

**PROCEDURES GOVERNING AUTHOR SUB-CLASS AND
PUBLISHER SUB-CLASS UNDER THE SETTLEMENT AGREEMENT**

Publishers and Authors recognize that they may have legitimate and overlapping rights to authorize use of and receive compensation for Books. Accordingly, in the course of settling the Action, Publishers and Authors have established procedures for determining their respective rights with respect to Books, the Settlement Fund and revenues earned from Books under the Settlement Agreement.

ARTICLE I. Definitions; Cross-References

- 1.1 A capitalized term in these Author-Publisher Procedures shall have the same meaning as set forth in the Settlement Agreement, unless otherwise provided.
- 1.2 Author means a member of the Author Sub-Class.
- 1.3 Educational Books means Books that, when published, were intended primarily for sale to educational markets (*i.e.*, K-12, higher education, continuing education, vocational, professional, self-study, and similar educational markets) for use in educational programs.
- 1.4 Other Google Program means a Google program other than, but similar to, the Revenue Models, including, but not limited to, the Google Partner Program.
- 1.5 Publisher means a member of the Publisher Sub-Class.
- 1.6 Unless otherwise stated, all references herein to Articles and Sections refer to Articles and Sections of these Author-Publisher Procedures.

ARTICLE II. Scope of Procedures

- 2.1 Scope. Except as set forth in Article X, the terms of these Author-Publisher Procedures apply only to the rights and obligations under this Settlement Agreement with respect to Rightsholders' Books.
- 2.2 Effective Date. The Author-Publisher Procedures are effective as of the Effective Date, provided, however, that if the Registry is operational prior to that date, an Author and a Publisher may, by mutual agreement, invoke the procedures set forth in these Author-Publisher Procedures.

ARTICLE III. Classification of Books

- 3.1 Initial Classification of a Book. Books that are initially classified as Commercially Available under the Settlement Agreement on the Notice Commencement

Date will be classified under these Procedures as In-Print Books, subject to Sections 3.2 and 3.3. Books that are initially classified under the Settlement Agreement on the Notice Commencement Date as not Commercially Available will be classified under these Procedures as Out-of-Print Books, subject to Sections 3.2 and 3.3.

3.2 Tests for Determining Classification of Books. Either an Author (or the Author directors of the Board of Directors of the Registry) (other than for a work-for-hire Book) or a Publisher (or the Publisher directors of the Board of Directors Registry) (other than for a reverted or Author-Controlled (defined in Article IV) Book) can challenge the classification of its Book or a group of its Books as In-Print or as Out-of-Print based on the following tests.

(a) A Book shall be classified as In-Print if it meets either of the following tests:

(i) Test 1:

The author-publisher contract for the Book does not provide for reversion to the Author of rights in the Book under any circumstances, or the Book is “in-print” under the author-publisher contract. For this purpose, the Book may be “in-print” even if the contract does not use the term “in-print,” provided, however:

(1) If the contract measures “in-print” by reference to revenues and more than fifty percent (50%) of the revenues paid to a Publisher from exploitation of a Book are earned from the Revenue Models, then those revenues shall not be considered in determining whether this Test 1 has been met.

(2) If the contract measures “in-print” by units sold or measures other than revenues, then an equivalent principle will be applied in determining whether this Test 1 has been met. The fact that a Book or information about a Book is included in a database or that information about the Book is provided in search engine results does not, by itself, mean that the Book is “in-print.”

(3) A Book is not “in-print” if the author-publisher contract provides for reversion to the Author of rights in the Book and all of the criteria for reversion have been met (except that the Author need not have sent a request for reversion to the Publisher).

(ii) Test 2:

To the extent consistent with any rights in the Book that it may have under the author-publisher contract, the Publisher publicly has announced to the trade that it has undertaken concrete steps to publish an existing or new edition of the Book, and such edition is published within twelve (12) months of the announcement.

(b) If neither of the Tests in Section 3.2(a)(i) or (ii) is met, then the Book shall be classified as Out-of-Print.

