of distinction" from across the CIC libraries that will be recommended for Digitization in toto. As indicated in Section 12.1, Google reserves final discretion over which Available Content it will Digitize (Selected Content), but will collaborate with the CIC Administrative Offices in making these decisions. Google, the CIC Administrative Offices, and each CIC University shall cooperate in good faith and work diligently to develop a sequence and timetable for completing the Project Plan for Digitizing the Selected Content of the CIC Universities. Each Source CIC University will provide Google with metadata for each Selected Content to be Digitized in the format specified by Google prior to Google Digitizing any Selected Content. Also, each Source CIC University will provide Google with an identifier such as an OCLC call number for each text of the Available Content as soon as reasonably possible after the Effective Date and prior to the commencement of Digitization efforts under this Agreement of the Selected Content provided by such Source CIC University.

2.2 Collecting the Selected Content. Each CIC University shall be responsible for locating, pulling and moving the Selected Content to a designated location at the CIC University facility as well as re-shelving the Selected Content when the Digitization is complete. Upon commencement of a Project, and consistent with general guidelines set forth by a CIC working group, each CIC University shall perform any conservation efforts that the CIC University determines are required for the associated Selected Content. On a rolling basis, as this conservation effort is completed, each CIC University shall provide the conserved Selected Content to Google for Digitizing.

2.3 Transporting and Storing the Selected Content. Google will move the Selected Content from a designated location at the CIC University facility to a Digitization facility controlled by Google. Google will provide and be responsible for commercially reasonable transport methods and temporary storage areas appropriate for the Selected Content in accordance with Section 2.6.

2.4 Digitizing the Selected Content. Google will be responsible for Digitizing the Selected Content. Subject to handling constraints or procedures specified in the Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content, so long as the resulting digital files conform to a minimum specification established by Google in consultation with the CIC Administrative Offices, the CIC Universities, and the Other Libraries. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the Project Plan, if any.

2.5 Return of the Selected Content. Google shall return the Selected Content to the designated pick-up location at the Source CIC University and in the like manner in which it was collected after Google completes Digitizing the Selected Content. Google will provide and be responsible for commercially reasonable transport methods appropriate for the Selected Content in accordance with Sect. 2.6.

2.6 Insurance Coverage for Digitization Operations. All risk of loss, damage or destruction of materials will lie with Google from the time that Google accepts possession of the materials until they are returned to the Source CIC University; provided that each CIC University agrees that Google's obligation will not exceed \$1,000 for any given text and that Google's maximum liability for any damage or loss to

Selected Content in Google's custody resulting from a single incident or event will not exceed one million dollars (\$1,000,000). Google will carry reasonably sufficient insurance with a reputable independent provider insuring against the risk of loss, damage, or destruction of materials entrusted to Google's custody, and will provide, upon request of a CIC University, a certificate of insurance evidencing such coverage. In general, Google will provide a transport method and temporary storage area that is reasonably clean, dry, cool, free from insects and other pests, protected from fire, and secure against theft and vandalism. However, unless the CIC Administrative Offices or a CIC University makes Google aware that specific materials require non-standard care, transport, storage and/or processing and Google decides to go forward with digitization of such items, Google shall have no responsibility to undertake special efforts to address unique or fragile conditions in its transport, storage or handling of individual items. Each CIC University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from the CIC University's premises and will provide Google with an itemized list of any such materials.

3. COSTS

3.1 Costs paid by each CIC University. In addition to costs mutually agreed upon by the Parties, each CIC University shall be responsible for the following costs: (a) those related to locating, pulling and moving the Selected Content to a designated location at the Source CIC University facility as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to existing CIC University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by CIC University to receive all of the University Digital Copy, (d) any conservation efforts that Source CIC University elects to undertake on the Selected Content prior to Digitizing, and (e) barcoding and associated data entry to barcode the Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software and other equipment or technology used to Digitize the Selected Content, (c) space required and other facilities used to Digitize the Selected Content, and (d) transportation of Selected Content from the Source CIC University facility where the Selected Content is normally kept to a Google designated facility and back to the Source CIC University facility where the Selected Content is normally kept, plus any incidental storage at a Google designated facility.

3.3 Budgets. Notwithstanding the foregoing, the CIC Administrative Offices or any CIC University and Google may jointly develop a budget to advance coordinated planning for each University Project Plan, pursuant to which the Parties may allocate the cost of researching and identifying the Available Content and/or Selected Content, conducting conservation assessments, performing conservation work, and performing any required copyright research and clearances. Any such budget agreed to in writing by the parties will take precedence over the provisions of Sections 3.1 and 3.2 above.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES

4.1 Copyright Status.

(a) Compliance With Copyright Laws. The Parties understand that the Selected Content may include some works that will be treated hereunder as Public Domain Works and some works that will be treated hereunder as In-Copyright Works. The Parties agree and intend to perform this Agreement in compliance with all applicable Copyright Laws and without infringing the intellectual property rights or any similar rights of any third party.

(b) Determination of Copyright Status. Each Party will be responsible for determining at its reasonable discretion how to categorize Selected Content under applicable Copyright Laws. Notwithstanding such determination, if any Party believes in good faith that any part of the Selected Content should be treated as an In-Copyright Work under any applicable Copyright Laws, and so notifies the other Parties in writing, then, within forty-eight (48) hours of another Party's receipt of such notice, such other Party will take appropriate steps to assure that it is

treating, or going forward will treat, such part of the Selected Content as an In-Copyright Work under such Copyright Laws.

(c) "Opt-Out" Procedure. Throughout the Term, Google will implement and maintain the availability of processes whereby the copyright holder can request Google not to Digitize specific In-Copyright Works included in the Available Content or the Selected Content or, if one or more of such In-Copyright Works has already been Digitized by Google, to cease the display or use of such In-Copyright Works made by Google under this Agreement. If Google determines that the person or entity making the request is the copyright holder or has apparent authority to act on behalf of the copyright holder, Google shall promptly comply with such request and promptly notify the CIC and each CIC University in writing of such request if the request requires a CIC University to take action to cease the display or use of the In-Copyright Works or to delete such In-Copyright Works from the University Digital Copy. Within forty-eight (48) hours of its receipt of such notice, the CIC and each CIC University shall (a) cease the display or use of the University Digital Copy of such In-Copyright Works and (b) delete any such In-Copyright Works if and to the extent that such works were previously provided as part of the University Digital Copy.

4.2 Ownership of Selected Content and Google Digital Copy.

(a) Ownership of Available Content and Selected Content. No Party to this Agreement shall have or claim any rights, title or interest in or to the Available Content or the Selected Content (i.e., to the materials underlying the digitization process), except where such Party acquired or acquires such rights, title or interests prior to or independently of the performance of this Agreement. Nothing set forth in this Agreement shall be deemed to transfer to any Party any ownership or intellectual property rights in or to any part of the Available Content or the Selected Content.

(b) Ownership of Google Digital Copy. As among the Parties, Google shall own all rights, title, and interest in and to the Google Digital Copy, subject to the rights of the copyright holder and/or its licensees for particular In-Copyright Works made a part of the Google Digital Copy.

4.3 Google's Use of the Google Digital Copy.

(a) Google Services. Subject to the restrictions set forth in this Agreement, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, as part of the Google Services.

(b) Searching Free to the Public. To the extent and for so long as Google uses all or part of the Google Digital Copy in connection with the Google Services, it shall provide a service at no cost to End Users that (i) permits such End Users to search both the Public Domain and In-Copyright Works contained in such part of the Google Digital Copy using an index of the full text or content; (ii) displays search results for such Public Domain Works and In-Copyright Works as set forth in Sections 4.3(c) and (d) below; and (iii) serves and displays the full text or content of such Public Domain Works.

(c) Use of Public Domain Works and Certain In-Copyright Works. To the extent portions of the Google Digital Copy are or become in the public domain or, if in copyright, to the extent Google has obtained the written permission of the copyright holder, Google shall have the right, in its sole discretion, among other things, to (i) index the full text or content of the Google Digital Copy, (ii) serve and display full-sized digital images corresponding to those portions, (iii) make available full text of content for printing and/or download, and (iv) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). To be clear, in the event that Google has received a written license or other written permission from the applicable copyright holder to use In-Copyright Works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license or other permission. Google shall be solely responsible for ensuring that its use of the Google Digital Copy is authorized by the relevant copyright holders or by applicable laws, including Copyright Laws.

(d) Use of All Other Works. For all other portions of the Google Digital Copy, Google shall limit its use of such portions to (i) indexing the full text or content of such portions, (ii) serving and displaying search results, and (iii) serving and displaying text or content contained in such portions; but, in each case, only if and to the extent such uses are permitted under applicable Copyright Laws.

4.4 Security and Privacy. Google shall implement and maintain for so long as the Google Digital Copy remains in its possession or under its control commercially reasonable physical and technological measures (e.g., through use of the robots.txt protocol) to restrict unauthorized automated access to any portion of the Google Digital Copy that is in-copyright. In addition, Google shall maintain on its website a privacy policy that governs the collection, use and disclosure of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As among the Parties, the Google Services and all content therein are, and at all times will remain, the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to the CIC Administrative Offices or any CIC University of any ownership interest in the Google Services. The CIC Administrative Offices and each CIC University acknowledge and agree that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Solution.

(a) Throughout the Term, Google will provide searchable access to the Google Digital Copy for the CIC Universities, their patrons, researchers and staff via a website hosted by Google (the "Hosted Solution"). To the extent portions of the Google Digital Copy are or become in the public domain or, if in copyright, to the extent Google has obtained the written permission of the copyright holder, Google will (i) serve and display to users of the Hosted Solution full-sized digital images corresponding to those portions, and (ii) make available to users of the Hosted Solution full text of content for download. For all other portions of the Google Digital Copy, Google shall serve and display search results and text or content only to the extent permitted under applicable Copyright Laws.

(b) The Hosted Solution will be provided at no charge to the CIC or the CIC Universities.

(c) The design, layout, content, functions, features, reliability and performance of the Hosted Solutions will be determined by Google but substantially similar in quality and efficiency to that provided by Google to any Other Library.

(d) During the Term, a CIC University may report problems with the Hosted Solution to Google's technical contact and the Parties will work to resolve such problems in a commercially reasonable time and manner.

4.7 University Digital Copy and Establishment of Escrow.

(a) Definition of "University Digital Copy." Unless otherwise agreed by the Parties in writing, the term "University Digital Copy," as used in this Agreement, means a copy of the Selected Content Digitized by Google. The University Digital Copy will consist of (a) a set of image and OCR files, (b) associated meta-information about the files such as which image files correspond to that Digitized work, and (c) the logical order of those image files. Google will create the University Digital Copy as part of the Project.

(b) Escrow Deposit. As Google "successfully processes" the works contained in the Selected Content, Google will place the University Digital Copy of such Selected Content in escrow on a secure server maintained by Google at Google's cost and expense. For purposes of this Section 4.7(b), Google will have "Successfully Processed" the works contained in the Selected Content when Google determines it has satisfactorily gone through all stages of Google's Digitization, post processing and quality assurance procedures. The portions of the University Digital Copy that are in escrow are hereinafter referred to as the "Escrow Deposit."

(c) Release of Works Held in Escrow. Google will make one copy of the works in the Escrow Deposit available for download by the CIC or Source CIC Universities as set forth in Sections 4.8 through 4.11 below.

(d) Security. For so long as Google maintains such escrow, Google shall implement and maintain commercially reasonable physical and technological measures to protect the Escrow Deposit from unauthorized access, copying, use or disclosure.

(e) Quality. Google will provide the CIC Administrative Offices or a Source CIC University with the ability to sample the files for one hundred (100) Digitized works per quarter to assess scanning quality.

4.8 Release of University Digital Copy of Public Domain Works.

(a) Timing of Release. In a timeframe mutually agreed by the Parties, but not to exceed six months from the date of scanning, Google agrees to make each Successfully Processed Public Domain Work contained in the Escrow Deposit available for downloading by the applicable Source CIC University.

(b) Downloading Public Domain Works. This release of the Public Domain Works from the Escrow Deposit shall allow for, at the discretion of the Source CIC University, transfer to either a) a secure server configured for such a purpose at the Source CIC University; or b) secure servers maintained and managed by a CIC Hosting Library (as defined in Section 4.13 below) on behalf of CIC Universities.

(c) Public Domain Works Digitized as Part of Other Projects. For readily defined public domain Selected Content held by one or several CIC Universities, but already digitized by Google from source libraries outside the CIC without any restrictions on distribution, Google at its discretion may digitize such works again using the copy from a CIC University or provide a digital copy drawn from another library beyond the CIC.

4.9 Works in Dispute and Works of Uncertain Copyright Status.

(a) Works in Dispute. Notwithstanding anything to the contrary herein, Google may withhold or delay release of any works not clearly in the public domain from the Escrow Deposit if Google's Digitization, use or release of such work is the subject of a dispute between Google and a third party. In such event, Google must inform the CIC Administrative Offices or the Source CIC University, in writing, of the specific work(s) being withheld and the details of the dispute. If such portions of the University Digital Copy have previously been released to any CIC University under this Agreement, then that CIC University agrees to delete or destroy any such portions of the University Digital Copy in its possession or under its control.

(b) Works of Uncertain Copyright Status. The terms of Section 4.1(b) notwithstanding, the Source CIC University shall have the right to claim access to any Successfully Processed work included in the Selected Content that is not subject to any dispute that it deems to be in the public domain, but which Google believes is not clearly in the public domain, if the Source CIC University (i) provides Google with acceptable evidence that the work is in the public domain and (ii) provides a written commitment to indemnify or otherwise assume full liability for any claims arising from such access to that work along with assurance acceptable to Google that any claim resulting from such access under such assumption of liability will be satisfied.

4.10 University Digital Copy of In-Copyright Works.

(a) In General. As noted in Section 4.1 above, Google may, in ways consistent with applicable Copyright Law, select and Digitize In-Copyright Works contained in the Selected Content. Such works will be part of the University Digital Copy and, as such, the Digitized files will be maintained in escrow as set forth in Section 4.7 above and released to the Source CIC University as set forth in Section 4.11. Until such time as these In-Copyright Works are released, Google agrees to provide CIC Universities with searchable access to such In-Copyright Works as described in Section 4.6 above.

(b) List of In-Copyright Works. Google will provide the CIC Administrative offices with a list of the In-Copyright Works contained in the Escrow Deposit.

4.11 Release of In-Copyright Works Held in Escrow. Subject to the terms of this Section 4 Google agrees to enable download capability from the escrow to the CIC Administrative Offices or the applicable Source CIC University for one copy of the digital file for any In-Copyright Work(s) held in escrow in the event that any of the following release conditions (each, a "Release Condition") occurs:

- (a) the In-Copyright Work becomes in the public domain;
- (b) a Party has obtained permission through contractual agreements with copyright holders that includes the right to make a copy of the In-Copyright Work and to provide it to the CIC or Source CIC University;
- (c) well established case law exists that In-Copyright Works can be copied and held by the CIC Administrative Offices and/or the Source CIC University without infringing on the rights of a copyright holder;
- (d) if at any time Google is in material breach of its obligations under Section 4.3(b) or 4.6(a) and Google does not remedy any such failure within ninety (90) days after its occurrence (or, in the event such failure is caused by technical problems or causes similar to those described in Section 12.5, within such longer period as Google, working diligently, reasonably requires to remedy such problems); or
- (e) the CIC Administrative Offices or the Source CIC University and Google agree in writing that the release of a particular In-Copyright Work or Works is legally supported and appropriate under the terms of this Agreement.

The CIC Administrative Offices or the Source CIC University may provide written notice to Google if it believes that a Release Condition has occurred, which notice will describe such Release Condition to Google. Google will enable the downloading of such In-Copyright Works so long as Google is reasonably satisfied that the Release Condition has occurred. Google may also enable the downloading of In-Copyright Works (in a manner and timeframe deemed reasonable by the Parties) if it elects to cease holding the In-Copyright Works in escrow. All In-Copyright Works provided under this Section 4.11 will be used only as allowed under Section 4.14.

4.12 Ownership of University Digital Copy. As among the Parties, and subject to the restrictions in this Section 4 and the rights of the copyright holders and their licensees, each Source CIC University shall own all rights, title, and interests in and to the University Digital Copy of the Selected Content provided by such Source CIC University. Without limiting the foregoing, neither the CIC nor any CIC University shall display or otherwise use the University Digital Copy except as expressly permitted in this Agreement, or in subsequent written agreements with Google.

4.13 Contribution of University Digital Copy to a Central Depository. Subject to the terms of this Section 4, each CIC University shall have the right to contribute all or portions of its Public Domain Works contained in the University Digital Copy to a joint depository or depositories of digital works hosted by one or more of the CIC University libraries (such libraries are referred to herein as the "Hosting Libraries"). Prior to the provision of Public Domain Works to any such Hosting Library, the CIC Universities participating in the joint depository and the Hosting Libraries shall have entered into a written agreement and shall have provided a copy of that agreement to Google, which agreement shall (a) contain limitations on the Hosting Libraries' use and distribution of the University Digital Copy that are at least as restrictive as the limitations placed on the CIC Universities' use and distribution of the University Digital Copy under this Agreement (including the restrictions set forth in Section 4.14 herein); (b) expressly name Google as a third party beneficiary of that agreement for the purpose of enforcing such restrictions; (c) provide a written commitment to indemnify or otherwise assume full liability for any claims arising from the Hosting Libraries' use and distribution of the University Digital Copy along with assurance acceptable to Google that any claim resulting from such use and distribution under such assumption of liability will be satisfied; and (d) require the Hosting Libraries to identify the works in the University Digital Copy, in a statement on the applicable web page or other access point, as "Digitized by Google" or in a substantially similar manner.

4.14 Use of University Digital Copy on the CIC University Website.

(a) Each Source CIC University shall have the right to use the University Digital Copy of the Selected Content provided by such Source CIC University, in whole or in part, at the CIC University's sole discretion, subject to applicable Copyright Laws, as part of services offered on the CIC University's website to advance its academic purposes to support the instruction, research and scholarship of its campus community.

(b) The CIC Universities may not charge or receive payment or other consideration for the use of the University Digital Copy without the express written consent of Google except that the CIC Universities may recover from its end users costs for print and copying services.

(c) The CIC and each CIC University agrees that to the extent it makes any portion of the University Digital Copy publicly available, it will identify the works, in a statement on a web page or other access point to be mutually agreed to by the Parties, as "Digitized by Google" or in a substantially similar manner.

(d) The CIC Universities shall implement technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the University Digital Copy or the portions of the CIC University website on which any portion of the University Digital Copy is available. The CIC Universities shall also take reasonable steps to prevent third parties from (i) downloading or otherwise obtaining any portion of its University Digital Copy for commercial purposes, (ii) redistributing any portions of the University Digital Copy, or (iii) automated and systematic downloading from its website image files from the University Digital Copy. Each CIC University shall develop methods and systems for ensuring that substantial portions of the University Digital Copy are not downloaded from the services offered on the CIC University's website or otherwise disseminated to the public at large. Each CIC University shall also implement security and handling procedures for the University Digital Copy which procedures shall be mutually agreed upon by the Parties. Except as expressly allowed herein, the CIC Administrative Offices and CIC Universities will not share, provide, license, or sell any portion of the University Digital Copy to any third party without the express written consent of Google.

4.15 Survival. The Parties' obligations under this Section 4 shall survive the expiration or termination of this Agreement; except that (a) Section 4.1(c) will terminate at the expiration or termination of this Agreement, (b) Section 4.6 will survive for as long as Google continues to hold the Escrow Deposit, and (c) Google's obligations related to the escrow will survive until the Escrow Deposit is released pursuant to a Release Condition or otherwise as set forth in Section 4.11.

5. ACCESS, AUTHORIZATION AND SUPPORT

5.1 Access. Google shall have the right to access Selected Content during the Source CIC University's business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, the Source CIC University shall make commercially reasonable efforts to provide Google with access to Selected Content outside of the Source CIC University's business hours provided that Google notifies the Source CIC University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The CIC will designate a single CIC University program manager who will be subject to Google's reasonable approval. The CIC University program manager, working in conjunction with the CIC Administrative Offices, is responsible for the Selected Content involved in any Project Plan and shall have authority to agree with Google and CIC Project Management Staff on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the CIC University program manager and/or the CIC are unreasonable, Google shall escalate the matter to CIC University Project Lead (as described below); in which case Google and the CIC University Project Lead shall confer to resolve the issue. The CIC University Project Lead will also be designated by the CIC and will be subject to Google's reasonable approval. The CIC University Project Lead will be a single individual who will serve as the single point of contact for all communications relating to the Project. The

CIC Project Lead will be responsible for distributing information to the appropriate individuals or groups at the CIC Universities and for communicating information back to Google. The CIC University Project Lead will also be responsible for identifying an appropriate alternative point of contact for instances when he or she is not available or is not the appropriate contact and the alternative contact will be responsible for distributing the information to the CIC Universities.

5.3 Support. The CIC Administrative Offices shall also appoint one person to serve as the administrative contact for Google, should administrative questions or issues arise during the Term of this Agreement. This administrative contact shall be available during regular business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) for the CIC Administrative Offices at a telephone number and e-mail address to be provided by the CIC Administrative Offices. Each CIC University shall also appoint one person to serve as the technical contact for Google for obtaining and regulating the use of the University Digital Copy. This technical contact shall be available during regular business hours for that CIC University at a telephone number and e-mail address to be provided by the CIC University. Upon execution of this Agreement, Google and each CIC University shall identify these individuals in writing, which may be email.

6. CONFIDENTIALITY

6.1 Confidentiality. Disclosure of confidential and/or proprietary information disclosed hereunder, including the existence and content of the Agreement and any information provided pursuant to the Agreement, shall be governed by the confidentiality provisions of mutual nondisclosure agreements, which have been executed by the Parties prior to the execution of this Agreement (the "NDA"). The confidentiality provisions of the NDA are hereby incorporated by reference into this Agreement. In accordance with the terms of the NDA, by execution of this Agreement, each Party provides to the other Parties advance written approval for release of the executed Agreement as a public document in a timeframe and manner to be mutually agreed to by the Parties.

6.2 PR. No Party will issue any public announcement regarding the existence or content of this Agreement without the other Party's prior written approval. Notwithstanding the foregoing, subject to the terms of Section 7 below, Google may include CIC Brand Features and/or a CIC University's Brand Features in presentations, marketing materials, and customer lists during the Term so long as Google first furnishes the CIC and/or the CIC University with specific examples of such presentations, marketing materials, and customer lists and obtains the CIC or the CIC University's written approval, which approval may be withheld at the CIC's or such CIC University's sole discretion, and provided Google uses the Brand Features only in a manner that is substantially similar to the reviewed and approved uses. Upon request by the CIC Administrative Offices or a CIC University, Google will furnish a sample of such usage. Google shall not use the CIC or CIC Universities' Brand Features in a manner that misrepresents the relationship among the Parties or implies that the CIC or any CIC University endorses Google's products or services.

7. BRAND FEATURES

7.1 Ownership. Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of CIC or CIC University Brand Features (including any goodwill associated therewith) shall inure to the benefit of the CIC University and all use by a CIC University or CIC of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party. Each Party shall display symbols and notices clearly and sufficiently indicating the trademark status and ownership of the other Parties' Brand Features. No party shall modify

or alter another Party's Brand Features or use a Brand Feature of another Party in combination with other trademarks or create a unitary composite trademark involving another Party's Brand Features without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and absolute discretion.

7.2 License to CIC University Brand Features. Subject to the terms and conditions of this Agreement, Google, each CIC University, and CIC grants to the other Parties a limited, nonexclusive, personal and nonsublicensable, royalty-free license during the Term to display those of its Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, any Party may revoke the license granted herein to use that party's Brand Features upon providing the other Parties with written notice thereof and a reasonable period of time to cease such usage.

8. TERM AND TERMINATION

8.1 Term. This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a "Renewal Term") unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The "Term" of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 Termination. Any Party may suspend performance and/or terminate this Agreement: (i) if another Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if another Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof; or

8.3 Effect of Expiration or Termination. Within thirty (30) days after expiration or termination of this Agreement for any reason, each Party shall return to the other Party (or, at that Party's request, destroy) any Confidential information of that Party that is in its possession. The following sections survive expiration or termination of this Agreement: 1, 4.15, 6, 7.1, 8, 9, 10, 11 and 12.