3.3 Procedures for Changing Classification of a Book.

(a) An In-Print Book shall be reclassified as an Out-of-Print Book if, pursuant to Section 3.2(d)(i) (Basis for Determination) of the Settlement Agreement such Book is determined to be not Commercially Available unless, pursuant to Article III, an Author or Publisher of such Book (or the Author directors or Publisher directors of the Board of Directors of the Registry, respectively) demonstrates to the Registry, and the Registry finds, that such Book meets either Test 1 or Test 2.

(b) An Author or Publisher of a Book, or the Author directors or Publisher directors of the Board of Directors of the Registry, respectively, challenging the classification of such Book as In-Print or Out-of-Print shall file a notice with the Registry with evidence (such as contracts, royalty statements, or trade announcements) sufficient to establish whether that Book meets either Test 1 or Test 2 (such evidence may, if no documentary evidence is reasonably available, include an affidavit).

(c) The Registry shall notify the other party of such challenge and evidence. If the other party, upon receipt of such notice, does not object and provide evidence rebutting the challenge within one hundred twenty (120) days from the time such notice is sent by the Registry, and the Registry finds that the evidence is sufficient to establish whether or not the Book meets either Test 1 or Test 2, then the Registry will deem the challenger's evidence dispositive and will promptly change the status of the Book from In-Print to Out-of-Print, or vice versa, as appropriate.

(d) If the parties have each timely submitted evidence and have not resolved the matter between them within sixty (60) days from the date such evidence is submitted to the Registry, the Registry will determine whether the evidence submitted establishes that the Book should be classified as In-Print or Out-of-Print under Section 3.2 by reviewing each party's documentary submissions, as well as any other relevant evidence submitted by the parties, including documents, affidavits, the course of dealing between the parties, or industry standards and practices.

(e) Any such determination by the Registry shall be final, provided, however:

(i) A determination by the Registry that a Book classified as In-Print should actually be classified as Out-of-Print shall not preclude the Publisher of that Book from subsequently publishing the Book that would result in a further reclassification of the Book as In-Print, provided doing so is consistent with the terms of the author-publisher contract.

(ii) Nothing precludes the Author of a Book from at any time challenging the status of that Book as In-Print on the ground that the Book fails to meet either Test 1 or Test 2.

(f) If (i) a challenge to the classification of a Book or group of Books is brought by the Author directors or the Publisher directors of the Board of Directors of

the Registry pursuant to Section 3.2, (ii) such challenge is brought before the Board of Directors and (iii) the Board of Directors is unable to make any determination pursuant to Section 3.3(b), then the matter shall be submitted to dispute resolution pursuant to Article IX (Dispute Resolution) of the Settlement Agreement.

ARTICLE IV. Author-Controlled Determination

4.1 Procedures. The following procedure shall apply in determining whether any Book for which the rights have not reverted to the Author (other than a Book that is a work-for-hire or for which the author-publisher contract does not provide for reversion of rights to the Author in any circumstances) shall be classified as Author-Controlled solely for purposes of the Revenue Models and other Registry-brokered licenses:

(a) An Author shall send or shall have previously sent to the Publisher (either before or after the Effective Date) a request for reversion to the Author of rights in such Book, in accordance with the author-publisher contract.

(b) If the Publisher does not respond or did not previously respond in writing to such request within (i) ninety (90) days or (ii) the applicable written response period specified in the author-publisher contract, if any (whichever period is longer) (the “Response Period”), then the Author may send a “Change Status Notice” to the Registry (with a copy to the Publisher). The Change Status Notice must:

(i) affirm that the Author believes that the Book is no longer “in-print,” as defined in Test 1 and that the Response Period has expired, and request that the Book be deemed to be Author-Controlled;

(ii) include a copy of the request for reversion previously sent to the Publisher; and

(iii) include a copy of the applicable author-publisher contract if the Author has it.

(c) Upon receipt of a Change Status Notice for a Book, the Registry shall escrow all revenues from Revenue Models thereafter owed to an Author and Publisher of the Book.

(d) If, within one hundred twenty (120) days of the date of the Change Status Notice, the Publisher does not respond in writing to the Registry and the Author to dispute the Change Status Notice, the Registry shall deem the Book to be Author-Controlled. Such Author-Controlled Book shall be subject to Section 6.1(b) and escrowed revenues shall be distributed according to Section 6.2(a).