9. WARRANTIES AND DISCLAIMER

9.1 Mutual Warranties. Google, CIC, and each CIC University represent and warrant that (i) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 Disclaimer. THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH PARTY SPECIFICALLY DISCLAIMS ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 Definition of Use. As used in this Section 10, the word "use" means copying, distributing, publicly displaying, publicly performing, creating derivative works, and all other use.

10.2 By Google. Google shall, at Google's sole cost and expense, defend the CIC and the CIC Universities and their respective governing boards, officers, employees, and agents (collectively, the "CIC Indemnitee(s)") against any demand, claim, action, suit, or other proceeding arising out of or in connection with any claim asserted by any third party against a CIC Indemnitee alleging that any or all of the following constitute the infringement of the intellectual property rights of any third party: (a) the CIC or the CIC Universities' making the Available Content and the Selected Content available to Google for Digitization (only to the extent that such provision of Available Content is alleged to be direct or secondary copyright infringement); (b) Google's Digitization of Selected Content, (c) Google's use of the Google Digital Copy, including such use by a third party; provided, however, that the foregoing indemnification excludes any third-party claim to the extent it is based on or otherwise arises out of use of any portion of the University Digital Copy by the CIC Universities, by any Hosting Library or any other third party after such portion has been downloaded from escrow by or at the direction of the CIC Source University. Google shall select counsel reasonably appropriate for such defense and shall pay such counsel's fees and disbursements and all costs and expenses of suit. Universities or CIC may participate in the defense with counsel of their own choice, at their own cost and expense.

10.3 By Each CIC University. Consistent with and subject to the requirements and limitations of the laws of the state under which it is organized, each CIC University (the "CIC Indemnitor") shall defend Google and its directors, officers, employees, and agents (collectively, the "Google Indemnitee(s)") against any demand, claim, action, suit, or other proceeding to the extent arising out of or in connection with any claim asserted by any third party against a Google Indemnitee alleging that any or all of the following constitutes the infringement of the intellectual property rights of any third party: (a) such CIC Indemnitor's use of any portion of the University Digital Copy after such portion has been downloaded from the escrow described in Section 4.7, and/or (b) use by any third party (including any Hosting Library) of the University Digital Copy of the Selected Content provided by such CIC University after such portion of the University Digital Copy has been downloaded from the escrow described in Section 4.7. To be clear, the foregoing indemnification excludes any third party claim that relates to the escrow described in Section 4.7 above or the Hosting Solution described in Section 4.6. If a third party claim covered by the indemnification set forth in this 10.3 is asserted, each CIC Indemnitor agrees to use best efforts to seek appropriate approvals or exemptions under applicable state law to provide the indemnification to the Google Indemnitee(s). Each CIC Indemnitor further agrees that, to the extent it is entitled to assert claims of immunity under applicable federal or state law in connection with its use of the University Digital Copy, such claims will not be asserted to vitiate its indemnity obligations with regard to Google's liabilities to third parties arising from such use. The CIC Indemnitor shall select counsel reasonably appropriate for such defense and shall pay such counsel's fees and disbursements and all costs and expenses of suit. Google may participate in the defense with counsel of its own choice, at its own cost and expense.

10.4 General. Notwithstanding anything to the contrary set forth in this Agreement, the indemnifying party's obligations under Sections 10.1 and 10.2 shall be limited to (a) payment by the indemnifying party ("Indemnitor") of all damages, judgments, awards, fines, penalties, costs and expenses (including attorneys' fees and costs of suit) finally awarded for such claim, or (b) amounts paid in settlement of such claim, provided such amounts were approved in advance in writing by the Indemnitor, which approval shall not be unreasonably withheld. The foregoing obligations shall exist only if the party seeking indemnification: (i) promptly notifies the Indemnitor of such claim, (ii) provides the Indemnitor with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, at the Indemnitor's expense, and (iii) gives the Indemnitor full control and sole authority over the defense and settlement of such claim. The Indemnitee may join in defense with counsel of its choice at its own cost and expense. The Indemnitor shall only reimburse the Indemnitee for expenses incurred by the Indemnitee with the Indemnitor's prior written approval.

11. LIMITATION OF LIABILITY

IN NO EVENT WILL ANY PARTY OR ITS REGENTS, TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO ANY OTHER PARTY NOR TO ANY THIRD PARTY CLAIMING THROUGH SUCH OTHER PARTY FOR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES AND LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR SUBJECT MATTER OF THIS AGREEMENT.

IN NO EVENT SHALL ANY PARTY'S COMBINED AGGREGATE LIABILITY HEREUNDER FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR SUBJECT MATTER OF THIS AGREEMENT EXCEED ONE MILLION DOLLARS (\$1,000,000.00).

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF AN AUTHORIZED REPRESENTATIVE OF A PARTY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk and (ii) that the Parties would not enter into the Agreement without these limitations on liability.

The foregoing limitations, however, are not applicable to any damages arising from a breach of Section 6 (Confidentiality), any monetary obligations arising out of the indemnification obligations in Section 10, indemnification, including, but not limited to, indemnification for allegations of copyright infringement, or to any damages related to actions for injury to or death of persons.

12. GENERAL PROVISIONS

12.1 No Obligation. Notwithstanding the foregoing, Google shall have no obligation to Digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. However, Google's decision to cease Digitization activities under this Agreement shall not be taken without prior consultation with the CIC enabling the CIC Universities to minimize investments in staff required under this Agreement. Likewise, notwithstanding anything in this Agreement to the contrary, no CIC University shall be obligated to participate in the Digitization program described in this Agreement with respect to any or all of the Available Content. However, a CIC University's decision not to participate in the Digitization program shall not be made without prior consultation with the CIC. The CIC will then inform Google of the decision of the CIC University as soon as possible to enable Google to minimize investments in operations required to perform the Digitization. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to Digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the CIC or Universities with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Assignment. No Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Parties, which shall not unreasonably be withheld, except that either Party may assign its rights and delegate its duties under this Agreement upon written notice to the other Parties to a division or an affiliate thereof (that is not a competitor of the non-assigning Party), provided such division or affiliate agrees to be bound by all of the terms hereof; and provided further that Google may assign this Agreement without consent to a successor-in-interest in connection with a merger or the sale of all or substantially all of its assets. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void. This Agreement shall be binding upon the successors and permitted assigns of both parties.

12.3 Notices. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be sent (a) if to the CIC, to the CIC Administrative Offices at the address identified above (b) if to a CIC University at the address identified on the signature sheet, and (c) if to Google to such address as provided at www.google.com/corporate/address.html or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, ("Attn: Legal Dept." Notice

shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail. Contact information shall be updated in writing as necessary to ensure that all Parties have current information regarding all such contacts.

12.4 Independent Contractors. Google, CIC and the CIC Universities are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture among them. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

12.5 Force Majeure. No Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

12.6 General. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties. The failure of any Party to act in the event of a breach of this Agreement by another shall not be deemed a waiver of such breach or a waiver of future breaches. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement. This Agreement sets forth the entire understanding and agreement between the Parties and may be amended only in a writing signed by both parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

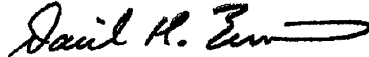
12.7 Governing Law. This Agreement shall be governed by Federal law without giving effect to applicable conflict of laws provisions. In the event of any dispute or litigation arising out of or relating to this Agreement, Parties agree that they shall attempt to resolve such dispute in good faith. If such dispute cannot be resolved within thirty days of being raised, the dispute shall be elevated to the highest level at the contending Parties. If the dispute still cannot be resolved within an additional thirty days, the aggrieved Party or Parties may file a lawsuit in the state or federal courts with jurisdiction to hear such matters. Notwithstanding the foregoing, a Party shall not be precluded from applying at any time to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction or other equitable relief to preserve the status quo, prevent the disclosure or infringement of its Confidential Information or any other intellectual property, or prevent other irreparable harm pending the resolution of the dispute.

12.8 Pre-Existing Agreements with Certain Universities Not Superseded. Google has previously entered into digitization agreements with the University of Michigan and the University of Wisconsin, both members of the CIC. The terms and conditions of those agreements are not superseded by this Agreement. Rather, in the case of those CIC Universities, this Agreement applies only to the extent necessary to allow them to participate in the CIC project contemplated herein.

[Rest of page left intentionally blank.]

IN WITNESS WHEREOF, this Agreement has been executed by Google by persons duly authorized as of the "Effective Date", which shall be the date the Agreement is signed by Google below. Google's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind Google to the terms of this Agreement.

Google Inc.



By: _____ DAVID EUN

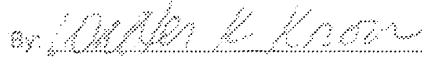
Print Name: Vice President, Content Partnerships
Google, Inc.

Title:


Date: 2007.06.04 15:46:00 -07'00'

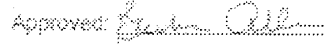
The Board of Trustees of the University of Illinois
on Behalf of

The Committee on Institutional Cooperation

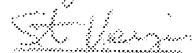
By:  _____

Title: Controller

Attest:  6-4-07
Secretary

Approved:  _____
CIC Director

Date: June 1, 2007


Form Approved
Univ. Counsel



IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University: Purdue University

By: 

Print Name: Morgan R. Olsen

Title: Executive Vice President and Treasurer

Date: May 24, 2007

Notice Address:

Office of the Executive Vice President and Treasurer

610 Purdue Mall, Hovde Hall, Room 230

West Lafayette, IN 47907-2040

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University:

By: _____

Print Name:

GARY C. SCHULTZ
SR. VICE PRESIDENT FOR
FINANCE & BUSINESS/
TREASURER
PENN STATE UNIVERSITY

Title:

Date:

4/25/07

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University: Ohio State U.

By: William T. Sikoroff

Print Name: WILLIAM T SIKOROFF

Title: S&B VP FOR BUSINESS FINANCE

Date: 6/1/07

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University:

By: _____

L. B. Dumas

Print Name: *LAWRENCE B. DUMAS*

Title: *PROVOST, NORTHWESTERN UNIVERSITY*

Date: *04/06/2007*

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University:

By: E. Thomas Sullivan, President, University of Minnesota

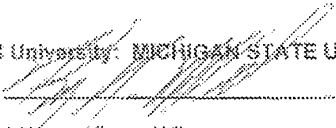
Print Name: E. Thomas Sullivan

Title: President

Date: 6-30-07

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

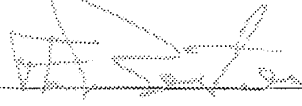
CIC University: MICHIGAN STATE UNIVERSITY

By: 

Print Name: Kim A. Wilcox

Title: Provost

Date: 5/14/07

By: 

Print Name: Fred L. Poston

Title: Vice President for Finance and Operations

Date: 5-15-07

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University: The University of Iowa

By: 

Print Name: Gary C. Fethke

Title: Interim President

Date: April 12, 2007

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University:

By: 

Print Name:

M. A. Majors

Title:

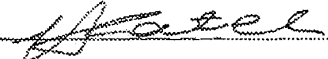
President - Elect

Date:

4/10/07

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University: University of Illinois at Urbana-Champaign

By: 

Print Name: Linda Katchi

Title: Provost and Vice Chancellor for Academic Affairs

Date: April 19, 2007

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University: Board of Trustees of the
University of Illinois on behalf of the
University of Illinois at Chicago

By: Walter K. Knorr

Print Name: Walter K. Knorr

Title: Comptroller

Date:

Attest: Michele M. Thompson

Print Name: Michele M. Thompson

Title: Secretary of the Board of Trustees

IN WITNESS WHEREOF, CIC University agrees to the terms of the Agreement attached hereto and CIC University's signatory to this Agreement represents and warrants that he or she has the power and authority to accept and bind CIC University to the terms of this Agreement.

CIC University: The University of Chicago

By: Thomas F. Rosenbaum

Print Name: Thomas F. Rosenbaum

Title: Provost

Date: May 29, 2007

EXHIBIT 24

FILED UNDER SEAL

EXHIBIT 25

FILED UNDER SEAL

EXHIBIT 26

FILED UNDER SEAL

EXHIBIT 27

DURIE TANGRI LLP
DARALYN J. DURIE (*Pro Hac Vice*)
ddurie@durietangri.com
JOSEPH C. GRATZ (*Pro Hac Vice*)
jgratz@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

The Authors Guild, Inc. et al.,

Plaintiffs,

v.
Google Inc.,

Defendant.

Civil Action No. 05 CV 8136 (DC)

**DEFENDANT GOOGLE INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendant Google Inc. (“Google”) hereby responds to Plaintiffs’ First Set of Requests for Admission (Nos. 1-34) with the following objections and responses.

GENERAL OBJECTIONS

1. Google objects to the preface, instructions, and definitions to the Requests to the extent that they purport to impose obligations that exceed those imposed by the Federal Rules of Civil Procedure, relevant local rules, and applicable case law. In responding to these requests, Google has followed the applicable law and has ignored the improper preface, instructions, and definitions.

2. Google objects to the Requests in their entirety and to each request to the extent that the documents and information sought are protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege.

3. Google objects to each and every request to the extent that it seeks information that is confidential and/or proprietary information. To the extent not otherwise subject to objection, Google will produce such confidential documents in accordance with the terms of the protective order entered in this case.

4. Google objects to the Requests in their entirety and to each discovery request as unduly burdensome to the extent they seek information or documents already known to Plaintiffs, or which are equally available to Plaintiffs.

5. Google objects to the Requests in their entirety and to each discovery request to the extent they seek documents not relevant to any claim or defense in this action or reasonably calculated to lead to the discovery of admissible evidence.

6. Google objects to The Authors Guild's definition of "Google" as vague, ambiguous, unintelligible, and overly-broad. For purposes of responding to these discovery requests, Google will interpret "Google" to mean Google Inc. and/or its agents.

7. Google objects to the time period of these requests as overly broad and unduly burdensome.

8. Google objects to the Requests to the extent they request information pertaining to persons or activities outside the United States.

9. Google objects to the Requests to the extent they request information pertaining to Google products other than Google Books, and Google's responses are limited to Google Books.

10. Google objects to each and every discovery request to the extent that it purports to impose a burden of providing information not in Google's possession, custody, or control or which cannot be found in the course of a reasonable search. Google has undertaken a reasonable and good-faith effort to locate all relevant, non-privileged documents known to it at this time that are responsive to these requests, but they reserve the right to conduct further investigation and discovery as to any issue raised or suggested by any discovery request and to rely on any subsequently discovered information or documents at trial or any other proceeding.

11. Google has not yet completed its investigation of the facts relating to this case. Any and all responses to the following discovery requests are therefore based solely on information presently known to Google, and Google reserves its right to conduct further discovery and investigation and to use at trial or any other proceeding evidence of any subsequently discovered facts, documents, or information.

12. In responding to these discovery requests, Google does not concede the relevancy or materiality of any request or of the subject to which any request refers. Google's responses to

these discovery requests are made expressly subject to and without waiving any objections in any proceeding, including trial of this action, as to competency, relevancy, materiality, or privilege of any of the documents referred to or the responses given.

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

As part of its Library Project, Google began in 2004 to digitally copy printed in-copyright works in their entirety, without permission from the copyright owners of such works.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it began in 2004 to scan, among other works, printed in-copyright and out-of-copyright works from libraries in their entirety, and that Google scans some works without the permission of the copyright owners in those works, as Google's acts with respect to those works constitute fair use. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 2:

One of Google's goals in its Library Project has been to digitally copy all of the printed books in the United States, including in-copyright books, regardless of their content.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of

the term “copy” as vague and ambiguous, and construes that term to mean “to create one or more copies, as that term is defined in 17 U.S.C. § 101.” Google objects to the definition of “Library Project” as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 3:

Google undertook the Library Project for commercial reasons.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to the definition of “Library Project” as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 4:

Google undertook the Library Project to gain a competitive advantage over other participants in the search engine market.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to the definition of “Library Project” as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 5:

Google has entered into agreements with libraries, including the University of Michigan, Stanford University, and the University of California, to obtain access to works for the purpose of digitally copying such works, including in-copyright works.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has entered into agreements with certain libraries, including the University of Michigan, Stanford University, and the University of California, pursuant to which those libraries request that Google scan books, including in-copyright works, provided to Google by the library. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 6:

In order to gain access to printed works for the purpose of digitally copying them, Google agreed to provide libraries with digital copies of works copied from the libraries' collections.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has entered into agreements with certain libraries, including the University of Michigan, Stanford University, and the University of California, pursuant to which those libraries request that Google scan books, including in-copyright works, provided to Google by

the library, and Google provides digital copies of those books to the libraries which, pursuant to the contracts, may be used only in ways which do not violate copyright law. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 7:

To date, as part of its Library Project, Google has copied millions of in-copyright works, without permission from the copyright owners of such works.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has scanned millions of in-copyright works from library collections and that, because Google's acts constituted fair use, permission was generally not sought or granted with respect to some of those works. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 8:

To date, as part of its Library Project, Google has provided to libraries digital copies of millions of in-copyright works, without permission from the copyright owners of such works.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of

the term “copy” as vague and ambiguous, and construes that term as that term is defined in 17 U.S.C. § 101. Google objects to the definition of “Library Project” as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has entered into agreements with certain libraries, pursuant to which those libraries have requested that Google scan books, including in-copyright works, provided to Google by the library, and Google has provided digital copies of millions of those books to the libraries which, pursuant to the contracts, may be used only in ways which do not violate copyright law. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 9:

To date, as part of its Library Project, Google has copied in their entirety millions of in-copyright works, including in-print and out-of-print works, fiction and non-fiction works, reference works, anthologies, educational works, textbooks, dissertations, monographs, journals, government publications and other type of works.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request’s use of the term “copy” as vague and ambiguous, and construes that term to mean “to create one or more copies, as that term is defined in 17 U.S.C. § 101.” Google objects to the definition of “Library Project” as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has scanned in their entirety millions of books from libraries, including in-print and out-of-print works, fiction and non-fiction works, reference works, anthologies, educational works, textbooks, dissertations, monographs, journals, government publications and other types of works. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 10:

Each in-copyright work copied by Google as part of its Library Project was copied by Google in its entirety at least twice, without permission from the copyright owners of such works.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it creates and maintains, as necessary for its fair uses, more than one copy of the books it scans from library collections. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 11:

Google maintains on its servers digital copies of millions of in-copyright works, without permission from the copyright owners of such works.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term as that term is defined in 17 U.S.C. § 101. Google objects to the definition of "Library Project" as vague and ambiguous. Google objects to the term "works" as vague and ambiguous. Google objects to this Request to

the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Google admits that it creates and maintains, as necessary for its fair uses, more than one copy of the books it scans from library collections, and that it has scanned millions of books from library collections. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 12:

Google uses the works copied in its Library Project to display search results to users of its search engine.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous. Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Google admits that one of the fair uses to which it puts books is rendering them searchable using the Google Books website. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 13:

In response to search queries by users of its search engine, Google has displayed content on the Internet from millions of in-copyright works, without permission from the copyright owner of such works.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous. Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Google admits in response to search queries by users of Google Books, in order to help users find the book they're looking for, Google has displayed short "snippets" of text from millions of books to those users, though it only displays a maximum of three "snippets" in response to a search query. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 14:

In response to search inquiries by users of its search engine, Google searches the complete text of works copied in its Library Project.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous. Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Google admits in response to search queries by users of its Google Books website, in order to help users find the book they're looking for, Google searches the complete text of at least some of the works scanned from library collections. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 15:

None of the representative plaintiffs gave permission to Google to copy, distribute or display any of their works.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Google admits that the representative plaintiffs themselves did not give Google any permissions with respect to any of their books, as Google's acts constituted fair use, although their publishers gave Google certain permissions with respect to some of their works. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 16:

Google did not seek permission from any of the representative plaintiffs to copy, distribute or display any of their works.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Google admits that, because its acts constituted fair use, Google did not seek any permission from the representative plaintiffs themselves, although their publishers gave Google certain permissions with respect to some of their works. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 17:

Google did not seek permission from copyright owners before copying in-copyright works in its Library Project.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that before beginning to scan works from libraries, because its acts constituted fair use, it generally did not seek or receive permissions from copyright holders with respect to its project of

scanning books from libraries. Except as specifically admitted, Google responds as follows:

Denied.

REQUEST FOR ADMISSION NO. 18:

Google has not compensated copyright owners for its copying in its Library Project of in-copyright works.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has not provided direct monetary compensation to copyright holders with respect to its scanning of books from libraries and the display of short "snippets" of text in response to search queries. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 19:

Google has not compensated copyright owners for its display on the Internet of content from in-copyright works copied in its Library Project.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request's use of the term "copy" as vague and ambiguous, and construes that term to mean "to create one or more copies, as that term is defined in 17 U.S.C. § 101." Google objects to the definition of "Library Project" as vague and ambiguous.

Subject to and without waiving its objections, Google responds as follows: Google admits that it has not provided direct monetary compensation to copyright holders with respect to its scanning of books from libraries and the display of short “snippets” of text in response to search queries. Except as specifically admitted, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 20:

Google’s security measures may be breached due to the actions of outside parties, employee error, malfeasance, or otherwise, and, as a result, an unauthorized party may obtain access to data held by Google, including works copied in its Library Project.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request on the ground that it presents a hypothetical question. Google objects to this Request on the ground that it is vague and ambiguous, including without limitation in its use of the term “security.” Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google’s response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 21:

Outside parties may attempt to fraudulently induce Google employees, users, or customers to disclose sensitive information in order to gain access to data held by Google.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request on the ground that it presents a hypothetical question. Google objects to this Request on the ground that it is vague and ambiguous. Google objects to this Request on the ground that it seeks

information pertaining to the state of mind of third parties, of which Google has no direct knowledge. Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 22:

Because the techniques used by outside parties to obtain unauthorized access to data change frequently and often are not recognized until launched against a target, Google may be unable to anticipate these techniques or to implement adequate preventative measures.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request on the ground that it presents a hypothetical question. Google objects to this Request on the ground that it is vague and ambiguous. Google objects to this Request to the extent it requests information pertaining to Google products other than Google Books, and Google's response is limited to Google Books.

Subject to and without waiving its objections, Google responds as follows: Denied.

REQUEST FOR ADMISSION NO. 23:

Google does not consider itself responsible for the security of the digital copies of works provided by it to libraries in its Library Project.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Google objects to this request to the extent it calls for the disclosure of material protected by the attorney-client privilege or any other privilege. Google objects to this Request on the ground that it is vague and ambiguous, including without limitation in its use of the term "security."

EXHIBIT 28

Google books

About Google Books

- [Overview](#)
- [Blog](#)
- [User Stories](#)
- [General Help](#)

Partner Program

- [For Publishers & Authors](#)
- [Join Now](#)
- [Partner Help](#)

Library Project

- [Overview](#)
- [Library Partners](#)
- [Librarian Help](#)

Perspectives

- [What's the Issue?](#)
- [Facts & Fiction](#)
- [Legal Analysis](#)

[Add Book Search to your site](#)

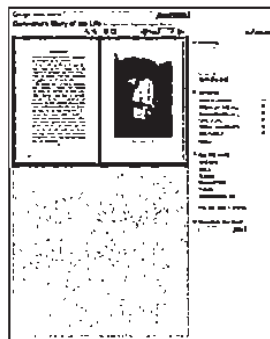
Google Books Library Project – An enhanced card catalog of the world's books

We're working with several major libraries to include their collections in Google Books and, like a card catalog, show users information about the book, and in many cases, a few snippets – a few sentences to display the search term in context.

What does a Google Books Library Project book look like?

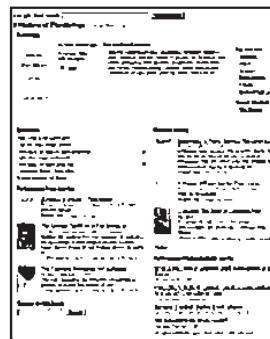
When you click on a search result for a book from the Library Project, you'll see basic bibliographic information about the book, and in many cases, a few snippets – a few sentences showing your search term in context. If the book is out of copyright, you'll be able to view and download the entire book. In all cases, you'll see links directing you to online bookstores where you can buy the book and libraries where you can borrow it.

Full View



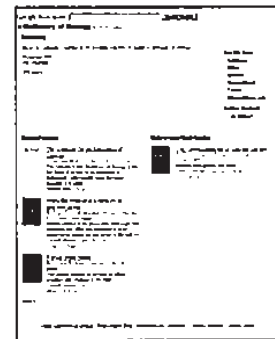
[View the entire book](#)

Snippet View



[View a few sentences surrounding the search term](#)

No Preview Available



[View basic information about the book](#)

To see close-ups of these pages and to learn more about Google Books features, view our [Screenshots](#).

What's the goal of this project?

The Library Project's aim is simple: make it easier for people to find relevant books – specifically, books they wouldn't find any other way such as those that are out of print – while carefully respecting authors' and publishers' copyrights. Our ultimate goal is to work with publishers and libraries to create a comprehensive, searchable, virtual card catalog of all books in all languages that helps users discover new books and publishers discover new readers.

EXHIBIT 29

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EXHIBIT 30

1980	CP	Snip	20101105	UOM	135107989C -	WRITER	American Institute Suggested improvement: UOM, 2010-11-15
1995	CP	Snip	20101105	UOM	135107989C -	WRITER	American Institute Audits of employee bene UOM, 2010-11-15
1982	CP	Snip	20101105	PSU	135107989C ISBN:0444	WRITER	Krystyna Dyrek Reactivity of solids
1979	CP	Snip	20101105	UOM	135107989C -	WRITER	Financial Accountir An analysis of issues rela UOM, 2010-11-15
1982	CP	Snip	20101105	PSU	135107989C ISBN:0444	WRITER	Krystyna Dyrek Reactivity of solids
1963	CP	Snip	20101105	UOM	135107989C -	WRITER	Richard H. Rush The techniques of becom UOM, 2010-11-15
1959	CP	Snip	20101105	UOM	135107989C -	WRITER	William Paxton Boy Productive business writ UOM, 2010-11-15
1991	-	Snip	20101105	UOM	135107989C -	WRITER	Richard B. McKenziAirline deregulation and UOM, 2010-11-15
1979	CP	Snip	20101105	UOM	135107989C ISBN:0665	WRITER	Robert W. Mandell Financing the capital req UOM, 2010-11-15
1987	CP	Snip	20101105	IND	135107989C -	WRITER	John James Pipoly A systematic revision of the genus Cybianthus, su
1969	-	Snip	20101105	UOM	135107989C -	WRITER	Arthur Andersen & Accounting and reportin; UOM, 2010-11-15
1973	-	Snip	20101105	UOM	135107989C -	WRITER	United States. Dep. Census of Population UOM, 2010-11-15
1961	-	Snip	20101105	UOM	135107989C -	CREATOR	Frank Walter Paish Business finance UOM, 2010-11-15
1991	CP	Snip	20101105	UOM	135107989C -	EDITOR	Theresa Brothers Corporate ethics UOM, 2010-11-15
1983	CP	Snip	20101105	UOM	135107989C -	WRITER	Michael H. Markel Make your point UOM, 2010-11-15
1953	CP	Snip	20101105	UOM	135107989C -	WRITER	Edwin M. Robinsor Business organization an UOM, 2010-11-15
1991	CP	Snip	20101105	UOM	135107989C -	WRITER	Joseph W. Cotchet; The ethics gap UOM, 2010-11-15
2001	CP	Meta	20101105	PSU	135107989C ISBN:157C	WRITER	Max Bell Everyday Mathematics
1973	-	Snip	20101105	UOM	135107989C -	WRITER	United States. Dep. Census of Population. Illi UOM, 2010-11-15
1987	-	Snip	20101105	UOM	135107989C -	WRITER	Nihon Konin Kaikai Corporate disclosure in J UOM, 2010-11-15
1979	-	Snip	20101105	UOM	135107989C -	WRITER	Doris B. McLaughli The impact of labor unio UOM, 2010-11-15
1957	-	Snip	20101105	UOM	135107989C -	WRITER	National Industrial Construction and buildin UOM, 2010-11-15
1935	CP	Meta	20101105	UOM	135107989C -	EDITOR	George Teele Stuff The traffic dictionary UOM, 2010-11-15
1972	CP	Snip	20101105	UOM	135107989C -	EDITOR	John C. Burton Corporate financial repoi UOM, 2010-11-15
1991	CP	Snip	20101105	UOM	135107989C -	WRITER	Irving Kellogg Fraud, window dressing, UOM, 2010-11-21
1985	CP	Snip	20101105	UOM	135107989C -	WRITER	Judith A. Sromovsk Solutions manual to accc UOM, 2010-11-15
1949	CP	Snip	20101105	UOM	135107989C -	WRITER	Charles Oliver Well A primer on budgeting UOM, 2010-11-15
1956	CP	Snip	20101105	UOM	135107989C -	WRITER	Lydia Strong Of time and top manage; UOM, 2010-11-15
1918	CP	Snip	20101105	UOM	135107989C -	WRITER	William Rupert Bas Accounting as an aid to t UOM, 2010-11-15
1987	CP	Snip	20101105	UOM	135107989C ISBN:0471	WRITER	Morton B. Solomor KMG Main Hurdman guir UOM, 2010-11-15
1998	CP	Snip	20101105	UOM	135107989C ISBN:0642	WRITER	Australian Academ Knowing ourselves and c UOM, 2010-11-15
1950	CP	Snip	20101105	UOM	135107989C -	WRITER	John Gordon Dakin Retail credit manual UOM, 2010-11-15
1985	CP	Snip	20101105	UOM	135107989C -	EDITOR	John E. Clow Economics in the busine; UOM, 2010-11-15
-	-	Snip	20101105	UOM	135107989C -	WRITER	United States. Burr 1967 Census of Manufac UOM, 2010-11-15

1982	CP	Snip	20101105	UOM	135107989C-	WRITER	Jack C. Gray	Cost and managerial acco	UOM, 2010-11-15
1969	CP	Snip	20101105	UOM	135107989C-	EDITOR	Gardner Lindzey	The Handbook of Social	UOM, 2010-11-15
1993	CP	Snip	20101105	UOM	135107989C-	WRITER	Stephen J. Garone	Building a high-performa	UOM, 2010-11-15
1983	CP	Snip	20101105	UOM	135107989C-	WRITER	Enzo R. Grilli	The Outlook for primary	UOM, 2010-11-15
1988	CP	Snip	20101105	UOM	135107989C-	WRITER	Andersen Consultir	The Changing role of the	UOM, 2010-11-15
1940	-	Meta	20101105	UOM	135107989C-	WRITER	H. S. Oakley	Among the balance shee	UOM, 2010-11-15
1934	CP	Snip	20101105	UOM	135107989C-	WRITER	Wayne Mackenzie	Financial organization an	UOM, 2010-11-15
1981	-	Snip	20101105	IND	135107989C-	-	-	Summarised readings in	geography 101
1984	CP	Snip	20101105	UOM	135107989C-	WRITER	Thomas C. Schelling	Choice and consequence	UOM, 2010-11-15
1975	CP	Snip	20101105	UOM	135107989C-	WRITER	Eunice C. Coleman	Supervisors	UOM, 2010-11-15
1978	CP	Snip	20101105	UOM	135107989C ISBN:0064	EDITOR	Grant W. Newton	Periodic reporting for int	UOM, 2010-11-15
1996	CP	Snip	20101105	UOM	135107989C-	WRITER	John Borton	An account of coordinati	UOM, 2010-11-15
1971	CP	Snip	20101105	UOM	135107989C ISBN:0675	WRITER	Robert E. Seiler	Accounting principles for	UOM, 2010-11-15
2001	CP	Snip	20101105	PSU	135107989C ISBN:0743	WRITER	Mary Bolté	A guide for using Curious	George and other Curio
1969	CP	Snip	20101105	UOM	135107989C-	WRITER	Keith Davis	Human relations and org	UOM, 2010-11-15
1971	CP	Snip	20101105	UOM	135107989C ISBN:0471	WRITER	Robert A. Dickman	Personnel implications fo	UOM, 2010-11-15
1957	-	Snip	20101105	UOM	135107989C-	WRITER	American Accounti	Accounting and reportin	UOM, 2010-11-15
1991	CP	Snip	20101105	PSU	135107989C-	WRITER	Jay K. Hackett	Science in Your World: T	eacher resource masters
1991	CP	Snip	20101105	PSU	135107989C ISBN:1561	WRITER	Jean Jamieson	The aminal by Lorna Balian	
2006	-	Snip	20101105	PSU	135107989C-	WRITER	Susan Geye	Edward Bloor	
1983	CP	Meta	20101105	UOM	135107989C-	WRITER	Paul Danos	Intermediate accounting	UOM, 2010-11-15
1952	-	Snip	20101105	UOM	135107989C-	WRITER	Cornell University.	The impact of budgets o	UOM, 2010-11-15
1971	CP	Meta	20101105	UOM	135107989C-	WRITER	Patrick J. Davey	Financial manuals	UOM, 2010-11-15
1991	CP	Snip	20101105	PSU	135107989C-	WRITER	Michael R. Cohen	Discover Science: Science	process skills book
1985	CP	Snip	20101105	UOM	135107989C-	WRITER	Robert D. Helsby	The Evolving process	UOM, 2010-11-15
1963	CP	Snip	20101105	UOM	135107989C-	WRITER	Dwight R. Ladd	Contemporary corporate	UOM, 2010-11-15
1970	-	Snip	20101105	UOM	135107989C-	WRITER	S. C. Saksena	Business administration	: UOM, 2010-11-15
1993	CP	Snip	20101105	UOM	135107989C-	WRITER	Larry E. Kuhlken	Expanding professional s	UOM, 2010-11-15
1968	CP	Meta	20101105	UOM	135107989C-	WRITER	Foundation for Res	Predicting managerial su	UOM, 2010-11-15
1989	CP	Snip	20101105	UOM	135107989C-	WRITER	Elizabeth Cohn	Writing to please your br	UOM, 2010-11-15
1991	CP	Snip	20101105	PSU	135107989C ISBN:0673	WRITER	Foresman and Cor	Discover science	
1944	CP	Snip	20101105	UOM	135107989C-	WRITER	Maurice Moonitz	The entity theory of cons	UOM, 2010-11-15
1996	CP	Snip	20101105	PSU	135107989C-	WRITER	Jeanette Reuter	The Kent Infant Development	(KID) Scale
1997	-	Snip	20101105	PSU	135107989C-	WRITER	Gail L. Ensher	Syracuse Scales of Infant	Development (SSID)

1981	CP	Snip	20101105	UOM	135107989C	ISBN:0256	WRITER	James E. Wheeler	Advanced accounting--a	UOM, 2010-11-15
1976	-	Snip	20101105	UOM	135107989C	-	WRITER	Exxon Corporation.	Middle East oil	UOM, 2010-11-15
1975	CP	Snip	20101105	UOM	135107989C	-	WRITER	Charles J. Woelfel	Accounting	UOM, 2010-11-15
1989	CP	Snip	20101105	UOM	135107989C	-	WRITER	Committee for Eco Battling America's budge	UOM, 2010-11-15	
1993	CP	Snip	20101105	UOM	135107989C	-	CREATOR	Christopher Swinsc Group	accounting	UOM, 2010-11-15
1973	CP	Meta	20101105	UOM	135107989C	-	WRITER	Accountants Intern Consolidated financial st.	UOM, 2010-11-15	
1952	CP	Snip	20101105	UOM	135107989C	-	WRITER	Chris Argyris	An introduction to field t	UOM, 2010-11-15
1996	CP	Snip	20101105	UOM	135107989C	-	WRITER	American Institute	Consideration of internal	UOM, 2010-11-15
2000	CP	Snip	20101105	PSU	135107989C	ISBN:0787	WRITER	TIMS Project	Math trailblazers	
1993	CP	Snip	20101105	UOM	135107989C	-	WRITER	Ernst & Young	Fair value accounting stu	UOM, 2010-11-15
1963	-	Snip	20101105	UOM	135107989C	-	WRITER	National Productiv	Cement industry in Franc	UOM, 2010-11-15
1992	CP	Snip	20101105	UOM	135107989C	-	WRITER	Leonard Lorenzen	Illustrations of Reporting	UOM, 2010-11-15
1980	CP	Meta	20101105	UOM	135107989C	-	WRITER	Shinkichi Minemur	Inflation accounting	UOM, 2010-11-15
1941	-	Snip	20101105	UOM	135107989C	-	WRITER	Edward G. Daniel	Financing the defense pr	UOM, 2010-11-11
1987	CP	Snip	20101105	UOM	135107989C	-	WRITER	Paul A. Griffin	Usefulness to investors a	UOM, 2010-11-15
1961	CP	Snip	20101105	UOM	135107989C	-	WRITER	Merriss Cornell	Columbus and Franklin C	UOM, 2010-11-15
1983	CP	Snip	20101105	UOM	135107989C	-	WRITER	Jo Anne Stille	Hop A reliability and validity	UOM, 2010-11-15
1979	CP	Snip	20101105	UOM	135107989C	-	WRITER	Stephen P. Hersh	The executive parent	UOM, 2010-11-15
1934	CP	Snip	20101105	UOM	135107989C	-	WRITER	George Ephraim So	Labor's fight for power	UOM, 2010-11-15
1928	-	Snip	20101105	UOM	135107989C	-	WRITER	John C. Beukema	The new science of city t	UOM, 2010-11-15
1997	CP	Snip	20101105	UOM	135107989C	-	WRITER	American Institute	Audits of employee bene	UOM, 2010-11-15
2001	CP	Snip	20101105	IND	135107989C	-	WRITER	Lee H. Herman	Catalog of the Staphylinidae (Insecta, Coleoptera)	
1936	CP	Snip	20101105	UOM	135107989C	-	WRITER	National Retail Dry	Internal audit	UOM, 2010-11-15
1991	CP	Snip	20101105	PSU	135107989C	ISBN:0195	WRITER	Jeni Wilson	It's time	
1973	CP	Snip	20101105	UOM	135107989C	-	WRITER	American Institute	Accounting for motion pi	UOM, 2010-11-15
1985	CP	Snip	20101105	IND	135107989C	-	WRITER	Howard R. Feldmar	Brachiopods of the Onondaga limestone in centra	
2001	CP	Snip	20101105	PSU	135107989C	-	WRITER	Sandy McConnell	Get Ready! for Standardized Tests: Grade 1	
1992	CP	Meta	20101105	PSU	135107989C	ISBN:1875	WRITER	Rod Cameron	Maths to munch on	
1992	CP	Snip	20101105	UOM	135107989C	-	WRITER	Felix Pomeranz	The successful audit	UOM, 2010-11-15
1983	CP	Snip	20101105	IND	135107989C	-	WRITER	Lee H. Herman	Revision of Bledius and related genera	
1994	CP	Snip	20101105	UOM	135107989C	ISBN:0786	WRITER	Arnoud de Meyer	The manufacturers' survi	UOM, 2010-11-15
1951	CP	Snip	20101105	UOM	135107989C	-	WRITER	National Committe	Municipal accounting an	UOM, 2010-11-15
1968	CP	Snip	20101105	UOM	135107989C	-	WRITER	Erik Barnouw	A History of Broadcasting	UOM, 2010-11-15
	CP	Snip	20101105	UOM	135107989C	-	WRITER	Irving Tenner	Municipal and governme	UOM, 2010-11-15

EXHIBIT 31

FILED UNDER SEAL

EXHIBIT 32

FILED UNDER SEAL

EXHIBIT 33

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3

4 THE AUTHORS GUILD, et al.,
5 Plaintiffs,

6 Master File No.

7 -vs-

05 CV 8136-DC

8
9 GOOGLE, INC.,
10 Defendant.

11 _____/

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15 The Videotaped Deposition of PAUL N. COURANT,
16 Ph.D., Taken at 503 Thompson Street,
17 5021 Fleming Administration Building,
18 Ann Arbor, Michigan,
19 Commencing at 2:00 p.m.,
20 Monday, April 23, 2012,
21 Before Jennifer L. Ward, CSR-3717.
22
23
24
25

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MICHAEL J. BONI, ESQ.</p> <p>4 Boni & Zack, LLC</p> <p>5 15 St. Asaphs Road</p> <p>6 Bala Cynwyd, Pennsylvania 19004</p> <p>7 (610) 822-0200</p> <p>8 mboni@bonizack.com</p> <p>9 Appearing on behalf of Plaintiffs, via</p> <p>10 Speakerphone.</p> <p>11</p> <p>12 DARALYN J. DURIE, ESQ.</p> <p>13 Durie Tangri</p> <p>14 217 Leidesdorff Street</p> <p>15 San Francisco, California 94111</p> <p>16 (415) 362-6666</p> <p>17 ddurie@durietangri.com</p> <p>18 Appearing on behalf of Defendant Google.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (Appearances continued on Page 3.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 ALSO PRESENT:</p> <p>4 Steve Alfonsi, Videographer</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 JOSEPH PETERSEN, ESQ. and</p> <p>4 ALLISON SCOTT ROACH, ESQ.</p> <p>5 Kilpatrick Townsend & Stockton, LLP</p> <p>6 The Grace Building</p> <p>7 1114 Avenue of the Americas</p> <p>8 New York, New York, 10036-7703</p> <p>9 (212) 775-8715</p> <p>10 jpetersen@ktslaw.com</p> <p>11 ascott@kilpatricktownsend.com</p> <p>12 Appearing on behalf of the University of</p> <p>13 Michigan and the Deponent.</p> <p>14</p> <p>15 JACK BERNARD, ESQ.</p> <p>16 Associate General Counsel</p> <p>17 The University of Michigan</p> <p>18 Office of the Vice President and General Counsel</p> <p>19 5010 Fleming Administration Building</p> <p>20 503 Thompson Street</p> <p>21 Ann Arbor, Michigan 48109</p> <p>22 (734) 764-0304</p> <p>23 bernar@umich.edu</p> <p>24 Appearing on behalf of the University of</p> <p>25 Michigan.</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXAMINATIONS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 PAUL N. COURANT, Ph.D.</p> <p>5</p> <p>6 EXAMINATION BY MR. BONI 7</p> <p>7 EXAMINATION BY MS. DURIE 92</p> <p>8 REEXAMINATION BY MR. BONI 116</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 INDEX TO EXHIBITS</p> <p>14</p> <p>15 EXHIBIT PAGE</p> <p>16</p> <p>17 EXHIBIT 1</p> <p>18 Complaint 6</p> <p>19</p> <p>20 EXHIBIT 2</p> <p>21 Answer and Defenses 6</p> <p>22</p> <p>23 EXHIBIT 3</p> <p>24 Cooperative Agreement 101</p> <p>25</p>

2 (Pages 2 - 5)

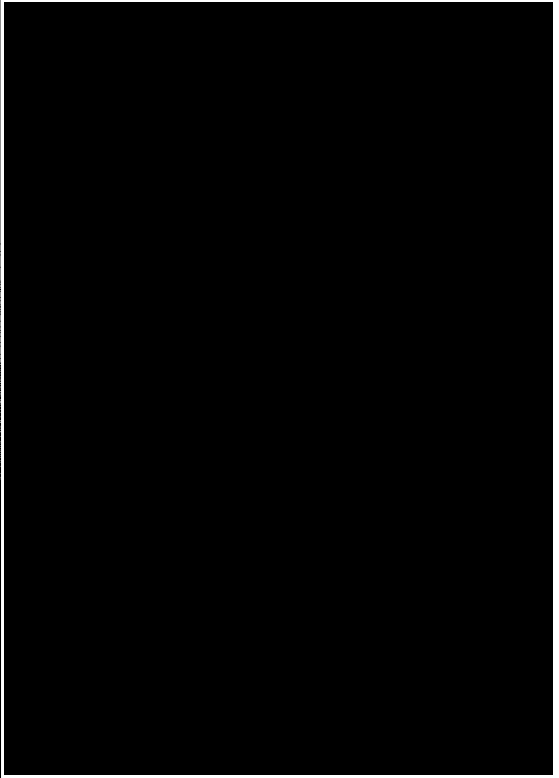
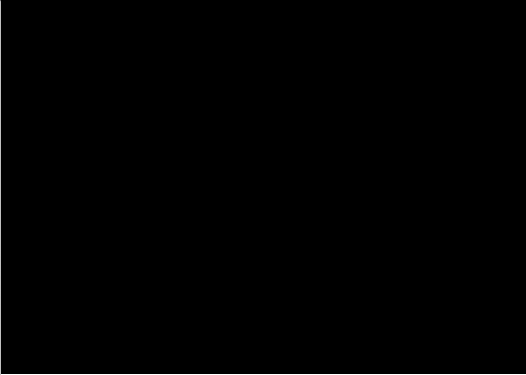
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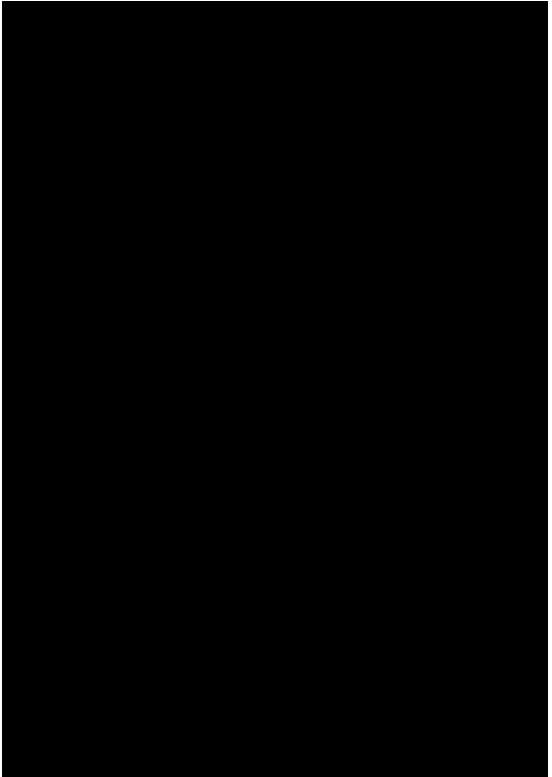
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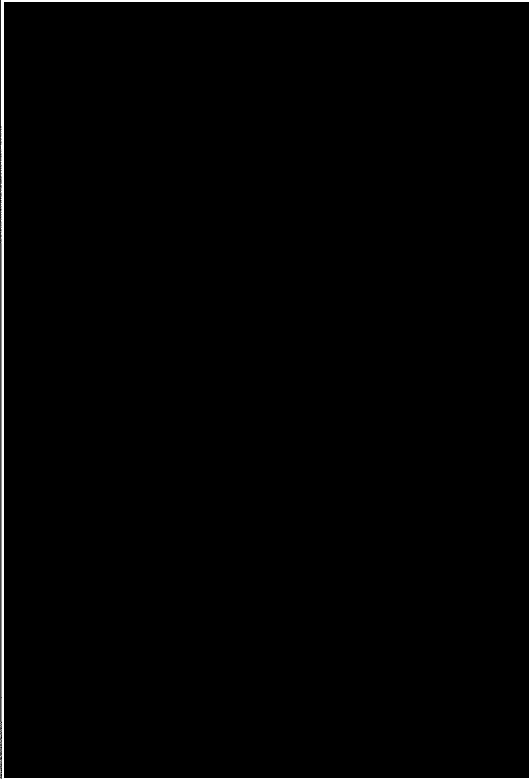
<p style="text-align: right;">Page 6</p> <p>1 Ann Arbor, Michigan 2 Monday, April 23, 2012 3 About 1:51 p.m. 4 DEPOSITION EXHIBITS 1 AND 2 5 (Identified in Index to Exhibits) 6 WERE MARKED BY THE REPORTER 7 FOR IDENTIFICATION 8 THE VIDEOGRAPHER: On the record. 9 This is the videotaped deposition of Paul Courant being 10 taken in Ann Arbor, Michigan. Today is April 23rd, 11 2012. The time is 1:51 p.m. 12 Will the attorneys please introduce 13 themselves and the court reporter please swear in the 14 witness. 15 MS. DURIE: This is Daralyn Durie 16 representing Google. 17 MR. PETERSEN: This is Joe Petersen 18 representing the University of Michigan and the 19 witness, Dr. Paul Courant. 20 MR. BONI: And this is Michael Boni 21 representing the Plaintiffs in the matter Authors Guild 22 et al v. Google. 23 PAUL N. COURANT, Ph.D., 24 having first been duly sworn, was examined and 25 testified on his oath as follows:</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Dr. Courant, you understand that you're here 2 pursuant to a subpoena that Plaintiffs in the Google 3 matter served on the University of Michigan? 4 A. I'm actually here because my attorney tells 5 me to be here, but that sounds plausible. 6 MR. PETERSEN: And as to -- 7 Joe Petersen speaking, Mike, just I'll add as well the 8 subpoena was in fact to the University of Michigan. 9 MR. BONI: Right, that's what I said 10 in the question, yeah. 11 BY MR. BONI: 12 Q. And you are here, Dr. Courant, representing 13 the University of Michigan as a result of that 14 subpoena? 15 A. That's correct. 16 Q. Okay. Dr. Courant, what are your -- what 17 are your duties at the University of Michigan? 18 A. I'm a professor of economics and a professor 19 of public policy and a professor of information, and in 20 those contexts I teach, advise dissertations, go to 21 department meetings, engage in the life of the faculty, 22 and I'm also Dean of Libraries and the university 23 librarian, and in that context I am responsible for the 24 activities of the largest library or set of libraries 25 on campus.</p>
<p style="text-align: right;">Page 7</p> <p>1 EXAMINATION BY MR. BONI: 2 Q. Good afternoon, Doctor. Is it okay to refer 3 to you -- 4 A. You just cut out. 5 Q. Is it okay to refer to you -- 6 MR. PETERSEN: Mike, you're cutting 7 out. I'm not sure what's causing that, but we should 8 fix that before proceeding. 9 MR. BONI: Oh, great. 10 MS. DURIE: Why don't you -- I think 11 you may need to just pick up your handset. 12 MR. BONI: Yeah. Is this better? 13 MS. DURIE: Yes, it is. 14 MR. BERNARD: Yes. 15 MR. BONI: All right. I'll do my 16 best when it comes time to dealing with the Answer, but 17 okay. 18 BY MR. BONI: 19 Q. Dr. Courant, is it okay that I refer to you 20 as Dr. Courant? 21 A. Sure. 22 Q. Okay. Could you please spell your name for 23 the record? 24 A. P-a-u-l, space, N-o-a-h, space, 25 C-o-u-r-a-n-t.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. It will be in your role as Dean of Libraries 2 that we -- that I'll be asking you questions today. 3 Can you describe very briefly what your role is as 4 Dean of Libraries? 5 A. I am the chief -- I mean this is not a 6 formal title, but I am responsible for the activities 7 of, again, most of the university libraries, so -- we 8 have several hundred employees and many millions of 9 books, and lots of other materials as well, and the 10 library functions to bring academic works to the campus 11 and also more broadly to the community of scholars and 12 interested parties nationwide and worldwide. It does 13 what libraries -- I mean I could go on at great length 14 what libraries do if that's what you want me to do. 15 Q. No, that's fine. I just really needed a 16 brief -- just a brief explanation. 17 A. And I am the one who is responsible to the 18 president and then to the regents for the activities of 19 the library. 20 Q. And how long have you held the role of 21 Dean of Libraries at University of Michigan? 22 A. A little over five years. 23 Q. Okay. Prior to your -- prior to your title 24 of Dean of Libraries, what position did you hold? 25 A. Immediately prior I was professor of</p>