(e) If, within one hundred twenty (120) days of the date of the Change Status Notice, the Publisher disputes the Change Status Notice, the parties shall submit the issues in dispute to the Registry for decision.

(i) At either party's request, the Registry shall review both parties' documentary submissions, as well as any other relevant evidence, to determine whether the Book should be classified as In-Print or as Out-of-Print pursuant to the procedures and tests in Article III.

(ii) The Registry shall review both parties' documentary submissions, as well as any other relevant evidence, to determine whether rights in the Book are subject to reversion to the Author according to the terms of the author-publisher contract.

(iii) If the Registry determines that the conditions in the author-publisher contract for reversion to the Author of rights in the Book have been met, the Registry shall deem the Book to be Out-of-Print and Author-Controlled, the Book shall be subject to Section 6.1(b), and all escrowed revenues shall be distributed according to Section 6.2(a).

(iv) If the Registry determines that the conditions in the author-publisher contract for reversion to the Author of rights in the Book have not been met and that the Book is Out-of-Print, then the Out-of-Print Book shall be subject to Section 6.1(a) or 6.1(c), as applicable, and all escrowed revenues shall be distributed pursuant to Section 6.2(b) or 6.2(c), as applicable.

(v) If the Registry determines an Out-of-Print Book should be reclassified as an In-Print Book, then the In-Print Book shall be subject to Article V.

4.2 Notification of Procedures. If a Publisher claims or registers a Book pursuant to Section 13.1(c)(ii)(2)(B) of the Settlement Agreement and an Author claims or registers the same Book pursuant to Section 13.1(c)(ii)(3)(B) of the Settlement Agreement, the Registry will notify both the Author and Publisher of such claims and of the procedures available under this Article IV.

ARTICLE V. In-Print Books

5.1 Permitted Uses. Both an Author (other than a work-for-hire Author) and the Publisher of an In-Print Book will be considered a Rightsholder for purposes of Section 3.5 (Right to Remove or Exclude) of the Settlement Agreement. Except for Books that are works-for-hire, for an In-Print Book, both the Author and the Publisher of such Book must agree, in accordance with the following procedure, that Google may make one or more Display Uses of the Book:

(a) The Publisher shall initially notify the Registry and the Author of the Book as to any and all Display Uses the Publisher wishes to authorize (*e.g.*, whether or not to allow Preview Use for a Book). The Author shall have the right, within thirty (30) days from the provision of such notice by the Publisher, to notify the Publisher and the Registry that the Author does not authorize some or all of the requested Display Uses. The Display Uses requested by the Publisher shall commence after such thirty (30)-day period absent notice from the Author that it does not authorize one or more of the

requested Display Uses. If the Author objects to one or more Display Uses, then only the mutually authorized Display Uses shall commence.

(b) After the thirty (30)-day period in Section 5.1(a), each of the Author and the Publisher for an In-Print Book shall continue to be considered a Rightsholder for purposes of Section 3.5 (Right to Remove or Exclude) of the Settlement Agreement (*i.e.*, for purposes of directing Removal, exclusion, changes in Display Uses and/or levels of access for any Revenue Model) and Section 5.2 will apply.

(c) Nothing herein precludes an Author from informing the Publisher and the Registry at any time that the Author wants the Book made available for one or more Display Uses.

5.2 Removal; Exclusion; Changes in Display Uses. Subject to Section 5.3, either the Author or the Publisher may direct the Registry to Remove or exclude, or change Display Uses of, an In-Print Book pursuant to Section 3.5 (Right to Remove or Exclude) of the Settlement Agreement, and, upon such direction, the Registry will notify Google and either the Author or the Publisher of the Book, as appropriate.

5.3 Conflicting Directions. If, at any time, the Author and the Publisher of a Book issue conflicting directions to the Registry for an In-Print Book pursuant to Section 3.5 (Right to Remove or Exclude) of the Settlement Agreement, the more restrictive directions as to Removal, exclusions, changes in Display Uses or levels of access will control (*i.e.*, the Registry shall act in accordance with the request authorizing the fewest or most limited uses of the In-Print Book).