<p style="text-align: right;">Page 10</p> <p>1 economics, professor of public policy, and professor of 2 information. Some years -- sometime before that I was 3 vice president for academic -- executive vice president 4 for academic affairs and provost, and I can go through 5 another long list if you wish. 6 Q. Not necessary. Did you have any role prior 7 to the time you were Dean of Libraries with respect to 8 University of Michigan's library system? 9 A. Well, yes, of course. As provost I was -- 10 the library reported to me. The provost is the chief 11 academic officer of the university, and the library is 12 a big academic unit. As a faculty member I used the 13 library frequently. 14 Q. In your capacity as provost did you have any 15 involvement in -- strike that. Let me ask this 16 question. Are you familiar with an initiative known as 17 the Google Library Project? 18 MR. PETERSEN: Objection to form. 19 THE WITNESS: I am familiar with 20 that project, yes. 21 BY MR. BONI: 22 Q. When you were provost did you have any role 23 with respect to the Google Library Project? 24 A. Yes, I did. 25 Q. Could you describe that role?</p>	<p style="text-align: right;">Page 12</p> 
<p style="text-align: right;">Page 11</p> <p>1 A. I was the -- I was the reporting line for 2 the librarian, so as that project emerged he kept me 3 generally informed about what was going on, and also 4 sought my approval for various major aspects. I didn't 5 get into the details. 6 Q. Who did get into -- who at University of 7 Michigan was more responsible than you with respect to 8 the -- getting into the details of the Google Library 9 Project? 10 MR. PETERSEN: Objection to form. 11 THE WITNESS: Yeah, it's -- you 12 know, it -- in terms of getting into details, 13 John Wilkin was the lead person in the library.</p> 	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. And you agree, Dr. Courant, that the 2 University of Michigan entered into a cooperative 3 agreement with Google in connection with the Google 4 Library Project? 5 MR. PETERSEN: Objection to form and 6 objection to the extent it calls for a legal 7 conclusion. 8 THE WITNESS: There was a 9 cooperative agreement. There's a document of that 10 title executed between the University of Michigan and 11 Google. 12 BY MR. BONI: 13 Q. As a result of the -- strike that. At any 14 time did the University of Michigan receive digital 15 copies of the books that the University of Michigan 16 Library permitted Google to scan? 17 MR. PETERSEN: Objection to form and 18 objection to the extent it calls for a legal conclusion 19 as to what constitutes a copy. 20 MR. BONI: Okay. Where we are, Joe, 21 there's no need -- you can just say "objection to form" 22 or this could be a very long deposition. So if you say 23 "objection to form," it will count. 24 MR. PETERSEN: Thank you. Thanks 25 for the advice, Michael. I am defending the</p>

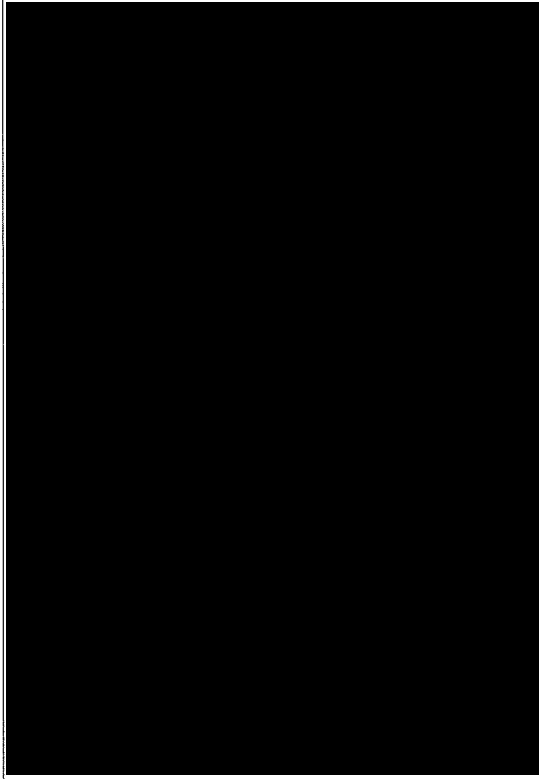
<p style="text-align: right;">Page 14</p> <p>1 deposition.</p> <p>2 MR. BONI: I'm not finished. I'm</p> <p>3 sorry, I'm not finished. And also, I'm happy to</p> <p>4 stipulate that there's no need to join one another's</p> <p>5 objections. That will -- that will be fine. I'm just</p> <p>6 trying to -- I'm just trying to move it along, that's</p> <p>7 all.</p> <p>8 MR. PETERSEN: Michael, understood.</p> <p>9 I make the objections that I see fit to make. I am</p> <p>10 happy if Daralyn makes an objection, if you agree that</p> <p>11 I join automatically to that I will not be redundant</p> <p>12 then, and I imagine Daralyn feels likewise.</p> <p>13 MS. DURIE: I do indeed. Thanks.</p> <p>14 Thanks for that, Mike.</p> <p>15 MR. BONI: Great. Thank you.</p> <p>16 BY MR. BONI:</p> <p>17 Q. So I'm sorry, I didn't hear whether you</p> <p>18 answered the question or not.</p> <p>19 A. I didn't, and I've forgotten what it was,</p> <p>20 so --</p> <p>21 Q. I'll just -- I'll just ask it -- I'll just</p> <p>22 ask it again. Has the University of Michigan ever</p> <p>23 received digital copies of books that Michigan</p> <p>24 permitted Google to scan from the University of</p> <p>25 Michigan's libraries?</p>	<p style="text-align: right;">Page 16</p> <p>1 talking about works in total or an individual work.</p> <p>2 MR. BONI: Oh, good. Well, thank</p> <p>3 you. Thank you. Okay.</p> <p>4 BY MR. BONI:</p> <p>5 Q. So let me clarify then, Dr. Courant. Has</p> <p>6 the University of Michigan received digital copies of</p> <p>7 individual books that Michigan permitted Google to</p> <p>8 digitize --</p> <p>9 MR. PETERSEN: Objection.</p> <p>10 BY MR. BONI:</p> <p>11 Q. -- from Michigan's collection?</p> <p>12 MR. PETERSEN: Objection to form.</p> <p>13 THE WITNESS: So I think -- I mean</p> <p>14 there are -- yes, except I'm nervous about the word</p> <p>15 copies as distinct from a copy of a book and a copy of</p> <p>16 another book, etcetera.</p> 
<p style="text-align: right;">Page 15</p> <p>1 MR. PETERSEN: And I make my same</p> <p>2 objection.</p> <p>3 THE WITNESS: I -- let me just</p> <p>4 restate it slightly.</p> <p>5 BY MR. BONI:</p> <p>6 Q. Sure.</p> <p>7 A. Google did scan works from the University of</p> <p>8 Michigan libraries, and Google -- and we did indeed</p> <p>9 receive copies of those scans. Well, copies made from</p> <p>10 those scans, digital copies, not legal copies. I don't</p> <p>11 know what those are.</p> <p>12 Q. Okay. So you did -- Michigan does have</p> <p>13 digital copies that it received from Google, correct?</p> <p>14 MR. PETERSEN: Objection to form.</p> <p>15 THE WITNESS: That is correct.</p> <p>16 BY MR. BONI:</p> <p>17 Q. And --</p> <p>18 A. Unless there's some term of art about</p> <p>19 "received from" that I'm missing, which is always</p> <p>20 possible in these kinds of proceedings.</p> <p>21 Q. Well, if you have anything to clarify, that</p> <p>22 would be welcome.</p> <p>23 MR. PETERSEN: Well, Mike, I think</p> <p>24 the issue -- part of the issue with your question, you</p> <p>25 said copies. It's unclear whether or not you're</p>	<p style="text-align: right;">Page 17</p> 

5 (Pages 14 - 17)

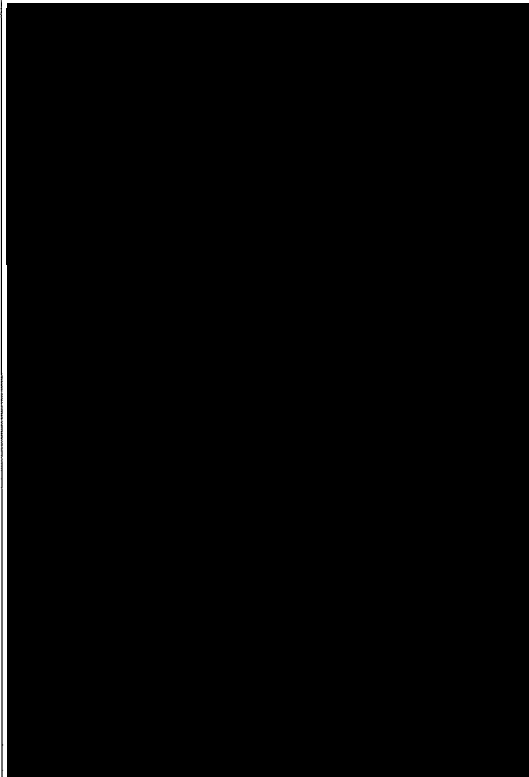
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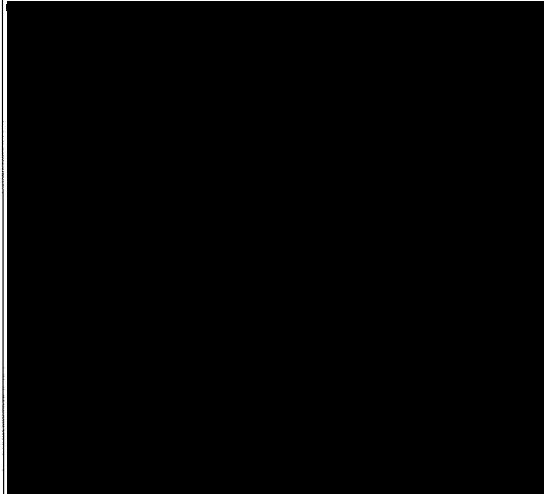

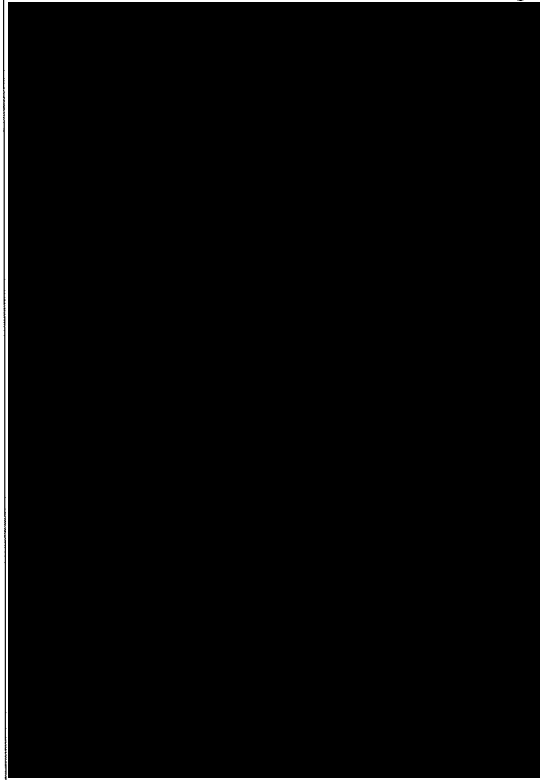
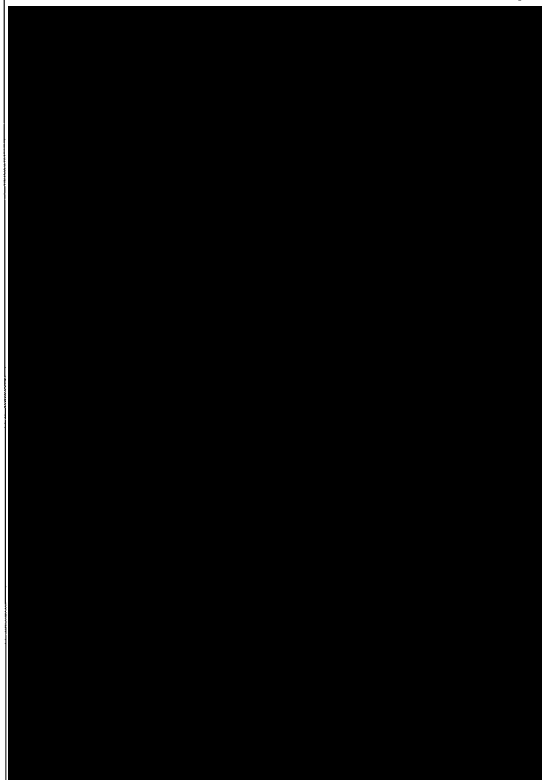
Page 21

2 Q. Tell me what the Hathi Trust is,
3 Dr. Courant.
4 MR. PETERSEN: Objection to form.
5 BY MR. BONI:
6 Q. As you just used that term.
7 A. It is an entity that is resident add and run
8 by the University of Michigan that is a -- stores and
9 makes available under certain circumstances works
10 deposited by academic libraries, mostly from the
11 United States, although we have some non-U.S. members
12 as well.
13 Q. Does the University of Michigan have a role
14 with respect to the Hathi Trust?
15 A. Yeah, I think -- I thought I just said that.
16 The University of Michigan is the -- is the entity that
17 operates the Hathi Trust.
18 Q. I see. And is there any one person more
19 than another at the University of Michigan who is in
20 charge of the Hathi Trust?
21 MR. PETERSEN: Objection to form.
22 THE WITNESS: John Wilkin is the
23 executive director of the Hathi Trust.
24 BY MR. BONI:
25 Q. Did the University of Michigan form

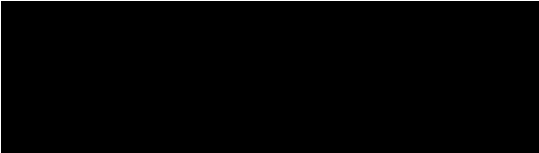
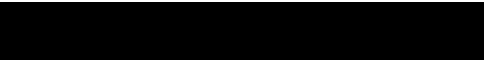
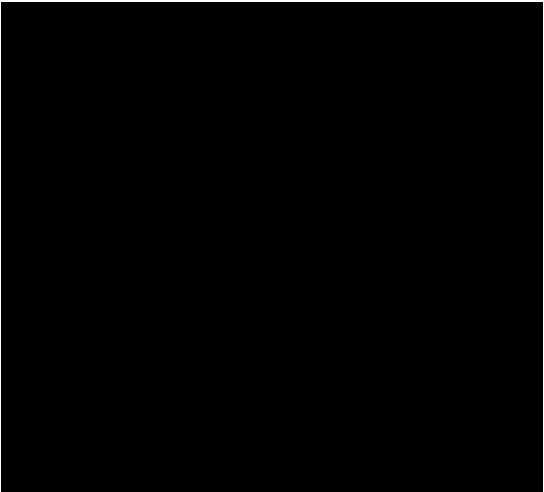
6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 Hathi Trust in conjunction with any other university?</p> <p>2 A. The Hathi Trust as such came out of a</p> <p>3 conversation that we had with Indiana University.</p> <p>4 Q. What is Indiana University's role with</p> <p>5 respect to Hathi Trust?</p> <p>6 A. It has contributed substantial financial and</p> <p>7 technical support, and also operates the mirror site</p> <p>8 for the works in the Hathi Trust.</p> <p>9 Q. Tell me what you mean by the mirror site.</p> <p>10 A. To a first approximation, as I understand</p> <p>11 it, and we're again skating away from what I know well,</p> <p>12 there is a copy of the deposits in the Hathi Trust in</p> <p>13 Ann Arbor, and an identical copy in Bloomington.</p> <p>14 Actually, it's not in Bloomington. I believe -- I have</p> <p>15 to be careful here. It might be Bloomington, it might</p> <p>16 be Indianapolis. I'd have to check.</p> <p>17 Q. Are there any other such mirror copies to</p> <p>18 your knowledge?</p> <p>19 A. No, not to my knowledge.</p> <p>20 Q. Are you aware of whether any university</p> <p>21 other than the University of Michigan and the</p> <p>22 University of Indiana -- or Indiana University who has</p> <p>23 a copy of the files that the Hathi Trust has?</p> <p>24 MR. PETERSEN: Objection to form,</p> <p>25 vague. I'm not clear what files you're referring to.</p>	<p style="text-align: right;">Page 24</p> <p>1 University of Michigan Library permitted Google to scan</p> <p>2 held outside of the aegis of the Hathi Trust?</p> <p>3 MR. PETERSEN: Objection to form.</p> <p>4 If the witness knows what you're referring to, he can</p> <p>5 answer.</p> <p>6 THE WITNESS: I -- if you're</p> <p>7 referring to the tape backups --</p> <p>8 MR. PETERSEN: Only if you know.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. PETERSEN: Mike, why don't you</p> <p>11 rephrase that question?</p> <p>12 THE WITNESS: Otherwise I don't</p> <p>13 know.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Yeah, I'm sorry. Let me rephrase it. I</p> <p>16 couldn't answer it myself. Are -- well, let's do this.</p> <p>17 Dr. Courant, when I referred to the phrase digital</p> <p>18 copies, could I ask you to agree whether if I use that</p> <p>19 phrase I'm referring to the files that Google sent to</p> <p>20 the University of Michigan as part of the Google</p> <p>21 Library Project?</p> <p>22 MS. DURIE: Objection, lacks</p> <p>23 foundation.</p> <p>24 MR. PETERSEN: I think that's gonna</p> <p>25 be cumbersome, Mike. I think you just need to take</p>
<p style="text-align: right;">Page 23</p> <p>1 BY MR. BONI:</p> <p>2 Q. I mean the digital copies of books.</p> <p>3 MR. PETERSEN: Same objection.</p> <p>4 THE WITNESS: I don't know how</p> <p>5 to -- I would be surprised if anybody had the complete</p> <p>6 set. I -- that's all I know.</p> <p>7 BY MR. BONI:</p> <p>8 Q. Okay. You are aware, are you not,</p> <p>9 Dr. Courant, that other universities have digital</p> <p>10 copies of the books that Google scanned at those</p> <p>11 libraries as well, correct?</p> <p>12 MR. PETERSEN: Objection to form.</p> <p>13 THE WITNESS: So two points. One,</p> <p>14 of course a great deal of what's in the Hathi Trust is</p> <p>15 in the public domain, and there are many copies in</p> <p>16 many places of those works widely used. And second,</p> <p>17 there are libraries that participated in scanning</p> <p>18 projects with Google that have not deposited all of the</p> <p>19 works they received in Hathi Trust, and presumably some</p> <p>20 of those hold their own copies. I wouldn't know what</p> <p>21 they do.</p> <p>22 BY MR. BONI:</p> <p>23 Q. At the University of Michigan are there</p> <p>24 any -- are there any file copies -- I'm sorry. Are</p> <p>25 there any digital copies of the books that the</p>	<p style="text-align: right;">Page 25</p> <p>1 each question at a time, and I think you should note</p> <p>2 my continuing objection to the use of copies to the</p> <p>3 extent it calls for any legal conclusions from this</p> <p>4 witness.</p> <p>5 THE WITNESS: But I'm supposed to</p> <p>6 try to answer it anyhow?</p> <p>7 BY MR. BONI:</p> <p>8 Q. Yeah.</p> <p>9 A. Okay. So -- so again, my issue with copies</p> <p>10 is counsel tells me about the legal issues.</p> <p>11 MR. PETERSEN: I don't want you --</p> <p>12 yeah.</p> <p>13 THE WITNESS: But I -- you know, the</p> <p>14 way in which computers and files work, the physical</p> <p>15 integrity of things is fluid, so there's a copy and</p> <p>16 then it gets moved from one place to another, and so I</p> <p>17 don't -- the actual molecules of things -- actually</p> <p>18 they aren't even molecules, the actual electrons, you</p> <p>19 seem to be asking if we -- about the specific</p> <p>20 configurations of electrons that Google made --</p> <p>21 returned or allowed -- made copies of or allowed us to</p> <p>22 make -- to acquire in the first place as a result of</p> <p>23 copying here, and I don't know enough about how these</p> <p>24 things work to be able to say anything about what</p> <p>25 happens to those particular bundles of electrons.</p>

<p style="text-align: right;">Page 26</p> <p>1 BY MR. BONI:</p> <p>2 Q. Right. I got it. I think you're giving --</p> <p>3 you give me too much credit. I guess I was asking</p> <p>4 in response to something you testified to earlier</p> <p>5 that -- when I asked where these copies were -- why</p> <p>6 don't I -- why don't I say digital files if the word I</p> <p>7 used --</p> <p>8 A. Yes, that's better.</p> <p>9 Q. -- is problematic. Is that a better phrase</p> <p>10 to describe what Google has given back to the</p> <p>11 University of Michigan?</p> <p>12 MS. DURIE: Objection, lacks</p> <p>13 foundation.</p> <p>14 THE WITNESS: So digital -- digital</p> <p>15 files that contain -- contain in some form these works?</p> <p>16 BY MR. BONI:</p> <p>17 Q. The books, right.</p> <p>18 A. That's -- that's okay with me. I know -- I</p> <p>19 think I know what we're talking about now.</p> <p>20 Q. So we talked earlier about the -- where the</p> <p>21 digital files were kept, and at one point you said that</p> <p>22 at some point they were kept under the aegis of the</p> <p>23 Hathi Trust, and my question was whether any such files</p> <p>24 today are kept outside of the aegis of the Hathi Trust?</p> <p>25 A. Anywhere in the world by somebody?</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. PETERSEN: Objection to form.</p> <p>2 THE WITNESS: There are of course</p> <p>3 many public domain works held in many places in digital</p> <p>4 form.</p> <p>5 BY MR. BONI:</p> <p>6 Q. Are you aware of whether among the books</p> <p>7 that Google scanned are books that are not in the</p> <p>8 public domain, but rather are in copyright?</p> <p>9 MR. PETERSEN: Objection to form.</p> <p>10 Objection, calls for a legal conclusion.</p> <p>11 THE WITNESS: There are works that</p> <p>12 are -- yes, there are works that are in copyright that</p> <p>13 were scanned as part of the project.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Do you know whether the University of</p> <p>16 Michigan has tapes of digitized copies of in copyright</p> <p>17 books from the University of Michigan Library other</p> <p>18 than the tape backups that you just testified about?</p> <p>19 A. I am not aware of any such.</p> <p>20 Q. Okay. Dr. Courant, are you aware of an</p> <p>21 initiative called the Orphan Works Project?</p> <p>22 A. I am.</p> <p>23 Q. What is the Orphan Works Project?</p> <p>24 A. The idea behind the Orphan Works Project was</p> <p>25 to identify works that were determined to be in</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. No, at the University of Michigan.</p> <p>2 A. Here I am -- there exist tape backups of the</p> <p>3 files, and whether those tape backups are being held</p> <p>4 under the aegis of the Hathi Trust or the University of</p> <p>5 Michigan Library, not the Hathi Trust, is an</p> <p>6 organizational matter that I simply don't know.</p> <p>7 Q. What form do these tape backups take? Do</p> <p>8 you know, Dr. Courant?</p> <p>9 MR. PETERSEN: Objection to form,</p> <p>10 vague.</p> <p>11 THE WITNESS: And you're not --</p> <p>12 again, we're talking about technical details. They're,</p> <p>13 you know, tapes. Magnetic tapes I assume.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Okay. These are physical tapes that you can</p> <p>16 hold, correct?</p> <p>17 MR. PETERSEN: Objection to form.</p> <p>18 THE WITNESS: Again, I don't know</p> <p>19 their size, but they would -- they are -- they're --</p> <p>20 yes is my guess is the right answer to that question.</p> <p>21 BY MR. BONI:</p> <p>22 Q. Okay. Other than the tape backups, are you</p> <p>23 aware of any other tapes that hold in digital form the</p> <p>24 books that Google digitized from the University of</p> <p>25 Michigan's libraries collection?</p>	<p style="text-align: right;">Page 29</p> <p>1 copyright through a set of investigations where the</p> <p>2 rights holder could not be found, and to make available</p> <p>3 to authorized, authenticated users of the University of</p> <p>4 Michigan libraries the ability to read those works</p> <p>5 online, limited to the number of copies of the original</p> <p>6 physical works that we had originally purchased. So</p> <p>7 all of these works were works where the University of</p> <p>8 Michigan acquired a physical copy at some point.</p> <p>9 The works were then scanned by</p> <p>10 Google or could also have been scanned by the</p> <p>11 university or -- and then the works -- we would explore</p> <p>12 to establish that we couldn't find a rights holder, and</p> <p>13 once that was established, well established, we would</p> <p>14 make the works available on this limited time basis to</p> <p>15 members of our community.</p> <p>16 Q. Are you aware of any person who has primary</p> <p>17 responsibility for the oversight of the Orphan Works</p> <p>18 Project?</p> <p>19 MR. PETERSEN: Objection to form.</p> <p>20 THE WITNESS: Again, the project has</p> <p>21 been largely led by John Wilkin.</p> <p>22 BY MR. BONI:</p> <p>23 Q. Was it John Wilkin's idea?</p> <p>24 MR. PETERSEN: Objection to form.</p> <p>25 THE WITNESS: It came out of</p>

<p style="text-align: right;">Page 30</p> <p>1 discussions among a number of leaders both in the 2 library and the university. 3 BY MR. BONI: 4 Q. And who are those leaders? 5 A. John Wilkin, myself, members of the 6 General Counsel's office, and then consultation with 7 the provost and the president, and others -- surely 8 others on the library staff. We discussed it quite 9 widely before we proceeded.</p> 	<p style="text-align: right;">Page 32</p> 
<p style="text-align: right;">Page 31</p> 	<p style="text-align: right;">Page 33</p> 

9 (Pages 30 - 33)

<p style="text-align: right;">Page 34</p>  <p>6 MR. PETERSEN: Objection to form. I 7 think you need to define what the cooperative agreement 8 is, which one you're talking about. 9 BY MR. BONI: 10 Q. The operative cooperative agreement between 11 the University of Michigan and Google regarding the 12 Google Library Project. 13 MR. PETERSEN: Well, your idea of 14 what's operative might be different than the witness', 15 Mike, so I think if you're referring to an agreement, I 16 think it's appropriate to identify that agreement and 17 perhaps put it in front of the witness. 18 BY MR. BONI: 19 Q. Dr. Courant, are you aware of several 20 cooperative agreements that are between the University 21 of Michigan and Google? 22 A. I'm specifically aware of two. There may be 23 more.</p> 	<p style="text-align: right;">Page 36</p> <p>1 the digital files it received from Google? 2 MR. PETERSEN: Objection to form. 3 THE WITNESS: And that's a very 4 different question, right? 5 BY MR. BONI: 6 Q. Yes. 7 A. Okay. So could you -- would you state it 8 again? 9 Q. Sure. Has the University of Michigan 10 displayed in full any in copyright books from the digit 11 files it received from Google? 12 MR. PETERSEN: You're talking about 13 regardless of licensing status? It's a very broad 14 question, Mike. It's essentially a meaningless 15 question, so I'll note my objection. 16 MR. BONI: Okay. 17 THE WITNESS: The answer -- so 18 there's a subtlety around the question, the use of the 19 word display. So there are certainly some in copyright 20 works that were produced in connection with the Google 21 project that have been and indeed in a moment, I want 22 to be very careful about this, are available to the 23 general public. The ones that are, in every case 24 that we know of have been specifically authorized to be 25 so by the rights holder. This happens quite</p>
<p style="text-align: right;">Page 35</p>  <p>17 A. Not to my knowledge, no. 18 Q. Has the university -- strike that. Has 19 Hathi Trust displayed any in copyright books in full in 20 connection with the Orphan Works Project? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: No. 23 BY MR. BONI: 24 Q. Do you know whether the University of 25 Michigan has displayed in full in copyright books from</p>	<p style="text-align: right;">Page 37</p> <p>1 frequently. So that -- so that answer is yes in that 2 limited way. 3 BY MR. BONI: 4 Q. So let's -- has the University of Michigan 5 displayed any in copyright book from the digital files 6 it received from Google as part of the Google Library 7 Project that was not authorized by the rights holder? 8 A. To my knowledge there have been a handful of 9 such cases. 10 Q. Under what circumstances have those displays 11 been made? 12 A. The Copyright Review Management System, 13 which we use to ascertain the copyright status of works 14 published after 1922 and before some important date in 15 the late '60s that I can't remember, maybe it's the 16 early '60s, has misidentified a -- as I said, a handful 17 of cases that were then available for a time. 18 Q. All right. Misidentified a handful of cases 19 that what? 20 A. That were then available on the -- from the 21 website for a time. 22 Q. And to whom were they made available? 23 MR. PETERSEN: Objection. 24 BY MR. BONI: 25 Q. Not the individual names obviously, but</p>


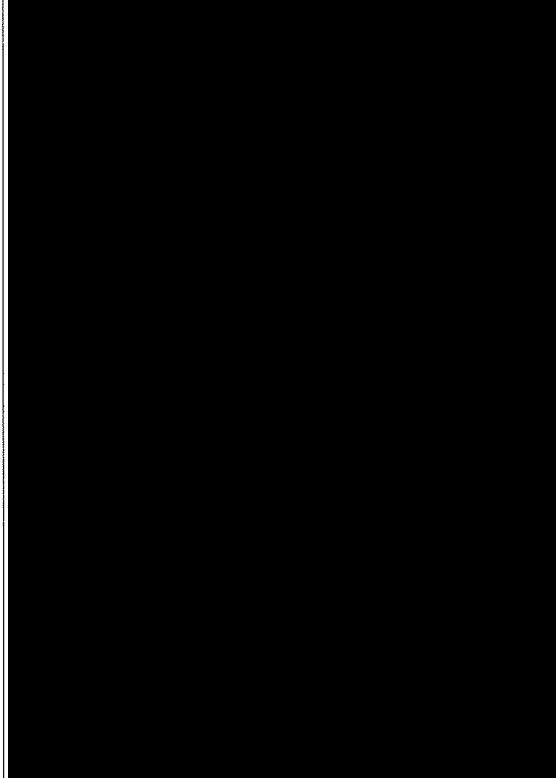
10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 generally to whom were they made available?</p> <p>2 MR. PETERSEN: Objection to form.</p> <p>3 Objection, mischaracterizes Dr. Courant's testimony.</p> <p>4 THE WITNESS: They could have been</p> <p>5 found by somebody with an Internet connection in the</p> <p>6 United States.</p> <p>7 BY MR. BONI:</p> <p>8 Q. And when you say a handful, how many are</p> <p>9 you -- how many books are you referring to?</p> <p>10 A. I would be really surprised if it got very</p> <p>11 far into the double digits and not surprised if it</p> <p>12 didn't get into the double digits at all.</p> <p>13 Q. So somewhere between 10 and 99?</p> <p>14 MR. PETERSEN: Objection to form,</p> <p>15 mischaracterizes the testimony.</p> <p>16 THE WITNESS: I would be very, very</p> <p>17 surprised if it were anywhere near 99.</p> <p>18 BY MR. BONI:</p> <p>19 Q. You think it was closer to 10?</p> <p>20 A. Yes.</p> <p>21 Q. And for how long were those books made</p> <p>22 available as a result of the misidentification of those</p> <p>23 books' copyright status?</p> <p>24 MR. PETERSEN: Objection to form.</p> <p>25 THE WITNESS: One would have to look</p>	<p style="text-align: right;">Page 40</p> <p>1 cases.</p> <p>2 BY MR. BONI:</p> <p>3 Q. You don't have actual knowledge of that</p> <p>4 occurring anywhere outside of the University of</p> <p>5 Michigan, correct?</p> <p>6 MR. PETERSEN: Objection to form.</p> <p>7 THE WITNESS: I have -- I have no</p> <p>8 specific knowledge of it happening elsewhere.</p> <p>9 BY MR. BONI:</p> <p>10 Q. Okay. What are Hathi Trust -- Hathi Trust's</p> <p>11 plans going forward with respect to the Orphan Works</p> <p>12 Project?</p> <p>13 A. The University of Michigan has plans to</p> <p>14 continue to work to identify orphan works, and</p> <p>15 that's -- in fact, we are continuing to work to</p> <p>16 identify orphan works.</p> <p>17 Q. Anything else? Is it limited to the</p> <p>18 identification of orphan works?</p> <p>19 MR. PETERSEN: Objection to form.</p> <p>20 THE WITNESS: That work is certainly</p> <p>21 work that we are committed to doing. We said at the</p> <p>22 time that we suspended the movement towards actually</p> <p>23 allowing members of our authorized and authenticated</p> <p>24 campus community to read these works one at a time in</p> <p>25 digital form, we said that we intended to learn and</p>
<p style="text-align: right;">Page 39</p> <p>1 at the record case by case, which I certainly haven't</p> <p>2 done.</p> <p>3 BY MR. BONI:</p> <p>4 Q. Who would be the person in the best position</p> <p>5 to answer that question?</p> <p>6 A. Again, John Wilkin.</p> <p>7 Q. Okay. Dr. Courant, are you aware of any</p> <p>8 other university that displayed in copyright books to</p> <p>9 anyone without the authorization of the rights holder?</p> <p>10 MR. PETERSEN: Objection. Objection</p> <p>11 to form.</p> <p>12 THE WITNESS: So I would not -- I</p> <p>13 don't know -- when you say other you're presumably</p> <p>14 including the University of Michigan, and I'm not sure</p> <p>15 that these instances I've described rise to the level</p> <p>16 of display, and I don't specifically know of other</p> <p>17 cases.</p> <p>18 BY MR. BONI:</p> <p>19 Q. Well, I'm referring to any instances outside</p> <p>20 of the University of Michigan.</p> <p>21 MR. PETERSEN: Objection to form,</p> <p>22 asked and answered.</p> <p>23 THE WITNESS: Right. And so if</p> <p>24 you're asking -- I could speculate that this plausibly</p> <p>25 has happened, but I do not know of any particular</p>	<p style="text-align: right;">Page 41</p> <p>1 study and reassess our procedures and practices, and</p> <p>2 that's what we're currently engaged in.</p> <p>3 BY MR. BONI:</p> <p>4 Q. Is it the intention of the Orphan Works</p> <p>5 Project to present for reading the full text of in</p> <p>6 copyright books without the authorization of the rights</p> <p>7 holder?</p> <p>8 MR. PETERSEN: Objection to form.</p> <p>9 Objection, asked and answered.</p> <p>10 THE WITNESS: It's a -- it's -- is</p> <p>11 it the intention of the project to do that? It</p> <p>12 certainly was in its -- well, I don't -- without the</p> <p>13 authority of the right holder, given that we already</p> <p>14 bought a copy and we're just substituting for it, I can</p> <p>15 dance around, but that was the original intention as I</p> <p>16 described it, that we would make individual copies</p> <p>17 available to members of the community where the library</p> <p>18 had already purchased a copy of the book, and the</p> <p>19 current status of the project is that we are -- we are</p> <p>20 considering what comes next.</p> <p>21 BY MR. BONI:</p> <p>22 Q. Okay. Dr. Courant, could you describe for</p> <p>23 me the -- all of the uses which you are aware of that</p> <p>24 the University of Michigan has made with the digital</p> <p>25 files it received from Google as part of the Google</p>

11 (Pages 38 - 41)

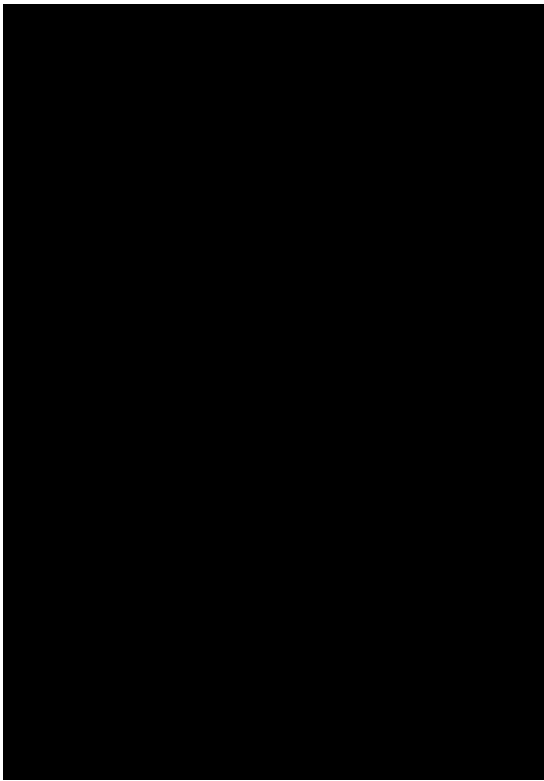
<p style="text-align: right;">Page 42</p> <p>1 Library Project?</p> <p>2 MR. PETERSEN: Objection to form.</p> <p>3 Objection, calls for a narrative. Can you ask a more</p> <p>4 focused question?</p> <p>5 MR. BONI: Yeah, I just want an</p> <p>6 answer as to all of the uses. I don't think it calls</p> <p>7 for a narrative at all. It calls for a list. It's</p> <p>8 okay.</p> <p>9 MR. PETERSEN: Same objection.</p> <p>10 THE WITNESS: So our uses of digital</p> <p>11 files?</p> <p>12 BY MR. BONI:</p> <p>13 Q. Yes.</p> <p>14 A. They're available for search, the works</p> <p>15 where -- that are in the public domain or where the</p> <p>16 rights holder have authorized us to do so are available</p> <p>17 to be read, and in some cases downloaded. The works</p> <p>18 that we believe -- that we do not know to be in the</p> <p>19 public domain or authorized by the rights holder are</p> <p>20 only available for search.</p> <p>21 And the works have also been</p> <p>22 used to be -- by people with certified print</p> <p>23 disabilities under -- under the university's relevant</p> <p>24 office for such certification. I'm trying to think</p> <p>25 what else. We have not yet -- yeah, I think I'll stop</p>	<p style="text-align: right;">Page 44</p> <p>1 distinct from to read? Yes?</p> <p>2 Q. Yeah. Fair distinction. Let's take both.</p> <p>3 A. Big distinction.</p> <p>4 Q. To search the text.</p> <p>5 A. To search the text for phrases or names or</p> <p>6 something like that, essentially the entire corpus</p> <p>7 of works held in the Hathi Trust, including the</p> <p>8 works contributed to the Hathi Trust by the University</p> <p>9 of Michigan, are available to search by essentially</p> <p>10 everyone in the United States with an Internet</p> <p>11 connection.</p> <p>12 Q. And then the same question with respect to</p> <p>13 availability to read the text of those works; that is</p> <p>14 to say, works that are in copyright and were not</p> <p>15 digitized with the authorization of the rights holders?</p> <p>16 MR. PETERSEN: Mike, that was</p> <p>17 complicated. Can you put that question together? It</p> <p>18 was a complicated question to begin with, and I --</p> <p>19 MR. BONI: Yeah, sure.</p> <p>20 BY MR. BONI:</p> <p>21 Q. Who -- to whom does the University of</p> <p>22 Michigan make available for reading purposes the</p> <p>23 digital files of in copyright books that were digitized</p> <p>24 by Google without the authorization of the rights</p> <p>25 holders?</p>
<p style="text-align: right;">Page 43</p> <p>1 there.</p> <p>2 Q. Great. So -- thank you. You mentioned</p> <p>3 that the digital files are used by people with print</p> <p>4 disabilities. Are those people limited to the</p> <p>5 University of Michigan community, or anyone?</p> <p>6 A. With respect to works that are from the</p> <p>7 University of Michigan files, yes, I believe it is</p> <p>8 limited to just the University of Michigan certified</p> <p>9 users.</p> <p>10 Q. And what is a certified user? What makes</p> <p>11 someone a certified user?</p> <p>12 A. There's an office in the university that</p> <p>13 determines whether people have print disabilities, and</p> <p>14 then of course the person has to be a member of the</p> <p>15 university community.</p> <p>16 Q. With respect to digital files of books that</p> <p>17 are in copyright and that were digitized without the</p> <p>18 authorization of the rights holder, to whom are those</p> <p>19 works or those digital files available for search</p> <p>20 purposes?</p> <p>21 MR. PETERSEN: Objection to form.</p> <p>22 BY MR. BONI:</p> <p>23 Q. You said you made them available for search.</p> <p>24 I'm asking available to whom?</p> <p>25 A. So to search for the -- search text as</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. PETERSEN: Objection to form.</p> <p>2 THE WITNESS: Again, the -- not</p> <p>3 knowing specifically about what the rights holders</p> <p>4 would think of such matters, the people with certified</p> <p>5 print disabilities who are members of the university</p> <p>6 community and incidentally to their duties to preserve</p> <p>7 the integrity of the files and such, so technical</p> <p>8 library work and computer work, the staff who are</p> <p>9 responsible for doing that work. They don't read the</p> <p>10 whole book, but they would have to read parts of books</p> <p>11 in order to do their work. That's it.</p> <p>12 BY MR. BONI:</p> <p>13 Q. And nobody other than those members of the</p> <p>14 University of Michigan community with print</p> <p>15 disabilities or those staff members in connection with</p> <p>16 the library or computer work are able to read the text</p> <p>17 of in copyright books whose digital files were given to</p> <p>18 the University of Michigan by Google?</p> <p>19 MS. DURIE: Objection, lacks</p> <p>20 foundation.</p> <p>21 THE WITNESS: Whose -- and it's</p> <p>22 not -- if you put it that way, then that's not right</p> <p>23 because there are works that were -- in copyright works</p> <p>24 that were made available to the University of Michigan</p> <p>25 through the -- from Google as part of this project</p>

12 (Pages 42 - 45)

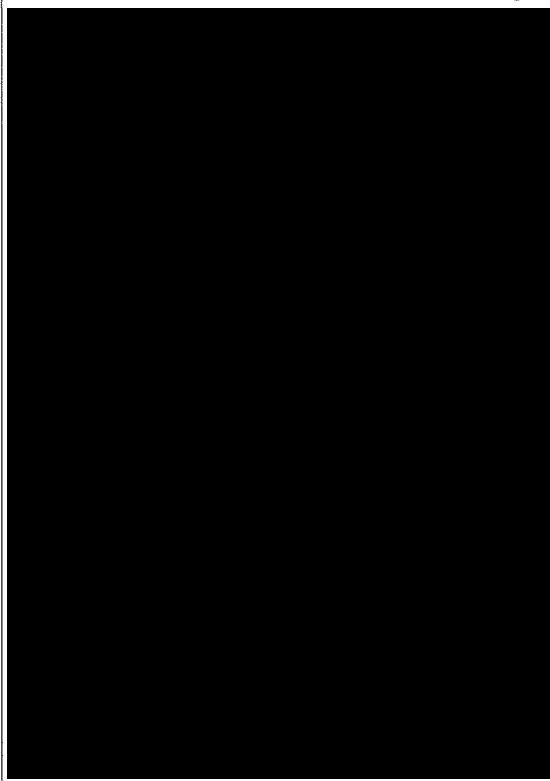
<p style="text-align: right;">Page 46</p> <p>1 where we do have authorization from the rights holder. 2 BY MR. BONI: 3 Q. Right. So let me limit it to those works 4 where the rights holder did not give authorization. 5 A. So let me just try to see if I can get this 6 set winnowed down to what it is. These are works that 7 are in copyright, digitized by Google, a copy has come 8 to the University of Michigan, and you're asking who 9 can read the text of those works? 10 Q. Correct. 11 A. Right. 12 Q. You mentioned those at the University of 13 Michigan with print disabilities and then staff for 14 technical and computer purposes -- 15 A. Yes. 16 Q. -- and I'm asking you whether there is 17 anyone else. 18 A. There are some staff who are not staff at 19 the University of Michigan associated with the mirror 20 site at Indiana, and that's all I can think of. 21 Q. Okay. Do you know whether any research 22 has been conducted on the digital files which -- where 23 the research does not involve reading the text of the 24 books? 25 MR. PETERSEN: Objection to form.</p>	<p style="text-align: right;">Page 48</p> <p>1 continue to take works from the project and put them 2 into the Hathi Trust, so in that sense that's an active 3 role I would say. 4 Q. In any other sense? 5 A. What sort of sense did you have in mind? 6 Q. Well, for example, does it have a role in 7 the governance of Hathi Trust? 8 MR. PETERSEN: Objection to form. 9 THE WITNESS: No. 10 BY MR. BONI: 11 Q. Does it control Hathi Trust's activities in 12 any way? 13 A. In the conventional use of the word control, 14 no.</p> 
<p style="text-align: right;">Page 47</p> <p>1 Research by whom? 2 BY MR. BONI: 3 Q. Anyone at the University of Michigan. 4 A. So I actually don't specifically know 5 because the cases that I know of, the kind of research 6 you're describing, have largely been done on Google's 7 files, but I would -- you know, so I don't specifically 8 know is the right answer. 9 Q. What research has been done on Google's 10 files? 11 A. Well, there's the engram project, which 12 looks for the frequency of words in various languages 13 over time, other elements of linguistic research, 14 largely around questions of language, language 15 development. 16 Q. Has the University of Michigan been involved 17 at all with those projects? 18 A. The University of Michigan as a corporate 19 entity has not. It's possible that faculty and staff 20 and students at the University of Michigan have done 21 some of that work. 22 Q. Dr. Courant, does Google have any role, 23 active role in connection with the operations of 24 Hathi Trust? 25 A. Google continues to digitize works, and we</p>	<p style="text-align: right;">Page 49</p> 

13 (Pages 46 - 49)