5.4 Control of Pricing. If, either by the procedure set forth in Section 5.1 or pursuant to a Transfer Request under Article X for an In-Print Book in an Other Google Program, the Publisher and Author agree to authorize one or more Display Uses for a Book, then the Publisher has the right to determine the pricing of the Book for Consumer Purchase, provided, however, that an Author will continue to be considered a Rightsholder pursuant to Section 3.5 (Right to Remove or Exclude) of the Settlement Agreement with rights to Remove or exclude the Book if the Author objects to the pricing.

5.5 Distribution of Payments/Revenues. All payments under Section 5.1 (Cash Payments to Class Members Whose Books and Inserts Have Been Digitized) of the Settlement Agreement and all revenues from Revenue Models for In-Print Books shall be remitted by the Registry to the Publisher and flow through the royalty statements of the Publisher. The Publisher shall provide to the Author the appropriate splits or royalties as may be specified in the author-publisher contract for the Book or as the parties may otherwise agree. If an Author wishes to dispute the split or royalty rate paid by the Publisher on such revenues, Article VII shall apply, provided, however, that Article VII shall not apply to Educational Books.

ARTICLE VI. Out-of-Print Books

6.1 Permitted Uses and Pricing. The following terms shall apply with respect to uses of Out-of-Print Books:

(a) For all Out-of-Print Books that are works-for-hire, only the Publisher of such Books shall be considered the Rightsholder for purposes of directing Removal, exclusion, changes in Display Uses and/or levels of access for any Revenue Model. The Publisher will control the pricing for Consumer Purchase of any such Books.

(b) For all Out-of-Print Books for which the rights have reverted to the Author or are determined to be Author-Controlled, only an Author of such Books shall be considered a Rightsholder for purposes of directing Removal, exclusion, changes in Display Uses and/or levels of access for any Revenue Model. The Author will control the pricing for Consumer Purchase of such Books.

(c) For all Out-of-Print Books for which the rights have not reverted to the Author and that are neither works-for-hire nor Author-Controlled, both (i) the Author and (ii) the Publisher shall be considered the Rightsholder for purposes of directing Removal, exclusion, changes in Display Uses and/or levels of access for any Revenue Model, provided, however, that any such direction by the Publisher must be for good reason articulated (*e.g.*, for the Publisher's legal, technical, editorial, policy, commercial or economic reasons), provided, further that, for purposes of the foregoing proviso, Removing, excluding or restricting Display Uses and/or levels of access for any Revenue Model for the purpose of benefiting any other book with which such Out-of-Print Book might compete is not a "good reason." If, at any time, an Author and the Publisher of a Book issue conflicting directions to the Registry regarding the uses authorized for such Out-of-Print Book, the more restrictive directions as to levels of access will control (*i.e.*, the Registry shall act in accordance with the request authorizing the fewest or most limited uses of the Out-of-Print Book). Either an Author or the Publisher may set the price for Consumer Purchase of any such Books, provided, however:

(i) upon receipt of a request to change the price for Consumer Purchase of such Book, the Registry shall notify the other party, if such a party has been identified; and

(ii) in the case of a timely objection by the other party, the Registry will maintain the higher of the prices specified until the parties can agree on a new price for Consumer Purchase.

6.2 Distribution of Payments/Revenues. All payments under Section 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized) of the Settlement Agreement and revenues earned from Revenue Models shall be distributed by the Registry as follows:

(a) For Out-of-Print Books for which the rights have reverted to the Author or are Author-Controlled, the Registry will remit one hundred percent (100%) of such revenues to the Author.

(b) For Out-of-Print Books that are solely works-for-hire, the Registry will remit one hundred percent (100%) of such revenues to the Publisher.

(c) For Out-of-Print Books other than those described in Sections 6.2(a) and 6.2(b), the Registry will separately remit payment to both the Author and the Publisher as follows:

(i) For such Out-of-Print Books with a Publication Year prior to 1987, the Registry will pay out sixty-five percent (65%) of such revenues to the Author and thirty-five percent (35%) to the Publisher.