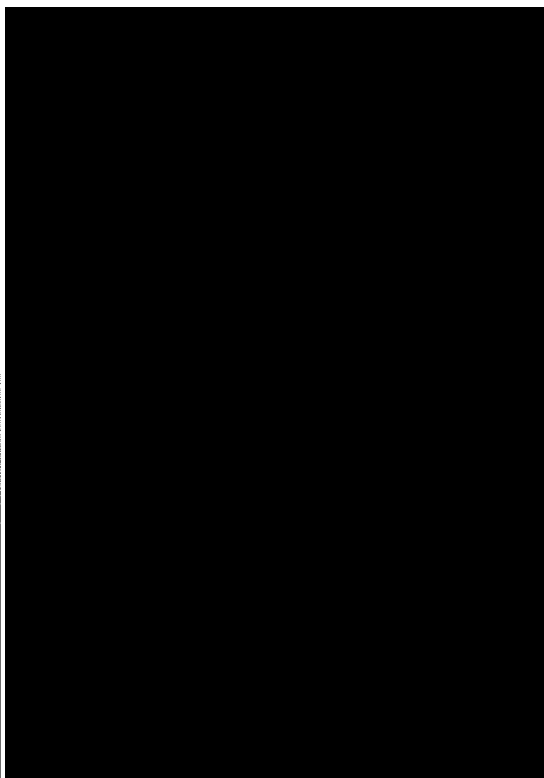
Page 50



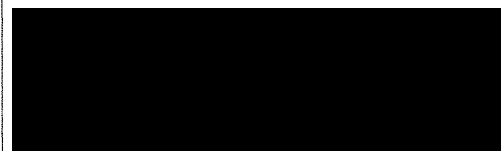
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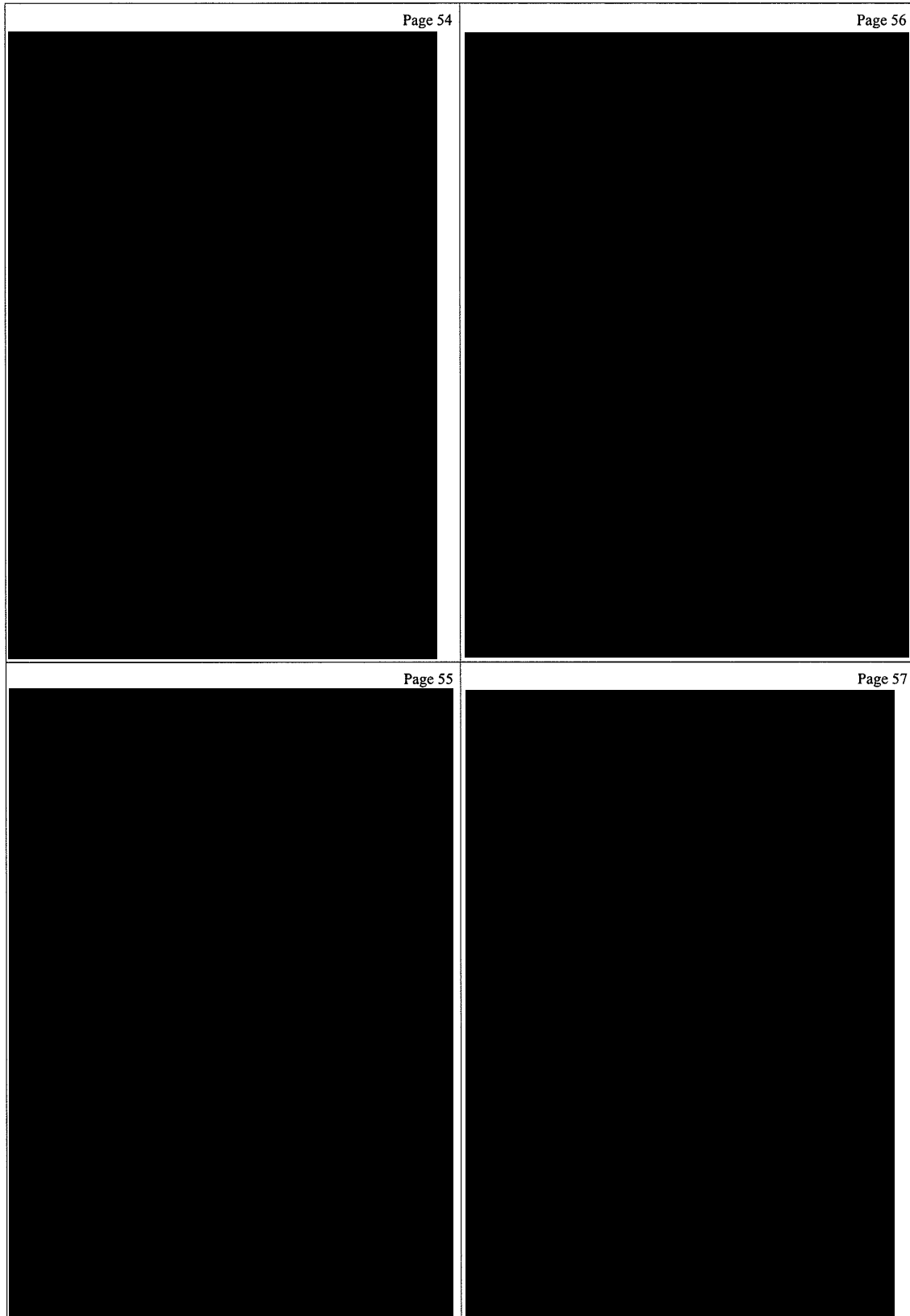
Page 53



6 MR. BONI: All right. Let me --
7 here's what I'd like to do. I'd like to take a
8 five-minute break, and then I'm going to spend a few
9 minutes on the Answer, and then I'll be finished.
10 MS. DURIE: Okay.
11 MR. PETERSEN: That sounds good.
12 Thanks, Mike.
13 MR. BONI: Okay.
14 THE VIDEOGRAPHER: We're going off
15 the record, the time is 2:56 p.m.
16 (There was a recess taken.)
17 THE VIDEOGRAPHER: We're back on the
18 record, the time is 3:10 p.m.
19 BY MR. BONI:
20 Q. Dr. Courant, is Google still digitizing
21 books from the University of Michigan libraries
22 collection?
23 A. Yes.



14 (Pages 50 - 53)



15 (Pages 54 - 57)

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Page 61

1 MR. BONI: Let me ask the court
2 reporter to put in front of the witness what has been
3 premarked UM 1 and UM 2.

4 MR. PETERSEN: So it's actually --
5 it's marked Courant 1 and Courant 2 --

6 MR. BONI: Oh, Courant.

7 MR. PETERSEN: -- Mike, and I'll let
8 you know that Courant 1 is the First Amended Complaint
9 and Courant 2 is the joint Answer and Defenses.

10 MR. BONI: Great. Thanks. And do
11 you guys -- I take it you and Daralyn have a copy?

12 MS. DURIE: We do.

13 MR. BONI: Okay. It doesn't matter
14 to me, but I know that there -- there is a deposition
15 in the other case, and I didn't want to confuse that
16 this was a -- this is a subpoena to the University of
17 Michigan, but Courant 1 and Courant 2 is fine with me.
18 BY MR. BONI:

19 Q. Dr. Courant, let me ask you whether you
20 recognize what has been marked Courant 1?

21 A. I haven't flipped through this copy of it,
22 but yes.

23 MR. PETERSEN: Why don't we give
24 Dr. Courant a few moments, Mike, to take a look at what
25 has been marked Exhibit 1.

16 (Pages 58 - 61)

<p style="text-align: right;">Page 62</p> <p>1 BY MR. BONI:</p> <p>2 Q. Take all the time you need.</p> <p>3 A. I may need more time if you start asking</p> <p>4 specific questions about it, but I've seen this</p> <p>5 document before I read it.</p> <p>6 Q. Right. I only asked whether you recognized</p> <p>7 it and if you could simply, in your own words, describe</p> <p>8 what it is?</p> <p>9 A. Well, I recognize it, and it's my</p> <p>10 understanding that it is a Complaint from the</p> <p>11 Authors Guild and a number of other entities against</p> <p>12 the University of Michigan and a number of other</p> <p>13 entities with respect -- with regard to copying and</p> <p>14 holding a number of digital files at the University of</p> <p>15 Michigan and in the Hathi Trust.</p> <p>16 Q. Have you read the Complaint, the First</p> <p>17 Amended Complaint prior to today, sir?</p> <p>18 A. Yes.</p> <p>19 Q. How recently have you read it?</p> <p>20 A. Quite some time ago.</p> <p>21 Q. Okay. And am I right that a copy of the</p> <p>22 Complaint is kept somewhere at the University of</p> <p>23 Michigan, at the offices of the University of Michigan?</p> <p>24 MR. PETERSEN: Objection.</p> <p>25 Objection, lacks foundation.</p>	<p style="text-align: right;">Page 64</p> <p>1 copies in a repository called the Hathi Trust Digital</p> <p>2 Library, which contains at least 9.7 million volumes.</p> <p>3 My question is whether that number is accurate today</p> <p>4 or do you have another number for the number of</p> <p>5 volumes?</p> <p>6 A. The number of volumes now exceeds</p> <p>7 10 million. I don't have an exact number for today.</p> <p>8 Q. Okay. But it exceeds 10 million?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any sense of what percentage of</p> <p>11 the volumes are protected by U.S. copyright laws?</p> <p>12 MR. PETERSEN: Objection to form,</p> <p>13 vague. Objection, calls for a legal conclusion.</p> <p>14 Objection, lack of foundation.</p> <p>15 THE WITNESS: I have a -- I could</p> <p>16 speculate within a range, but I have no exact knowledge</p> <p>17 of what works are in copyright because it's actually</p> <p>18 quite difficult to determine whether a work is in</p> <p>19 copyright in many cases.</p> <p>20 BY MR. BONI:</p> <p>21 Q. Okay. On what do you base your ability to</p> <p>22 speculate as to a range of the percentage?</p> <p>23 MR. PETERSEN: Objection to form,</p> <p>24 vague. Mike, can you rephrase that?</p> <p>25 MR. BONI: Yeah.</p>
<p style="text-align: right;">Page 63</p> <p>1 THE WITNESS: I just -- I would be</p> <p>2 shocked if it were otherwise, but I do not know.</p> <p>3 BY MR. BONI:</p> <p>4 Q. Let me ask you to look at Courant 2. Take</p> <p>5 all the time you need review it, and then I'll ask you</p> <p>6 questions about it.</p> <p>7 A. Yes.</p> <p>8 Q. Do you recognize that document, Dr. Courant?</p> <p>9 A. I do.</p> <p>10 Q. What is it?</p> <p>11 A. It is, as I understand it, since these are</p> <p>12 all matters of legal form in which I have no expertise,</p> <p>13 but this is the response of our attorneys to that</p> <p>14 Complaint that we just discussed.</p> <p>15 Q. Okay. And have you read -- have you read</p> <p>16 this document before today?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know how recently you read this</p> <p>19 document?</p> <p>20 A. I read it first quite some time ago, and I</p> <p>21 looked through it over the last few days.</p> <p>22 Q. Let me ask you to turn to the bottom of page</p> <p>23 three, the last two lines, where it reads, the uni --</p> <p>24 this is the second -- this is the latter part of a</p> <p>25 long sentence. The university stored these digital</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. BONI:</p> <p>2 Q. You said that you can speculate as to the</p> <p>3 percentage, so I'm asking --</p> <p>4 MR. PETERSEN: I don't think you</p> <p>5 want a record with speculation on it, Mike. I think</p> <p>6 you need to --</p> <p>7 BY MR. BONI:</p> <p>8 Q. I didn't ask for that. I'm asking how you</p> <p>9 can -- how you can give us a range of the percentage,</p> <p>10 Dr. Courant?</p> <p>11 A. Well, I may be being a little too much the</p> <p>12 empirical economist that I am, and so I make -- I make</p> <p>13 speculations on such data as I have. We consistently</p> <p>14 find -- we know that somewhere around 27 or 28 percent</p> <p>15 of the works are in the public domain, and I think it's</p> <p>16 reasonable to expect that the majority of the works</p> <p>17 that we haven't made that determination of are in</p> <p>18 copyright, and that would be a pretty broad range. So</p> <p>19 that's about as far as I can go.</p> <p>20 Q. Okay. Did you serve any role in the</p> <p>21 preparation of the Answer to the First Amended</p> <p>22 Complaint, what you have before you as Courant 2?</p> <p>23 MR. PETERSEN: Objection to form,</p> <p>24 vague.</p> <p>25 THE WITNESS: I looked at parts of</p>

17 (Pages 62 - 65)


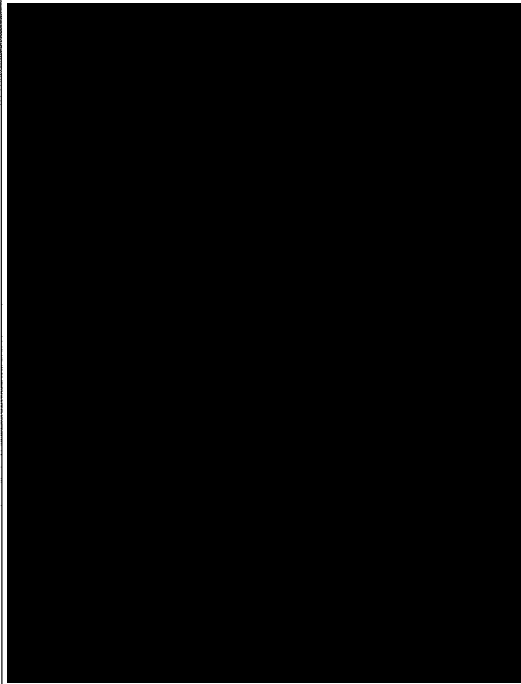
<p style="text-align: right;">Page 66</p> <p>1 it when it was being drafted.</p> <p>2 BY MR. BONI:</p> <p>3 Q. Prior to the time that it was filed?</p> <p>4 MR. PETERSEN: Mike, you're getting</p> <p>5 close. Obviously this is a legal document that was</p> <p>6 filed in connection with a lawsuit. There's a</p> <p>7 privilege issue.</p> <p>8 He can answer if he's seen the</p> <p>9 document before, but I'm going to assert privilege with</p> <p>10 respect to communications with counsel concerning the</p> <p>11 document and those types of issues on timing as to --</p> <p>12 as to timing as well, so --</p> <p>13 MR. BONI: Well, I'm not asking with</p> <p>14 whom -- actually, I could ask with whom he spoke, but</p> <p>15 I'm not, and I'm not asking what was said. I'm simply</p> <p>16 asking whether Dr. Courant reviewed the Answer prior to</p> <p>17 the time that it was filed with the court.</p> <p>18 MR. PETERSEN: He can answer that</p> <p>19 question -- if he recalls, then he can answer that, but</p> <p>20 in terms of any issue of substance, I'm going to assert</p> <p>21 the privilege.</p> <p>22 MR. BONI: Okay.</p> <p>23 THE WITNESS: I believe that I was</p> <p>24 in on discussions of the content of this before it was</p> <p>25 filed, but I may be remembering incorrectly.</p>	<p style="text-align: right;">Page 68</p> <p>1 think you're right, so let me strike that. I do recall</p> <p>2 asking that question before.</p> <p>3 BY MR. BONI:</p> <p>4 Q. What is meant in that statement by the term</p> <p>5 to make lawful uses of these works?</p> <p>6 MR. PETERSEN: Objection to form and</p> <p>7 objection, calls for a legal conclusion.</p> <p>8 THE WITNESS: So there are lots of</p> <p>9 plausible lawful uses of works -- of these works. One</p> <p>10 of them would be to make a list of them and make that</p> <p>11 list public. And, you know -- and -- and there may</p> <p>12 well be uses -- reading uses of these works that are</p> <p>13 lawful, including ones for the print disabled, and</p> <p>14 when this project -- as this project was designed on</p> <p>15 advice of counsel we had intended to make the works</p> <p>16 available to members of our community and --</p> <p>17 MR. PETERSEN: I instruct the</p> <p>18 witness not to divulge any attorney/client information.</p> <p>19 THE WITNESS: I'm sorry, okay. So</p> <p>20 the uses that we talked about earlier in response to a</p> <p>21 similar question.</p> <p>22 BY MR. BONI:</p> <p>23 Q. Did anyone tell you why Indiana University</p> <p>24 has not announced plans to participate in the Orphan</p> <p>25 Works Project?</p>
<p style="text-align: right;">Page 67</p> <p>1 BY MR. BONI:</p> <p>2 Q. Okay. At paragraph three on page four, it</p> <p>3 states that Defendants admit that UM and UC have</p> <p>4 announced their participation in the Orphan Works</p> <p>5 Project, an initiative to, inter alia, identify orphan</p> <p>6 works, and then hyphen, in copyright works for which</p> <p>7 the copyright holder cannot be found, hyphen, and</p> <p>8 eventually to make lawful uses of these works. Do you</p> <p>9 have an understanding of what is meant in that</p> <p>10 admission by the word eventually?</p> <p>11 MR. PETERSEN: Objection to form.</p> <p>12 THE WITNESS: In the -- in the</p> <p>13 context of the announcement, after there was</p> <p>14 determination that the work was an orphan work,</p> <p>15 including an open period in which the work would be</p> <p>16 displayed to the world as a potential orphan work, we</p> <p>17 would get to I think eventually.</p> <p>18 BY MR. BONI:</p> <p>19 Q. And as you sit here today, is it still</p> <p>20 the -- is it still the aim of the Orphan Works Project</p> <p>21 to identify orphan works?</p> <p>22 MR. PETERSEN: Objection to form,</p> <p>23 and objection, asked and answered. I believe</p> <p>24 Dr. Courant has already --</p> <p>25 MR. BONI: Yeah. You know what, I</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I don't recall having a specific</p> <p>2 conversation with people from Indiana about that.</p> <p>3 Q. Do you have any knowledge as you sit here</p> <p>4 today as to why Indiana University has not announced</p> <p>5 plans to participate in the Orphan Works Project?</p> <p>6 MR. PETERSEN: Objection to form and</p> <p>7 objection to the extent it calls for speculation.</p> <p>8 THE WITNESS: Yeah, I just, you</p> <p>9 know -- I find that speculating on other people's</p> <p>10 motives isn't a very good move.</p> <p>11 BY MR. BONI:</p> <p>12 Q. You have no idea why it made that decision?</p> <p>13 MR. PETERSEN: Objection, asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: Am I supposed to</p> <p>16 respond?</p> <p>17 BY MR. BONI:</p> <p>18 Q. Yeah, you can respond.</p> <p>19 A. So I have lots of ideas. I just have no</p> <p>20 knowledge.</p> <p>21 Q. Right. What are those ideas?</p> <p>22 MR. PETERSEN: Objection, it calls</p> <p>23 for speculation. The witness told you he has no</p> <p>24 knowledge.</p> <p>25 MR. BONI: I'd like to know what his</p>

18 (Pages 66 - 69)

<p style="text-align: right;">Page 70</p> <p>1 ideas are. He just testified as to having ideas. 2 THE WITNESS: Somewhere in their 3 decision process they decided not to. 4 BY MR. BONI: 5 Q. Why not? 6 A. I don't know. 7 MR. PETERSEN: Same objection. 8 BY MR. BONI: 9 Q. And so when you testified that you had 10 ideas, do you have any other ideas as to why 11 Indiana University has not announced plans to 12 participate in the Orphan Works Project? 13 MR. PETERSEN: Objection to form. 14 Objection, calls for speculation. Objection, asked and 15 answered. 16 THE WITNESS: I assume that they 17 didn't -- haven't announced plans because they don't 18 mean to participate. 19 BY MR. BONI: 20 Q. Do you know why they don't mean to 21 participate -- 22 A. I do not know why. 23 Q. -- in the Orphan Works Project? 24 MR. PETERSEN: And objection, asked 25 and answered.</p>	<p style="text-align: right;">Page 72</p> <p>1 would be made available to authorized and authenticated 2 members of the University of Michigan community on the 3 basis that they could, on a -- such that they could 4 have reading access to it digitally online per the 5 number of books of that -- works of that title that we 6 had purchased in print form. In other words, they 7 would have essentially exactly the same use of the work 8 that they would have if they went into the library and 9 checked it out, but they could do it from their dorm 10 room. 11 BY MR. BONI: 12 Q. Okay. Let me ask you to turn to page ten. 13 The last sentence of paragraph 34, it's at the top of 14 page 10, says the Defendants further admit that UM is a 15 co-founder, host, and primary administrator of the 16 Hathi Service -- I'm sorry, the Hathi Trust Service and 17 is the largest contributor to the HDL, which contains 18 the collection of digital works with respect to which 19 the Hathi Trust Service operates. Do you see that 20 language, Dr. Courant? 21 A. Yes, poetry. 22 Q. What is meant by the term host in that 23 statement? 24 MR. PETERSEN: Objection, lacks 25 foundation.</p>
<p style="text-align: right;">Page 71</p> <p>1 THE WITNESS: I don't know why. 2 BY MR. BONI: 3 Q. Let me ask you to turn to paragraph 13 on 4 page five. Are you there? 5 A. Um-hum. 6 Q. I have the handicap of not seeing whether 7 you're here or not. 8 A. I'm here. 9 Q. Okay. The first sentence says, Defendants 10 admit that a book entitled "Good Troupers All: The 11 Story of Joseph Jefferson" by Gladys Malvorn was 12 digitized and included in the HDL and was 13 preliminary -- preliminarily identified as a book that 14 UM planned to make available on the limited basis 15 contemplated as part of the OWP if the copyright holder 16 were not identified, and then the sentence goes on. Do 17 you see that language, Dr. Courant? 18 A. I do. 19 Q. Can you tell me what is meant by the phrase 20 on the limited basis contemplated? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: Yes. As I believe 23 we've already discussed, works that were identified 24 as a -- as orphan works, which this work was not, it 25 was only preliminarily identified as an orphan works,</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: The U of M is the 2 place where and whence the works are held and can be 3 found and searched, etcetera. 4 BY MR. BONI: 5 Q. Do you know how it came to be that the 6 University of Michigan would be a host of the works, of 7 the digital files? 8 MR. PETERSEN: Objection to form, 9 vague. 10 THE WITNESS: The U of M at the time 11 that the Hathi Trust was founded already had the -- as 12 it says in this sentence actually, the largest 13 collection of such works and a active and functional 14 set of procedures for hosting them, and so we continued 15 in that role because we were the entity that was doing 16 that work already. 17 BY MR. BONI: 18 Q. How did the U of M come to develop an active 19 and functional set of services in that regard? 20 MR. PETERSEN: Objection to form. 21 THE WITNESS: We've discussed -- we 22 discussed earlier today the relationship -- the 23 U of M's making -- having files that came from the 24 Google scans. We put those -- used those files -- used 25 those files. We store those files on servers</p>

19 (Pages 70 - 73)

<p style="text-align: right;">Page 74</p> <p>1 maintained by U of M subject to a set of protocols, and 2 the -- and so the starting place of Hathi Trust was 3 that there were already many books that were being held 4 by U of M, the U of M library at that point, in this 5 way. 6 BY MR. BONI: 7 Q. And that is as a result of the Google 8 Library Project? 9 MR. PETERSEN: Objection to form. 10 THE WITNESS: Yes. 11 BY MR. BONI: 12 Q. What is meant by -- so is UM the only host, 13 or are there any other hosts? Is Indiana University -- 14 let me ask this question. Is Indiana University also a 15 host? 16 A. So if the word host is a legal term of art 17 then I have to pull back because I don't know what 18 its -- what its meaning is. 19 Q. I'm not asking it as a legal term of art at 20 all. 21 MR. PETERSEN: Mike, why don't you 22 just define -- 23 BY MR. BONI: 24 Q. I don't know how it would be a legal term of 25 art.</p>	<p style="text-align: right;">Page 76</p> <p>1 BY MR. BONI: 2 Q. Is Google also an administrator of the Hathi 3 Trust Service? 4 A. Not in any sense that I understand. 5 Q. Okay. Are the other -- are the other 6 schools in which U of M have those bilateral agreements 7 considered administrators of the Hathi Trust Service? 8 MR. PETERSEN: Objection to form. 9 THE WITNESS: No, I shouldn't think 10 so. 11 BY MR. BONI: 12 Q. So is U of M the only administrator of the 13 Hathi Trust Service? 14 MR. PETERSEN: Objection to form. 15 THE WITNESS: I think that this -- 16 this language either contemplates the U of M alone or 17 U of M and Indiana, Indiana in its role as the mirror 18 site. 19 BY MR. BONI: 20 Q. Fair enough. Let me ask you to turn to the 21 bottom of page 11. The last sentence on that -- I'm 22 sorry, the second to last sentence on that page reads, 23 Defendants admit that a fully operational, synchronized 24 and live mirror site of the HDL is located on IU's 25 Indianapolis campus. Do you see that language,</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. PETERSEN: Why don't you define 2 host, Mike? That might be helpful. 3 MR. BONI: Well, it's in your 4 Answer, and we asked anyone to step forward on behalf 5 of the University of Michigan to speak about the 6 Answer, and here's Dr. Courant, so I'm asking what is 7 meant in the Answer by host. 8 MR. PETERSEN: And to the extent the 9 witness knows, he can answer. To the extent he doesn't 10 know, it's appropriate for him to say he doesn't know. 11 THE WITNESS: So as the -- as a host 12 for a copy of the files, both Michigan and Indiana are 13 hosts. 14 BY MR. BONI: 15 Q. University of Michigan is a primary 16 administrator of the Hathi Trust Service; is that 17 correct? 18 MR. PETERSEN: Objection to form. 19 THE WITNESS: The Hathi Trust 20 Service takes place under a series, a set of -- a 21 large set of bilateral contracts between the University 22 of Michigan and other universities and research 23 entities, research libraries around the country, and 24 thus the University of Michigan is the primary 25 administrator.</p>	<p style="text-align: right;">Page 77</p> <p>1 Dr. Courant? 2 A. Yes. 3 Q. Is this what you were referring to 4 previously as Indiana's mirror site -- 5 A. Yes. 6 Q. -- of the Hathi Trust Digital Library? 7 A. Yes. 8 Q. What is meant by synchronized? Do you know? 9 A. I think that's a technical term in the 10 context of the computing activity, and so I would not 11 opine on what it means in detail. 12 Q. Do you know whether Indiana University 13 offers for reading the full text of in copyright books 14 to members of its community who are print disabled? 15 MR. PETERSEN: Objection to form. 16 THE WITNESS: I do not know. 17 BY MR. BONI: 18 Q. Do you know -- do you know what uses 19 Indiana University makes of its mirror site of the 20 Hathi Trust Digital Library? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: The principal use 23 would be to store a duplicate set of the files. 24 BY MR. BONI: 25 Q. Do you know whether it does anything with</p>

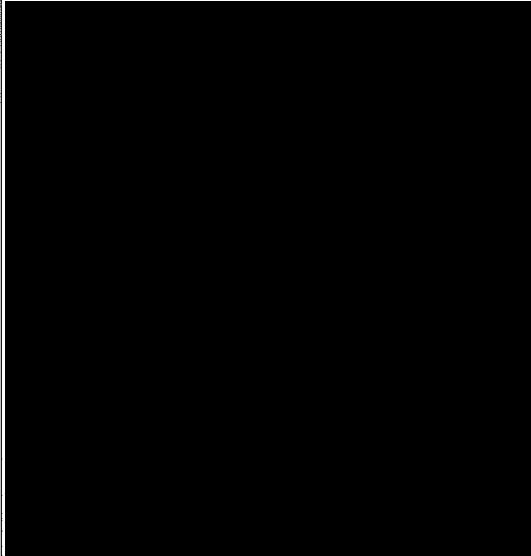
<p style="text-align: right;">Page 78</p> <p>1 the mirror set of the Hathi Trust digital files other 2 than that?</p> <p>3 MR. PETERSEN: Objection to form. 4 THE WITNESS: I do not know. 5 However, I would expect that they would -- the use -- 6 any use would be through the Hathi Trust interface. 7 BY MR. BONI: 8 Q. What do you mean by the Hathi Trust 9 interface? 10 A. www.hathitrust.org gives one a way of 11 getting to many services of the Hathi Trust, largely 12 around -- search around all works, as I've pointed out, 13 and reading use of public domain works or other works 14 that have been authorized for such use, and the 15 institutions -- both institutions who are part of the 16 Hathi Trust and institutions who are not, and just 17 ordinary folks anywhere can go there and make those 18 uses, and that is the mechanism that people use in 19 order to make uses -- any uses of those files. 20 Q. So by Hathi Trust interface you meant 21 Hathi Trust's website, correct? 22 A. Yeah.</p> 	<p style="text-align: right;">Page 80</p> <p>1 digital copies deposited in the HDL by some 2 institutions have been delivered to the HDL over the 3 Internet or via removable media, and then the sentence 4 goes on. Do you see that language, Dr. Courant? 5 A. Yes. 6 Q. By whom have the digital copies been 7 delivered to the Hathi Trust Digital Library? 8 MR. PETERSEN: Objection to form. 9 THE WITNESS: Do you want the names 10 of people? 'Cause I wouldn't know. 11 BY MR. BONI: 12 Q. Or entities. Either one. 13 MR. PETERSEN: Objection. Same 14 objection. 15 THE WITNESS: The -- many 16 entities -- 17 BY MR. BONI: 18 Q. Well, let me cut it short. Is Google one of 19 those entities? 20 A. Yes. 21 Q. And earlier today you testified that the 22 digital copies were delivered to the HDL over the 23 Internet, but that you didn't know the inner workings 24 of that. I'm paraphrasing. Do you recall that 25 testimony?</p>
<p style="text-align: right;">Page 79</p>  <p>23 Q. Let me ask you to turn to page 17, please. 24 At paragraph 63, the second sentence reads, UM Regents, 25 the Hathi Trust Service, and UC Regents admit that</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. PETERSEN: Objection, 2 mischaracterizes the testimony. 3 MR. BONI: Yeah, I don't mean to do 4 that. 5 THE WITNESS: I actually resisted 6 the phrase "over the Internet" because I was concerned 7 that that might imply the open web, and -- but so -- is 8 that good enough? 9 BY MR. BONI: 10 Q. What term would you have used? 11 MR. PETERSEN: Objection, asked and 12 answered. He did answer these questions, Mike, at the 13 beginning of the deposition. 14 MR. BONI: I don't think he answered 15 what term he would use instead of "over the Internet." 16 MR. PETERSEN: I think he said 17 secured server or words to that effect. 18 THE WITNESS: Yeah, I would -- I 19 would have said something about optical -- optical 20 fiber networks. Optical fiber networks. 21 BY MR. BONI: 22 Q. Okay, all right. But not over the worldwide 23 web? 24 A. Again, I don't know the details of how these 25 things work, but not in an insecure way.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. And then where it says via removable 2 media, do you have an idea of what is meant by 3 removable media? 4 A. At least in some cases hard drives, maybe 5 other media as well. 6 Q. Okay. Does UM have those hard drives today? 7 A. I do not know. 8 Q. So you would not know that if you had them 9 where they would be kept, right? 10 MR. PETERSEN: Objection. Objection 11 to form. 12 THE WITNESS: I think that follows, 13 yes. 14 BY MR. BONI: 15 Q. Okay. Let me ask you to go to paragraph 64 16 on page 18. It says at the top of the page, Defendants 17 admit that the incorporation of digital works and 18 their associated metadata into the HDL is performed at 19 MLibrary. What is -- what exactly goes into 20 incorporating the digital works and their associated 21 metadata? 22 MR. PETERSEN: Objection to form. 23 THE WITNESS: I can't tell you 24 exactly, but the HDL has a bibliographic record for the 25 works in it, and so when the works are taken into the</p>	<p style="text-align: right;">Page 84</p> <p>1 tapes are secured in any way from theft or misuse? 2 A. I believe that they are. 3 Q. Do you know how? 4 A. We're now way beyond my expertise. I 5 know that the people who are responsible for holding 6 those tapes are experienced in holding such things 7 securely. 8 Q. Are they employees -- those people to whom 9 you are referring, are they employed by University of 10 Michigan? 11 A. Yes. 12 Q. Okay. So this is U of M staff who are 13 responsible for the security of the backup tapes? 14 MR. PETERSEN: Objection to form. 15 Objection, asked and answered. 16 THE WITNESS: Yes. 17 BY MR. BONI: 18 Q. Who -- do you know who is in charge of that 19 staff? 20 A. The tapes are held by the Information 21 Technology Services at the university. The director of 22 that operation, the Chief Information Officer of the 23 university, is named Laura Patterson. 24 Q. And she's the chief technology officer at 25 U of M?</p>
<p style="text-align: right;">Page 83</p> <p>1 HDL, the associated metadata, title, author, publisher, 2 date, all this stuff that we carry around with records 3 of works has to be carefully linked to the works 4 themselves, made findable and so forth, and so 5 that's -- that's in broad outline the work that's being 6 done here as I understand it. 7 BY MR. BONI: 8 Q. And who at Michigan Library does that 9 incorporating? 10 A. The -- largely John Wilkin's staff. In 11 fact, I think exclusively John Wilkin's staff. 12 Q. Okay. In the next sentence it says 13 UM Regents, the Hathi Trust Service and IU Trustees 14 admit that the digital works and associated metadata 15 are replicated to an active mirror site located on 16 IU's Indianapolis campus and are stored on backup tapes 17 located at UM's facilities. Do you know -- and then 18 the sentence goes on. Do you know where at UM's 19 facilities the backup tapes are located? 20 MR. PETERSEN: Objection, vague. 21 THE WITNESS: I don't off the top of 22 my head, although there are addresses where those sites 23 are. 24 BY MR. BONI: 25 Q. Do you have any idea of whether those backup</p>	<p style="text-align: right;">Page 85</p> <p>1 A. She's the Chief Information Officer. 2 Q. All right, okay. Chief information, CIO, 3 all right. Who replicated the digital works and 4 associated metadata to the active mirror site at IU's 5 Indianapolis campus? 6 MR. PETERSEN: Objection to form. 7 THE WITNESS: That work would have 8 been done under the general direction of John Wilkin 9 and his counterpoints at Indiana -- counterparts at 10 Indiana. 11 BY MR. BONI: 12 Q. Okay. On page 19 in paragraph 67, it's 13 right in the middle of the page, it says in the 14 second sentence, Defendants also admit that the 15 Hathi Trust Service preserves and secures books that 16 are in copyright, published, and commercially 17 available. Do you see that language, Dr. Courant? 18 A. I do. 19 Q. In what way does Hathi Trust preserve the 20 books referenced here? 21 MR. PETERSEN: Objection to form. 22 THE WITNESS: The Hathi Trust is an 23 operation of the library and has a time scale for 24 preserving its assets that extends into the indefinite 25 future.</p>

<p style="text-align: right;">Page 86</p> <p>1 BY MR. BONI:</p> <p>2 Q. What are its assets?</p> <p>3 A. Its holdings, copies of works. Assets may</p> <p>4 not have been the best word, but copies of works. And</p> <p>5 works are subject to -- print works are subject to all</p> <p>6 manner of risk of deterioration and destruction over</p> <p>7 time, and so the sense in which these works are</p> <p>8 preserved is that we would intend to keep a copy, as I</p> <p>9 said, into the indefinite future against the</p> <p>10 possibility that the -- that other copies would</p> <p>11 disappear.</p> <p>12 MS. DURIE: Can you do me a favor?</p> <p>13 Can I just get you to move the bottle to one side? The</p> <p>14 videographer was just saying it was blocking.</p> <p>15 THE WITNESS: Oh, sure.</p> <p>16 MS. DURIE: Thanks.</p> <p>17 BY MR. BONI:</p> <p>18 Q. Let me ask you to turn to page 21, paragraph</p> <p>19 78.</p> <p>20 A. I'm there.</p> <p>21 Q. There is a block quote there. It appears to</p> <p>22 be a statement from Michigan Library. And it states,</p> <p>23 this tells us that our pilot process is flawed,</p> <p>24 referring to the potential orphan works. Can you tell</p> <p>25 me what that -- what is meant by the pilot process</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. PETERSEN: Objection to form,</p> <p>2 vague.</p> <p>3 THE WITNESS: Other than what?</p> <p>4 BY MR. BONI:</p> <p>5 Q. Sources. Do the people who do the -- who</p> <p>6 try to identify orphan -- you know what, let me ask you</p> <p>7 this question. Throughout the deposition you've</p> <p>8 referred to the term orphan works. What do you mean by</p> <p>9 orphan works?</p> <p>10 A. Works that are in copyright for which a</p> <p>11 rights holder cannot be found.</p> <p>12 Q. For those at U of M seeking to identify --</p> <p>13 trying to identify the rights holders of potential</p> <p>14 orphan works, do you know whether those people have, as</p> <p>15 a result of the errors identified, considered other</p> <p>16 sources, other sources to determine the identity of the</p> <p>17 rights holders?</p> <p>18 MR. PETERSEN: Objection, form,</p> <p>19 vague. Objection, lacks foundation.</p> <p>20 THE WITNESS: And I need ask, other</p> <p>21 sources than what?</p> <p>22 BY MR. BONI:</p> <p>23 Q. Yeah, other -- other -- other sources of</p> <p>24 investigation, of research?</p> <p>25 MR. PETERSEN: Objection, same</p>
<p style="text-align: right;">Page 87</p> <p>1 being flawed?</p> <p>2 A. Yeah. It's actually stated very well in the</p> <p>3 previous sentence. The close and welcome scrutiny of</p> <p>4 the list of potential orphan works has revealed a</p> <p>5 number of errors, some of them serious. The errors</p> <p>6 were classifying some things as potential orphan works</p> <p>7 that in -- that -- that we should have been able to see</p> <p>8 more easily than we did were actually not potential</p> <p>9 orphan works.</p> <p>10 Q. Has the pilot process changed as a result of</p> <p>11 the errors --</p> <p>12 MR. PETERSEN: Objection to form.</p> <p>13 BY MR. BONI:</p> <p>14 Q. -- discovered?</p> <p>15 MR. PETERSEN: Objection, lacks</p> <p>16 foundation.</p> <p>17 THE WITNESS: We are -- we are -- we</p> <p>18 have changed a good deal of the process in response to</p> <p>19 what we learned last fall.</p> <p>20 BY MR. BONI:</p> <p>21 Q. How so?</p> <p>22 A. Here, to get into the details I would have</p> <p>23 to refer to the people who do the work in detail, but</p> <p>24 more time, more care, more eyeballs on the case.</p> <p>25 Q. Are there other sources that are considered?</p>	<p style="text-align: right;">Page 89</p> <p>1 objection. And it lacks foundation.</p> <p>2 THE WITNESS: So I don't know at --</p> <p>3 I mean when you improve a process you do things other</p> <p>4 than what you did before, so that answer would be yes.</p> <p>5 But I -- the use of the word sources, this isn't a</p> <p>6 matter of looking things up in the International</p> <p>7 Register of Orphan Works. If we had that we would in</p> <p>8 much better -- this it wouldn't be a problem.</p> <p>9 BY MR. BONI:</p> <p>10 Q. Understood. So tell me -- tell me what you</p> <p>11 know about what is done to identify the rights holders</p> <p>12 of potential orphan works --</p> <p>13 MR. PETERSEN: Objection.</p> <p>14 BY MR. BONI:</p> <p>15 Q. -- as part of the Orphan Works Project?</p> <p>16 MR. PETERSEN: Objection, asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: I note that it's very</p> <p>19 important here to be considering -- there's a potential</p> <p>20 orphan works part of the process, and then there is a</p> <p>21 part of the process that involves publishing the list</p> <p>22 of potential orphan works and inviting the world to</p> <p>23 comment on that, and that part of the process actually</p> <p>24 has worked well in that it has identified a number of</p> <p>25 works that were potential orphans that proved not to</p>


23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 be, and I actually believe that that will be a vital 2 part of any process going forward to identify -- to 3 identify orphan works. 4 The first thing was to look for is 5 the publisher still alive, does the publisher still 6 exist. If the answer to that question was yes, we 7 stopped. Note that in many cases where the publisher 8 exists, the work still might well be out of copyright 9 and we could go back and look, keep a record of those 10 works. We were developing a record of publishers that 11 are -- that are findable. 12 And then move from publisher to 13 author, similar set of questions. And then the 14 question of whether then look for the -- if the book 15 were for sale that would obviously mean that it wasn't 16 an orphan. 17 So there is a nested set of 18 searches starting with actually is it for sale and then 19 going to publisher and then looking for information 20 about authors, and also a mechanism whereby a second 21 investigator would go through the process without 22 having information from the first investigator. 23 BY MR. BONI: 24 Q. Dr. Courant, are you aware that the 25 Authors Guild identified at least one rights holder of</p>	<p style="text-align: right;">Page 92</p> <p>1 they exist? 2 MR. PETERSEN: Objection to form, 3 vague. Objection, mischaracterizes testimony as to the 4 process. 5 BY MR. BONI: 6 Q. You can answer. 7 A. The answer is certainly not. Certainly not. 8 MR. BONI: All right. Thank you, 9 Dr. Courant. I have no further questions. 10 MS. DURIE: Great, thank you. I 11 have a few questions for you. Do you want to take a 12 short break first? 13 THE WITNESS: I would like that. 14 MS. DURIE: Great, then we can do 15 that. 16 THE VIDEOGRAPHER: We're going off 17 the record, the time is 4:01 p.m. 18 (There was a recess taken.) 19 THE VIDEOGRAPHER: We are back on 20 the record, the time is 4:12 p.m. 21 MS. DURIE: Thanks. 22 EXAMINATION BY MS. DURIE: 23 Q. Good afternoon, Dr. Courant. I introduced 24 myself off the record. As you know, I represent Google 25 in the Authors Guild versus Google litigation. I have</p>
<p style="text-align: right;">Page 91</p> <p>1 a book that was on the list that you referred to in 2 your previous testimony that was considered a potential 3 orphan works? 4 A. Yes. 5 Q. Orphan work, I'm sorry. 6 A. Considered a potential orphan work, yes. 7 Q. Right. And do you know whether -- had the 8 Authors Guild not advised the Hathi Trust of that book, 9 would Hathi Trust have displayed the full text of that 10 work? 11 MR. PETERSEN: Objection. Objection 12 to form, calls for speculation. 13 THE WITNESS: Yeah, we will -- it 14 is -- this is speculative, and the only accurate answer 15 is we will never know. 16 BY MR. BONI: 17 Q. Why is that? 18 A. Because we had a good long time before the 19 work was scheduled to be displayed, and many people 20 other than members of the Authors Guild had access to 21 that list of works. 22 Q. Is the Hathi Trust process -- I'm sorry, the 23 Orphan Works Project, the process of identifying orphan 24 works wholly dependent on rights holders coming forward 25 and notifying the project that they are there, that</p>	<p style="text-align: right;">Page 93</p> <p>1 just a few questions for you, and I will endeavor to be 2 brief. 3 When did you join the faculty of the 4 University of Michigan? 5 A. 1973. 6 Q. Can you just describe for me very briefly 7 your educational background? 8 A. I went to high school in Bayport, 9 Long Island, and then went to college at Swarthmore 10 College, got my BA in history in 1968, and then did a 11 few things for a few years and went to Princeton, got a 12 Ph.D. from Princeton in economics. Actually, the 13 degree was awarded in 1974, shortly after I got here. 14 Q. Can you give me a brief overview of your 15 academic career at the University of Michigan? 16 A. I was hired as an assistant professor in 17 economics and public policy. As I said, I got here in 18 1973. My work in those days was largely on urban 19 economics, housing, housing discrimination and 20 segregation, then moved more broadly into public 21 policy, behavior of governments, taxes at the local and 22 state level and economic development as well, and also 23 federal tax policy and budget policy. 24 I spent a year on the staff of the 25 Council of Economic Advisers in Washington in the late</p>

<p style="text-align: right;">Page 94</p> <p>1 '70s doing principally budget policy and health 2 policy. I came back to Michigan. I've stayed in those 3 fields, although I've done a fair amount of work on 4 gender discrimination as well, and then moved into 5 administrative roles. I became director of what was 6 then called the Institute of Public Policy Studies, it 7 might have been 1982, somewhere around there. It's now 8 the Ford School.</p> <p>9 And then after several years in 10 that role went back to the faculty for a while, then 11 did that again for a while, was Chair of the Economics 12 Department and was appointed -- I wrote a good book 13 about federal budget deficits along the way there, 14 which is -- which I've turned into public domain, is 15 available on Google Book Search for free if anybody 16 wants to read it.</p> <p>17 Came to work for the provost then, 18 Nancy Cantor, in 1998 maybe, '97, '98. She hired me as 19 vice provost for budget. Did that for several years. 20 When she left the university, after a brief interim 21 period I was appointed provost and executive vice 22 president for academic affairs and served in that role 23 from 2002 through most of 2005.</p> <p>24 Back to the faculty. Now in that 25 period I got interested in libraries and started</p>	<p style="text-align: right;">Page 96</p> <p>1 that?</p> <p>2 A. I thought it was an extremely interesting 3 and positive development.</p> <p>4 Q. Why was that?</p> <p>5 A. So really a number of reasons. We had been 6 digitizing our collections ourselves at the rate of 7 about 10,000 volumes a year give or take, and at that 8 rate it was going to take 900 years or so to get the 9 job done. And in fact, it would have taken longer 10 because we're still acquiring works.</p> <p>11 And so suddenly it became possible 12 to imagine digitizing close to the whole -- the whole 13 library, and that provided in turn a number of benefits 14 that struck me then and strike me now as being very, 15 very important. One, which is really huge, is this 16 notion of search that I talked about earlier. Having 17 the full text available for search of the works in the 18 library allows people, scholars, students, faculty, to 19 find works that have subject matter that might not be 20 apparent until the old card catalogs.</p> <p>21 The old catalog would give you three 22 entries, and if it turned out there was something else 23 important that was number four, it's not there. But if 24 it turns out that that 4th or 5th or 6th use has words 25 that are characteristic, you can find them in the works</p>
<p style="text-align: right;">Page 95</p> <p>1 writing papers about libraries, and then along the way 2 had written -- done a fair amount of research on the 3 economic and policy aspects of higher education, areas 4 in which I still continue to do some work, and then 5 was appointed library dean in -- whatever that would 6 be, 2007.</p>  <p>25 Q. What was your reaction when you heard about</p>	<p style="text-align: right;">Page 97</p> <p>1 in the library and then come to the library and use 2 them.</p> <p>3 The second enormous advantage has to 4 do with preservation. Many works in the library, 5 millions certainly, several millions, were printed on 6 acid paper, which means that they have within them the 7 seeds of their own -- their own destruction. It's a 8 phenomenon you will have noticed. You know, from time 9 to time you take an old paperback especially or an old 10 newspaper off the shelf and it just turns into 11 cornflakes and then dust in your hands. That's what 12 happens to works on acid paper, and in time it happens 13 to all of them.</p> <p>14 And by -- knowing that there are 15 millions of such works, identifying them one by one is 16 sort of inconceivably difficult. You have to go to the 17 shelves. I mean it just -- you know, millions or -- 18 that's a big number, and, you know, I just can't 19 imagine the amount of effort that would be involved in 20 finding them one by one.</p> <p>21 If we go through this process of 22 digitizing essentially the whole collection we then 23 have a preservation copy of works that would otherwise 24 disappear without replacement. These works now will in 25 due course disappear, in due time, but we will be able</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 to construct a replacement from the digital files. So</p> <p>2 that struck me as being, you know, an independence of</p> <p>3 two now big uses of the digitized files. The third,</p> <p>4 obviously very important, is to be able to make</p> <p>5 available to people with print disabilities in a timely</p> <p>6 way access to these works.</p> <p>7 Q. You mentioned earlier in your testimony</p> <p>8 making works available to people with print</p> <p>9 disabilities. What does it mean to have a print</p> <p>10 disability?</p> <p>11 A. I'm no expert in this field, but basically</p> <p>12 it means to have basically bad eyesight, to make it</p> <p>13 such that it is difficult to read text in the form in</p> <p>14 which it -- difficult or impossible to read text in the</p> <p>15 form in which -- I mean one form of print disability is</p> <p>16 total blindness.</p> <p>17 Q. And how is it that you're able to make these</p> <p>18 works available to people who do have a difficult time</p> <p>19 reading them?</p> <p>20 A. Again, this is not my field of expertise,</p> <p>21 but in some cases it's as simple as being able to blow</p> <p>22 up the size of a font so that things can be read, or to</p> <p>23 work with contrast. In some cases where people's</p> <p>24 disability is more serious than that such that they</p> <p>25 really can't read at all, there are text-to-voice</p>	<p style="text-align: right;">Page 100</p> <p>1 and I'm going to instruct the witness not to divulge</p> <p>2 any attorney/client privileged information. The</p> <p>3 General Counsel's office at the University of Michigan</p> <p>4 was involved in those discussions, and so again, I</p> <p>5 caution the witness to not divulge attorney/client</p> <p>6 privileged information.</p> <p>7 THE WITNESS: So the General</p> <p>8 Counsel's office was indeed involved in most of those</p> <p>9 or at least many of those discussions, and certainly</p> <p>10 was involved in the ones that led to the policy choices</p> <p>11 that we made.</p> <p>12 BY MS. DURIE:</p> <p>13 Q. Okay, fair enough. You testified earlier</p> <p>14 that Google and the University of Michigan entered into</p> <p>15 a cooperative agreement; is that right?</p> <p>16 A. That's correct.</p> <p>17 Q. Did that cooperative agreement provide that</p> <p>18 the parties would respect copyright laws?</p> <p>19 A. Pardon me? Say it again?</p> <p>20 Q. Did the cooperative agreement provide that</p> <p>21 the parties would respect the copyright laws?</p> <p>22 MR. PETERSEN: I'm going to object.</p> <p>23 If you want to show him a copy of the agreement --</p> <p>24 MS. DURIE: Sure.</p> <p>25 MR. PETERSEN: -- I think that's the</p>
<p style="text-align: right;">Page 99</p> <p>1 protocols that allow the work to be rendered in a form</p> <p>2 where it can be heard, indeed at very high speed for</p> <p>3 people who are trained to hear this way, rather than</p> <p>4 read in the usual physical way.</p> <p>5 Q. Did you consider the potential impact of</p> <p>6 this project on authors?</p> <p>7 MR. BONI: I'm sorry, I didn't hear</p> <p>8 the question.</p> <p>9 BY MS. DURIE:</p> <p>10 Q. Did you consider the potential impact of</p> <p>11 this project on authors?</p> <p>12 A. We were -- authors as a group. Of course I</p> <p>13 am an author. We did, in a -- but in a -- in a sort of</p> <p>14 what impact kind of way. So the impact of these</p> <p>15 digitizations on authors, we saw no market effect. We</p> <p>16 spent some time talking about that. And indeed, seems</p> <p>17 likely to me, although by no means a sure thing, so</p> <p>18 this is speculation, and it was speculation at the</p> <p>19 time, that the search capability would lead to some</p> <p>20 works that were otherwise never gonna be found being</p> <p>21 found and market might appear for them, who knows.</p> <p>22 Q. You said that you did have discussions</p> <p>23 regarding potential market effects. What did you</p> <p>24 discuss in that regard?</p> <p>25 MR. PETERSEN: I'm going to object</p>	<p style="text-align: right;">Page 101</p> <p>1 appropriate way to do that, so --</p> <p>2 MS. DURIE: I'm happy to do that.</p> <p>3 Let's --</p> <p>4 MR. BONI: Let me just add, Daralyn,</p> <p>5 I'm straining to hear you.</p> <p>6 MS. DURIE: Sorry.</p> <p>7 MR. BONI: Yeah.</p> <p>8 MS. DURIE: I'll try to keep my</p> <p>9 voice up, Mike.</p> <p>10 MR. BONI: Thank you.</p> <p>11 MS. DURIE: And if I can have marked</p> <p>12 as the next exhibit a copy of a document GOOG 05000355</p> <p>13 through 366. Sorry, Mike, I can't hand you a copy.</p> <p>14 MR. BONI: I have it. I just</p> <p>15 couldn't mark it before.</p> <p>16 MR. PETERSEN: This is 3?</p> <p>17 MS. DURIE: Yeah.</p> <p>18 DEPOSITION EXHIBIT 3</p> <p>19 Cooperative Agreement</p> <p>20 WAS MARKED BY THE REPORTER</p> <p>21 FOR IDENTIFICATION</p> <div style="background-color: black; width: 100%; height: 50px; margin-top: 10px;"></div>