(ii) For such Out-of-Print Books with a Publication Year during or after 1987, the Registry will pay out fifty percent (50%) of such revenues to the Author and fifty percent (50%) to the Publisher.

(iii) For purposes of this Section 6.2(c), "Publication Year" means the earliest copyright year that appears in or on the Book, or if no copyright year appears in or on the Book, the year of initial publication set forth in a copyright registration for the Book.

(iv) The Publisher will not owe splits or royalties to the Author on the revenues remitted to the Publisher by the Registry under this Section 6.2.

6.3 Author Claim of Reversion. If an Author in claiming or registering an Out-of-Print Book pursuant to Section 13.1(c)(ii) of the Settlement Agreement indicates that, to the best of the Author's knowledge, such Book is not a work-for-hire and is reverted, and a Publisher claims or registers the same Book pursuant to Section 13.1(c)(ii)(2)(B) of the Settlement Agreement, then such Book will be presumed reverted for purposes of this Article VI and solely for purposes of the Revenue Models and exercising rights under the Settlement Agreement and other Registry-brokered licenses. The Registry shall notify such Publisher of such indication by the Author. If, within a reasonable time after such notification, the Publisher comes forward with evidence that the Author is not a Rightsholder of the Book and/or the Book is not reverted, the Registry will notify the Author as to such evidence and give the Author an opportunity to submit his or her own evidence. If there is a dispute based on the evidence submitted to the Registry by the Author and the Publisher, the dispute will be resolved pursuant to Article IX (Dispute Resolution) of the Settlement Agreement based on all the evidence presented. In each such dispute, the Arbitrator will determine who shall bear the burden of proof under the circumstances.

6.4 Resolving Conflicting Claims. Except where otherwise specifically provided in these Author-Publisher Procedures, if both an Author and a Publisher claim or register an Out-of-Print Book other than an Educational Book and there is a conflict

between their Claim Forms with respect to their asserted rights in the Book, the Author and the Publisher shall follow the procedures in this Section 6.4. First, the parties shall attempt to resolve the matter informally. If they are unable to do so, either party may submit the dispute to the Registry for resolution. After a decision by the Registry, either party may thereafter submit the dispute for resolution pursuant to Article IX (Dispute Resolution) of the Settlement Agreement. In reaching a decision, the Registry or the Arbitrator will give primary consideration to the terms of the written contract and amendments thereto, if any, between the parties. If the contract has no conclusive or determinative wording, the Registry or the Arbitrator may consider extrinsic evidence, including documents, affidavits, the course of dealing between the parties, or industry standards and practices.

ARTICLE VII. Disputes

7.1 Scope. This Article VII shall apply to disputes:

(a) Between an Author and a Publisher referenced in Section 5.5, except if the dispute regards an Educational Book, provided, however that if the dispute concerns whether a Book is an Educational Book, then that dispute shall be subject to Article IX (Dispute Resolution) of the Settlement Agreement;

(b) Between and among non-Publisher Rightsholders (*e.g.*, co-authors and heirs and assignees of an Author) with respect to pricing, Removal, inclusion or exclusion of a Book, or authorization of one or more Display Uses of a Book, under the Settlement Agreement.

7.2 Procedures. The following procedures shall apply to disputes described in Section 7.1:

(a) The Rightsholder will notify the Registry of a dispute; the Registry will not pay any Rightsholder for the Book until after a final decision according to the procedures in this Article VII.

(b) After notification to the Registry of a dispute, the parties will attempt to resolve the dispute amicably. If no such resolution is reached within ninety (90) days from the date the Registry was notified of such dispute (which period can be extended by agreement of the parties), any party can submit the dispute for resolution under the procedures of Section 9.3 (Arbitration) of the Settlement Agreement, subject to the additional terms of this Article VII, and all parties to the dispute will then be bound to follow such procedures to resolve such dispute.

(c) All decisions of the Arbitrator will be binding. In reaching a decision, the Arbitrator will give primary consideration to the terms of the written contract and amendments thereto, if any, between the parties. If the contract has no conclusive or determinative wording, the Arbitrator may consider extrinsic evidence, including documents, affidavits, the course of dealing between the parties, or industry standards and practices.