<p style="text-align: right;">Page 102</p>  <p>12 Q. That's fine. You can set that aside. That 13 was my only question -- 14 A. Okay. 15 Q. -- with respect to that document. Can you 16 give me a sense, Dr. Courant of the size of the 17 University of Michigan collection? 18 A. Oddly enough, that is not as simple as you 19 would think. For one thing, the University of 20 Michigan's agreement for digitization involves several 21 libraries in the university that I'm not responsible 22 for. The law school library, the business school 23 library, which is called the Kellogg -- no, yeah, 24 the -- is that right? The business school library, 25 yeah, the Michigan historical collection, which is the</p>	<p style="text-align: right;">Page 104</p> <p>1 to form on that as well. 2 THE WITNESS: The works range from 3 the -- there's some bound volumes, which was the 4 purview of the agreement, range from the very beginning 5 of publishing to the present day and all manners of 6 subject matters. I often say that we hold the 7 scholarly and cultural record, so if you could construe 8 it as part of the scholarly or cultural record, we are 9 likely to have significant numbers of works in it, also 10 reference. So a very -- it's a very diverse, very 11 broad collection of works. 12 BY MS. DURIE: 13 Q. You testified earlier that the University of 14 Michigan had used digital copies that it had 15 obtained of works in this collection to create its own 16 searchable index; is that right? 17 MR. PETERSEN: Objection to form. 18 MR. BONI: I'm sorry, I couldn't 19 hear the tail end of that question. 20 MS. DURIE: Sorry. To create its 21 own searchable index. 22 THE WITNESS: Not as such. Although 23 those works were searchable, the number is so small 24 that having an index of a tiny fraction of a collection 25 is uninteresting.</p>
<p style="text-align: right;">Page 103</p> <p>1 Bentley Library, and a special collections library 2 called the Clements Library, are all contemplated by 3 the project and the agreement but are not part of the 4 University of Michigan Library System. 5 That said, the University Library 6 System holds approximately -- oh, and I should also 7 mention the University of Michigan at Flint and the 8 University of Michigan at Dearborn are also 9 contemplated in the agreement and are not part of the 10 University of Michigan Library System. The University 11 of Michigan Libraries, the part that I'm dean of, has 12 approximately 8 million volumes in it. 13 Q. Can you give me a sense of, and I realize 14 this is a very broad question, but the types of works 15 that are encompassed within those 8 million volumes? 16 MR. BONI: Object to form. 17 THE WITNESS: Lots of works of 18 many types. So without knowing what you mean by 19 types -- 20 BY MS. DURIE: 21 Q. I just want to get a sense of what kinds of 22 works are in there, what is the age range of these 23 works, what are the kinds of topics that they embrace, 24 what is the diversity within this collection? 25 MR. PETERSEN: I'm going to object</p>	<p style="text-align: right;">Page 105</p> <p>1 BY MS. DURIE: 2 Q. I'm sorry, I apologize. Is it correct that 3 the University of Michigan has used copies of -- 4 digital copies of books that were scanned by Google to 5 create a searchable index? 6 A. As part of this project? 7 Q. Yes. 8 A. Yes. 9 Q. And what was the reason for doing that? 10 A. I think I described it earlier, that it 11 enables users to find things reliably and easily that 12 they would otherwise not be able to find. 13 Q. You also mentioned the display, using the 14 work to allow people with print disabilities to gain 15 access to works that they otherwise would not be able 16 to read. Has the University of Michigan made any 17 actual displays of works in its collection of any of 18 the works as part of the search -- strike that. That 19 was terrible question. 20 In connection with this 21 searchable index, does the University of Michigan allow 22 users to read works that are returned from that 23 searchable index if those works are deemed to be in 24 copyright? 25 MR. PETERSEN: So we're off the</p>

<p style="text-align: right;">Page 106</p> <p>1 subject of students with print disabilities?</p> <p>2 MS. DURIE: Correct.</p> <p>3 MR. PETERSEN: This is a</p> <p>4 different -- okay.</p> <p>5 THE WITNESS: In cases where the</p> <p>6 rights holder has authorized it, yes.</p> <p>7 BY MS. DURIE:</p> <p>8 Q. To the extent that the rights holder has not</p> <p>9 authorized it, does the University of Michigan allow</p> <p>10 individuals to see the complete copies of works that</p> <p>11 are returned as search results if those works are in</p> <p>12 copyright?</p> <p>13 MR. PETERSEN: And you're excluding</p> <p>14 students with print disabilities?</p> <p>15 BY MS. DURIE:</p> <p>16 Q. Excluding students with print disabilities.</p> <p>17 A. If the works are either in copyright or not</p> <p>18 known to be not in copyright, no.</p> <p>19 Q. Has the University of Michigan --</p> <p>20 A. Did I get that grammar right?</p> <p>21 Q. Yeah.</p> <p>22 A. I believe so.</p> <p>23 Q. Yes. Has the University of Michigan put</p> <p>24 security measures in place to protect all of the</p> <p>25 various digital copies that exist of these works?</p>	<p style="text-align: right;">Page 108</p> <p>1 entity?</p> <p>2 A. Approximately 20 -- a little bit under</p> <p>3 20 million dollars a year.</p> <p>4 Q. Has that budget been affected in any way by</p> <p>5 the Google Library Project? In other words, has that,</p> <p>6 for example, caused your budget to go down?</p> <p>7 MR. PETERSEN: When you say budget,</p> <p>8 for acquisitions?</p> <p>9 BY MS. DURIE:</p> <p>10 Q. For acquisitions, acquisitions.</p> <p>11 A. Certainly not in any direct way. Indirectly</p> <p>12 the Google Library Project has enhanced the reputation</p> <p>13 of the library, therefore possibly improved our</p> <p>14 political ability to get resources from the provost.</p> <p>15 Q. Okay. But it is not then the case I take it</p> <p>16 that the fact that you have digital copies of the works</p> <p>17 in your collection has itself caused you to start</p> <p>18 spending less money on book acquisition?</p> <p>19 A. No.</p> <p>20 Q. Have there ever been circumstances where the</p> <p>21 University of Michigan has bought additional paper</p> <p>22 copies of books that it has in digital form as a result</p> <p>23 of its participation in the Google Library Project?</p> <p>24 A. So we have a dangling modifier here. So we</p> <p>25 have it in digital form as a result of the Google</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Again, we're talking about this set of works</p> <p>2 that we do not know to be in the public domain?</p> <p>3 Q. Correct.</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware of any breaches that have</p> <p>6 taken place that have allowed those works to become</p> <p>7 part of the public domain --</p> <p>8 A. No.</p> <p>9 Q. -- security breaches? Does the University</p> <p>10 of Michigan have a budget for the acquisition of new</p> <p>11 works?</p> <p>12 A. Yes.</p> <p>13 Q. Is that budget broken down in some fashion</p> <p>14 departmentally or --</p> <p>15 A. It's -- so actually I should back up. The</p> <p>16 University of Michigan Library has such a budget.</p> <p>17 Several other libraries have budgets. Departmental</p> <p>18 libraries have budgets. So there are probably dozens</p> <p>19 of entities within the University of Michigan who</p> <p>20 have -- make budgeted expenditures on library</p> <p>21 acquisitions, and by far the largest of those entities,</p> <p>22 but only one of them, is the one of which I am the</p> <p>23 dean.</p> <p>24 Q. With respect to the entity of which you are</p> <p>25 the dean, what is the acquisition budget for that</p>	<p style="text-align: right;">Page 109</p> <p>1 project.</p> <p>2 Q. Correct.</p> <p>3 A. Stop. And have we as a result of that, of</p> <p>4 having it not -- have we bought --</p> <p>5 Q. Let me ask the question again.</p> <p>6 A. Okay.</p> <p>7 Q. I want to direct your attention to those</p> <p>8 books where you have a digital copy as a result of the</p> <p>9 Google Library Project. Have there been circumstances</p> <p>10 where the University of Michigan has nonetheless gone</p> <p>11 out and bought additional paper copies of those books</p> <p>12 for the library?</p> <p>13 A. So I can say certainly, but I don't have</p> <p>14 specific knowledge of such cases. But knowing our</p> <p>15 practices, we would not take into account that we had a</p> <p>16 digital copy of an in copyright work, and we buy stuff</p> <p>17 all the time.</p> <p>18 Q. Okay. So having a digital copy of an in</p> <p>19 copyright work has not affected your purchasing</p> <p>20 decisions?</p> <p>21 A. That's correct.</p> <p>22 MR. BONI: Object to form.</p> <p>23 BY MS. DURIE:</p> <p>24 Q. Have there been circumstances, again</p> <p>25 referring your attention to this category of books that</p>

<p style="text-align: right;">Page 110</p> <p>1 are in copyright where you have a digital copy --</p> <p>2 A. That are not known not to be in copyright?</p> <p>3 Q. That are not known -- fair enough. That's</p> <p>4 a very good correction. Let me start again. Have</p> <p>5 there been circumstances where with respect to books</p> <p>6 that are not known not to be in copyright and for</p> <p>7 which you have a digital copy that the University of</p> <p>8 Michigan has paid publishers for digital full view</p> <p>9 access to those books?</p> <p>10 A. Again, certainly, although I can't cite</p> <p>11 specific instances.</p> <p>12 Q. Okay. Would having the digital copy have</p> <p>13 impacted that purchasing decision?</p> <p>14 A. No. Actually, I can site specific I mean.</p> <p>15 So in the scientific journal and e-book, scientific</p> <p>16 e-books area where we digitized, we also continue to</p> <p>17 license those same works frequently.</p> <p>18 Q. Okay. Has the University of Michigan ever</p> <p>19 paid money simply for the right to include a work in a</p> <p>20 searchable index as opposed to the ability to view or</p> <p>21 display the full text of that work?</p> <p>22 MR. BONI: Object to form.</p> <p>23 THE WITNESS: So I'm just -- I need</p> <p>24 a little help with the activity that you contemplate</p> <p>25 here.</p>	<p style="text-align: right;">Page 112</p> <p>1 connection with search functionality?</p> <p>2 BY MS. DURIE:</p> <p>3 Q. Any. Just in general. Presumably yes,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And has the University of Michigan</p> <p>7 ever paid a rights holder for permission to include a</p> <p>8 work simply in that index?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Okay. Now let me take indices that</p> <p>11 encompass the full text of the work. Has the</p> <p>12 University of Michigan ever paid a rights holder for</p> <p>13 permission to have that rights holder's work included</p> <p>14 in the index where it was an index of the full text of</p> <p>15 works?</p> <p>16 A. Again --</p> <p>17 MR. BONI: Object to form.</p> <p>18 THE WITNESS: I had no knowledge of</p> <p>19 such circumstances.</p> <p>20 BY MS. DURIE:</p> <p>21 Q. Okay.</p> <p>22 A. So no, as far as I know.</p> <p>23 Q. Now, you also mentioned earlier in your</p> <p>24 testimony the importance of being able to maintain</p> <p>25 duplicate copies of works as part of a digital archive;</p>
<p style="text-align: right;">Page 111</p> <p>1 BY MS. DURIE:</p> <p>2 Q. So in a situation in which the University of</p> <p>3 Michigan is creating an index of books in its</p> <p>4 collection, has the University of Michigan ever paid a</p> <p>5 rights holders simply for permission to include their</p> <p>6 book as an entry in the search results as opposed to</p> <p>7 paying the rights holder for permission to be able to</p> <p>8 read the book?</p> <p>9 MR. PETERSEN: I'm going to object</p> <p>10 to form, but the witness can certainly answer to the</p> <p>11 extent he understands the question.</p> <p>12 MR. BONI: Right.</p> <p>13 THE WITNESS: So if you're asking if</p> <p>14 we paid for the right to use a full text, no, no. I</p> <p>15 think the answer to your question is no.</p> <p>16 BY MS. DURIE:</p> <p>17 Q. Okay. Let me make sure we're clear. So</p> <p>18 have there been situations where the -- the University</p> <p>19 of Michigan has created indices of works in its</p> <p>20 collection; is that right?</p> <p>21 A. So indices of the contents of works so -- is</p> <p>22 what you're talking about?</p> <p>23 Q. Well, let me just start with indices of</p> <p>24 works in its collection.</p> <p>25 MR. PETERSEN: Do you mean in</p>	<p style="text-align: right;">Page 113</p> <p>1 is that correct?</p> <p>2 A. I'm not quite sure what you're referring to.</p> <p>3 Q. You mentioned the importance of being able</p> <p>4 to keep works for posterity --</p> <p>5 A. Yes.</p> <p>6 Q. -- is that right?</p> <p>7 A. Um-hum.</p> <p>8 Q. How is it that the library project has</p> <p>9 enabled Michigan to do that?</p> <p>10 A. The library project has led to our</p> <p>11 possession of digital files of many millions of our</p> <p>12 works, and so those files are available. They exist</p> <p>13 and are available as a record of the contents of those</p> <p>14 works should the works deteriorate, disappear, have</p> <p>15 other things happen to them.</p> <p>16 Q. Okay. Has the University of Michigan ever</p> <p>17 paid rights holders money for the inclusion of works</p> <p>18 purely in an archive, a duplicate copy of a work for</p> <p>19 purely archival purposes?</p> <p>20 A. Specifically actually here, if I may, a dark</p> <p>21 archive?</p> <p>22 Q. Correct, where the works are not being</p> <p>23 accessed for any purpose, but --</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 114</p> <p>1 A. No, no, we haven't, okay.</p> <p>2 Q. You also mentioned earlier in your testimony</p> <p>3 the Orphan Works Project. What was the rationale for</p> <p>4 undertaking the Orphan Works Project?</p> <p>5 MR. BONI: Object to form. Whose</p> <p>6 rationale, Daralyn?</p> <p>7 BY MS. DURIE:</p> <p>8 Q. Were you involved in early discussions</p> <p>9 regarding the desirability of embarking on the Orphan</p> <p>10 Works Project?</p> <p>11 A. Yes.</p> <p>12 Q. What was your understanding of the</p> <p>13 University of Michigan's rationale for embarking on</p> <p>14 that project?</p> <p>15 A. The project arose out of the decision by</p> <p>16 Judge Chin to -- not to approve the amended settlement</p> <p>17 agreement. And under that agreement, the -- many</p> <p>18 orphan works would have been made readable, usable as</p> <p>19 part of the product that Google and the Authors Guild</p> <p>20 and the publishers agreed to.</p> <p>21 And so we asked ourselves following</p> <p>22 that, is there some way that we could get orphan works,</p> <p>23 which would of course by definition, if they were well</p> <p>24 established, their orphanage was -- orphan-ness was</p> <p>25 well established, not to have any consequence for a</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. BONI: All right. Let's try.</p> <p>2 REEXAMINATION BY MR. BONI:</p> <p>3 Q. Dr. Courant, you testified just now that</p> <p>4 University of Michigan has not paid any rights holder</p> <p>5 for books that were stored in a dark archive. My</p> <p>6 question is whether any rights holders have been paid</p> <p>7 for books in any other kind of archive at the</p> <p>8 University of Michigan?</p> <p>9 MR. PETERSEN: Objection to form,</p> <p>10 vague.</p> <p>11 THE WITNESS: We have about</p> <p>12 8 million books in the library, and we paid for pretty</p> <p>13 much every one of them.</p> <p>14 BY MR. BONI:</p> <p>15 Q. Got it. So my question is, you drew a</p> <p>16 distinction in your response between dark archive and</p> <p>17 other -- any other type of archive as the question was</p> <p>18 presented, and my question is, did the University of</p> <p>19 Michigan ever pay a rights holder for a book purely for</p> <p>20 storage for archival purposes?</p> <p>21 A. So in a light archive it just isn't purely</p> <p>22 for storage. It's automatically by definition of light</p> <p>23 readable, and we certainly have paid rights holders on</p> <p>24 millions of occasions for reading access to works,</p> <p>25 including reading access to digital works.</p>
<p style="text-align: right;">Page 115</p> <p>1 rights holder, was there any way we could make digital</p> <p>2 uses of those works, which was something that there was</p> <p>3 a great interest in on the campus, because actually</p> <p>4 digital works are much easier to get at and use than</p> <p>5 print works for many purposes. So that was the genesis</p> <p>6 of the idea.</p> <p>7 Q. You said that digital copies are easier to</p> <p>8 use in some cases than print copies. Why is that?</p> <p>9 A. Well, there's lot of things you can do with</p> <p>10 them that you can't do with print copies. One of them</p> <p>11 is read them at distance. One of them, again, if you</p> <p>12 can combine searching and reading, which you can for</p> <p>13 works in the public domain, you can look at the way in</p> <p>14 which phrases were used on a given subject over</p> <p>15 different periods of time and do a kind of scholarship</p> <p>16 and study that really is much more difficult to do</p> <p>17 using only print volumes.</p> <p>18 MS. DURIE: Okay. Thanks very much.</p> <p>19 I don't have any further questions.</p> <p>20 MR. BONI: I just have a few</p> <p>21 follow-up questions. I will not be long. We can break</p> <p>22 or not. I'm ready to go now if you want.</p> <p>23 MS. DURIE: There's three minutes on</p> <p>24 the tape, Mike, so as long as you can get done then, I</p> <p>25 think we can keep going.</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. Is there any other type of archive other</p> <p>2 than one that has books available for reading in a dark</p> <p>3 archive?</p> <p>4 MR. PETERSEN: Objection to form.</p> <p>5 THE WITNESS: There -- one could</p> <p>6 hold an archive of -- usually -- usually there are not</p> <p>7 other archives of published works, of printed works,</p> <p>8 although one could imagine very rare books being held</p> <p>9 in a way that would be principally archival,</p> <p>10 principally to take care of them and only rarely,</p> <p>11 rarely for use.</p> <p>12 BY MR. BONI:</p> <p>13 Q. Were you -- Dr. Courant, were you personally</p> <p>14 in favor of the amended settlement in the Google Books</p> <p>15 case?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether --</p> <p>18 A. Generally.</p> <p>19 Q. Generally. Do you know whether that view</p> <p>20 was held by your colleagues at the University of</p> <p>21 Michigan?</p> <p>22 MR. PETERSEN: Objection, calls for</p> <p>23 speculation.</p> <p>24 THE WITNESS: It was surely held by</p> <p>25 some of them and surely not held by others.</p>

<div style="text-align: right;">Page 118</div> <div style="background-color: black; width: 100%; height: 150px; margin-bottom: 10px;"></div> <p>17 MR. PETERSEN: The videotape is up, 18 Mike. 19 MR. BONI: All right. That's all I 20 have. 21 MS. DURIE: Perfect. 22 THE VIDEOGRAPHER: This concludes 23 the deposition, the time is 4:46 p.m. 24 (The deposition was concluded 25 at 4:46 p.m.)</p>	<div style="text-align: right;">Page 120</div> <p>1 CERTIFICATE OF NOTARY 2 STATE OF MICHIGAN) 3) SS 4 COUNTY OF OAKLAND) 5 I, Jennifer L. Ward, Certified Shorthand Reporter, 6 a Notary Public in and for the above county and state, 7 do hereby certify that the above deposition was taken 8 before me at the time and place hereinbefore set forth; 9 that the witness was by me first duly sworn to testify 10 to the truth, and nothing but the truth, that the 11 foregoing questions asked and answers made by the 12 witness were duly recorded by me stenographically and 13 reduced to computer transcription; that this is a true, 14 full and correct transcript of my stenographic notes so 15 taken; and that I am not related to, nor of counsel to 16 either party nor interested in the event of this cause. 17 18 19 _____ 20 Jennifer L. Ward, CSR-3717 21 Notary Public, 22 Oakland County, Michigan 23 24 My Commission expires: 10-27-2013 25</p>																																													
<div style="text-align: right;">Page 119</div> <p>1 CERTIFICATE OF DEPONENT 2 I, PAUL N. COURANT, Ph.D., do hereby certify 3 that I have read the foregoing transcript of my 4 testimony, and further certify that it is a true 5 and accurate record of my testimony (with the 6 exception of the corrections listed below): 7</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 80%;">Correction</th> </tr> </thead> <tbody> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> </tbody> </table> <p>22 _____ 23 PAUL N. COURANT, Ph.D. 24 25 SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____, 20__. _____ 25 (NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>	Page	Line	Correction	8			9			10			11			12			13			14			15			16			17			18			19			20			21			
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31 (Pages 118 - 120)

Page 119
(part 1)

1 CERTIFICATE OF DEPONENT

2 I, PAUL N. COURANT, Ph.D., do hereby certify
 3 that I have read the foregoing transcript of my
 4 testimony, and further certify that it is a true
 5 and accurate record of my testimony (with the
 6 exception of the corrections listed below):

7	Page	Line	Correction
8	8	22-23	university librarian University Librarian
9	11	2	the librarian the University Librarian
10	12	16	university librarian University Librarian
11	21	7	add at
12	29	14	limited time basis limited basis
13	36	10	digit digital
14	47	11	engram Ngram
15	53	21	Michigan libraries Michigan Library's
16	61	9	joint Answer and Joint Answer and
17	62	5	before I read it. before. I read it.
18	71	25	orphan works orphan work
19	73	3	etcetera et cetera

20 (continued on next page)

21
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7	Page	Line	Correction
8	96	20	apparent until the apparent under the
9	98	2	an independence of an instance of
10	109	16	an in copyright work an in-copyright work
11	117	2	for reading in a dark for reading and a dark
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20 Paul N. Courant
 21 PAUL N. COURANT, Ph.D.

22 SUBSCRIBED AND SWORN TO BEFORE ME

23 THIS 22nd DAY OF June, 2012.

24 Denise M. Truesdell
 25 (NOTARY PUBLIC)

12/1/15
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DENISE M. TRUESDELL
 NOTARY PUBLIC - STATE OF MICHIGAN
 COUNTY OF WASHTENAW
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