7.3 Fees. The Registry shall set filing fees for disputes taking into account the objectives of facilitating dispute resolution, deterring frivolous filings and defraying the Registry's expenses, such that the dispute resolution process benefits Rightsholders but does not unduly financially burden the Registry.

(a) In cases of disputes brought pursuant to Section 7.1(a), the party submitting the dispute to the Arbitrator shall pay a filing fee to the Registry of \$300 (subject to adjustment by the Registry), and if such party is the prevailing party, half of such filing fee will be refunded at the conclusion of the arbitration.

(b) The Registry will adopt fees and rules for disputes brought pursuant to Section 7.1(b), which may differ from those adopted for disputes brought pursuant to Section 7.1(a).

(c) Except as provided in this Section 7.3, all costs of the dispute resolution process will be borne by the Registry.

ARTICLE VIII. Unclaimed Funds

8.1 Unclaimed Authors' Funds. If revenues earned by an Out-of-Print Book are owed to the Author pursuant to Section 6.3(a) (Unclaimed Funds and Public Domain Funds) of the Settlement Agreement but the Author fails to register with the Registry, the revenues to which the Author otherwise is entitled shall be designated Unclaimed Authors' Funds. All such Unclaimed Authors' Funds shall be subject to Section 6.3(a) (Unclaimed Funds and Public Domain Funds) of the Settlement Agreement and, if distributed by the Registry to Rightsholders pursuant to that section, shall be distributed to Registered Rightsholders who are Authors.

8.2 Unclaimed Publishers' Funds. If revenues earned by an Out-of-Print Book are owed to the Publisher pursuant to Section 6.3(a) (Unclaimed Funds and Public Domain Funds) of the Settlement Agreement but the Publisher fails to register with the Registry, the revenues to which the Publisher otherwise is entitled shall be designated Unclaimed Publishers' Funds. All such Unclaimed Publishers' Funds shall be subject to Section 6.3(a) (Unclaimed Funds and Public Domain Funds) of the Settlement Agreement and, if distributed by the Registry to Rightsholders pursuant to that section, shall be distributed to Registered Rightsholders who are Publishers.

8.3 Allocation of Unclaimed Funds. All revenues earned by Books that neither an Author nor a Publisher claims within five (5) years after the end of the reporting period during which such revenues were earned will be allocated between the Unclaimed Authors' Fund and the Unclaimed Publishers' Fund pursuant to Section 6.2(c), based on the Publication Year of such Books.

8.4 Timing of Payments. No payments under Section 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized) of the Settlement Agreement or revenues from the Revenue Models shall be paid or distributed to Authors or Publishers until the Effective Date or one (1) year after the Final Approval Date,

whichever is later, so that Authors or Publishers or their representatives may submit challenges, pursuant to Article III, to the initial classifications of Books. With respect to Books for which the initial classifications are challenged in that time period, payments under Section 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized) of the Settlement Agreement and revenues from the Revenue Models shall not be paid to Authors or Publishers until the challenges are resolved pursuant to Article III.

ARTICLE IX. Releases and Precedential Effect

9.1 Releases. Except as set forth in Sections 9.2 and 10.3, nothing herein shall constitute a release of any claim by an Author against a Publisher or by a Publisher against an Author, and all rights to bring such claims are expressly reserved by Authors and Publishers.

9.2 All Claims Governed. The provisions of these Author-Publisher Procedures shall govern all claims and disputes between Authors and Publishers regarding the inclusion and exploitation of any Book in the Revenue Models, and (except for Educational Books) the royalty splits for revenue derived from the Revenue Models.

9.3 No Precedential Effect. Any decisions of the Registry (or of an Arbitrator pursuant to Article IX (Dispute Resolution) of the Settlement Agreement) with respect to any dispute brought pursuant to these Author-Publisher Procedures will be final. Except as expressly provided in Article X, any such decision, including but not limited to decisions made pursuant to Articles III, IV, VI, VII or X, shall apply solely with respect to and for purposes of the Settlement Agreement, the Revenue Models, and any other Registry-brokered licenses. Neither a Publisher nor an Author, nor either's agent or associational representative, may rely on or cite the Registry's determination with respect to an individual Book, or any group or pattern of determinations, as legal or other precedent or authority, "course of dealing," "industry practice," or otherwise, as an aid or support in the negotiation, enforcement, interpretation and/or construction of an author-publisher contract, nor with respect to any other Books or any programs other than the Revenue Models or other Registry-brokered licenses.

ARTICLE X. Other Google Programs

10.1 Application of Decisions. For each In-Print Book published under an author-publisher contract executed prior to 1992 that has not been amended thereafter to expressly grant or retain all electronic rights pertinent to the Revenue Models or any Other Google Program, any decision in a dispute initiated pursuant to Section 5.5 regarding the royalty split for a Display Use of that Book will also apply to all royalty splits for uses of that Book in any Other Google Programs that are the same as or substantially identical to that Display Use.

10.2 Take Down and Transfer Requests. The following procedures will apply to each In-Print Book (except for Educational Books) that is the subject of an author-publisher contract executed prior to 1992 that has not been amended thereafter to

expressly grant or retain all electronic rights pertinent to an Other Google Program if such Book is displayed in an Other Google Program:

(a) A Rightsholder who has a good faith belief that Google is exploiting such Book in an Other Google Program without the necessary authorization from such Rightsholder (the “Notifying Rightsholder”), may, by using the form of notice described in Section 10.2(b) (the “Notice”), request, through the Registry, that Google either remove such Book from such Other Google Program (a “Take Down Request”) or transfer such Book from the Other Google Program to one or more Display Uses in one or more of the Revenue Models (a “Transfer Request”).

(b) The form of Notice is Exhibit A hereto, and will be available online (including through the Registry’s website).

(c) The Notifying Rightsholder shall submit the Notice to the Registry. Upon receipt, the Registry shall forward a copy of the Notice to Google, and the person who had given Google permission to use such Book (the “Initial Authorizing Rightsholder”) will be sent a copy of the Notice by Google pursuant to Section 3.5.(c)(ii)(1) of the Settlement Agreement.

(d) The Initial Authorizing Rightsholder shall have thirty (30) days to respond to the Notice, as set forth in Sections 10.2(e) or 10.2(h). If Google, pursuant to Section 3.5(c)(ii)(2) of the Settlement Agreement, transfers such Book into the Revenue Models, such Book shall become subject to these Author-Publisher Procedures, as applicable.

(e) If the Notice is a Take Down Request, the Initial Authorizing Rightsholder may respond, at its election, by:

(i) Not objecting to the Take Down Request; or

(ii) Objecting to the Take Down Request by filing with the Registry a counter notice that states, under penalty of perjury, that the Initial Authorizing Rightsholder has the good faith belief that he, she or it has rights in such Book necessary to authorize Google to exploit such Book as it is being exploited in such Other Google Program (the “Counter-Notice”). The Counter Notice shall include documentation supporting such belief.

(f) The form of Counter-Notice is Exhibit B, and will be available online (including through the Registry’s website).

(g) The Registry shall forward the Counter-Notice to Google and the Notifying Rightsholder. If the Counter-Notice requirements are complied with, then:

(i) If, pursuant to Section 3.5(c)(ii)(3) of the Settlement Agreement, Google does not maintain or restore access to such Book in the Other Google Program, then the Initial Authorizing Rightsholder may file a lawsuit against the

Notifying Rightsholder (or follow the dispute resolution procedures in the author-publisher contract) to determine who has the right to authorize Google to exploit such Book in the Other Google Program; or

(ii) If Google does maintain or restore access, then the Notifying Rightsholder may file a lawsuit against the Initial Authorizing Rightsholder (or follow the dispute resolution procedures in the author-publisher contract) to determine who has the right to authorize Google to exploit such Book in the Other Google Program.

(h) If the Notice is a Transfer Request, the Initial Authorizing Rightsholder may respond, at its election, by:

(i) Not objecting to such Book being moved into the Revenue Models; or

(ii) Objecting to the Transfer Request by filing a notice of objection with the Registry.

(i) If the Initial Authorizing Rightsholder objects to the Transfer Request pursuant to Section 10.2(h)(ii), then:

(i) The provisions of Section 3.5(c)(ii)(4) and (5) of the Settlement Agreement will apply; and

(ii) Either the Notifying Rightsholder or the Initial Authorizing Rightsholder may file a lawsuit against the other (or otherwise follow the dispute resolution procedures in the author-publisher contract) to assert that it has the rights to exploit such Book in either the Revenue Models or Other Google Programs, and nothing in these Author-Publisher Procedures or the Settlement Agreement may be read to release or waive any such claims.

(j) To the extent that any provision of this Article X conflicts with any other provision of these Author-Publisher Procedures, the provision of this Article X shall control.

10.3 Retention of Rights. All Rightsholders will retain any and all rights that they have under 17 U.S.C. § 512 with respect to all Books in Other Google Programs, except that Rightsholders will instead follow the procedures in this Article X for all Books covered by this Article X.

ARTICLE XI. Miscellaneous

11.1 Delegation. The Registry may delegate one or more of the functions specified in Articles III, IV or VI to an Arbitrator designated pursuant to Article IX (Dispute Resolution) of the Settlement Agreement.

11.2 Notice. All notices, demands and requests as specified herein shall be given to the parties specified herein and not pursuant to Sections 17.15(a) (Legal Notices)

and 17.15(b) (Other Notices) of the Settlement Agreement, and shall be in writing. Such notices, demands and requests shall be sent by e-mail (if practicable), postal mail, or other delivery methods. Notice shall be deemed received upon proof of receipt.

11.3 Assistance. Publishers and Authors shall use commercially reasonable efforts to provide author-publisher contracts to assist the Registry (or Arbitrator) in classifying Books as In-Print or Out-of-Print and in resolving disputes brought pursuant to these Author-Publisher Procedures, subject to an appropriate confidentiality agreement that will be executed by each party.

11.4 Amendments. The Registry may amend the terms of these Author-Publisher Procedures pursuant to Section 17.27 (Amendments) or otherwise; provided, however, that no amendment may impair the rights of the Settlement Class, or, without Google's consent, Google's rights, under the Settlement Agreement. The Registry shall not make any such amendment except with a vote of the Board of the Directors of the Registry, in accordance with its By-Laws.

11.5 No Liability For Settlement or Registry Administration. No Rightsholder will have any claim against any Plaintiff, Class Counsel, Google or the Registry for (i) any decision with respect to payment of any Cash Payment under Section 5.1 (Cash Payment to Class Members Whose Books and Inserts Have Been Digitized) of the Settlement Agreement or (ii) actions taken in good faith for payments or other disbursements from the Settlement Fund. Except as expressly set forth herein, these Author-Publisher Procedures are not intended to, nor shall they in any way be construed or interpreted to, create or support any cause of action or any claim for damages or injunctive relief against any Plaintiff, Class Counsel, Google or the Registry.

11.6 Plan of Allocation. All distributions under these Author-Publisher Procedures will be made in accordance with the Plan of Allocation.

NOTICE OF TAKE DOWN/TRANSFER REQUEST

The undersigned holds a Copyright Interest in the following Book:

Title:

Author:

Publication Date:

Publisher:

ISBN:

Other Identifying Information:

The undersigned has a good faith belief that such Book is included in a Google program without the necessary authorization from the undersigned.

The undersigned hereby requests that (check one):

Google cease using the Book (“Take Down Request”).

Google transfer the Book to the Google Library Project, subject to the terms and conditions of the Settlement Agreement (“Transfer Request”).

Name:

Title:

Date:

COUNTER-NOTICE

The undersigned has a good faith belief that he, she or it has the rights in the Book that is the subject of the Notice attached hereto that are necessary to authorize Google to use such Book in the Google Partner Program or [other Google program].

Documentation supporting such good faith belief is attached hereto.

Signed under penalty of perjury.

Name:

Title:

Date:

AWAITING
COURT
APPROVAL